

Public Accounts Committee

Oral evidence: Confiscation Orders: progress review, HC 915

Monday 18 April 2016

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Members present: Meg Hillier (Chair), Kevin Foster, Mr Stewart Jackson, Nigel Mills, Stephen Phillips, Mrs Anne-Marie Trevelyan

Sir Amyas Morse, Comptroller and Auditor General, Adrian Jenner, Director of Parliamentary Relations, and Toby Evans, National Audit Office, and Marius Gallaher, Alternate Treasury Officer of Accounts, HM Treasury, were in attendance.

Witnesses: Mark Sedwill CMG, Permanent Secretary, Home Office, Mick Creedon, Chief Constable, Derbyshire Police and National Lead Officer for Serious and Organised Crime, and Alison Saunders, CB, Director of Public Prosecutions, Crown Prosecution Service, gave evidence.

Chair: Good afternoon and welcome to the public affairs committee on Monday the 18th—

Stephen Phillips: Have we renamed the Committee, Chair?

Chair: Sorry. Forgive me. I am distracted by having the august Chair of the Home Affairs Committee in the room, clearly.

Welcome to the Public Accounts Committee on the afternoon of Monday 18 April 2016. We are here today to discuss the National Audit Office's progress review on the criminal justice system's administration of confiscation orders. This is a matter of interest to us as a Committee because we looked at this in 2013 and put a Report out in 2014, which we will be referring to today and which the NAO Report refers to as well. It is also of interest because the Home Affairs Committee has an open inquiry on criminal assets.

The NAO Report shows clearly that progress against the timetable that you all set has been disappointing, because you have only implemented one of the six recommendations made in 2014

when this Committee published its Report and in many areas you have gone backwards in the last two years, which concerns us. We do appreciate that it is a very complex area—challenging and confiscating criminal assets—and that you have made improvements in some areas, but we did expect more progress. I am going to ask Stephen Phillips to lead off our questioning today.

Q1 Stephen Phillips: Mr Sedwill, we have a Report from the NAO here, which you have read, and you wrote to the Committee on 31 March. In your letter, you said that regrettably, you were unable to provide accounting officer clearance for the Report before the deadline the NAO had set. I really want to ask you two things at the outset. What does that actually mean? Are the facts in the Report agreed or aren't they? And are you now able to go further and actually say that, having reviewed the matter and had the time to do so, what the NAO says is correct?

Mark Sedwill: Clearance and agreeing the Report—Mr Phillips, we have had this discussion at the Committee before. I was setting out the Government's position. The Government felt that there is much in the Report that is not at issue. Most of the content of the Report we do agree. The body of the Report is mostly balanced. But there remain some issues between the Government and the NAO on the findings and the conclusions. I did not think those were irresolvable, but I was not in a position to clear the Report on that basis and essentially say that this was a Report that the Government could accept uncontentiously as the evidence basis for this hearing. It is the prerogative of the NAO to set the deadlines and to publish the Report, but we had not reached the point at which I felt that we could clear it. I still feel, as I set out in my letter—and this is, as I say, representative of the Government's position—that there are findings and conclusions drawn from the evidence in the Report that we do not agree with.

Q2 Stephen Phillips: That is a confusing answer. You say that findings in the Report are disputed. Now, findings relate to facts, and I am going to be asking you about some of the facts in the Report, so are those agreed or not?

Mark Sedwill: Well, we can go through it, but as I said, most of the body of the Report is not contentious. We are not disputing most of the numbers in the Report.

Q3 Chair: Most? Are the facts—are the numbers agreed, Mr Sedwill?

Mark Sedwill: The numbers in the Report I think are, but—

Chair: You think or are?

Mark Sedwill: Well, I set out in my letter that I wasn't yet able to clear the Report. We were still—

Chair: That was 31 March.

