

Justice Select Committee

Oral evidence: [The work of the Serious Fraud Office](#),
HC 629

Tuesday 25 October 2016

Ordered by the House of Commons to be published on 25 October 2016.

[Watch the meeting](#)

Members present: Robert Neill (Chair); Alex Chalk; Alberto Costa; Philip Davies;
Mr David Hanson; Victoria Prentis; Marie Rimmer

Questions 1 - 86

Witness

David Green CB QC Director, Serious Fraud Office

Written evidence from witnesses:

- [The Serious Fraud Office](#)

Examination of witness

David Green CB QC

Q1 **Chair:** Good morning, Mr Green. Thank you very much for coming to give evidence to us. I think it is the first time at this Committee in this Parliament.

David Green: Yes, indeed. November 2012 was the last time.

Q2 **Chair:** Quite a lot has happened since. I will start with some technical but important things that we have to do around the nature of the questioning. First, we have to declare our interests. As is recorded, I am a non-practising barrister and a consultant to a legal firm. You and I know each other well and have known each other for many years. I think we last did a case together about 15 years ago.

David Green: It was May 2000.

Q3 **Chair:** Sixteen years ago. We both remember it well, as the song goes. Are there any other interests for people to declare?

Alex Chalk: I am a practising barrister. I am also on the A panel of the SFO. I should add, in the context of these questions; that I acted at one hearing for a named co-conspirator in the case of Hayes, Farr and Gilmour. It was one hearing. It never went any further.

Chair: Thank you. If there are no other specific declarations, for the sake of those who are watching or listening, I will deal with the sub judice issues, which I know you are familiar with, in any event, Director.

It is worth setting out the sub judice resolution of the House. That prevents us from referring in Committee, or indeed in the Chamber, to cases that are active before the courts; it does give discretion for the Chair to waive that rule where the circumstances merit it. There are a number of cases—helpfully, the Director has submitted a schedule—that are ongoing. Some of those would fall within that sub judice rule; so it is important that we do not refer to those cases in a way that might prejudice their ongoing nature. There are others where we should, generally, be cautious. Although some parts of the cases have been concluded, other parts are ongoing. I hope that members and the Director will be cautious in dealing with that to avoid any possibility of prejudicing proceedings.

It is also worth pointing out to people that very often they write to us and ask us to raise individual cases. It is worth saying for the record that the Justice Select Committee is part of the parliamentary process. It is not part of the legal system and it is not part of the legal process. We are not the venue to debate the merits of individual cases or to raise legal points. That is a matter of general application, and the Standing Orders of the House prevent Select Committees taking up individual cases. I am not sure that that is always understood, but it is worth saying for the record as we have had some correspondence around the issues that we aim to



HOUSE OF COMMONS

be discussing today to that effect.

The only other matter I am going to deal with is to ask some questions about deferred prosecution agreements. It seemed to us, having taken advice, that the sub judice rule applies, in principle, to deferred prosecution agreements, but I do not think it is desirable that we should be stopped from discussing those agreements, at least in general terms. I am prepared to waive the resolution to enable discussion to talk about that but not the detail of the terms or the compliance. I hope that is satisfactory from your point of view, Director.

David Green: Yes.

Q4 **Chair:** That said, let us start. Thank you for the memorandum; we have also seen the inspectorate's report on the SFO. Back in 2012 when you came along to see our previous Committee, you said that you wanted to refocus the SFO, which has sometimes been referred to as adopting a more prosecutorial approach as opposed to compromising through regulatory matters, and you were looking to deal with "the most serious and complicated cases that affect the UK nationally." What is your assessment of how that has gone? What is the basis for the evidence if you are saying that we are succeeding in this?

David Green: First, as I told the Committee back in 2012, I wanted to take the SFO back to doing the sort of work for which I think it was intended. Under my predecessor, the impression had got about—fairly or unfairly I know not—that the SFO did not want to take the risk of prosecuting or court proceedings and was very willing to reach settlements. That, perhaps, was most problematic in the Innospec case and the sentencing there.

