



Justice Committee

Oral evidence: [The work of HM Chief Inspector of the Crown Prosecution Service](#) HC 1100

Wednesday 4 March 2015

Ordered by the House of Commons to be published on
Wednesday 4 March 2015

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Members present: Sir Alan Beith MP (Chair); Mr Christopher Chope; Jeremy Corbyn; Nick de Bois; John Howell; John McDonnell; and Andy McDonald.

Questions [1–27]

Witness: **Michael Fuller**, HM Chief Inspector of the Crown Prosecution Service, gave evidence.

Chair: Welcome back to the Committee, Mr Fuller. We are sorry we kept you waiting for a few minutes. We had some other business to complete. Are there any declarations of interest that I must take at this point?

Mr Llwyd: I would like to declare an interest. I have in the past prosecuted for the CPS and I will be accepting instructions to prosecute in the near future.

Andy McDonald: I was a former legal aid practitioner but I have no intention to prosecute or defend in the future.

Q1 Chair: Mr Fuller, you have been in regular contact with the Committee, and you and I have met regularly during the course of your term of office. We are very interested to get your reflections on what has happened during that term of office. Would you like to indicate briefly which things you are most pleased that you have been able to do in that period, and which things you would have liked to do but have not proved possible?

Michael Fuller: Thank you for the opportunity to present to you. It has been a real privilege to perform the role. We last met in this session at my pre-appointment hearing.

On my achievements, I have seen a transformation of the organisation of the inspectorate in terms both of the people but also in the type of work that we do. We had some very difficult HR issues, which we have now dealt with. We have reduced sickness. We have transformed the work. We have widened the remit. We do not inspect just the CPS; we now inspect the CPS and the Serious Fraud Office, and have powers to do that, so the work is very different. We also consult very widely not only with you, the Attorney-General and the Solicitor-General, but with a very wide stakeholder group of lawyers, defence practitioners and other groups interested in prosecution issues. We consult them on potential inspection topics. I see a very different organisation from the one I started in. It has a wider remit, and we have some very capable staff. With the expanded remit for the inspection of the Serious Fraud Office we needed individuals—lawyers and other practitioners—who were fraud specialists. We now have them.

In terms of what I think you described as disappointments, it is more about what I would like to have done. I had a vision of building a world-class prosecution services inspectorate. I do not say that naively. Lots of countries have visited us. They regard us as a model of good practice, so much so that they have invited us to various countries. We have not been able to do that, but we have been in touch with them electronically and talked about how we go about our work. They see inspecting the quality of prosecution work as a niche area. All of those countries are outlined in my annual report. I will be taking a retrospective look at the performance of the CPS and what we have achieved. The countries include Pakistan, India, China, South Korea, the Netherlands and Israel; they have all looked to build a similar model of inspectorate.

Q2 Chair: Are there any disadvantages in being an ex-chief police officer operating in this field?

Michael Fuller: I have not found any disadvantages—in fact, quite the converse. You know my background. I was a police officer for some 37 years and rose from cadet to chief constable. In the type of work I was doing, I was heavily involved in prosecutions, because I was overseeing serious crimes and murder investigations, so I was very familiar with the prosecution process anyway. I then qualified as a barrister, as you know. I did not practise because I took up this post, but I have now spent five years carrying out inspections.

The inspection role is different from any other investigative role, or any other role I have come across. I had to learn how to go about doing it. I now feel that different skills, in terms of inspection skills, are required for it, and that is something we look to develop in our staff. In answer to your question, there have not been any disadvantages. I have taken a victim-focused approach, because much of my career has been dealing with victims of crime, so my perspective was quite different from a lot of the prosecutors I have dealt with.

Q3 Nick de Bois: Can you summarise the main lessons for the CPS that have come out of the work you have overseen during your tenure? What in your opinion would you say are the key strengths and weaknesses?

Michael Fuller: One of the satisfying things about the role is that the CPS have been very responsive to the recommendations I have made. One of the things I introduced was that I track their responses to my recommendations. Two or three weeks ago the National Audit Office held this out as good practice. One of the things I was not prepared to do when I started was to make recommendations and have them ignored. I have always followed up on what we recommended and then tracked whether those recommendations have been implemented. We know that 75% of them are implemented.

