HOUSE OF COMMONS

Justice Committee

Oral evidence: The work of the Director of Public Prosecutions, HC 334

Tuesday 15 June 2021

Ordered by the House of Commons to be published on Tuesday 15 June 2021.

Watch the meeting

Members present: Sir Robert Neill (Chair); Paula Barker; Rob Butler; Angela Crawley; James Daly; Maria Eagle; Laura Farris; Dr Kieran Mullan; Andy Slaughter.

Questions 1 - 63

Witness

I: Max Hill QC, Director of Public Prosecutions, Crown Prosecution Service (CPS).

Examination of witness

Witness: Max Hill.

Chair: Welcome to this session of the Justice Committee, and a particular welcome to our witness, Max Hill QC, Director of Public Prosecutions. It is very good to see you again, Mr Hill.

Before we come to the evidence session, we have to deal with the normal formalities of our declarations of interest. I am a non-practising barrister. In this instance, I ought to remind Members, as I have before, that Mr Hill and I are old friends and colleagues from practice at the Bar and fellow Benchers of the Middle Temple.

Maria Eagle: I am a non-practising solicitor, Chair.

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

Dr Mullan: I have a family member who is a senior police officer.

Rob Butler: Prior to my election, I was non-executive director of Her Majesty's Prison and Probation Service and a magistrate member of the Sentencing Council. Mr Hill also sat on the Sentencing Council at the time I was there.

Chair: Paula, is there anything from you?

Paula Barker: No, thank you, Chair.

Q1 **Chair:** Mr Slaughter is due to join us by Zoom. He is a non-practising barrister. Shortly, in the course of the meeting, we will be joined by Sarah Dines, who is a barrister who has not practised since her election, and Laura Farris, a new member of the Committee, who is a practising barrister.

Director, thank you very much for coming to see us. It is over a year since we saw you last and a lot has happened. I will start with a topic that it may be unusual to ask the Director of Public Prosecutions about: the G7. In the course of the press conferences afterwards, the Foreign Secretary, Mr Raab, referred to an apparent agreement with the United States Government that, in his words, would enable a virtual trial of Anne Sacoolas, who is subject to an arrest warrant in the United Kingdom—but, of course, has claimed diplomatic immunity by virtue of her husband's status—in relation to an offence committed in the United Kingdom, which is well known. He suggested that the way was open for the CPS to bring such proceedings.

We would be interested to know whether you or your officials at the CPS were involved in any of the discussions with the Foreign Office that led up to that. What is the position as to the practicality of that trial, which would seem to be unprecedented, as far as we are aware?

Max Hill: Thank you. The death of Harry Dunn was a terrible tragedy and one that, for the Crown Prosecution Service, we wish to see brought to

court so that justice can be delivered by the fact finder, as in any other case, which is not us but is judge and jury.

I have met with the Dunn family on two occasions now. I can tell you that on the first day of the Biden Administration I had a bilateral discussion with my counterparts in the United States and pressed the case, as we have done since making a positive charging decision in 2019, for Mrs Sacoolas to face justice in this jurisdiction.

As to precisely how that is achieved, we have been clear from the outset that Mrs Sacoolas only needs to travel to this country, where, in accordance with our system, she will be provided with a full and fair trial. Whether there are any alternatives to that, I noted, along with you, Chair, that there was discussion at the G7, but I was not involved in that. I do not think it is possible to say that a finite conclusion has been reached. We stand ready to prosecute by whatever means we can, according to the law of this country and also understanding that it will be for an individual judge to decide and to sanction any process in this case.

There is legislation in place on an interim basis through the Coronavirus Act. We are aware of provisions in the current Courts Bill now going through pre-legislative scrutiny that could enshrine those emergency measures into the generic law, but it is too early to say precisely what the outcome will be in this case. My answer is that we still stand ready, as we always have done, and we will see what can be developed, I hope, for a positive outcome on behalf of everyone in this case, but specifically including the Dunn family.

Q2 **Chair:** You are absolutely right to mention the Dunn family front and centre in relation to that. It might need, by the sound of it, some legislative or procedural change before it could actually happen in the way that is envisaged, but you have not been given further details from the Foreign Office of anything more since the G7 communiqué.

Max Hill: No. It is right to say we await further developments. We are all conscious as lawyers at the CPS that, if there were any solution, it would have to be something that we all consider as part of the criminal justice system—and potentially for application in other cases and not just one. We have to be careful about taking exceptional measures. Generally, that is not what the law does. I stay with my main line here, which is that we have made a positive charging decision and we hope to prosecute this case freely and fairly as we do in every other case.

Chair: That is very clear. Thank you very much. There is another topic that is obviously a current concern of Maria Eagle.

Q3 **Maria Eagle:** I would like to read to you an email I have received from my constituent who is a sister of Gary Jones. Gary was 18 years old when he was unlawfully killed at Hillsborough. She says this to me: "I am sure you can appreciate how disappointed, indeed devastated, we were as a family from the outcome of the trials. In 2016, it was determined after

two long years that Gary and the other 95 victims had been unlawfully killed, and for five years we were silenced in order not to prejudice any future prosecutions. To say that we feel let down by the CPS is an understatement. Throughout the trials, we had to listen again to the prosecution speak of football hooliganism, and this was never challenged immediately by the CPS. The disparaging comments made by the defence barristers at the conclusion of the recent trial were shameful and untrue and showed no respect towards the victims of the Hillsborough disaster and their families. When we lost Gary, a part of each of us died with him, and the emptiness continues still. He is missed every second of every day. I am now older than my mum and dad were when they lost their boy, and I cannot understand why it has taken so long and why no one has been held accountable. We would never want any other family to have to endure the slurs directed at their innocent loved ones and the extremely long road for justice and accountability to end in no accountability."

There are 95 other families who would say that; thousands of survivors who have witnessed horrors and have been traumatised since who would say something similar. Can you tell me why you think those trials failed as badly as they did?

Max Hill: Yes, I will do my best to explain. As with your question, I have to start by paying tribute to the 96—the friends and the families who have gone through year after year and decade after decade of a search for justice and accountability. We have to accept now in 2021 that criminal proceedings have not provided that justice and accountability, although there have been aspects of it elsewhere—inquests such as you mentioned in the email being one example.

I have met with many of the families. I travelled to Warrington during the trial of police commander Mr Duckenfield. I will be meeting with the families again in the next two or three weeks; a date is being arranged. We have done our best at the Crown Prosecution Service to maintain proper contact to treat this community as the victims that they are, with the rights of the bereaved, which they are. Actually, at the CPS, we have had in place since 2013 a dedicated specialist unit of lawyers, paralegals and administrative staff who have given their all to try to generate criminal justice outcomes. They—and I speak for them—are first in saying how sorry we all are that this process has not led to the closure that the 96 have sought.

Where it leaves us is this. The Crown Prosecution Service was right, I maintain, to lay charges both against those who stood trial in the first trial of Duckenfield and Mackrell, the latter, of course, being convicted of health and safety offences but none the less being convicted. That is the first occasion in which there has been criminal liability established, and I am pleased to say that we managed to achieve that. In relation to Mr Duckenfield, as history now relates, there was a jury who disagreed and a second jury acquitted.

When it came to what has been known as the cover-up trial—I do not shy away from that phrase—we, years ago now, took advice from senior Treasury Counsel. We charged in accordance with that advice, and that is why the indictment alleged perverting the course of justice. What I think has been lost perhaps in some of the public messaging in recent days is that, in 2018, Sir Peter Openshaw, the judge who dealt with the Duckenfield trial and managed, pre-trial, the cover-up trial, ruled that the Taylor inquiry in the 1990s was not a course of public justice. However, that same judge did permit us to proceed on the basis on which we put the case to a jury this year, namely that, even though statements prepared and edited for the purpose of Taylor were not in the course of public justice, they must have been so edited and prepared in contemplation of public justice outcomes such as inquests or even criminal trials.

That is a course that we argued in 2018. Sir Peter Openshaw's ruling that Taylor did not represent a course of public justice was not susceptible to appeal; we could not appeal it. Now, we come to Mr Justice Davis's ruling and we bear in mind that he had already on his desk the Openshaw review, if I can call it that. Mr Justice Davis then heard expert evidence—and many of the families and friends of the 96 heard it too—in which there was a level of disagreement, but evidence over many days, and it was having heard that evidence, after evidential developments in the trial, that Mr Justice Davis ruled that the trial had to stop there.

I will just add here, because I have seen it in some of the public commentary, that had we taken the alternative course of alleging misconduct in public office—which, by the way, we could not have done in respect of Mr Denton because he is not a public officer, and we wanted to be consistent in the charging—in respect of the other two defendants in this trial, the conduct, or misconduct, would have been exactly the same as relied upon for perverting the course of justice, and, therefore, the case would have stopped in precisely the same fashion as it did as a result of Mr Justice Davis's ruling. This is contrary to the case that we advanced, but after everything that I have said, and after the evidential developments in the last month or so, the learned judge reached his ruling.

Of course, we considered very carefully whether we should appeal against Mr Justice Davis's ruling. There is a technical route to appeal. However, as I have tried to explain, that was not the first but the second ruling by a very experienced High Court judge. To try to dislodge it, we would have had to have demonstrated to the Court of Appeal that Mr Justice Davis was wrong and that the decision he made was unreasonable. We decided—and I believe we were right in deciding—that that is such a high test that we had no prospect of meeting it. That is why we did not lodge the appeal, which leaves the families where they have always been.

The final point I will make, if I may, is that we are only too well aware of Bishop James Jones's valuable work in this arena. In fact, in March 2018,

we signed the Bishop's charter, which essentially calls for enhanced rights and awareness of the rights of bereaved families. I believe we are the only national organisation that has signed that charter. Whether so-called Hillsborough law and a duty of candour is to reach the statute book is for members of this Committee and for this House, and not for me. However, we have been very clear in doing everything we can to achieve a criminal justice outcome, and I am sorry—I repeat—that that has not proved possible in this tragic and very long-standing case.

Q4 **Maria Eagle:** Do you think, therefore, that the vigour with which the CPS fought, and those who were presenting the case fought, was appropriate and of the correct strength?

Max Hill: I do. I said as much to the families during the Duckenfield trial proceedings and I will say so again, because we have been represented by Queen's Counsel of extremely high calibre. We have operated on the basis of legal advice. We have at no stage associated ourselves with slurs on the fans, which we have seen in previous years. You are right that there was a certain repeat of those slurs as part of the historical analysis during the trial, but not by us, and we do not associate ourselves with it. What that leaves is the style of advocacy in a criminal court, but I defend to the hilt the exceptional hard work that was put in by not one but several Queen's Counsel, numbers of junior counsel as well, not to mention our specialist lawyers, and I maintain that we did everything we could and we applied all of the vigour that we could.