Mark Sedwill: Yes. We were still in discussion with the NAO at the time about the Report. This had been a difficult Report for us to agree. We had had correspondence about it several months earlier. Most of the facts, the facts in the body of the Report—if there are any facts that you challenge me on that I think are wrong, I will say so. I am not aware of any numbers that are actually wrong in the Report, but it is not just the numbers that one clears when one is clearing a Report; it is

the Report as a whole. For the reasons I set out, we looked at this very carefully—it is the first time it has happened; I am in my fourth year in this job—and we did not feel this Report was in shape yet, at that time, to be cleared and we wanted some further changes before we were ready to do that.

Q4 Stephen Phillips: You see, that creates a problem for this Committee, because we have to form a view as to how progress is going in this area, and whether the Government has done what it said it was going to do. And in circumstances where we do not have an agreed Report that is very different, so I am afraid I am going to press you. I want to know what it is in this Report that is not agreed. Is it the facts that are stated by the NAO, or is it that you do not agree with their statements of opinion?

Mark Sedwill: If I can give you two specific points there, we do not agree that only one of the recommendations has been implemented. That is not the Government's view. And secondly—

Chair: It's a pretty big fact.

Mark Sedwill: You could state that as an assessment rather than a fact, but we take the view that it is not the case that only one of the recommendations has been implemented.

Q5 Stephen Phillips: Well, how many do you say have been implemented?

Mark Sedwill: We think we have made progress across the board.

Stephen Phillips: No, that wasn't my question. How many do you say have been implemented?

Mark Sedwill: Well, fully, we would not claim that we have implemented all of them across the board.

Q6 Stephen Phillips: You promised to implement them by March 2015—all six of them—so how many do you say have been implemented?

Mark Sedwill: If you read carefully the language in it, Mr Phillips, we did not suggest that all the recommendations would be fully implemented by March 2015 in the Treasury minute or in our responses. We have made progress against all the recommendations; some of that is ongoing implementation. They are not fully implemented, but to say that because we have not hit 100% somehow or other five out of the six have not been implemented is stating it in too binary a fashion. So I give that as a—

Q7 Stephen Phillips: I will let Mr Foster in, but I have to say it creates an almost impossible position for this Committee—certainly for me trying to lead the questioning—because I do not know what in this Report I can treat as being agreed by you and what I cannot. If I go through, as I have done very carefully, your letter of 31 March, frankly, I understand that it contains—how shall I put this—a gloss on all the good things that are going on, but what it does not tell me, for the purposes of asking you, Ms Saunders and Mr Creedon questions, is what is in the NAO Report with which you disagree.

Mark Sedwill: As I said, Mr Phillips, when I wrote to the Auditor General, I was still seeking to see whether we could produce a Report that was agreed. That was not possible with the deadline set. That is entirely the Auditor General's prerogative. If you look at that correspondence, including the earlier correspondence between me and the NAO, it is set out there.

Q8 Stephen Phillips: The problem is I can't look at that correspondence because that is correspondence with the NAO; it is not correspondence to which I have access.

Mark Sedwill: Oh, I'm sorry. I thought that the Committee did have access.

Chair: I have to say, Mr Sedwill, the point is we have an NAO Report in front of us and it is unprecedented to have one that is not agreed. We understand you agree the facts, and now you are saying, actually, you do not agree with the fact that only one of the recommendations has been implemented in full, though you then prevaricated a bit about that. I wonder if the NAO could shed any light on this—Mr Evans, or perhaps the Comptroller and Auditor General, would you like to comment on what you believe has been agreed by the Home Office?

Sir Amyas Morse: Let me start with the easy bit. I am fortunate to be able to refer to a piece of correspondence from the Home Office stating explicitly that any what it describes as factual inaccuracies have been resolved. So, whatever we mean by the facts, the Home Office has agreed them. I know that that may not feel very reassuring, but that is it. Then, in each of these recommendations, if you look at the actual response to the Treasury recommendations, in each case there is a target implementation date. Now you can argue what "target" means; none the less the facts are that in our estimation none of these have been fully implemented by the target implementation date. It is clearly set out. There is a specific target implementation date for each recommendation.