The evidence that we have focused on and the sort of cases for which the Roskill model was intended are contained in the case list itself. To give you a sample, there was LIBOR, Rolls-Royce, Barclays Qatar, Alstom, Tesco and GSK. We have about 60 cases on our books at the moment and another number under development in our intelligence section. That is certainly the evidence of that refocusing.

Q5 **Chair:** In the early days there seemed to be almost a monetary threshold.

David Green: Yes. When you say "the early days," Mr Neill—

Q6 **Chair:** Initially, it was about £1 million, was it not, when it started?

David Green: Yes.

Q7 **Chair:** Then it went up to £5 million.

David Green: Yes.

Q8 **Chair:** What is your approach? Do you apply purely a monetary threshold now or do you go beyond that?



David Green: We do not apply a monetary threshold at all. There are guidelines that we publish on our website, but, thinking about it at the beginning, I found it more useful to try to focus on the sort of work for which the SFO was intended. I set it out as cases that tend to undermine UK commercial or financial plc in general or the City of London in particular, and, under that, taking into account cases with a high public interest, cases featuring a new species of fraud and cases where a lot of money was potentially lost or actually lost; but I did not find it useful to focus on any particular sum and use that to reject or accept a case.

Q9 **Chair:** You made the point, and I am glad you did, about the reputation issue of British financial services.

David Green: Yes; absolutely.

Q10 **Chair:** Not exclusively, but largely, that is about the reputation of the City in particular.

David Green: Yes. It is a very important part of our purpose that we play our part at the SFO in ensuring that the UK is a good place to do business and a level playing field for investors and others who want to do business. We play a small part in that.

Q11 **Chair:** In doing that, it sometimes must involve the City or any financial institution believing that, if wrongdoing has occurred, it is better to report that themselves.

David Green: That is the hope. Certainly, part of the policy intention behind DPAs—deferred prosecution agreements—as you will know, was to incentivise self-reporting by corporates that had discovered criminality.

Q12 **Chair:** Do you think that the SFO has the capacity and is doing enough to win over the mindset of the big financial institutions and the markets to the advantage of that approach?

David Green: I have spent the last four years speaking at least once a fortnight to professionals in the City, groups of lawyers or businessmen and other groups, explaining the incentives behind self-reporting, and at the same time building up our own intelligence capability so that certainly in some sectors it increases the chances of people being found out in any event. Our intelligence section acts as a convenient portal for whistleblowers and people who wish to report knowledge of wrongdoing to us. We have quite a lot of those.

Q13 **Chair:** That is part of the unique set-up that you have referred to.

David Green: It is, yes. The USP for the SFO is the Roskill model, as you know, which means that we have all the skills necessary under one roof to both investigate and prosecute the most serious and complex cases of fraud and bribery.

Chair: Mr Chalk, do you want to come in on that point?

Q14 **Alex Chalk:** On that point, DPAs only work if the firms concerned think,



HOUSE OF COMMONS

"Actually, it is going to be in our interest to comply with this, because, failing that, we may be at risk of prosecution by the SFO." That threat, in turn, is contingent upon the SFO, yes, having the skill, yes, having the expertise, but also having the capacity for that to be a credible threat. Do you think the SFO has the capacity to ensure that that threat of prosecution is credible, thereby getting companies to do the decent thing?

David Green: Mr Chalk, I would never want to refuse additional capacity, but our capacity at the moment is very good and effective, and it has become very much more effective over the years in what you have spoken about. We will come to our conviction rate in due course, I do not doubt. In terms of DPAs, you will see, over the coming months, some significant deferred prosecution agreements. We have had two already. There will be more. With each of them, we have had very useful judgments from the President of the Queen's bench division.

In terms of whether there is sufficient to incentivise companies to come forward, again, I was talking yesterday to a group of City lawyers. It shone out to me from that that there is certainly a discussion had at board level whether to self-report to the SFO, as you would expect, but when a company decides that it wants to draw a line under conduct, that is when a DPA and self-reporting are worth considering for the company, and that is, perhaps, when we get a self-report.