Q5 **Maria Eagle:** Following the inquest verdicts, the families—and they had been silenced for two years during the inquests—were prevented from speaking publicly, showing any emotion in court or reacting in any way to what was said and what was put, for, in total if one includes the inquest, seven years. The basis of the cover-up, which you have acknowledged happened in this case, starting on the very day of the disaster, was that the fans were at fault. It was not the police who were at fault; it was the fans. They rioted; they behaved badly; they forced the gate, we were told originally. There have been variations of that theme. That was how the changes to the statements were made to try to present that case right from the beginning.

The consequence of this has been to force the families at every stage for 32 years to attempt to defend the reputations of those who had died and the survivors, thousands of whom are still traumatised by what they witnessed and what has happened since. Given that they were silenced, do you not think that it was incumbent upon the lawyers presenting the prosecution case to step in at every stage when these slurs were repeated during the trial and defend the truth, which was established by the Hillsborough independent panel report of 2012, and, as a consequence of which, the Prime Minister of the day, David Cameron, apologised at the Dispatch Box for the cover-up by the South Yorkshire police?

Max Hill: Yes. Let me try to be clear. It has been almost beyond bearing for the 96 families, and I am the first to acknowledge that. I say the same when I meet with them, as I will again.

Equally, the core of the trial that has just concluded leads me to repeat a paragraph that we wrote very carefully knowing that the judge's ruling was to be handed down the following morning and that has formed part of our press release. This is the nub of it in relation to that second trial. What was heard in court will have been surprising to many. That a publicly funded authority—and that means South Yorkshire police—can lawfully withhold information from a public inquiry charged with finding out why 96 people died at a football match in order to ensure that it never happened again, or that a solicitor can advise such a withholding without sanction of any sort, may be a matter that should be subject to scrutiny. That was the heart of the trial and that was the contention that we were advancing.

I repeat: we have never associated ourselves with, nor have we built, any case on the basis that someone else was to blame, still less that it was fans themselves who were to blame. I do not believe that the narrative of the trial and what was being received by the jury in that trial—or, indeed, the Duckenfield trial—was anything different. What our lawyers have done is to try to focus on the issue, which, I am afraid, by application of the criminal law, became a narrower and narrower issue—and I have repeated the history of that. But that is what the prosecution is there to do. None of that should stand in the way of aggrieved families, traumatised over decades, from saying whatever they feel they should say in order to seek their own justice outcomes. I support that, and that is why we signed up to the Bishop's charter, and we are still a signatory of that charter to this day.

Q6 **Maria Eagle:** They have had to keep quiet over the last seven years. In that time, the old slurs have been reintroduced, and they were used and reintroduced during these trials by the defence. At the end of those trials, two of the defence QCs made public pronouncements, one in an article in a political magazine and the other on the BBC, reintroducing those slurs saying there was no cover-up, something for which the Prime Minister of this country has apologised from the Dispatch Box, and also saying that the Liverpool fans rioted. That is the very essence of the slurs.

Do you understand why the families were looking to your advocates to defend the reputations of their loved ones from that kind of scurrilous attack, when the families themselves could not for fear of prejudicing the trial?

Max Hill: I do understand, and I say two things. First, whatever may have been said by those defending in that trial about the allegations, historical or otherwise, slurring the fans, that was not the issue that the judge and jury had to decide, and our team was intent in focusing the court on the real issue. We are very sorry that we were not able to

prevail and that the limitations, I am afraid, on the criminal law did not allow us to prevail. That is the first point.

The second point is that I heard what was said and I have read the article. It is not for me to regulate what defence representatives say either before, during or after trial. That is simply not within the CPS's power. But I will say that I dissociate myself—and I speak for the whole of the Crown Prosecution Service—with anything that was said in that article or in commentary after the case came to an end.

Maria Eagle: Thank you, Chair.

Q7 **Chair:** Thank you very much. Does that now leave potentially some deficiency in the law when you refer to further scrutiny? Essentially, I get the sense that you are suggesting that it needs some legislative revisiting, either the definition of the Act or the terms of the course of public justice. Is that the reality of what you are saying?

Max Hill: Yes. What I am saying is that we used the criminal law as it exists as best we could.

Chair: Indeed.

Max Hill: We cannot create anything fresh. It is for Parliament to determine whether anything fresh could be created, but the paragraph I read from our press release and the surprise that we have expressed perhaps give some guidance at least to a discussion that can take place. It is beyond my power to go further than that.

Chair: Thank you very much. We move on to a different but equally important topic, of course, with Paula Barker.

Q8 **Paula Barker:** Thank you, Chair, and good afternoon, Mr Hill. I would like to start by associating myself with the comments of my colleague, the hon. Member for Garston and Halewood, in paying tribute to the families and survivors, and, of course, the wider city of Liverpool for the Hillsborough issue.

I would like to move on to RASSO, if I may, Mr Hill. I am sure you will agree that the fall in rape prosecutions is stark. I would be keen to understand your views on why prosecutions have plummeted over the last five years, and are you expecting any immediate change to this trend?

Max Hill: Thank you. This is about determination to force change and seeking an unprecedented opportunity across the whole of the criminal justice system. On determination first, I, like everybody else, see the figures, and I have seen the truly alarming disparity between reports of rape that are made to the police in any of the 43 forces around the country and the number of cases that either reach us at the CPS or then, through us, go to court. We are determined to make a change and to see more people.

I do not want to talk about cases here. When someone complains of sexual violence at the hands of another, they are a person; they have been through an appalling experience. Rape remains one of the most serious offences that can be committed to a person, short of murder itself. There are not enough of those people who are having their opportunity to tell their story in court and to seek justice for what has happened to them. There needs to be a determination to change that and to see a rise in the numbers. I put it as simply as that.

Then, on to opportunity. We do actually have an unprecedented opportunity. I, as is everybody else, am awaiting the publication of the Government's rape review, which has been in preparation for a couple of years, and I hope that we will receive it soon. Whatever it says, I think and believe that it will present us all with an opportunity to do better. Let me be very clear here. I think that all of us at all stages in the criminal justice system need to do more and need to do better. What I have seen emerging in the time that I have been at the CPS—a little over two years—is far less defensive argument on behalf of one organisation or another. I will not claim that we or even I have been perfect about that, but I think that has been declining. On the contrary, what I see are a huge number of steps taken to improve the way we talk about this insidious crime and the way that we tackle it together.

So let me answer your question. Under my leadership, we have an ambitious programme of work already under way to improve how we prosecute these cases. I have given evidence on two previous occasions before this Committee about how we have tackled the real and difficult issue of disclosure through the National Disclosure Improvement Plan and the national board that sits between policing and the CPS to make things better. That is relevant to my answer to this question because, within the last six months, Assistant Commissioner Ephgrave and I, who still jointly chair the board, have renamed it the Joint Operational Improvement Board. That is more than just a cosmetic change, because we have brought under the responsibility of the board the prosecution of rape and serious sexual offences, including charging those cases, progressing them, and, before charge, the question of investigation, which can often be complex; and I am happy to expand on that. That is the first evidence of an ambitious programme of work.

However, earlier this year—in fact, in January—together with the police, we launched the Joint National Action Plan, which contains meaningful tiers of work under the plan to ensure that we do what I think we need to do in partnership with the police, namely to build stronger cases from the start by engaging with each other at a much earlier stage.

Beyond that, I have personally led an evidence-gathering exercise going around the country when it has been possible, engaging, as some of us are today, on screens when not possible, and actually sitting down with prosecutors, with police officers who investigate these crimes, and with criminal justice partners, including independent sexual violence advisers,

to understand exactly what good practice looks like and to ensure that we all aspire to that.

We are publishing data on a quarterly basis and have been now for a year and a half, something that was not in place prior to 2019. We have developed increased specialist training for our rape and serious sexual offence lawyers. They are not just any prosecutors. They move through the ranks in the Crown Prosecution Service. They are specialists and they receive training, for example, on the psychological impact of trauma on a person's ability to recall what has happened to them, whether the crime happened recently or some time ago, and, indeed, also tackling myths and stereotypes; tackling the difficult issue—and it is a difficult legal issue—of presenting a case to satisfy a criminal court that there was no consent to what happened.

One of the real problems in this area of crime, which singles out rape from many other more general areas of crime, is that defendants commonly do two things. First, they do not plead guilty in answer to a strong prosecution case. In general crime, we are seeing pleas of guilty of between 75% and 78%. In rape, it is about 44%. Defendants are saying that we need to prove the case.

In many instances, the physical aspects of what happened, horrible though they are, are all agreed, but the defence that is tendered is one of consent. The law dictates—it is very straightforward, but it represents a high hurdle—that we, for the prosecution, must prove that the victim in the individual case did not consent and that the defendant could not have held a reasonable belief that she, and it is usually a "she", was consenting.

There are cases—it is distasteful to say it, but I can understand how it is reached—in which I am quite sure that a jury is satisfied to what lawyers call a criminal standard that the victim, the complainant, did not consent, but they cannot be sure that the defendant had no reasonable belief in consent. That is not an issue that stops us charging—I want to emphasise that—but it is an issue that stands in the way of achieving conviction. That is an important factor.

I need to go on and say that the complexity of this area of casework is, I think, well known. I have talked in the past about the digital explosion that we have gone through as a society; witness all the screens in this room today. For investigators, the steps that need to be taken to build the case do involve looking at surrounding material, whether that is CCTV footage for an offence that has taken place in public or whether it is social media evidence for an offence that has taken place in the course of what appears to have been a relationship, or is other digital material held on telephones, laptops and the like.

As to that last point, we have needed as a system to improve the way we interrogate people's mobile phones and their laptops. We have in the last year the guidance judgment in the case of Bater-James and Mohammed

from the Court of Appeal, setting out in very clear steps for the first time the circumstances—let me say the limited circumstances—in which it is necessary to interrogate a complainant's mobile phone. That guidance is in place and I believe will make a difference.

Lastly, let me say that we are developing a national framework outlining a baseline standard for how we work with ISVAs, and they are a huge force for good. A lot of my evidence gathering has involved sitting in rooms alongside independent sexual violence advisers. They can be the interlocutor between the investigator, the prosecutor and the individual who has been raped, keeping them informed al all stages of the process.

All of that is a rising curve. I believe that the outcome will be an increase in the number of cases going to court. It is because we are now talking, perhaps for the first time, right across the system from end to end—that is police work, prosecution work and court case progression—that I believe this is an opportunity to take all of this forward.