Q9 Stephen Phillips: We should not have to do this at the beginning of a hearing, but let's see if we can make some progress, Mr Sedwill. If you look at appendix four of the NAO's Report, you can see the six recommendations made by our predecessor Committee and the NAO's assessment of where you have got to on each of those. Now let us go through them one by one, regrettable as it may be, and see whether or not you think they were implemented by March 2015. We will use the summaries in the first column of appendix four, which is on page 46.

On "more use and awareness of orders", the NAO's assessment of progress is that that has been weak. Do you agree with that?

Mark Sedwill: Mr Phillips, I am not equipped to go through that in that level of detail. My notes do not have all of this.

Chair: This is appendix four on page 47 of the NAO Report.

Mark Sedwill: On process, we submitted at the end of the last Parliament in March 2015—

Q10 Stephen Phillips: I am moving beyond process now. Let's just ignore process.

Chair: We are less interested in the argy-bargy that went on behind the scenes than what we have in front of us. We are trying to get clarity, so if you could answer Mr Phillips's questions.

Mark Sedwill: Sorry, Madam Chair, but the Government submitted to Parliament a further Treasury minute on confiscation orders at the end of 2015 setting out the Government's view on progress at that time, at the end of the last Parliament, so that is on the record; that is not argy-bargy with the NAO. That is on the record.

Q11 Stephen Phillips: Presumably, having prepared for this, you will be familiar with that Treasury minute, so now you will be able to answer my questions. Now, the NAO's assessment of the first recommendation of the Committee, "more use and awareness of orders", was that progress had been weak. Is that agreed or not agreed?

Mark Sedwill: We believe that the performance on orders has improved.

Q12 Stephen Phillips: What does "has improved" mean?

Mark Sedwill: Although the absolute number of orders imposed has reduced, the money secured—the assets seized—has increased. By the end of 2013-14, it had increased by 16%.

Chair: This is descending into farce.

Sir Amyas Morse: Just to be clear, the original recommendation was that, "Law enforcement and prosecution agencies need to agree and apply a common set of criteria to ensure that they consider consistently and properly all crimes with a financial gain for confiscation orders." That is what was accepted. Our understanding is that, "The Home Office believes that the use of confiscation orders is a tactical decision for local law enforcement agencies...and central direction would only distort operational decision-making". If that is so, the Home Office agreed to this recommendation, but they have subsequently decided they do not agree with it. Is that right?

Q13 Stephen Phillips: Is that right, Mr Sedwill?

Mark Sedwill: There's a difference between the Home Office's view on what we should be telling law enforcement to do and the overall performance of the system as a whole. Decisions about confiscation orders are for prosecutors as they bring the cases and for the courts to impose. It is not the Home Office's role—

Q14 Mr Jackson: But you agreed the recommendation in 2014. You agreed all these recommendations and they were recapitulated in 2015. Are you saying you were wrong to have agreed the recommendations subsequent to our Report in 2014?

Mark Sedwill: The recommendation I am looking at is the one from the Committee that says, "Not enough confiscation orders are imposed".

Q15 Chair: Yes, from 2014.

Mr Jackson: Which you agreed—

Mark Sedwill: From 2014. My point is that although the number has gone down, the take has increased. The Government's point on this is that the effectiveness of confiscation orders has improved. We do not think it is for the Government to specify how many confiscation orders—

Chair: We are going to bring in Mr Foster briefly and then we will consider how to proceed, because this is not going very well at the moment, Mr Sedwill.

Q16 Kevin Foster: A couple of moments ago, Mr Sedwill, you referred to “facts I think are wrong” in relation to the Report. A few moments later it was suggested it had been agreed and you looked behind you to see if that was the case. Do you actually have a list of facts that you think are wrong in this Report? Presumably, if you think there are facts that are wrong, you have brought them with you today.