Q15 **Chair:** That is helpful. You make the point that you are a fairly tight organisation, not large but multidisciplinary. Quite a lot of burden falls upon you as Director. The inspectorate suggested that you should appoint a chief executive officer, largely, perhaps, to take off some of the managerial matters.

David Green: Yes. I was very touched by the chief inspector's concern. I think one has to see it in the historical perspective. When I arrived, the office of chief operating officer was, perhaps, not cast in its best light, so I decided that we would break up that office and share out the corporate tasks among the senior managers. That worked and has worked very well for four years, but I agree with the inspector's conclusion that the time has come now to have a more conventional and neat split between the operational side of the business—the casework—and all that supports that, which is hugely important to us. Thus it is that, after an open competition, I appointed a chief operating officer—not a CEO, because I regard myself as the CEO in many ways and I thought it was more descriptive to have his job entitled COO.

Q16 **Chair:** You had a vacancy for the post of chief finance officer. What is the position there now?

David Green: The chief finance officer is the one who has become the chief operating officer.

Q17 **Chair:** He has moved up. Are you going to replace him?



HOUSE OF COMMONS

David Green: We have a head of finance below SCS level, and the new COO can be chief finance officer as well.

Q18 **Chair:** Do you see those two posts being combined?

David Green: Yes, indeed. Both of them have taken part, and do take part, in discussions with the Treasury and senior management about the expenditure of resources.

Chair: That is very helpful.

Q19 **Mr Hanson:** You mentioned the conviction rate. I want to explore that a little. Looking at the recent conviction rates, last year's conviction rate was 31.6%.

David Green: That was 2015-2016; yes.

Q20 **Mr Hanson:** But, on average, it had been between 73% and 91%.

David Green: Yes.

Q21 **Mr Hanson:** There may be explanations for that. We would be grateful to hear what they are.

David Green: It has to come with significant health warnings. If you bear with me for a moment, first, we do a few large cases, so any one can actually skew the statistics. In this financial year we have done four cases and our conviction rate is 100%, so a certain health warning has to go there. On the microlevel, last year we had two cases where the main defendant became too ill to stand trial just before the trial. In those circumstances, we had two trials that were Hamlet without the prince and you can imagine that presenting a trial in that way has its effect.

Also, one has to make the observation that, at the end of the day, we are in the hands of a jury. The role of the prosecutor is to see that a case passes the code test—sufficient evidence and public interest—and, if so, we put the best case we possibly can before the court. From then on, it is up to the jury. If a case is thrown out before half time, then I would regard that as a prosecutorial failure.

If you look at the LIBOR cases of the cash brokers, who we alleged had conspired with Tom Hayes, who had already been convicted, the jury were out for six to 10 hours after a two-month trial and acquitted everybody. A couple of months later, in the Barclays traders case—a slightly different job but also related to LIBOR—after a two-month trial, the jury were out for two weeks and one day, after which they convicted one person unanimously, one 11:1, one 10:2 and could not agree on two others. I am sure you will agree that we are reliant on the jury system.

Q22 **Mr Hanson:** On the Tom Hayes LIBOR case you got one conviction with a sentence of 14 years, and you got six acquittals.

David Green: Reduced to 11.



HOUSE OF COMMONS

Q23 **Mr Hanson:** But on the six acquittals, as you said yourself, the jury took six hours. Does that point to a weakness in the case or to other factors?

David Green: As to a weakness in the case, three of the defendants submitted at the close of the prosecution case that there was no case to answer and the judge was not with them. At the end of the day, the jury system, to my mind, is the least imperfect system available. I would not want to say more than that.

Q24 **Mr Hanson:** Let us look at another aspect of performance. If I go back to when you commenced, on seizures and confiscation, £45 million was seized in 2012-2013, and we are down to less than £5 million in 2015-2016. Does that point to anything in particular?

David Green: We actually recovered £19.61 million last year.

Q25 **Mr Hanson:** The figures that I have before me—

David Green: I think that is orders obtained. That was £3.5 million or something.

Q26 **Mr Hanson:**—for confiscation and compensation in 2012-13 are £45 million, and I have less than £5 million for 2015-16. Does that point to any statistic in particular?