In terms of learning for the CPS, the key points are the focus on quality and early review of cases. There is still a lot of potential for the CPS to save time and resources by reviewing their cases early. In some cases there will never be sufficient evidence, and because somebody has not reviewed those cases at an early stage that is only realised when the cases are either at court or about to go to court, and often there is a long lead time before they go to court. I think that a huge amount of resources is still being wasted. In London, where you have bigger volumes of cases, the waste is commensurately bigger as well.

Q4 Nick de Bois: You are saying that is still prevalent and it is something they have to face up to. With the reduction in resources, you would have thought that the two met, and that a bit of common sense and financial prudence would have driven a better response. Has it gone as far as you would have liked?

Michael Fuller: No, not at all, and they know it is a big frustration of mine. They need to get to grips with the problem. Nobody has disagreed with me, but addressing it has been very frustrating.

I have been very concerned about quality, because that has a big impact on victims of crime. When I started, we helped them to devise a quality assessment model to enable them to assess their own work. It was not a function we were going to take over. We felt it was important that they assess the quality of their work. In my retrospective report, one of the things I have looked at is how performance has panned out over the last five years. Quite surprisingly, despite the 30% reduction in budget, the loss of over 400 prosecutors and a lot more staff as well—obviously you can get the figures from the CPS, but it has gone from an organisation of some 8,000 to 5,000 staff, so it is a huge reduction in staff—there has not been a commensurate reduction in the performance of the CPS. The performance has remained the same, looking at the key indicators I outline in my report. I am pleasantly surprised by that. Because they have been focused on quality, even though there is still a lot of room for improvement, we have not seen the big reduction in quality and the big disaster that a lot of people predicted.

Q5 Nick de Bois: To pick up on the quality of charging decisions, which is something you identified in your annual report for 2012-13, has the situation improved? When will the joint inspection of charging decisions report its conclusions?

Michael Fuller: At the moment, the joint inspection of charging is being quality-assured, so we would hope to report that before I leave at the end of March. I am very keen to get it published. It is a joint inspection, so we are reliant on the police inspectorate to agree it as well, and ensure that it is factually accurate.

In terms of charging decisions, we have seen a slight decline since the implementation of CPS Direct, which is very much about giving telephone-based advice. There has been a reduction in the quality of charging decisions. Charging is really important. It sounds like a dry topic, but you can imagine the importance of charging people with the correct offence. If people are wrongly charged, effectively they are wrongly accused, so it is something I have seen as very important.

The other problem is that with the reduction in CPS resources more charging has been given to the police. The quality of police charging is certainly worse. I feel that the CPS should be giving feedback to the police about their charging decisions, and effectively educating them about the new function that has been given back. I do not think that should happen without an education process to back it up.

Q6 Nick de Bois: Is it predominantly an education process? I can understand the logic of why the police were granted more powers. How much education and training is there at the moment?

Michael Fuller: There is a paucity of education and training from the police point of view. When I was in the police, it was key and core, because you were actually doing the charging—as a sergeant you would be charging, and if you got it wrong there would be a very high level of accountability. A lot of the prosecution work is now carried out by prosecution units, and I do not think the accountability is the same. There is a lot to be done in training the police, who have been given back this responsibility, but also educating them when they make mistakes. Because of inspections we have done, we know for a fact that often there is not that feedback to the police.

Q7 Nick de Bois: But that is not happening, so it is just lost, gone or dismissed.

Michael Fuller: You do not see an improvement in the charging decisions, which is what we want to see.

Q8 Nick de Bois: There is no feedback mechanism from the CPS to the police saying, “That was not very bright.”

Michael Fuller: There is a mechanism. Most chief Crown prosecutors I deal with would have regular liaison with the police, but I do not think feedback on performance issues happens enough.

Q9 Andy McDonald: What is your assessment of the quality of in-house advocacy in the CPS?