I await the Government's rape review, which we will all read with intense interest, but, back to where I started, we need to be determined to do better. We need to get more cases to court. We can only do that by satisfying the code tests, which I am happy to go through, enshrined in the code for prosecutors. We need to be mindful of disclosure, which I am sure we will talk about later, which can never be forgotten. We need to balance the rights of suspects who are brought into the criminal justice system with witnesses and victims. We have to do all of that, but we need to do it better. That is the determination that I am trying to bring to bear right now.

Q9 **Chair:** That is a very full answer and it is a substantial topic. Perhaps we can try to keep our questions and answers reasonably succinct simply to get through the volume of business and important issues that we want to raise. If people want to take their jackets off, feel free, by the way.

Max Hill: Of course.

Q10 **Paula Barker:** My next question, Mr Hill, is, what is your assessment of the success of the CPS's RASSO 2025 strategy so far? I am interested to understand how you are measuring the success of the strategy, and how did the strategy and your updated legal guidance incorporate the voice of victims and their concerns? I am very keen to learn more about that.

Max Hill: Thank you. It is unprecedented that as the national prosecuting authority we have developed specific legal guidance as well as strategy for the prosecution of rape and serious sexual offences. When, in April 2020, we brought out our organisational strategy to take us through to 2025, alongside that, we wanted to do the same on a dedicated basis for rape and serious sexual offences. I commend that as a good thing.

The five strands—I will be as quick as I can—in relation to that are our people and enhancing the skills of our people. That is where the updated legal guidance that was published in May, as you have mentioned in your

question, is particularly relevant. In answering your question, we went out to public consultation on that legal guidance. I am going to be bold and say that we do not have to go out for public consultation when all that we are doing is drafting legal guidance for lawyers to make legal decisions. We thought it was none the less important that we consult publicly. We had a very strong set of responses from individuals, organisations, stakeholders, and the commissioner community as well. We absorbed all of that input and then were able to produce that legal guidance.

I commend that. It is a transparent document. It is written for lawyers because it has to be used by lawyers, but we really put it out to tender to pressure-test what we were saying with a very wide community. On the back of that, we are publishing later this year a new leadership strategy for how we conduct this area of casework.

I have referred to the digital explosion. Digital capability is the second strand of RASSO. In November last year, at an early stage under the strategy, we published guidance that assists prosecutors to understand what can be obtained from different digital devices—so to know where to look and know what you can look for—and that is going to be an important outcome.

To put one layer of detail on that, in December last year we introduced together with police colleagues the investigation management document, the IMD, which is designed to challenge reasonable lines of inquiry, to make sure that thought is given to what investigators think they need to do to investigate a case, and for prosecutors, when they play a part in that, to ensure that it is a proper part and that any lines of inquiry are reasonable rather than being unnecessary.

The third point is that we work on strategic partnerships. There is a cross-government group now being set up to improve the sharing of cross-system data for rape. That, too, I am sure, will be transparent. There is a proof of concept model being trialled this year. We will be able to hold ourselves to account through that.

That leaves two final strands. One is casework quality. The legal guidance is there to indicate how we approach this area of crime. We have specific guidance under development to support consistent national file standards. We are refreshing the list of advocates, the barristers and, in some cases, solicitors we use to prosecute these cases.

All of that is driving to the final strand, which is building public confidence. Here, we are committed to continuing to consult with victims groups. We do that in a number of ways, but the Violence Against Women and Girls external consultation group is an ideal vehicle for that.

All of that is in play. I think the outcomes of all of those strands, which can be measured over time, will show what I am determined will be a success of that strategy.

Paula Barker: Thank you. I will leave it there, Chair, because I know other colleagues wish to come in under this section.

Chair: Thank you very much. The next questions are from James Daly, Laura Farris and Kieran Mullan on this topic.

Q11 **James Daly:** Thank you very much, Chair. Director, you are an eminent lawyer who has been involved in the criminal justice system, but I found your evidence particularly unconvincing, to say the least, on what we are talking about. I practised in the criminal courts for 16 years, and, essentially, what you have told us is that, during that period of time and when the Chair practised in the courts, the process of both investigating and prosecuting cases of this type was completely deficient and that your predecessors clearly were not directing matters in an appropriate way.

Ms Barker asked you a very fair question about how you measure success. Rather than members of this Committee hearing about yet another strategy—which it seems to me to be plainly obvious is what the prosecuting authorities should be doing—I think the public would be staggered to know that fewer than one in 60 rape cases reported to the police last year resulted in the suspect being charged. That is 52,210 rapes being recorded in 2020 by the police in England and Wales, and only 843 resulting in a charge or a summons—a rate of 1.6%. I consider that to be utterly shameful.

If the only answer that our prosecuting authorities have is that we need to build stronger cases—we are talking for the first time right across the system—the comments that you have made are damning to the extent of——as you can see, I am rather lost for words.

Can I ask you this? The figure of 1.6% is there. In terms of the strategies and the various things that you are going to put in place, and we speak to you next year or the year after, what will that percentage be?

Max Hill: I am not going to predict a percentage, but I accept the challenge, and I say that we all need to be equal to it. Let me just deal with the figures that you have presented. You are right: 52,000 reports of rape. The figure you did not mention, though, is that, of that 52,000, only 2,700 were referred to the Crown Prosecution Service. Something I talk about often, namely the attrition rate, is far, far too high. At this stage, what I mean by that is for those who are brave enough—and, let us be clear, it is mostly women—those women who are brave enough, notwithstanding the trauma, to come forward and to tell the police what has happened, only a very small percentage of those cases even reach the Crown Prosecution Service.

Something is going wrong at a very early stage. I believe there are multiple reasons for that. I am speaking to you at the tail end of a pandemic in which we now have a criminal justice system, by volume of cases in the system, that is facing a challenge that none of us has ever faced before. I am sure that many people looking, as it were, at the front door of the system are wondering, "How will my case find its way

through? How long am I going to have to wait?" Those are legitimate questions. All of the strategies that I have set out and the detail that I set out in answer to Ms Barker under that strategy stand. I won't repeat it. That is designed to properly increase the volume of cases that we get to consider and to make sure that, in considering them, we apply the right standards and we charge whenever we find that the code test is satisfied.

That is why I maintain my previous answer. If we show sufficient determination, I believe the figures will change, but I am not here to predict a precise percentage or number.

Q12 **James Daly:** Therefore, what you leave us with, Director, is a comment that essentially—and you phrase this in whichever way you think is appropriate—the level of cases and how they are investigated by the police is not being dealt with in a sufficiently competent or professional manner to come through in volume to be representative of the very many victims in this country who are not being served by the justice system.

Max Hill: I said at the outset, and I repeat, that not enough of these people are being given their day in court, and that needs determination to change it. Let me be clear here. There have been some step changes introduced very recently—in fact, at the beginning of this year. The Attorney General produced new guidelines on disclosure, which came into force on 31 December. On the same day, I published what is known as the Director's Guidance on Charging—the sixth edition. Both of those documents are designed to make all of us who operate in this arena look hard and look early at these cases and build them from the outset, and that is where change will come from. This is not about me saying it is all for the police, nor is it about the police saying it is all for the CPS. We have to work together and communicate at an earlier stage. If that has not been happening sufficiently in the past, that is what needs to change.

I will stop there. I am sure there are other reasons why, if, as you say, it has not happened in the past.

Q13 **James Daly:** No, you said that, Director. If you do not have this figure, perhaps you could provide it to the Committee. How many suspects are currently released under investigation having been arrested for an offence of rape?

Max Hill: I do not have the figure for that. I am happy, Chair, to provide it in writing. Let me just say this. It is not for me to comment on the Courts Bill, but I do commend legislative efforts to ensure that as many cases as possible are brought within the bail-out provisions—in other words, not subject to release under investigation. It is probably not right for me to go any further. One way of applying pressure on the system—and I am here to say we need to apply that pressure to ourselves—is to hold these cases to a tighter timeline. That is by releasing on bail, which is always with a designated date—I need hardly tell a qualified solicitor that—rather than an open-ended release under investigation. If, through

whatever changes, we see fewer cases released under investigation and tighter control from the earlier stages, I would say that is a good thing.

James Daly: Thank you, Chair.

Q14 **Chair:** To follow up Mr Daly's point, as to the 50,000 who do not get to the CPS, essentially, a decision has been taken by the police—

Max Hill: Yes.

Q15 **Chair:** —that there is not adequate evidence to submit the file to the Crown Prosecution Service. That is the long and short of it, is it not?

Max Hill: That is absolutely right. Whether we are talking about my guidance on charging or the Attorney General's guidelines on disclosure, there are going to be cases where it is right for the police to decide, for whatever reason, that they cannot take the case forward; it is not a provable allegation. That will always be a matter for police judgment. But there are many other cases where, through reaching out to the CPS for what we call early investigative advice, we can then apply minds to that case. We will take what is known as an offender-centric approach to that— in other words, rather than just scrutinising the account given by the complainant, looking at the activity of the suspect before, during and after the offence to see whether that generates evidence that will bolster the case, and that is how you bring these cases forward.

I won't go on, but we have regional pilot work, as do police colleagues around the country, that is designed to bank these various changes in terms of strategy documents and working plans, and to work locally together—and that is the key to this—to take those cases that are provable and to bring them through the system.

Chair: Okay. Thank you very much.

Q16 **Dr Mullan:** How do the figures that we have talked about here reflect— it may not happen at all—pre-charge discussion between the police and the CPS? Do the figures look at that? I do not know what the process is, but do the police speak to the CPS, get an informal view and then perhaps decide not to charge, or is that not part of the system?

Max Hill: No, I would not go so far as to say an informal view. You either show the prosecutor the full product of your investigation and then invite him or her to conduct the code tests, evidential sufficiency, public interest and determine charge, or you do not. There is not really a halfway house. My guidance on charging is quite clear on that and sets out quite clearly for CPS staff and police colleagues when cases should be brought in for formal advice. The figures last year are, as I have said, 51,000 complaints but 2,700 individual cases that were formally referred to us. It was not a higher number than that.

Q17 **Dr Mullan:** On that same point, I guess there is the question of police practice in terms of them looking at the previous decisions that the CPS

had taken, the local decision maker that they speak to. Would they, in your experience, perhaps not bring a case to the CPS if they have seen similar cases rejected, or would you expect the police always to present the evidence for a formal decision?