David Green: I will send you all the figures, if you wish, but our figures last year show that £19.61 million was recovered. Again, there is a health warning there because our recovery is always quite lumpy. Most of that, as I recall, was due to the sale of a house, which was the asset of a particular defendant who had been convicted. Of course, the more we recover following orders, the better it is. In a lot of our cases, the sums are irrecoverable. Half the national total outstanding is regarded as irrecoverable because it has either disappeared or it is interest.

Q27 **Mr Hanson:** There is a wide variation in the figures.

David Green: There will be a variation.

Q28 **Mr Hanson:** Is the discrepancy, in your view, down to factors outside your control?

David Green: It depends on the cases, Mr Hanson. Some cases are, if you like, cash rich; others are not. We do not do a huge number of cases, so it can be very lumpy.

Q29 **Mr Hanson:** I suppose this leads to two questions. In terms of performance, is it fair to judge you on prosecutions and convictions and then on confiscation and compensation?

David Green: It is one of the factors, yes; absolutely. It is inevitable that people will look at them, but I would ask people to bear in mind the health warnings which, I think, fairly attach to those figures.

Q30 **Mr Hanson:** Where are we now with the LIBOR investigation?



HOUSE OF COMMONS

David Green: The LIBOR investigation continues. Tom Hayes was convicted. The cash brokers were acquitted. The Barclays traders were convicted, and the two on whom the jury could not agree will be retried next year. There is a further trial listed for September next year, and we have to decide whether some others should be charged. Bear in mind, Mr Hanson, that this was a case where, at the beginning, I remember that my predecessor had declined to investigate it at all. There were some pundits and commentators who said that it was unprosecutable. That is what the SFO is there for. It was an immensely challenging and large case, with huge amounts of data. That had to be mastered and put before a jury. We have had some success.

Q31 **Chair:** I suppose there is a logic that the harder and more complex the cases you take on, and the fact that you are taking them through the jury system, will raise a risk inevitably.

David Green: Absolutely. The SFO does not do punch-ups in pubs. We do not do street robberies.

Q32 **Alex Chalk:** Going back—by the way, this is not in the spirit of criticism because I take on board all the points you have made—it seems to me that the issue of the cash brokers has to be looked at in a bit more detail because it was a trial that went on for a long time and, as you rightly pointed out, the jury acquitted after only six to eight hours, which is pretty astonishing. It is right to say that if it was stopped at half time it was a clear prosecutorial failure, but then the jury decides what it decides. However, it was very quick. There was a lot of suggestion in the media and elsewhere that it was, if not a misconceived prosecution, certainly a very difficult prosecution and the evidence was not terribly satisfactory. Has there been a review into that case, and, if so, have any lessons been learned that can practically be applied to the future, or is it just a case of saying, “Look, it is one of those things. It is the jury system”?

David Green: One has to go back, Mr Chalk, to the point you made. The judge considered at least three submissions at the close of the prosecution case and concluded that there was evidence to go to the jury. A lot of commentators afterwards said that the case was weak. They are entitled to have their own opinions—of course they are—and there were many involved in the case who had something to say about it afterwards. As I said at the time, no one could sensibly suggest that it was a case that should not have been brought.

Q33 **Chair:** Basically, it went past half time.

David Green: Yes. The jury went one way. Then a few months later a jury, on not dissimilar evidence, although considering people in a different role, reached a very different conclusion.

Q34 **Alex Chalk:** Just to press you on that specific point—and this may be a perfectly legitimate thing to say—you do not think there are lessons to be learned, though, from that case.



HOUSE OF COMMONS

David Green: The lesson to me would be: is there anything there that indicates it is a case that should not have been brought? Tom Hayes was charged with conspiring with them and he was convicted. It would have been pretty illogical of us not to try them. Again, I go back to the role of the prosecutor, which I do not need to lecture you on, Mr Chalk. We put the best case we can before a court and that is where our job ends.

Chair: Ms Prentis, do you have any interests to declare?