Mark Sedwill: I wrote to the Auditor General—I am sorry, I didn't realise you didn't have access to that.

Kevin Foster: I have to say, Mr Sedwill, you are taking a long time this afternoon to answer questions that could be answered with “yes” or “no”.

Mark Sedwill: I have already set out one factual position, Mr Foster, on which the Government takes a different position to the NAO, which is whether or not we have failed to implement all but one of these recommendations.

Q17 Kevin Foster: So you don't agree with that fact?

Mark Sedwill: We do not agree with that.

Q18 Kevin Foster: Next one?

Mark Sedwill: Secondly, we think that, through the Report, the constitutional position on the independence of law enforcement and the nature of that system is not properly represented.

Q19 Kevin Foster: Which fact does that relate to in the Report, rather than a theory? If there are facts in the Report that you think are wrong, which facts are they?

Mark Sedwill: There is a reference to it, but we do not think that the Report properly reflects it. My point is that, by the time we came to seek to clear the Report—it is not simply a question of “I don't like that fact in that paragraph”, it is whether or not the Government thinks that the Report is a fair and balanced—

Chair: Mr Sedwill, I have a proposed way forward. I suggest—I will have to do this formally in a moment—that we suspend. Ten minutes should be enough for you to go out of this room, come back and tell us which of these recommendations in appendix four you agree with or disagree with. Then we might have some basis on which to continue this hearing.

Sitting suspended.

On resuming—

Q20 Chair: Now that we have reconvened, and before we continue, I just want to remind you, Mr Sedwill, that the Committee’s 2014 Report was very clear in its recommendations and about the urgency of the action. Those recommendations were agreed by the Government—by your Department—without caveat. I am going to ask Mr Phillips to continue going through appendix four—the summary of progress.

Mark Sedwill: Madam Chair, may I say very briefly that the Government submitted in a Command Paper on 30 March 2015 a further Treasury minute setting out the Government’s position on each of the Committee’s recommendations? I confirm that the Government agreed the recommendations. We set out progress in those. We do not think that progress is properly reflected in this annexe. I can go through that, Mr Phillips, if you wish. That is essentially what is at issue.

Q21 Stephen Phillips: I think that is where we’re going to have to start, Mr Sedwill, I’m afraid. You’re right that there’s a second Treasury minute—I accept that—saying, “This has been done, and this is what we’ve done.” The trouble is that the NAO’s assessment in relation to five out of six of the recommendations is that performance has been inadequate. Let’s start with that. Is that something that you disagree with? You don’t agree, as you’ve already said in this hearing, that in relation to those five areas progress has been inadequate.

Mark Sedwill: That’s right, Mr Phillips. I don’t think that is the right assessment. There has been progress. The job isn’t done, but we think good progress has been made.

Q22 Stephen Phillips: Okay. Let’s try to unpack this and look at each one. Recommendation 1: “Not enough confiscation orders are imposed.” Our predecessor Committee’s recommendation was: “Law enforcement and prosecution agencies need to agree and apply a common set of criteria to ensure that they consider consistently and properly all crimes with a financial gain for confiscation orders.” Okay—agreed? That was the recommendation.

Mark Sedwill: Yes.

Q23 Stephen Phillips: The Government accepted that recommendation—correct?

Mark Sedwill: Yes.

Q24 Stephen Phillips: The National Audit Office assessment of progress is “Weak”. It continues: “The Crown Prosecution Service, in conjunction with law enforcement agencies, has not issued a common set of criteria to select cases. Law enforcement agencies continue to have their own aims and priorities for the use of confiscation orders. The Home Office believes that the use of confiscation orders is a tactical decision for local law enforcement agencies in their fight against crime, and central direction would only distort operational decision-making”. The Committee’s recommendation was that there needed to be an application of a common set of criteria. The Home Office—and I presume this is a fact which is agreed in the Report—says “No, not so. It must be done by individual law enforcement agencies.”