Max Hill: My guidance would be that, if you, as a police investigator, have a case that you determine is capable of being proved and capable of satisfying the code tests, you should refer it to the CPS and you should not be guided by other cases, as I have tried to say earlier. We are dealing with people here. Every person is different and every case deserves to be looked at seriously and as fully as possible. That, I know, is what police colleagues up and down the country are committed to. The reason I know that, going back to something I said earlier, is because we have embraced RASSO casework as one of the three operational strands under the Joint Operational Improvement Board. I sit down every month without fail with Assistant Commissioner Ephgrave—we are doing so tomorrow afternoon—and we call in briefings on disclosure, which was the original purpose of the group; case progression, which I am happy to expand on later; and RASSO casework. I see a huge amount of good work, and all of that determination that I have described for the CPS is there for police colleagues as well. I want to commend the work that is going on now, which is why I say we have a unique opportunity.

Q18 **Dr Mullan:** You mentioned and very clearly articulated the immovable prosecutorial challenges when the dispute is over consent rather than anything to do with the physical act. Do you have any sense of what proportion of the challenge that represents? Does the CPS look at and understand that that is a key deciding factor of its cases that are not successful or other cases it chooses not to charge?

Max Hill: I do not think, in all honesty, we have data on exactly how many RASSO cases are those where consent is the issue. Interestingly, we have developed data in the last couple of years about non-conviction outcomes where disclosure is an issue. That is because of work, if I may say so, partly generated by this Committee and previous reports of this Committee. There has had to be an intense focus on what were, up to 2017, really significant disclosure failings, so that is where a lot of effort has gone in. That is just one part of the picture.

Q19 **Dr Mullan:** It would be helpful for us to understand this problem if we were able to tangibly understand the proportion of it that relates to that.

Max Hill: Undoubtedly, it is a theme that anyone who comments on this area needs to understand, namely the extent to which the legal requirements on disproving consent are a problem. That is not the same thing as me calling for a change in the law, and neither, I think, is your question doing that, but we do need to focus on that. I cannot say to you that there are specific datasets that will allow us to tease that out. I suspect that the Ministry of Justice courts service do not keep that data either. They will record what is on the indictment, but they are unlikely to

record in detail. It will take a lot of work to get to the individual issues per case.

Dr Mullan: Thank you.

Chair: Thanks very much. Ms Farris, welcome to the Committee. I am delighted to see you joining us.

Q20 **Laura Farris:** Thank you, Chair. Thank you, Mr Hill. I want to try to dissect a little more of the data that we have seen around rape convictions. *The Times* did a piece about two weeks ago—I think it was data for 2019-20. That showed that there were 55,130 reported rapes; 2,747 got reported to the CPS. That is less than 5%. I just have a couple of very quick questions about that to begin with, just to make sure I have understood.

It looked from that data that the CPS successfully secured convictions in about half of those cases; I think about 1,400 obtained convictions. That is about 50%. Is that standard—is that consistent—with the rape prosecution rate as it has always been?

Max Hill: Yes is the short answer to that.

Q21 **Laura Farris:** Just pausing there, it is right to say that the thing that has changed is the cases that are being referred to you from the police. That is consistent with the answers you have given already this afternoon. It is also right to say that, partly at least because of that, you put into place the joint national RASSO plan in conjunction with the police.

Max Hill: Yes, the Joint National Action Plan.

Q22 **Laura Farris:** Before we consider what the Government's end-to-end rape review might say, could you give the Committee your preliminary view on why you think the police have referred so few cases to you, relatively, in the last few years? What has changed? What should we understand has changed about rape and policing?

Max Hill: I am not sure at all that rape has changed or that the nature of the allegations has changed. I am afraid I am going to disappoint you here because, save for the 2,700-odd cases that are referred to us, we are actually not in a position to know what has happened to the 47,000 other cases that, by definition, we have not seen. What I can say though, and I have touched on this earlier, is that in a number of specific geographical areas—the south-east is one and London is another—we have, if you like, sent our RASSO lawyers to sit down with police officers in regional police forces to ask them, frankly, what is on the books, what allegations they have, if we can look at those, and if we can see whether, through working together, mindful of the Attorney's guidelines, mindful of the guidance on charging, we can improve the numbers month by month and area by area of cases that are then being referred. What I am seeing now are the early signs this year of an increase in numbers.

Q23 **Laura Farris:** I want to come on in a moment to some of the local pilot

projects you are running. If you were just giving your impression—I am not asking you to criticise the police but really for our understanding—what do you think has happened? Do the police not have the time to investigate perhaps, or do they find that victims do not want to hand over phones? It would just be helpful for us as a Committee. You must have a view.

Max Hill: I am sure that, as with the CPS, resourcing is bound to be a factor here. Let me be the first to say that I have every respect for the policing community and everything that is required of them. As I touched on earlier, the fact that we are in an unprecedented position during Covid, with the sheer number of all-crime cases that we are dealing with, is replicated by the burden the police are now bearing. It would be unsurprising if, if you like, at the frontline, there are not really significant pressures on police forces region by region. Allegations of crime do not stop—they keep coming—but finite resources are there to meet them.

Q24 **Laura Farris:** Would it be fair to say that it would be the luck of the draw for a victim which police force she encountered first?

Max Hill: No. I am not going to go that far and I am not going to say that there are such stark regional variations as that. We have a dedicated RASSO unit in every geographical area throughout England and Wales. We make, and we need to continue to make, the same offer to all of the 43 regional forces. I say to chief crown prosecutors and to all other levels, "You must go and form resilient relationships, whether at senior level or at operational level, to make sure that you are talking about the detail of the cases." What we cannot do is investigate 50,000 cases a year at the CPS.

That is why it is important to note that there are cases that do not have a future. Let me say here, because you are asking for reasons, that one of the reasons is that there are, I repeat, brave women who come forward, who want the system to know about what has happened to them, but they are not actually prepared to put up with the interference in their life for one, two or possibly three years that is represented by taking that case all the way through the system. Who are we to criticise them for not wanting to bear that burden? That is where attrition comes in. Equally, there are cases where an allegation may have been made but on investigation the police make up their own minds that it is not going to be a provable allegation. Those are two reasons, and resourcing would be a third, where you see the numbers being affected.

Q25 **Laura Farris:** Pausing there, you alluded, I think, to some of the local pilots that are being run. One of the ones that I have read about is called Operation Bluestone by the Avon and Somerset Police, with a perpetrator focus. Are you aware of that pilot?

Max Hill: I am.

Q26 **Laura Farris:** Can you explain to the Committee why it is different from an ordinary policing approach and why, if indeed it is your view, it is

more effective?

Max Hill: It is led, actually, by Deputy Chief Constable Sarah Crew, who is a full member of the Joint Operational Improvement Board. I meet with her on a monthly basis. I know that what Bluestone does is what I have been describing, namely early intervention; early conversation about cases; offender-centric approach; understanding what a proper investigation involves; setting reasonable lines of inquiry that are proportionate and reasonable. There have been poor examples on our side at the CPS as well as on the police side in the recent past. If you do those things, you will arrive at an agreement about the strength of a case that you are then able to take forward. If you do that, not in isolation but with everybody else, as it were, playing their part—and that can include local community organisations; it definitely will include independent sexual violence advisers; it will include sexual assault referral centres, all of those factors—and bear early attention on a case, it can improve the outcome and improve the prospects, and drive those numbers up.

Q27 **Chair:** It is an important issue, so we have spent a bit of time on it. You referred to disclosure issues, which I might as well pick up now. A lot of the problems with RASSO offences, we know, can turn around disclosure. It is a broader issue because there is an obligation on disclosure right across the whole of the justice system, obviously.

You have talked about the National Disclosure Improvement Plan in the RASSO offences context. A lot of that surely depends on the detective constable and the detective sergeant running the investigation being fully aware of the disclosure obligations. Whatever is said at the top level with chief constables and assistant chief constables, it is the person who is under pressure and with quite a heavy workload in a police station, maybe on a late shift or the night shift, having to come to a decision, having that readily to hand and the confidence that they will be supported in the decisions that they take, is it not?

Max Hill: Yes.

Q28 **Chair:** What can be done to improve that side of things? What is being done there?

Max Hill: You are right; it is a frontline issue, so you need to take a progressive approach. That is why the National Disclosure Improvement Plan was not one set of principles once and for all but has been developed in stages.

Stage 1, which was on foot when I arrived in November 2018, was about setting those national principles. This Committee has heard in the past about disclosure champions by force—officers of some rank who are able to help the detective constable or the detective sergeant.

Phase 2, which was still running at the start of the pandemic and up to the early stages of this year, was about taking those national principles and making them local, and making them land force by force.

Phase 3, which we are embarking on now, will be about taking the best examples of local practice and reflecting those back to the centre. It is not a once-and-for-all strategy.

I would add, if I may, that it was an extremely serious issue faced by the CPS and criminal justice partners in 2017. Cases, had disclosure been properly dealt with, would not have got as far as they did. I would suggest that a level of understanding has to be given if we are talking about focus here for those aspects of the criminal justice system that swung their focus in particular on to disclosure, not least because of the July 2018 report of this Committee which demanded that that be done.

As you mature over time, first, you cannot slide backwards on disclosure—the Attorney General's guidelines are designed for that very purpose—and, secondly, you have to see, as the start of your question intimated, disclosure as one important component part in the development of the case. It is with that in mind that we have put case progression alongside disclosure in what we have renamed as the Operational Improvement Board.

Q29 **Chair:** The other thing referred to in the RASSO context but that applies in a number of other contexts too is the amount of digital footprint that both complainants and suspects will have. You referred to the need to behave sensitively towards complainants in sexual offences, which includes the question of going through any digital material they have on their phones in a timeous and sensitive fashion. What is the progress on that, and how much will technology help you speed that up rather than someone having to give over a chunk of their life for a period of months while it is examined?

Max Hill: I cannot speak for them, but police colleagues need the technology on the frontline to download and to interrogate any digital device. That has to be the starting point. The principles of how you do it have been set out by the Court of Appeal in Bater-James. We have received the Information Commissioner's Office report on that. There is a much-improved landscape, but the fundamental issue is the police having the technology to quickly download what is necessary and then return the device to the individual so that he or she can get on with their life.

Q30 **Chair:** Do you, as the Crown Prosecution Service, have enough resource in terms of technology or experienced staff and resource to deal with your end of what happens thereafter, taking decisions, requesting additional material and evidence if required, and so on?

Max Hill: That is something that we have particularly focused on around the Operational Improvement Board. We are a digital service. I would claim that we are fully digitised as a national prosecuting authority, without which we would not have been able to continue as we did working from home during the pandemic.