- Q35 **Victoria Prentis:** I do. I am a non-practising barrister and I worked at the Treasury Solicitor's Department for many years. In that vein, you clearly have a great deal more experience of jury trials than I do. Do you think the problem with these particular cases lay in the fact that you were prosecuting the wrong type of person for a jury to convict?

David Green: That is a fair point. There was a lot of comment afterwards that these people were junior people and why were we not going after the top people. Again, you will know as well as I do that we do not go after people; we go after the evidence and the people to whom the evidence points.

- Q36 **Victoria Prentis:** Have you learned, possibly, from that experience—I absolutely accept that what you say is right—that it can be said, and was said very widely, that that led to the results?

David Green: During LIBOR trials we have had comments made from all quarters, including defendants, such as, "Come on, everybody was doing this. Come on, why are you picking on me? What about the big people? Where are they?" We say, and we presented the case on every occasion, that it came down to an issue of honesty or dishonesty and the answer to the LIBOR question, which was central to those cases.

- Q37 **Chair:** Which, very often, is a classic jury point in any kind of large or small case.

David Green: Absolutely. "What is your honest opinion of what it would cost your bank to borrow money at 11 o'clock today?"

Chair: I understand that. Mr Davies, did you want to raise any issues around the use of the jury?

- Q38 **Philip Davies:** Yes, Chair. Mr Green, you did say that the jury trial was the least imperfect system. I think those were the words you used.

David Green: That is my personal opinion. Indeed, it is an opinion that was voiced by Lord Justice Judge, a former Lord Chief Justice, in the past.

- Q39 **Philip Davies:** I wondered if you thought it was worth revisiting whether it is the least imperfect system or whether there is another less imperfect system. I am one of the few non-barristers on this Committee—Mr Hanson, of course, is another—but it strikes me as a layman that we are in the realms, by its very nature, of extremely complicated cases, and they are far more complicated than any lay person should be expected to be able to fathom out. We expect a jury to convict when it is beyond



reasonable doubt. In an extremely complicated case, the ramifications of which go way beyond what people in the street—and I would be included in this— could be expected to understand, is it not worth looking at whether there should be a special group of people who look at these cases who have more expertise?

David Green: You will know, Mr Davies, that that is an idea that has come up in the past. I am subject to civil service rules, I am a public appointment and I will act according to the law as it stands. I have to deal with the jury system. Personally, having been at the Bar for 25 years, I like the jury system. It is also a very important part of the prosecutor's role to make a case as simple as possible. As I said to Mr Neill just now, despite all the apparent complexity of LIBOR, and it is in some people's interests to make it far more complicated than it actually is, it came down to a question of honesty or dishonesty in answering the LIBOR question, which I just adumbrated.

Q40 **Philip Davies:** The other aspect of it, apart from the fact that it seems to me to be much more difficult to secure a conviction beyond reasonable doubt in these kind of cases, is the length of time it takes for a case in court, which is a hell of a lot of time for a member of the public to have to give up or for an employer to have to lose somebody. If somebody falls ill during the case or a couple of people have to drop out or whatever, then the whole thing is wrecked and you have to start again. I wonder whether, taking aside the complexity, the length of these cases makes them less suitable for a jury trial.

David Green: I would do everything I could, and I believe we have, to avoid any trial going over three months, which I would regard as the absolute limit, frankly. I absolutely take your point that there may be something in a shadow jury sitting with a sitting jury. That is a possibility, is it not, so that, if the sort of problems come up that you mentioned—illness or whatever—they can quickly be replaced without delay? Overall, as I say, I believe the key to these cases is to present them as clearly and simply as possible and not to try to paint the whole picture of the case, the whole criminality from A to Z, but to focus on the bit that matters.

If we have failed in the past, it was, perhaps, lacking that focus and clarity on a particular aspect of the case. I cannot call one to mind at the moment, but that is usually a prosecutorial failing, in my view.

Q41 **Chair:** Even within the jury system, is there some merit in exploring the idea of a specialist economic crime court administratively where you would have specific judges who are expertise in putting cases like these to juries, where you could apply separate rules such as a shadow jury or matters of that kind, which you would not have in other cases?