Mark Sedwill: But, Mr Phillips, the CPS has issued guidance, and there is guidance on the use of financial investigative techniques in the College of Policing’s *Authorised Professional Practice* manual. That is the basis on which the Government said that we—

Q25 Stephen Phillips: Mr Sedwill, I am not trying to cause you difficulties. You say the CPS has issued that guidance and the recommendation has been complied with, but the NAO says, “The Crown Prosecution Service, in conjunction with law enforcement agencies, has not issued a common set of criteria to select cases.”

Alison Saunders: It might be perhaps easier if I answer that one. We have, since the Report and since the recommendations were issued, had a fairly major change from how we were when we came before the Committee last, because what we have done is set up a national proceeds of crime division that deals with proceeds of crime. They have renewed our internal guidance for prosecutors, which includes guidance on how to use confiscation and restraint. As well as that, because of the national remit of the proceeds of crime division, they deal with restraint clinics, where police officers can come to them to talk about whether or not they should take out orders—

Q26 Stephen Phillips: Have you or have you not issued a common set of criteria to select cases?

Alison Saunders: No.

Q27 Stephen Phillips: Right. So the recommendation has not been complied with.

Alison Saunders: No, and we haven’t done that for the reasons that I have just outlined, in that the landscape as far as the CPS is concerned has changed.

Q28 Stephen Phillips: I am not interested in the reasons. I asked you a very straightforward question, to which you have answered no. That was “Has the recommendation been complied with?” You have just said no.

Alison Saunders: As far as the CPS are concerned, and law enforcement.

Q29 Stephen Phillips: Right. What about the Home Office, Mr Sedwill?

Mark Sedwill: As I said, we took the view that there is guidance there that gives law enforcement what they need to consider consistently and properly crime with financial gain at the heart of it, including the guidance from the CPS and the guidance issued by the College of Policing. That was set out in that Treasury minute.

Q30 Stephen Phillips: I am flabbergasted and at a loss. I simply don't know. We have the NAO saying on the one hand it hasn't been complied with, Ms Saunders saying it hasn't been complied with, and I think you saying, "Whatever has been done is enough, even though we agreed the recommendation and it hasn't been met." Is that true?

Mark Sedwill: I didn't say, Mr Phillips, the recommendation had been fully met—that was the point we were discussing earlier—but I did say there had been progress against it.

Q31 Stephen Phillips: Again, we come back to the point—and we can do this with all six of the recommendations, or the five that haven't been complied with—that you did not say to our predecessor Committee in the Treasury minute, "By March 2015 we will make progress against these recommendations." You said "They will be done by March 2015."

Q32 Chair: You didn't have to agree. Not every recommendation we issue is agreed by Government Departments.

Mark Sedwill: No, indeed—

Chair: We were pleased you agreed them; and we are now disappointed.

Mark Sedwill: I don't think it would have been apparent to us that it would have been interpreted that all the recommendations had to be completely implemented by then. We believed that we were implementing the recommendations.

Q33 Chair: You could have put a caveat. Mr Sedwill, there is enough space in the Treasury minutes to put a caveat: "We will have made this much progress by this date." I am going to bring in the Comptroller and Auditor General to see if he can cast any light on this—and then back to Mr Phillips.

Sir Amyas Morse: There are different dates for different recommendations—some 2015 and some 2014—so it is a bit odd to say these dates were not meant. The other point I would make is that, from our point of view, what we have written here is, as far as we have known it in our dialogue with the Department up to this hearing, what we understood the Department's position to be. We are hearing for the first time a new argument: "We have effectively got national standards, only we just didn't mention them before." I find that quite a new argument. That is not what we have been hearing as we have prepared our Report. I am not saying you are wrong; I am just saying that has not been adduced to us as a substitute for national standards.

Chair: I don't know how much progress we can make this afternoon on the basis of the exchanges so far. I am minded, with the Committee's agreement, to adjourn this Committee meeting and call you back, Mr Sedwill and colleagues, in the next 10 days when we can agree a date.