Michael Fuller: I am about to publish a report on that very subject. As you can see, I am about to publish lots of reports before I leave, but there are some things I would like to see through. Advocacy is important because it is the CPS shop window; it is what the public see. As a victim of crime, you want to see the state put its case eloquently, properly and professionally, so I think the quality of advocacy is very important. We have looked at this. Unfortunately and disappointingly, we do not feel that there has been the progress on

the recommendations I made some 18 months ago that there should have been. One of the things we spoke to Keir Starmer about was the quality of in-house advocates compared with the independent Bar. We found that the quality of advocacy of the independent Bar was higher than that of in-house advocates, who were newly introduced. What was promised was that a lot more effort on training and development would go to the in-house advocates. I am generalising. Clearly, we have seen models of good practice. I have sat and marshalled with a judge—the resident judge at Guildford insisted that I did that—to see the quality. You see some very good examples. The judge’s view was that he had seen the regular advocates grow in confidence. But the fact of the matter is that they are not getting the experience of contested work; the in-house advocates have about four contested trials a year, and they are doing a lot of non-contested work. A lot more work, some 40%—I will be publishing a report on the exact figure—is being given back to the independent Bar. Clearly, the independent Bar will be pleased because it is an increase in work, but it means that the in-house advocates are not doing enough to give them confidence and to be on a level with the independent Bar.

Q10 Andy McDonald: Have you succeeded in helping the CPS raise its standards in dealing with complaints?

Michael Fuller: I would hope so. This is another area where I felt the CPS had been very responsive. I used to get lots of letters of complaint, as I am sure you do. I had a huge postbag, because they saw me, in my role, as an independent arbiter. They had gone through the police complaints system and saw that the next place to go was somebody independent, and they would write to me. I have done two reports on CPS complaints. I recommended that they have an independent assessor. I had in mind an ombudsman figure when I first recommended that. I also recommended that there should be a review mechanism for victims of crime; if a decision is made not to charge, which is very distressing for victims of crime, there should be an independent review. Eventually, both those recommendations, which I felt very strongly about, after strongly arguing them with Keir Starmer, who was the director, were accepted. They have implemented an independent reviewer of complaints, who I deal with quite regularly, and they have a review mechanism so that victims of crime have an avenue of appeal. It is early days, but I think it is proving quite successful, in that they have been willing to overturn decisions in response to complaints by victims of crime. As a result, there is a commensurate reduction in my postbag, which I have been quite pleased about. At least victims feel they have another chance to have decisions reviewed and looked at, which must be a good thing.

Q11 Mr Llwyd: How effective is the Serious Fraud Office? In the foreword to your recent follow-up report, you suggest that it is not fully proficient in investigating and prosecuting the most serious and complex frauds and corruption cases.

Michael Fuller: I stand by that. I stand by what I said. It did not make me very popular with the new director, as you can imagine.

Q12 Chair: It is not your job to be popular.

Michael Fuller: No. I have found that the role is not a popularity contest. There is history, even in the time I have been in the inspectorate, in relation to the SFO. I have inspected it twice. The first time there was clear reluctance for me to carry out the inspection, but I did it. Through tenacity and with the assistance of the previous Attorney-General, I got in the door. Of course, I did not have powers then. Things have moved on.

Q13 Chair: Are you talking about Mr Grieve?

Michael Fuller: Yes. What was apparent the first time was that there was an issue, which remains, about the quality of their casework. Clearly, they are very different cases from the CPS, with bigger risk. Investigations can take two to three years and they are very complex prosecutions, but we did not see the quality assurance mechanisms that we felt should have been in place, and there was not a consistent approach to prosecuting cases. There were staffing issues. I am very confident that a lot of those issues are being addressed, and I reported on that in the second report you cite. But what was clear when I went back was that a lot of the changes that had been made in response to the recommendations were not having the desired impact, or we could not see evidence of it. The SFO would say that we went back a year after the first inspection and that was why there was not any impact, but we could not see the impact. As a result, none of the recommendations, most of which related just to casework, where we saw the greatest risk to the reputation of the Serious Fraud Office, was shown as having been achieved. They still have a long way to go to ensure that they are regarded as a very professional, slick prosecutor. That is what we need. I feel there is a need for a serious fraud office; I want them to succeed. All the recommendations made by the team with me were constructive ones that we felt would improve the quality of their work and their success.