When the product of criminal investigation is presented to us, it needs to be presented in a fashion that speaks to our technical capability, and that is why under our generic strategy for the next five years, CPS 2025, we have specifically highlighted digital capability. In answer to your question, I am saying that we can always do with more, and we need to speak the same digital technical language as police kit does so that we can seamlessly transfer the material. But there are other things too. What actually holds up the progress of a case will be digital material that has been received but is not in a form that is capable of being used in court. That is about redaction and ensuring that data protection laws and responsibilities are applied at the earliest stages. There is more work that needs to be done there by the police as well as by us.

Yes, I do think that resourcing is important. If, as I am determined to see, the volume of these cases goes up, by definition, the amount of work will be multiplied. I am only too mindful of the fact that this new opportunity, as I have been calling it, in prosecuting rape is a big ask of the whole system, and it comes at the same time as dealing with an unprecedented volume of uncompleted cases that are in the system and that court capacity means we cannot clear as quickly as we would like. There is a tension there between addressing both of those at the same time.

Q31 **Chair:** Understood. Is there scope in some types of cases—perhaps not RASSO offences—more generally for the use of artificial intelligence? I know that in serious fraud, for example, the Serious Fraud Office has used AI to set search parameters and so on in the same way that it is done in a lot of civil litigation. Is there more scope for the CPS to do that?

Max Hill: I think there is. I know that that would be useful to our specialist fraud division and our teams who investigate financial crime, and I know it would be useful to anyone interrogating digital evidence. Two years ago there was a seminar hosted by the Solicitor General, as she was then and is now again, in which a number of field leaders came together to discuss AI. That included the Serious Fraud Office, which also looks at that area. I would like to see more development there. I am mindful of the fact that it is very costly.

Q32 **Chair:** It is a budgetary issue. Finally on disclosure, we had a January 2020 report from your organisation's chief inspector that was largely positive about the work on disclosure across the piece. In December, they had a follow-up report, and they raised the concern that they thought that the improvement had started to drift and they were concerned that there might be some degree of fatigue, potentially, at failing to get improvements in the system by the Crown Prosecution Service. Perhaps it was not getting through to the police, for example. What about this concern that the inspectorate had at the end of last year about a drift backwards, potentially?

Max Hill: I sincerely hope it is not a drift backwards. Undoubtedly, the problems that I have suggested we all grapple with can arrest the speed

at which you go forward. The first point is that we are not seeing disclosure failings of the headline nature that we saw in 2017. That has taken a huge effort. The fact is that now—and the inspectorate reports have reflected this—we are seeing that non-prosecution outcomes where disclosure was a feature have dropped to around 2%. That is half what it was only a couple of years ago, at 4%. That is an improvement. There is so much to focus on that I accept it is difficult to apply our resources swinging to one issue and then to another issue. We have to apply equal focus to them all.

At the moment, we are looking at what further changes we can make in terms of internal resource to maximise our input towards RASSO cases and specialist prosecutors. But the fact is that, if I take resources and put them into one part of the organisation, they have to come from elsewhere in the organisation. That concerns me. I am only too pleased that since the spending review in 2019 considerable investment has been made in the CPS, which we have not seen for many years before. In three successive years, it has been £5 million, £85 million and then £23 million. We are using that to recruit as many lawyers, paralegals and administrative staff as we can.

I will finish by touching on something that you mentioned, Chair, namely fatigue is a real factor in the Crown Prosecution Service. I do want to take the opportunity to pay very full tribute to everyone in the Crown Prosecution Service for continuing to work despite the challenges from March 2020.

I can give you the statistics averaged out by case type as to how many more live cases a prosecutor has on his or her laptop in comparison to where they were pre-Covid, in February 2020. We are talking about between 20% and 80% uplift per prosecutor of live cases. I do worry about the fatigue that they bear. Our people are first and foremost in our strategy documents, some of which I have mentioned, and we need to look after our own staff. It is a testament to their determination and their extraordinary hard work that we have done as well as we have under Covid. I call into play here the two inspectorate reports—one last year and one early this year—saying how successful the CPS was at keeping going.

My final word is to pay tribute to departmental trade union colleagues, with whom we have an extremely good relationship, who have made sure that they are fearless on behalf of their members and that we look after our people and we treat that as a priority. If we let go of that, I do fear burnout and I do fear that the task of bearing down on the overall case backlog as well as the problems in the prosecution of rape will lead to undue fatigue. I think it is right that I sound that warning.

Chair: Mr Slaughter wants to pursue a further line of questioning in relation to backlogs now.

Andy Slaughter: Thank you very much, Chair. I will declare my interest

as a non-practising barrister, as I did not do that at the beginning.

Chair: We did it for you and Ms Farris, I promise you.

Q33 **Andy Slaughter:** Good afternoon, Mr Hill. You mentioned the backlog. That is something that throughout our inquiry on court capacity and generally we are very concerned about, as I am sure you are. The position seems to be, from the latest figures, that there are still around 60,000 outstanding cases in the Crown court, more than 40% higher than pre-Covid and growing—it is shrinking but it is still very significant—and a backlog in the magistrates court that is 70% higher than pre-Covid-19. That suggests that the measures that have been taken so far are not having sufficient effect.

From your point of view, how seriously do you address this? What are the main problems? Is it volume; is it type of case; is it the rate of dealing with cases at the moment; or all of those? What are the solutions to make a real inroad into that?

Max Hill: Thank you. It is a problem of volume and it is a problem of speed. We need to be adaptable on both as best we can, particularly on cases such as rape where it does nobody any good to have to wait a long time before the case reaches court.

The up-to-date statistics are that our post-charge case load—live cases, as I speak—is 53% higher than the pre-Covid baseline. In the magistrates court that is 50%, and in the Crown court it is 58%. The measures, though, that we have put in place and that I gave evidence about on 24 May last year when I last appeared before the Committee have had an impact. That case load in the magistrates court rose as high as 80% up on, if you like, standard working. It has fallen back to 50%, which is testament to a huge amount of hard work. In the Crown court, the live case load has continued to climb for a little longer because the capacity issues, with longer cases and serious criminal trials, are more acute there.

In terms of, as it were, new business that is coming into the CPS when measured against cases that are being completed at the end of their journey, overall, I would say that we have done well and we are able to complete slightly more cases than we are receiving.

To break that down on where that leaves the magistrates court, it will be necessary on the lifting of social distancing measures to really focus on what I would call triage and prioritisation. We know that it is for the judiciary, and always for the judiciary, to decide when a case is listed, but we can help, and we can have proper conversations on a regional basis with district judges and with legal advisers in the magistrates court. In fact, we have run some pilots in some areas of the country where the judiciary has agreed to list cases in bulk—for example, on the books of an individual firm of solicitors—which have not yet arrived at trial, and then to see whether those cases will require an effective trial or some other

outcome is possible. More of that will bear down on volume in the magistrates court.

In the Crown court, we are aware of an increase in sitting days and we are aware of some increase in physical capacity through the Nightingale court spaces, but the key there too, I would suggest, will be prioritisation; bringing forward the cases that we should be bringing forward as fast as possible. Obviously, that includes case where individuals—

Q34 **Andy Slaughter:** Sorry, can I just interrupt? What sort of cases are you prioritising at the moment?

Max Hill: Take one example. Since the start of Covid, we have prioritised domestic abuse cases, all the more so where it is a custody case, but where there is serious domestic abuse the charging protocol and the other protocols that we have put in place in spring last year dictate that cases of that type should be prioritised, in contrast, for example, to a long fraud investigation where the money might have been secured under a restraint order and where it may not be necessary to take that case into the criminal justice system so quickly. So there are some choices that you can make.

Beyond that, in the Crown court, it is important to bring forward the right cases as fast as possible, and as part of that to make the best use of technology, which we were discussing earlier. Here, I extol the use of remote court hearings supported by what is generally known as the cloud video platform. There have been 145,000 cloud video platform hearings in the courts system since this time last year. As we come out of Covid, I believe that retaining remote hearings where it is proper to do so and in the interests of justice to do so, as determined by a judge, could be an important factor in allowing us to address the backlog in the right way, the right sequence of cases and to achieve more speed.

Q35 **Andy Slaughter:** It must be right in the interests of justice to address vulnerable victims and custody cases, if that is what you are talking about in terms of prioritisation. I do not quite see how the growing backlog in the Crown court squares with you saying you are dealing with more cases than you are getting in. Anecdotally, the sorts of things that have been said to us are that there is a problem with Nightingale courts; there are not enough of them. Obviously, there is only a fraction of the number of courts. They cannot deal with custody cases on the whole because they do not have secure docks and cells. Also, with multi-hander cases—big cases that require a lot of space, which could be serious matters—there have been reports of trials not being timetabled till 2023, and even, in one or two cases, 2024 now, with vulnerable victims. How do you explain that?

Max Hill: I do not govern either the use of court space or the speed or the selection of which case is brought forward when. That is a judicial decision, I am afraid. That is a fact. What I am saying is that we are here

and we stand ready to impress upon the decision makers the factors in the case. We will always be concerned about a vulnerable victim or witness case. We will always be looking to use technology to best advantage. Take section 28 of the 1991 Act, which allows a pre-recorded cross-examination in many cases. That is a good tool to use.

There should be local conversations, as I say, governed by the judiciary, which is how it has to be, but designed to arrive at a sophisticated listing of cases that brings them through in the right order and with the right speed.

I would add that, with an increase in sitting days and some physical increase in Crown court capacity, I am going to be partisan here and say that we must bear in mind the sheer effort that it takes to lift a case from computer to court. What that means in the CPS is that a paralegal officer will have the task, often at very short notice, of preparing what lawyers all recognise as the bundles for the court and the material that has to be ready for presentation to the jury, alongside playing their part in trial preparation and playing their part in witness and victim liaison, getting the right people to court at the right time. If you move too quickly by increasing the number of cases listed, you will create a problem of fatigue on the part of the CPS—and I can only speak for my sector here—for the people who then have to support those cases. It is already really intensive work supporting a live case load, which is half as big again as it was last year. That could be compounded by listing lots and lots of cases very quickly.

We are determined to play our part here, but I am just calling for very careful conversation about how to triage these cases, how to prioritise them and to try to work our way through. The bottom line is that, if you want to call it a backlog, that is what it is and it will be here to stay. There is no mechanism that would allow you to remove a backlog within three or six months. It will be with us for longer than that, just as Covid is. I look forward to opening up the courts without social distancing. I am sure that will make a difference. We will have to do our best.