David Green: I would be very much in favour of specialist judges if only for this reason. Most of our cases go to a particular court in London, which is Southwark Crown court. Southwark is enormously busy. It has



HOUSE OF COMMONS

an overflow at Kingston. We often have to wait a year or 18 months for a trial date after charge. It seems to me that it is not the court's fault but it is piling Pelion upon Ossa in that there has already been a two or three-year investigation. That is the problem.

Q42 **Chair:** That could be done administratively with no change to the basic legislative or procedural frameworks.

David Green: Yes.

Q43 **Chair:** That is helpful. The final issue that I was going to raise around these issues is that, in some of the cases that have been referred to, you have prosecuted common-law conspiracies in fraud rather than the statutory case. My recollection is that there was a move away from conspiracy to defraud at common law, because it was criticised by the Law Commission and others as being too uncertain, too wide-ranging, with a greater risk of injustice, a bit like we moved away from rolled-up conspiracies. On the face of it, it seems to be a backward step. Why?

David Green: I am reluctant to get into a debate on the merits of common law conspiracy. I agree with you, Mr Neill, with great respect, that it is an offence that needs to be kept within sensible bounds. It is, at the same time, an extremely useful offence for a prosecutor.

Q44 **Chair:** You say you look at it on the individual case.

David Green: Absolutely. Obviously, we try to decide what is the most appropriate charge with the assistance of the whole case team and counsel, who will have been involved in it from the very beginning.

Q45 **Chair:** Do we need to revisit, perhaps, with the Law Commission or other bodies, the parameters of the way we deal with economic crime at all?

David Green: I would not be encouraging it, but I will take what happens.

Q46 **Alex Chalk:** Can we turn to the Bribery Act 2010, please? You have achieved your first convictions under that piece of legislation.

David Green: Yes.

Q47 **Alex Chalk:** Could you let us have your reflections on the Act and its impact to date?

David Green: Yes. Internationally, and I mean this, our Bribery Act is regarded as the gold standard in this area. There is absolutely no question about that. It is stronger, in some respects, than the FCPA, its American equivalent. It has been in force since July 2011. It is not retrospective, so that has led us to continue using other legislation for pre-July 2011 conduct. Since April 2012, which is when I came in, eight bribery cases have been successfully concluded. Of those under the Bribery Act, we have had two DPAs—deferred prosecution agreements—involving conduct against section 7 of the Bribery Act. The Sweett Group



HOUSE OF COMMONS

pleaded guilty to an offence under section 7 in relation to bribery in the Gulf. We convicted two individuals for bribery in the AgroEnergy case, and we have two more convictions that I cannot talk about due to reporting restrictions.

It is an extremely useful piece of legislation. People got jolly impatient, understandably, about why it was not being used, but the reason is, essentially, that it is not retrospective, and an SFO investigation could take three years. Things build up from there. At the moment we have more than 20 bribery cases on our books under active investigation. More than half of those involve conduct under the Bribery Act. We also have a good number—I will not say how many—of cases under preparation in our intelligence section. So there is a great deal of activity under the Bribery Act. As I say, it is regarded as the gold standard, stronger than the FCPA say, in this respect. Facilitation payments are contrary to our Bribery Act. In the US facilitation payments are permitted. I would say that our Act is stronger. People want to copy it and want to know about it.

Q48 Alex Chalk: Thank you very much. That is a good piece of legislation, so it would appear.

David Green: It is excellent.

Q49 Alex Chalk: You have also been on the legislative front as an advocate for a wider definition of corporate liability. This is slightly feeding back to the point we were making before about the LIBOR cases. Do you think that there is a case for a wider definition of corporate liability, which is something the former Prime Minister himself advocated, so that, putting it bluntly, you can more easily go after the top brass as opposed to the minnows, with whom juries, rightly or wrongly, may feel some degree of sympathy?

David Green: What we have at the moment, as you know, concerns corporate liability; it is not the liability of top managers but the liability of the company itself. In order to convict a company of a criminal offence, we have to use the identification principle, which means identifying the controlling mind of the company and showing that they were complicit in the criminality. There are exceptions to that as well, so we have the identification principle with exceptions. The exceptions so far are section 7 of the Bribery Act, which concerns a company failing to prevent acts of bribery by associated persons. We will soon have the offence of failing to prevent facilitation of tax evasion.