Q14 Mr Llwyd: I referred a very serious mortgage fraud to the SFO about 18 months ago, involving about £1.5 million in the case I cited. It involved a crooked solicitor by the name of Peter Williams, a company by the name of Acorn Finance and a crooked lender by the name of Desmond Phillips. The answer I got back, after several weeks, was, “Sorry, it’s not big enough for us.” I wrote back saying that at least 40 Members of Parliament had constituents who were affected by the exact *modus operandi*, and I had the response, “Sorry, we’re not interested.”

Michael Fuller: I cannot answer for that individual case without seeing the detail. One thing we did look at was the case acceptance process of the Serious Fraud Office, and whether they were accepting the right type of cases. Previously, we felt they were accepting cases that could be investigated by any police force. I have managed and run a police force and I know what frauds it can investigate. We work very closely. We had officers from the City of London serious fraud squad seconded to the inspection, and they felt—certainly first time around—that they were accepting cases that could be effectively investigated by any competent police force.

The Serious Fraud Office is constructed along the lines of the Roskill model, with which you will be familiar. You have forensic accountants and other specialists, who all work as a multi-agency team, along with lawyers and investigators. It is felt that the organisation is there to deal with the country’s most serious and complex frauds. If they take on the easy cases, yes, they will boost their conviction rate, which is what we felt was happening

before, but they will not be dealing with the types of cases that the public would expect them to deal with. The public want to see them succeed in prosecuting those cases. Clearly, you never know what the outcome will be, as you well know, but the feeling was that as a serious fraud squad they should be taking on the most serious frauds. They should also be aware of the threats. That was another issue. I did not think they were clear as to the biggest threats to the economic well-being of the country. I felt they should be into intelligence, which was obviously something I was very familiar with in law enforcement; they should be as familiar with where the threats are coming from and which threats are likely to undermine the economic well-being of the country. This is our premier fraud body and it should be dealing with the most difficult and complex cases.

Q15 Mr Llwyd: Do you think that if all your recommendations are fully accepted and acted upon—SFO intelligence, acceptance of cases, investigation, casework and so on—there will be less chance of having a massive blunder like the Tchenguiz case again?

Michael Fuller: A lot of the recommendations we made during the first and second inspections were focused on the quality of casework and implementing the quality assurance processes. You will be aware that the SFO now have a general counsel who will make the decisions. As I pointed out in my first report, some of the decisions in the past were not being made by a lawyer, which I think is wrong because of the complexity of the cases. That has been put right and a general counsel has been employed. They have a retired judge who reviews the cases.

Q16 Mr Llwyd: Is that Judge Rivlin?

Michael Fuller: Yes, Judge Geoffrey Rivlin, who obviously we have met on quite a few occasions to talk through some issues. He is there to quality-assure the presentation of cases. They have gone some way to deal with the quality assurance issues, but, as we say in the second report, they have not gone far enough. We are waiting to see the impact of the changes they have made. That has been the main focus of the inspection, which should be wider. Certainly with the CPS we do not look just at how they deal with cases; we look at the quality of the staff and how they go about recruiting them. Those issues are as relevant to the SFO as they are to the CPS and other prosecution bodies; you want good staff prosecuting those cases, who are also well trained and well developed in their role.

Q17 Chair: The funding model for the SFO is one which many Departments would be delighted to have. Basically, whenever they get anything hopelessly wrong they are bailed out by a supplementary estimate. This Committee expressed some concern about that earlier in the Session. Do you think the funding model itself leads to complacency about avoiding expensively wrong decisions?

Michael Fuller: I do not think it is as simple as that. There are issues about the funding model. When we looked at the SFO, the feeling was that the blockbuster-funded cases got more resources. That was one of my concerns, because the majority of cases were not blockbuster-funded and were not as well resourced. I did not see any evidence of complacency. Some of the decisions are very difficult and complex; they are not easy. The first decision is whether or not there is a criminal offence. That is why I think there should

be lawyers involved as part of the multi-agency team model deciding that. They have very difficult, complex decisions to make. Sometimes they will get them wrong or people will disagree, but we want to see a good structure where we do not have systemic problems. My focus is on systemic issues. One could be forgiving if they lost one case, or maybe two, but these are big cases with a lot of resources being employed on them, and we do not want systemic problems where they regularly lose cases and suffer reputational damage, and also financial costs, as a result. I am concerned to focus on systemic issues. I do not see any evidence of complacency—quite the converse; they were very keen to try to demonstrate that they had responded to the recommendations.