Q36 **Andy Slaughter:** I will have one more try. I appreciate what you say. You do not control the court listings or the use of buildings, but you are, shall we say, very interested observers on this, and you must have formed some view over almost 18 months now as to what is working and what is not working. What would you like to see the courts service and the MOJ putting their efforts into? What do you see is succeeding and we can do more of, and where do you see there are deficiencies?

Max Hill: Whether you are talking about the Crown court or the magistrates court, it is anything that facilitates really bearing down on the detail of a case and its readiness before it arrives at the door of the court on the trial date. In the magistrates court, that means between the first appearance and the trial date having a mechanism that allows everyone to look again at that case so that it is not listed needlessly or

listed—in other words, a court space is held for it—when it will be non-effective on the day.

That same principle applies in the Crown court. What we want is to list cases once and once only, and for them to be effective when they are listed. That is all about case progression and a commitment to driving a case through once it is in the system. That is why case progression is the second of the three strands that we have taken on board as part of the Joint Operational Improvement Board. We published a national case progression commitment earlier this year that supports the themes in the National Disclosure Improvement Plan and is designed for our part and on the part of police colleagues to ensure that we keep those cases in as high a state of readiness as possible. That is doing our bit. We need to focus on that.

We then need to be available for those who are making the listing decisions to try to ensure that we do not have cases listed in error or wasting court space. Sometimes, it can be difficult if a large number of cases is listed just in case there is space when the reality is that there will not be that space. It is better to list, in a sense, realistically what will actually be reached on the day. Of course, that can only be better for victims and witnesses, who want to come to court once and not again and again awaiting the opportunity to give their evidence.

Q37 **Andy Slaughter:** Clearly, more efficiency is required and is assisting, but it only goes so far. Do you feel that you have enough resources within the CPS, and where do you see there being these pinch points for resources? Is it a lack of court buildings? Is it a lack of judges' availability, sitting dates and so forth? What will stop us actually getting into the backlog in a substantial way when, hopefully, social distancing does end within a few weeks or months?

Max Hill: The hard reality is that we had a case load of—look at this way—100%. It was what it was in February 2020. It is now 53% up nationwide. I have been able, courtesy of previous spending rounds, to invest in people in the CPS. If you compare March 2020 to March 2021, we are up 500 members of staff net. That is net of attrition through retirement or whatever other reason in the meantime.

I am absolutely sure that I/we need to keep recruiting. We need to keep recruiting not just the lawyers but all of the support staff who sometimes literally sit behind the lawyers in court. We need more paralegal assistants. We need more administrative staff. That is what I am looking to invest in to support all of that work as we go forward. That is my piece of it.

I am not calling for structural changes in the Crown court. That is not for me to do. I know that the current physical capacity—the way the courts are running—is about 85% of pre-Covid capacity in the magistrates court and about 95% currently with the addition of Nightingale spaces in the Crown court. I am sure that when distancing lifts there will be an

opportunity to go beyond 100% in terms of available space. If we use it well, that will allow us to bear down on the quantity of cases, but I would urge that to be a gradual increase taking everyone along with it rather than a dramatic step change, which, I am afraid I must be honest, would place real pressure and stress on staff who are, by definition, overworked and coping with 50% more of the case load than they were before all of this started.

Q38 **Andy Slaughter:** Do you think the Nightingales are working? Do we need more? A recent report suggested that some of the existing ones are going to close shortly. Are they useful to you? Do you want to see them spared, and do you think we should have more of them?

Max Hill: Again, it is not for me to dictate on physical space. What I would offer you is that for the right sorts of cases they are extremely valuable. A case that does not require a custody suite and does not have a custody component can be very well conducted in a Nightingale court. Our specialist fraud division has been using Prospero House in London to conduct some long trials notwithstanding Covid, with success, I may add. Where we have those urgent cases, including domestic abuse and sexual violence where we all need to gear up to list as quickly as possible, we understand that in those custody cases—that sort of environment—fraud cases will lose out. That is where there is a particularly valuable role for Nightingale courts to step in.

Andy Slaughter: Thank you very much. Thank you, Chair.

Chair: Thank you very much.

Q39 **Rob Butler:** Do you think the roll-out of the Common Platform might reduce the burden of work, particularly on the paralegals and consequently speed up getting through that backlog?

Max Hill: Yes. The Common Platform has been many years in the making, and it predates me as director. There has been significant success recently this year and last, notwithstanding Covid, to roll out what I call phase 1 of the Common Platform capability—in other words, the court-facing tech.

Work still goes on to develop the second phase. That is the integration with CPS capability. Precisely when that will land is as yet unknown. In answer to your question, let me be very clear: we need that. We need to maintain our digital capability. That is why it is a strand of CPS 2025. We need investment in what is currently the case management system. Let me say, as I speak, that 1,100 of our lawyers are working in court on a daily basis and have been. It varies between 1,000 and 1,300 on any given day who are supporting court work, even though we are in the middle of a pandemic. They are able to do that through the digital tools and the laptops at their disposal, partly physically going to court and partly supporting it remotely from home or indeed from our offices, where people are also working every day.

How the Common Platform integrates with that will be key. That is phase 2 of the Common Platform. I am optimistic of good outcomes there. I know it has taken a long time coming. What we have seen in the court estate and in the court space has not been a seamless transition—I do not think anyone realistically would expect that—but a number of regional pilots, which are now really gathering pace in getting this technology available to every court. I look forward to how that will be integrated with our capability as soon as we can achieve it.

Q40 **Rob Butler:** More generally, do you think it would be useful or not to set targets for the length of time that a case takes from charge to completion, or does that create a whole set of other problems?

Max Hill: As I said earlier, we may use the word "case", but it is actually people involved in a life-changing event; that is a criminal case. That is equally true for a suspect, a witness and a victim. To say that there is a one-size-fits-all speed at which that case, that life-changing event, should proceed presents great difficulties. If that is the way that we are to go, I would beg everyone to remember this answer and to remember that there have to be variations, and there has to be an accommodation for the individual factors in any set of circumstances.

Q41 **Rob Butler:** Would broad guidelines be helpful for specific types of case, for example? You can always have the exceptions, but at least that might provide an idea of what one should aspire to.

Max Hill: We have always set performance indicators for ourselves at the CPS. We expect to charge cases on receipt of a full and final police file as quickly as possible, and generally in 28 days, but there are many cases that simply cannot be charged in 28 days. Their sheer complexity, seriousness and sensitivity—all those factors together—mean that it is not sensible to set that sort of time limit.

I have no difficulty with aspiration. I have no difficulty with being motivated to do more, and, back to what I said at the very outset, being really determined to make a change. The direction of travel, to answer your question, needs to be more cases at greater speed as long as we do that right across the system from end to end. I will take responsibility for my component part, which is receipt of cases and charging them. Police colleagues will do the same for investigation, and then the courts service for the process through the courts.

Q42 **Rob Butler:** On the matter of the police file getting to you, one of the challenges that the police will often talk about is the amount of paperwork they have to do. One element of that that has been specifically described to me recently is the amount of redaction they have to do of their own investigative material before it comes to you as the CPS.

For example, if they turn up to a flat with body-worn video and they record it, they then have to black out the number of the flat that they have attended before that comes to you as the CPS, or the date of birth

of a suspect. It seems very strange that, when you are supposedly both on the same side, the requirements of data protection presumably require the police to spend all their time doing that rather than getting back out on the street, which is where they want to be and, frankly, the public want them to be. I am not necessarily blaming you for that, but I wonder if there is some way of better and more efficient working that you could see.

Max Hill: The data protection laws apply to everyone. They have equal application to the CPS as they do to the police. That is what the Data Protection Act is there for. It is actually a complex problem. The example you give of redacting a video showing the door of premises would not be necessary if those are premises in which a domestic burglary has just taken place and that address will appear on the charge sheet or the indictment before court, but would be necessary if that is the address of a witness that must be protected. Actually, it is quite complicated whether it is a police investigator, a CPS prosecutor or paralegal who is trying to address that.

The Attorney General, in my view, rightly introduced a step change at the turn of the year by saying once and for all that disclosure and redaction is a key part of disclosure and must be addressed at an earlier stage. In doing that, the Attorney, I suggest, was acting in accordance with what this Committee reported in 2018 and with all of the problems of addressing disclosure too late. It is not a problem: it is actually a solution, I would suggest, that everyone responsible addresses these fundamental issues, which are guided by law—it is not because we choose to; it is guided by law—at an earlier stage, hence it is incumbent on the police to provide a schedule of unused material pre-charge, not post-charge. Yes, it involves work, but we all have to knuckle down and do that work.

I repeat what I said earlier about technological advances. Many of the presentations that come to us at the Joint Operational Improvement Board from police ICT companies are about making this task easier for regional police forces. You used a video example, but if it is a police notebook, for example, to be able to do that on screen rather than physically printing it out and using a black marker pen will make life easier for police officers and easier for prosecutors.

We need to be clear what we have to do. This is not about raising the bar or doing things in a deliberately slower way than before. It is about getting it right and doing it right first time, because, as shown in 2017, if the system does not, bad things occur, and we have to avoid that. I am confident that the communication that we have with police colleagues nationwide has led to a real level of understanding of what needs to be done to build a proper case and get it right first time. I do not shy away from the fact that there are burdens there, and redaction is one of them, but it is something that has to be done.

Rob Butler: Thank you. *[Interruption.]*

Chair: Does any Member have to participate physically in the Division, or will you be proxied? We can carry on.

Q43 **James Daly:** Director, you just talked about communication with police colleagues. Both Mr Slaughter and Mr Butler asked you about the backlog of cases across the criminal justice system. Clearly, the criminal justice system encompasses the police investigation. At this moment in time, an area of backlog within that, which we have not talked about, is release under investigation. You have been talking about cases within the system. There are thousands of people released under investigation for up to and over 12 months who are waiting for some action to be taken.

Following on from Mr Mullan's point, when we were talking about a different subject, in respect of those cases, could you give us a flavour of the interaction between Crown Prosecution Service lawyers and the police in addressing those matters, because, clearly, as social distancing is relaxed, we may have an avalanche of cases coming from release under investigation through the justice system on top of the cases you already have?

Max Hill: Yes. This should be straightforward. As a prosecutor, we look forward to receiving a file of information from the police that allows the Crown prosecutor to conduct the code tests and to charge the case. What we are talking about here are those cases where that is not so, where the Attorney's guidelines on disclosure have not been put into effect across the material in the file, and where the guidance on charging that I brought out shows that there are elements missing from the investigation. What we can do to try to help with that is to set action plans, to say, "These are the lines of inquiry that you have not pursued yet. This crime took place on a street. You have not seized the CCTV. We need to know whether there is supporting evidence of that type, so please do so."