This is a hugely important issue. This is getting criminal assets back to the taxpayer from people who have defrauded the system. We had an urgency about it in 2013. That came out in our Report in 2014. It was within the Government's remit to say, "We disagree with some of the dates." That happens all the time with recommendations, but to agree them and then to come back with this confused message and to disagree with that NAO Report is extraordinary and unprecedented in my experience on this Committee. If the Committee agrees, I am going to adjourn.

Q34 Stephen Phillips: Yes, but may I make this suggestion, Mr Sedwill? We want to have an effective hearing. We are not here to hang you or to trip you up—or Ms Saunders or Mr Creedon. The Committee is here to try to find out where we are, to hold you to account if we have not got far enough, and to make recommendations, which you can then either accept or not accept, as to the way forward. That is the purpose of this Committee. In order to do that, I think that before we reconvene this hearing, you are going to have to write to us with reference to appendix four and say the respects in which you disagree with the NAO's findings of fact or their opinions or judgments on how far you have got, and also tell us if there are going to be further matters that are relied upon as demonstrating compliance with these recommendations, which were accepted by the Government, that have been done—like, for example, the national guidance to which Ms Saunders referred, of which I and apparently the NAO were completely unaware.

Mark Sedwill: Mr Phillips, I am happy to write to you. The reason I wrote fairly shortly after the publication of the Report at the end of March, well in advance of this hearing, was that if there was an issue over the fact that we had not cleared it—and I do not think it is unprecedented, by the way, Madam Chair; I have checked with colleagues and other Departments have been in that position, I am told—

Chair: Not to the extent that we have had this farce, but carry on, Mr Sedwill.

Mark Sedwill: Obviously it is entirely your prerogative to adjourn the hearing. On the substance of the Report, however, we are ready to work through each of these and state what we think the position is. The Committee can then reach your own conclusion about whether you think assessment of progress is sufficient or not. I think we have got rather hung up on—

Chair: Mr Sedwill, we always reach our own conclusion, but we do rely on a National Audit Office Report that is agreed, and the National Audit Office does a very important and thorough job. To be disagreeing with them in this way at this notice, albeit you wrote a letter a couple of weeks ago, is extraordinary.

Q35 Stephen Phillips: It's not just that, Mr Sedwill. You may remember that when you were last here giving evidence on this in January 2014 you said you did not want to be thought of as a Sir Humphrey, but this letter of 31 March 2016 is a great exercise in Sir Humphreyism. It says, "Well, we don't give accounting officer clearance to this Report, and here's a lot of good things the Government has done," but it doesn't actually tell me where you disagree with the NAO and why you disagree with the NAO about the conclusions that it has reached, so it is impossible for me to ask you questions and then form a judgment about it.

Mark Sedwill: I must admit, Mr Phillips, I thought some of the earlier correspondence was available to the Committee, so we can reprise that for you.

Q36 Chair: This Committee, though, is not in the business of getting involved in the dialogue between the National Audit Office and the Home Office. We expect you to come with an agreed position. We expect that even if you do not like all the opinions—as you would describe them—or the conclusions in the Report, you would be able to engage with us in a meaningful discussion about progress in this area. But as Mr Phillips has highlighted, we have a lot of words here, but actually, on the recommendations we made, we have very little progress and very little information from you.

I am looking around at the Committee here. I do not think we have any option but to adjourn this. This is something I never wanted to do in this Committee. As Mr Phillips said, we want to get answers. This is a hugely important area and I am really disappointed that we are going to have to take this form of action. I do not think we are going to get very much further today. Will you write to us, as Mr Phillips has asked, laying out what in appendix four you disagree with and why? Then we will come back in the next 10 days to have you in front us again. May we have the letter by the end of this week, please?

Mark Sedwill: I will seek to do that, Madam Chair, yes.

Chair: Okay. With great regret, I adjourn the Committee.