If you just look at that picture of the identification principle with exceptions, first, it is illogical. Why should one principle apply to bribery and another to money laundering or false accounting? Secondly, it operates unfairly in that it is much easier for a prosecutor to identify the controlling mind of a very small company than it is in a very complex corporate structure. Thirdly, it creates conflicting incentives among senior managers. On the one hand, they want to distance themselves from



HOUSE OF COMMONS

knowledge of operations, and, on the other, they are encouraged to have in place adequate procedures as a defence under the Bribery Act.

Finally, in practical terms, if one looks at the case of Tom Hayes, working for UBS, because of the identification principle—I say lack of evidence of complicity by people high up in the bank—we were unable to touch UBS, the bank, for their conduct while he was working there. So, where was the bank dealt with? It was dealt with in a New York courtroom and fined US\$700 million for, effectively, permitting Tom Hayes's conduct.

Q50 Alex Chalk: You think that, if a section 7-style liability were to be rolled out across the legislation; that would be a sensible move.

David Green: Yes. I have advocated the idea of a company failing to prevent acts of economic crime by persons associated with it.

Q51 Alex Chalk: We have already touched on this, but I want to go back to DPAs. Forgive me if there is an element of going back over some of the ground. Perhaps you can explain what they allow you to do that you could not do before. In what circumstances would you consider offering a DPA? I do not know whether you have answered that.

David Green: As we know, a DPA, as I see it, is a mechanism by which a company can account to a court for its criminal conduct without suffering a criminal conviction. I think the policy rationale was to avoid the collateral damage that so often attends a criminal conviction of a company. Also, it is aimed at producing better corporate conduct and better business, basically. I am quite sure that the Bribery Act and DPAs together have worked towards better compliance and a better boardroom culture. It is not a cosy deal. It has to be transparent. The legislators have taken the American model and adapted it to our context, namely, we have complete judicial supervision of the whole process. We have a statement of facts, which becomes public at the end of the case with a pronouncement by the judge that the conditions attached to the DPA are in the interests of justice and that the terms are fair, reasonable and proportionate.

All in all, we have started, deliberately quite modestly, with two DPAs involving Standard Bank and XYZ. Each of them has interesting things that came up in the judgment. In the case of XYZ, the interesting thing there was that the court said it was prepared to go up to a 50% discount in the circumstances of that particular case. Otherwise, Parliament had decided that the discount should be the same as that for a guilty plea, namely, a third.

I wonder perhaps out loud, and I often hear this when speaking to City firms and companies, whether we have quite got the measure of discount right. I am mindful of the fact that, in May, the Department of Justice in Washington said that for a 12-month period only they would allow a 50% discount on companies self-reporting offences under the FCPA. I wonder whether we need another look at the degree of incentive available,



because, after all, we want to incentivise, surely, self-reporting to save a state resource and to increase corporate good conduct.

- Q52 **Alex Chalk:** There is, obviously, an issue of public confidence here as well. You said at the beginning that the impression got about under your predecessor at the SFO was that it would not prosecute. How do you make sure that you do not fall into the same trap through DPAs?

David Green: I mentioned earlier the Innospec case. What appeared to have happened in that case was that without the legislative framework of DPAs back in 2010 there seems to have been some sort of agreement between the prosecution, the SFO, and the Innospec company about the measure of fine they would pay and the penalties they would pay. The court's judgment in that case was instructive. Partly as a result of that, we now have the statutory framework for DPAs. To my mind, as has been set out by the President of the Queen's bench division in both the judgments, the crucial thing is the conduct of the company once it has discovered wrongdoing. The features you are looking for are a prompt self-report to the SFO, co-operation during the investigation, giving us access to factual matters such as first accounts of witnesses and so forth, assisting us always in prosecuting individuals, because DPAs only apply to companies and it is absolutely vital in terms of public confidence that this is not some sort of get-out-of-jail-free card for individuals. We certainly go after individuals as well.