We know that, in a volume of cases, that can lead to prioritisation by the police because of limitations on their own resources, and, with a comparatively restricted bail-out regime, subject to any change that Parliament brings in, that is what has led to a very high incidence of cases released under investigation. Once released under investigation, the influence we can bring to bear is limited to setting an action plan and encouraging the police to come back with answers to those points that allow us to charge the case.

Q44 **James Daly:** I appreciate that, but the question was related to the interactions. We have thousands of cases—that is not under dispute—that are currently released under investigation. From what you have said, Director, I am assuming that the vast majority, if not all, have Crown Prosecution Service input in terms of providing an action plan or however it is described. The Crown Prosecution Service is directly involved in, one can say, delays, but directly involved in just about every single case that has been released under investigation. Would I be correct in making that statement?

Max Hill: I do not think that is correct. It is a matter for the police to decide whether to release subject to bail-out or to release under investigation.

Q45 **James Daly:** Can you just give me a flavour? I will not hold you to this, obviously, Director. Clearly, the majority of cases that are released under investigation have Crown Prosecution Service input into them. Is that correct?

Max Hill: I actually do not have the figures. I will provide them in writing, of course, but I cannot answer here and now what the proportion is.

Q46 **James Daly:** It is an incredibly important matter because, if the Crown Prosecution Service's interaction with the police on these thousands of cases is not leading to efficient disposal in whichever way, that clearly is something that should concern you, I would suggest.

Max Hill: It absolutely concerns me. For our part, if we set an action plan, it has to contain proportionate and reasonable actions. The inspectorate has produced more than one report touching on that and has shown where there needs to be room for improvement. Many of the things I have said this afternoon about the plans and projects that are in place under RASSO 2025 and CPS 2025 are all designed to improve the product that an individual prosecutor brings to bear to an individual case. We will answer for that, but we cannot answer for very large numbers of cases where, for other reasons than a conversation with the CPS that case does not find its way through to a completed file about which we can make a charging decision.

Q47 **James Daly:** On release under investigation, when was the last time you had a conversation with a chief constable or a police and crime commissioner about this particular issue and how these issues can be improved?

Max Hill: It is absolutely part of the work of the Joint Operational Improvement Board that cuts across the College of Policing and the National Police Chiefs' Council to drive efficiency into the system. We have had many conversations on a monthly basis about the Attorney's guidelines and the charging guidance, all of which is designed to drive towards—let me put it this way—a compliant, complete file. By definition, that is what you do not have when the case is released under investigation. All of our impetus is towards bringing cases forward for charging and therefore not releasing under investigation.

Q48 **James Daly:** This Committee has heard evidence repeatedly, Director. One defence solicitor gave evidence that, in a custody area with CCTV evidence and numerous witnesses, a defendant who was brought into that cell area committed an assault or allegedly committed an assault. The case was there, and he was released under investigation. I will just make the final point that there are many very straightforward cases that have been released under investigation for no good reason at all. That is

a matter of concern to the Committee.

Max Hill: I have said before I would welcome any improvements to the system—for example, a return to a bail-out approach—that would, by definition, bear down on release under investigation and reduce it. I cannot speak for an individual example. A release under investigation is a police decision; it is not a CPS decision. It is not a term of art.

Q49 **James Daly:** But you are involved in it.

Max Hill: We are involved in many cases where we will have a conversation. It will be clear that the case investigation has not been completed, and unless and until it is completed we simply cannot pass it through the code tests. But we are here to try to drive up the number of code test decisions and therefore drive up the number of cases that go before the courts.

James Daly: Thank you, Chair.

Chair: Thanks very much.

Q50 **Angela Crawley:** Could I now come to the specific issue that you rightly raised earlier regarding domestic abuse? It is widely reported that domestic abuse cases significantly increased during the first lockdown last year. Do the number of cases coming to the CPS for charging decisions and prosecutions show similar trends for subsequent lockdowns?

Max Hill: It is difficult to have a clear picture. The truthful answer is that there are variations in sometimes seeing more and sometimes seeing less. If there is a trend of the last year, I would say it is downward and that we are seeing fewer domestic abuse allegations. Therefore, my fear is that we are about to see an increase, because I am sure that one of the reasons for the figures going down is that coronavirus has facilitated abusers. It has enabled people to control individuals in a home environment where under national lockdown there is no escape, and that, I think, has driven down the number of cases that we have seen. Therefore, when all the restrictions unlock, we should see more of those cases.

That means that we must be ready for that. One of the first things I did in December 2018 was to open the domestic abuse best practice framework at a conference in Birmingham with a senior colleague from policing and from the courts service. In March this year, we had a virtual national conference on those themes. We are coming together to press the argument for making sure that these hidden harms—and that is what they are—are addressed as quickly and as completely as possible.

I have referred earlier this afternoon to the fact that domestic abuse cases have remained a high priority. When I gave evidence last year under the interim Covid arrangements, they were a high priority. That is still true today. We are now updating our legal guidance to reflect

changes through the Domestic Abuse Act this year, 2021. But I need to be quite honest here. I am worried about the number of people in difficult circumstances who are being subject to domestic abuse. I hope that the system as a whole will be able to bear down on that, because I am quite sure that there are people who need criminal justice interventions.

We have a network nationally of inclusion and community engagement managers, many of whom during the pandemic have been directly supporting homeless and abused women's shelters around the country, trying to give frontline advice and support to people who manage to escape their abuser. However, my fear is that many have not yet escaped and when they do I hope that they will feel able to report and to be supported, and we will ensure that we prosecute. That includes in some specific areas.

Let me just mention that in October last year I hosted a non-fatal strangulation symposium where we brought together operational leads and academic leads. We are only too well aware of the new offence that has been introduced in the 2021 Act. These methods of coercion and control need to have criminal justice outcomes, and that is what we are here for.

Angela Crawley: Because you alluded to this, how would you assess the success of the CPS's domestic abuse programme for 2021? As you rightly identified, and you rightly are, we all are concerned about the potential rates of domestic violence increasing. What more can the CPS or other associated organisations do to raise the profile of this issue and to ensure that women in this circumstance can seek justice?

Max Hill: It is about continuing what we are doing and looking for opportunities to do more. The national conference that I opened online in March was co-hosted by the domestic abuse commissioner. That is a key strategic relationship for us that we will absolutely maintain. I would claim that the domestic abuse best practice framework was quite groundbreaking in 2018, designed to encourage people to come forward and to indicate the levels of support they will have when they do. We need to make sure that that is advertised far and wide so that these most vulnerable individuals, hidden sometimes in communities from which they have no escape, are aware of what is here. That is why I mentioned our community engagement manager network.

I cannot think of anything entirely new. We have looked very hard at this. We will be very concerned if the decline in numbers continues. We have the spread of offences. We are in a position to prosecute. We need people to come forward and to feel confident in doing so.

Chair: Thanks.

Q51 **Laura Farris:** I have some questions about the Nightingale courts. I think the most recent data I could find on the MOJ website suggests that disposals are now outstripping receipts in the criminal courts.

Max Hill: Yes.

Q52 **Laura Farris:** I anticipate that is partly because of the Nightingale courts.

Max Hill: The Nightingale courts are absolutely playing a part. It is quite limited in some respects, because a Nightingale court, I think without exception, can only deal with non-custody cases. For any case that might lead to the imposition of custody you need a custody suite, which a Nightingale centre will not have. As I said to Mr Slaughter earlier, where you are dealing with, for example, economic crime—special fraud—some of the Nightingale courts, and Prospero House in London is a good example, have been really valuable in allowing us not just to conduct short trials but even some longer trials and to get results that way.

Q53 **Laura Farris:** The backlog peaked somewhere in the 60,000s. It is now, I think, in the high 50,000s. From a politically neutral standpoint, what is the kind of backlog that you think the criminal justice system can sustain, and how long will it take us? We often weaponise historical backlogs when various parties leave Government. I would be interested to know your view on that.

Max Hill: I cannot give a date. It would be wrong of me to suggest a day and month by which—

Q54 **Laura Farris:** What would be a level that you think would be sustainable, though, where you could say that sufficient progress was being made and that you would have a reasonable expectation that justice was being discharged?

Max Hill: My answer is that the backlog that existed in February 2020 was too large at that stage. Therefore, I would say that, in eating away at that backlog, driving cases through the system to fruition, we should not stop when we arrive at February 2020 levels.

Q55 **Laura Farris:** Which was about 39,000.

Max Hill: Yes, something of that sort in the Crown court, I think. We should continue. But that is not the same thing as continuing to zero. However efficiently you run the system, you need to have ready-made cases that are in a position to be brought through for trial and are not being listed in a given week. It is not about getting to zero. The correct place to sit is somewhere between the pre-Covid backlog and zero to allow a continual throughput of cases to make maximum use of our physical space, which means that every court space occupies every sitting day, whether it is a Nightingale space, a Crown court or a magistrates court. That is what the system tries to achieve. You need an upcoming list, but it was already quite a long list. Therefore, I was concerned then and I am concerned now about cases where people are waiting a long time for their day in court, whether that is rape or any other form of crime.

Q56 **Laura Farris:** Can you give us a time period, perhaps when you were a practitioner, when you would say that the backlog was a manageable length? It was longer in 2009-10. It has ebbed and flowed a bit. It would be helpful for us to know, as a Select Committee, what you think were the glory days.

Chair: *[Inaudible.]*

Max Hill: My difficulty is that I cannot point to a glory day because, if you go back a decade, the volume of cases in the system was higher and, whatever the backlog was, it was a proportion of that. You would need to have similar volume to equate comparative backlog figures. I am afraid I am going to stick to what I have said. We need to keep going even when we reach February 2020 levels and then see how efficiently we can speed cases through.

That requires our ongoing focus in all aspects of criminal justice. For my part, that means ongoing investment and resourcing, subject to us demonstrating that we efficiently use every penny that we are given—and I believe we do that. We need to continue to do that. In the same way that we have been able to recruit through the pandemic, I need to recruit now to prepare for the cases a year hence, because the system is never going to drain; it is always going to be renewed. It is quite wrong for me to talk about spending reviews that have not yet commenced, but you can take it that the CPS will be looking to have continuity of recruitment. Comparing 2010 with 2018, when I arrived, CPS resourcing had been reduced by 44% and overall headcount by 30%. I am keen to build that back. I am delighted and grateful that we have been able to build back since the spending review of 2019, and I want to continue doing that.

Laura Farris: Thank you.