Q18 Jeremy Corbyn: When you came in January 2010 to the previous Committee, you said that resources would be your biggest problem. Has that proven to be the case? How have you managed to cope with the reductions in resources available from the Treasury for what you are doing?

Michael Fuller: It has been a huge challenge in many respects. We have been affected in the same way as every other Government Department. We have been reduced by 30%. I have managed bigger organisations, but one of the things we have is the ability to choose what work we do and when. Even though we have expanded the remit, I still have been able to work within a reduced budget with fewer staff. We are doing more work and are far more productive because I have dealt with the HR issues I talked about. The staff are far more productive.

We have also moved premises. I had a lovely office overlooking St James's park, but when we got some mail for a pop star I asked how much it was costing us. It was part of the Government estate. Then we moved, and we share a floor with the Treasury Solicitor. We have saved ourselves £500,000 a year by moving offices.

We do far more digital publication as well.

Q19 Jeremy Corbyn: Sorry to interrupt you. Could that saving, for example, be redirected into your service, or was it taken back within the Treasury?

Michael Fuller: It was. We were not paying that out of the budget, so there was a big financial saving, and it meant that I did not have to cut staff, which I would otherwise have had to do.

The fact that we do more internet-based publication means that our reports are far more accessible. I monitor the reading of the reports. We have over 100 people a day looking at the range of reports on our website. We know that some 4,000 people opened the pages of the advocacy report. We only ever used to produce 500 hard copies before, so the reports are far more accessible than they ever were. I was involved in developing the website. We make better use of the internet in publicising and promoting what we are doing.

We also have a savings strategy. Despite the reduction in spend, I made a saving of £2.5 million over five years. It was not something I intended to do. I was fortunate in terms of the expansion of the remit to the Serious Fraud Office, in that the Commissioner of Police for the City of London loaned us two serious fraud investigators, which was a huge

sacrifice for him, to assist our inspection. He saw the importance of it. Like everybody else, he wants to see a professionally operated serious fraud office, so that made quite a huge, commensurate saving; otherwise, we would have had to buy in expertise.

Q20 Jeremy Corbyn: Has the change in budget had any effect, as far as you can see, on the ability to take up and prosecute cases? Is the level of prosecution now in operation the same as it was before the cuts came in 2010?

Michael Fuller: I see the CPS under huge strain. The managers often say otherwise, but when you speak to the staff—and I spend a lot of my time speaking to the staff as part of an inspection—there are huge stresses and strain. I went to the best CPS performing area, which is the east of the country. It covers Suffolk and Norfolk, but it is a wider area. Even though they were getting the best CPS performance across a range of performance indicators, about 30% of the front-line advocates were off sick with stress-related illnesses. They were delivering the best performance, but it came at a cost. I was pleased they were performing but concerned at the consequences. I asked what was being done to get those people back to work, and they went through the list of things they were doing. Clearly, they were not proud of it and were working on it, but it was evidence of the fact that here is an organisation under strain. The question now is could they suffer any more budget cuts and be effective? I think the answer to that is no, unless you could deliver the service in a very different way. That is what they have to look at rather than just another 30% reduction.

Q21 John McDonnell: How would you describe your relationship with the Attorney-General's office? Has your independence of judgment or operation ever come into question? Do you think there is potential to become accountable to Parliament more generally or through this Committee?

Michael Fuller: There are three questions there. No, the operational judgment has not been challenged or questioned. We have had arguments over findings and judgments, but the judgments as such have not been questioned. That is because they are evidence-based judgments. Rather than just giving my own view—the thoughts of Chairman Fuller—it is very much an evidence-based discussion. There has not been any challenge to the judgments at all. What was your first question?

Q22 John McDonnell: How would you describe your relationship with the Attorney-General's office?

Michael Fuller: It has been cordial. I have regular meetings with the officials. I have regular meetings—I certainly had regular meetings with the previous Attorney-General. I now have regular meetings with the Solicitor-General, who has been very interested in our work.

Q23 Chair: He is a former member of this Committee.