Q57 **Dr Mullan:** I want to talk to you briefly about economic crime. I am sure that most of the members of the Committee have had contact from constituents who have been victims of a text message scam, a call centre scam or an online scam, and beyond it being reported to Action Fraud they see very little from that. I appreciate that a lot of that will be decided by police forces in levels of investigation, but I would like to repeat the discussion we had in this area around levels of prosecution. What is your current assessment of the proportion of people who are victims of economic crime who are getting justice?

Max Hill: I am afraid it is low. If you take the headline statistics of the number of fraud offences committed nationwide, as your question infers, there is no end to the ingenuity of criminals. That includes those who are taking criminal advantage of cyber-enabled offending, crypto-offences, including cryptocurrency offences, and, even more insidious, Covid-related offending—for example, doorstepping elderly residents and persuading them to part with their money for some non-existent commodity. I am concerned about all of that. We are seeing crime rising in those areas.

The Crime Survey for England and Wales, as I am sure you know, suggested a total of 4.3 million fraud offences in the year to June 2020. That is about a 13% increase on the previous year. As in other areas, what we see at the Crown Prosecution Service is a tiny fraction of that. I am not surprised about that. I am not suggesting for a moment that we should be prosecuting 4 million cases a year.

We have actually managed to stay reasonably static. Inevitably, Covid has had an impact on the throughput of our cases, even moving as efficiently as we can. In the year 2019-20, we managed to conclude 10,000 fraud cases, largely prosecuted by our specialist fraud division, and we secured £100 million of criminal ill-gotten financial gains on the back of those convictions. We must continue that.

We have played a significant part in the development of a national economic crime centre. We are part of and we support the delivery of the Government's public/private Economic Crime Plan. I hope that, as a mark of how concerned we are and how we want to take a lead to the extent that we can, we have brought out an economic crime strategy, which I launched two months ago. We had some very good parliamentary engagement over that.

Q58 **Dr Mullan:** What would you say are the biggest barriers to prosecution from the CPS's point of view?

Max Hill: I think it is volume. We can only deal with the number of cases—

Q59 **Dr Mullan:** Of the cases, according to you, what would be the barriers?

Max Hill: I think it is the technical complexity of much of the business that comes to our specialist fraud division. The levels of ingenuity that are shown using cyber or other technology mean, I am afraid, that even with the best will it takes considerable time to go through the weight of material.

The challenge that leads to is for us to have an ever more effective and efficient relationship with the investigators—that includes the police, the National Crime Agency and HMRC, for example—and to ensure that case strategies are set appropriately at the very outset. That includes a disclosure strategy so that the volume of material can then be manageable and can shape a case into a format that is capable of prosecution. Sometimes, that means constructing a case strategy that allows you to select what you know you can prove. Whether we are talking about fraud or any other species of crime, the task we have is to prove it, so you have to cut through the material to ensure that is done. In the past, too long has been taken—let me be frank—over some of the biggest cases to get them into a position where we can charge and prosecute. We have a flexible specialist fraud division now. In 2018, we set up three regional fraud hubs around the country. We have much greater interoperability, if I can use that word, and we have a very sound

relationship with many of the investigators. That is the way to make these cases cut through.

I would repeat everything I said earlier about technology when it comes to redaction and disclosure etc. We need everything we can get.

Q60 **Dr Mullan:** Are there any legislative changes that would help?

Max Hill: I would mention corporate criminal liability here. We have some aspects of corporate liability in some of the bespoke legislation: the Crime Finance Act 2017 and the Bribery Act 2010. I support others, including the NECC, the National Economic Crime Centre, in saying that I think we should be looking very hard at expanding corporate criminal liability to more general fraudulent activity and not just those specific areas.

It is complex. The way that corporate liability is dealt with at the moment is subject to the identification principle, which can be extremely difficult. Witness the Barclays bank litigation recently. I think that we should have a longer conversation about that, which is why I am very pleased that the Law Commission is specifically embracing corporate criminal liability in its current work, and I have met with the commissioners to encourage that. I think that that is an area where there is potential for growth. We are not only interested in chasing corporates for criminality. Many of our cases are always going to be against individuals, but I think that there is more that we can do in the field of corporate criminal liability.

The other thing I would say is to maintain our international work here. More than any other species of crime, fraud knows no boundaries, no borders. The international division of the CPS is particularly important when it comes, often, to repatriating the money from other countries to provide to victims here—but that is a two-way thing—bringing individuals back to face trial and sharpening the case strategy by making mutual legal assistance requests of other countries. I would suggest that our international network of liaison prosecutors, which numbers about 20 at the moment, in the European Union and worldwide needs to be maintained and needs to be resourced so that we can do what our international strategy, which we have rewritten in the last two years, says, namely support our domestic casework and all of the outcomes of that casework. Let me put it simply. Chasing the money, which is what you are doing in fraud investigation and prosecution, is vitally important, and I want us to do more of that.

Q61 **Dr Mullan:** You have mentioned the strategy, which is helpful in setting out aims and objectives, but how, internally, are you seeking to materialise that? What have you done operationally in terms of staff resources and actually meaning that you will be able to deliver?

Max Hill: If I am looking right across the CPS strategy, that is about the headcount of the organisation and improving that as rapidly as we can. That does not mean necessarily going back to previous numbers in

previous decades, but it does mean making a meaningful inroad into the reduction in CPS staff. To be up by a net 500 over the last year is a good thing. We need more of that. Human resource is the most important thing here. That is why the first strand of the CPS 2025 strategy is about our people and about the capability of our people. I think that is very important.

Beyond that—and this is certainly true for economic crime—it is about setting up a practice facilitated by the technology, facilitated by the fact that we can do everything remotely there, of flexing our resources around the country. Under Covid, we put in a number of operating practices that we had not before, for example, what we called an offer mechanism between areas of the CPS, where those who had less casework that was being listed in court—fraud is a good example—could support charging decisions elsewhere in the CPS. I went a step further than that and asked our Crown advocates between November 2020 and April this year to step away from advocating in trials in order to support our charging work, and I am grateful that they did, and they are now returning to trial advocacy.

Beyond that, we are looking at how we flex areas of casework nationwide and regionally as not before and taking a new approach to serious organised crime when you are looking regionally. A good example of that is Operation Venetic, a National Crime Agency investigation with foreign links, which has resulted in a significant four-figure number of arrests and hundreds of criminal cases where we have had to put systems in place across our fraud and organised crime divisions with all the geographical regions to support those cases.

We have flexibility through being a digital organisation; we do not need to work in geographical silos. We can flex according to the needs of the work, provided we have the specialisms, particularly at legal level. I will end by saying that you cannot create a specialist prosecutor overnight. It is very hard to appoint a specialist prosecutor. It is a longer process of taking, for example, experienced prosecutors from our Crown court teams who can move into specialist divisions, whether that is rape or special fraud, and backfilling the Crown court team from the magistrates, and then recruiting at a magistrates court level.

There is complex work wherever you look in the CPS. That is what we have to do. I am conscious that there is a finite resource of qualified lawyers out there, and that too worries me as we seek to recruit.

A final word: I am just as concerned about having a flexible, well-resourced and supported defence community, because every case we bring requires someone to defend it. I am interested in the maintenance of defence solicitors' firms and defence advocates nationwide.

Chair: Thank you. A final question quickly from Andy Slaughter.

Q62 **Andy Slaughter:** Before you go, I want to ask you about one other case

that is in the news today, which is the Daniel Morgan inquiry, which has reported. This seems to be one of those seminal crises in the criminal justice system. I do not know if you have followed the headlines, but the inquiry found institutional corruption in the Metropolitan police persisting to this day, serious failings in investigation, not complying with procedures, evidence gathering irretrievably lost, and the police not being honest with the victim's family and not co-operating with the inquiry. The inquiry itself made comparisons with the Lawrence inquiry here.

How do you view the level of seriousness that is emerging here, and what do you think the next steps should be in taking this forward?

Max Hill: I do not think anyone can read that report or listen to the panel chair, as I was, at 12.30 today without extreme concern. You have to start with a word to the Morgan family, who have gone through agonies for 34 years now with not a single person being found accountable for the death of their son, their family member, their loved one. This is a case where it needs to be family first, and theirs is a voice that we should listen to, just as with Hillsborough, as I mentioned earlier.

What stood out to me as the headline was that where things go wrong at the very start it can be extremely difficult to build back from there. I heard what the inquiry chair was saying about, as she put it, failure of investigation from the outset. I am afraid it is a fact that in some of these long-standing cases—thankfully, they are rare—where there is a failure at the outset it can be extremely difficult to build back. I am not pretending that the CPS is immune from criticism there, although the headlines were all about the Metropolitan police, and it is not for me to comment on that.

Because the report was published exactly two hours before I started giving evidence this afternoon, all I will say is that we, in every case, work with what we are given. We need, in all cases, to have a constructive relationship with investigators to improve the quality and the breadth of the material we are given, because it is in our interest and in everybody's interest to take any provable case through to prosecution. But the history of this particular case has been very long and sad, and all I can say beyond that is that we will read the report with care and if there is anything that we need to react to, we will.

I would add that we engaged as a service openly and transparently throughout the life of the inquiry. We did not withhold material. We did not assert privilege over any material, and we facilitated interviews with key parties, including members of our staff who were engaged in this sometimes many years ago. We did everything that we could to shine a light on this tragic case.

Q63 **Andy Slaughter:** Thank you for those comments. What seems to be particularly true and unusual here is that the inquiry was concerned about the limitation of its own powers. Therefore, my question was not so much the individual responses that have been asked for from the IOPC and the Metropolitan Commissioner, but what further inquiries should be

made. Should there be a public inquiry here with proper powers? Should we have Leveson 2, which is what—you mentioned the Morgan family—the Morgan family were promised as part of the consequence of this? Are we not selling them short unless we agree to that?

Max Hill: I cannot give you a procedural outcome or that sort of answer— the report has just landed today—but I have heard what was said in the headlines about a duty of candour. To this extent, it is perhaps appropriate to link this to what I was saying a couple of hours ago about Hillsborough, about the Bishop's charter, about the surprise that we expressed about a public authority, and what did and did not represent criminal conduct. It is incumbent on everyone to demonstrate candour, transparency and openness. How that will be done in the context of this case is really not for me to say. If there are any future proceedings of any sort, I can assure you that we will do what we did since 2015 in relation to this panel, namely to engage with complete transparency and openness, and help in any way that we can.

Andy Slaughter: Thank you, Chair.

Chair: Thank you very much. Thank you to colleagues and thank you very much, Director, Mr Hill, for your time and for your evidence today. The session is concluded.