Michael Fuller: Yes, I remember. It is important for us that we have somebody who is interested in our work and can give views on the subjects and topics we choose to look at and confirm that they are relevant. I felt that worked well. Personally, I would not see a problem if the accountability arrangements were different. I have always been happy to speak to Sir Alan and agree to meet him, whenever he has requested that. With our particular arrangement there has not been any attempt to undermine independence. It has always been very much respected and has made my life a lot easier as a result. I very much tell the Attorney-General how it is. It is often bad news, which, as you can imagine, a Minister does not want to hear, but I see that as our role. It is very much about the identification of risk and highlighting it—alerting the Attorney-General and anybody else, including the public, to that risk, as we have seen with the SFO.

Q24 John McDonnell: What is your assessment of the joint inspection work that has been undertaken? Do you think that should be developed further?

Michael Fuller: It is something Ministers have fed back to me, because I was chair of the joint chief inspectors' group. They said they find the joint inspection work more useful because it is less silofied and because of the interdependence of the criminal justice system. To comment on just one area and making recommendations about improving it, IT would be a case in point; the CPS have done a lot, but a lot of the surrounding organisations have not moved as fast, so the CPS are not going to realise the benefits unless the others do. We are looking at a lot of systemic issues. With joint inspection, you are looking end to end. As a result, the recommendations you make are aimed at improving the whole system rather than just that one organisation.

Q25 Chair: Is there a central piece of advice you would give to the next holder of the office?

Michael Fuller: It would probably be something around calmness—being calm, patient and tenacious in convincing people in presenting the evidence. I would want to see somebody who was sincere about improving the work of the organisations. I want the people I have been inspecting to see that I am sincere and constructive, not nit-picking and making tickbox recommendations. Sincerity in wanting to see improvement is all-important. It is very hard. I have been inspected, as you know. When I came here first, I pointed out that I had 11 different inspection processes as a chief constable every year. The thing I wanted to see in the people who were inspecting me was sincerity in making recommendations, and that they were convinced that those recommendations would actually improve the workings of the organisation. That is what I would like to see.

Q26 Mr Chope: Can I ask you something about pre-charge bail? There has been an exponential increase in the number of people held on pre-charge bail and the length of that bail, and it is often associated with delays with the CPS. The Home Secretary has said she wants to do something about it. What do you think can or should be done about the injustice which arises from people being held on pre-charge bail, sometimes in excess of a year?

Michael Fuller: I accept and agree that there is injustice in that. It is too long. I also understand the reasons for the delay. I was an investigator for many years—actually

securing forensic evidence. As you can imagine, there are huge demands in terms of having to review CCTV evidence, which is very laborious. Having watched lots of court proceedings, often mistakes are still made by the prosecutors because they have not reviewed the CCTV evidence properly; often the real evidence is later in the video clip. Thorough preparation is all-important in being confident that you have the right person. DNA is very objective. Securing that evidence, which can often prove guilt or innocence, is very time-consuming and expensive, so that contributes to delay, along with other factors, such as chasing doctors to get medical evidence from them. There are reasons for the delay.

There is a question as to whether those individuals should be bailed at all. If you release people without any obligations on them, they can be misled if some time later, maybe a year later, when you have the evidence, they are rearrested. I think the police service should look to addressing the problems I have outlined: securing the forensic evidence and getting the medical evidence. On CPS decision making, we have really only seen that as a problem with sex offences, where there has been an exponential rise; the courts are saying to me that they have seen a rise of about 40%, so there has been a backlog of cases where decisions were awaited. The CPS used independent counsel in some areas to assist them in their decision making in those cases. I have been concerned about the backlog, because often you have somebody on bail.

You highlight a big problem. It is for police forces to help tackle it—to find solutions in terms of the forensic providers. Can they look elsewhere so that they get decisions and results back quicker than going to the same laboratories? There is a whole list of things in terms of causes. I do not think the causes are that complicated. I would not point the finger entirely at the CPS, other than in rape and sexual assault cases, where it is acknowledged that there is a backlog; the point is that they are doing something to address that.

Q27 Chair: We have to move on, because we are keeping Mr Hardwick waiting for the next session. We thank you for the work you have done, and for your co-operation with this Committee throughout your time in office. Thank you very much, Mr Fuller.

Michael Fuller: Thank you. It has been a real privilege.