- Q53 **Alex Chalk:** Sorting out these DPAs is a resource-intensive business, and the resources that you are applying to that process you cannot apply to prosecutions. How do you ensure that you get the balance right and that you do not allocate too great resources to this practice?

David Green: For a DPA, as with any other prosecution, we have to get it to a certain stage, either to pass the threshold contained within the code test or that we are within touching distance of that position. In any case, you have to have a proper criminal investigation and be able to put before the court something like the full extent of the criminality. That is a really important part of the process. I look at the policy behind all this, which is to encourage corporate self-reporting and to deal, as smoothly as possible, with corporate offending by corporates who wish to co-operate and wish to draw a line under it.

- Q54 **Alex Chalk:** I do not wish to press this too much. Public support and confidence is really critical to this. As you say, for it to work properly, resources have to go into investigating this so that the court has the full picture, and getting that full picture can be a difficult and complex business. Of course, agreeing secrecy to parties with a DPA, where you have a combination of resources going into this and ultimately being kept secret, how do we ensure that public confidence is maintained?

David Green: The secrecy only applies to the preliminary hearing, where we go to a court and say, "Look, judge, do you agree, in principle, that it is in the interests of justice that this offending should be met with a DPA



HOUSE OF COMMONS

with these conditions?" The judge will say, as he has said twice, "Yes, in principle." It then has to remain secret because the negotiation phase continues up until the time agreement is reached. Supposing negotiations broke down, there would then have to be a prosecution. The fact that a company has been angling for a DPA would prejudice any subsequent trial.

Q55 Alex Chalk: You are mindful, are you, of the need to ensure that the SFO retains confidence as a prosecutor to bring people to book, to achieve convictions, punishment, disgrace and all the things that are required of a public prosecutor?

David Green: Yes.

Q56 Alex Chalk: You are mindful of the need not to be distracted from that core task by DPAs.

David Green: Absolutely; but DPAs are a new and welcome tool against corporate offending. I think it encourages good corporate conduct, which, surely, is the whole intention behind it.

Q57 Chair: I suppose it might be argued that one area where at the moment there is not an incentive to good corporate conduct and self-reporting is the fact that, if you do co-operate, you get a greater level of scrutiny of your corporate governance than if you chance your arm, go for a prosecution and are convicted. Would that be helped if we were able, in economic crimes, to adapt the sort of procedures you have in the 2007 Corporate Manslaughter and Corporate Homicide Act, around remedial orders and publicity orders, to try to enforce changes in the corporate governance of companies that have been convicted and make that part of the sentence, rather than having to go through the civil process of the SCPO—the serious crime prevention order?

David Green: If you do not mind, Mr Neill, I would want to reflect on that quite carefully. I am happy that the DPA is a new and effective tool and we will see a lot more of it.

Q58 Chair: I do not want to prejudice the DPA. It has been raised by a number of commentators, and I think by the inspector as well, whether there are enough tools, when there has been a conviction, to ensure, in a convenient and sensible fashion, that there is actually a change of behaviour by the company going forward.

David Green: Yes. I suppose that would refer to imposing the sort of conditions you would have attached to a DPA to some sort of court order, such as a monitor on a board in extreme cases. Yes, I can see some merit in that, but all these things are case and fact-specific, are they not? The history of monitors in the US has not been a great one. They have worked out extremely expensive and quite cumbersome. Perhaps there is a monitor-lite system, if you like, where there is an objective scrutiny of compliance and compliance procedures in a company after, say, six months. That could work very well.



HOUSE OF COMMONS

Chair: That is helpful. Ms Rimmer, you are going to move on to the blockbuster funding issues.

Q59 **Marie Rimmer:** As to blockbuster funding, in 2008 your core funding was £52 million and that has now been reduced to £33 million in 2016. However, blockbuster funding has significantly risen in that time, and £47 million has been applied for over the past two years. Do you intend the Serious Fraud Office to use the blockbuster funding model for the foreseeable future?

David Green: It is more the Treasury's intentions that matter than mine. Let me tell you why I find it useful. We do not know what is around the corner. There could be another LIBOR, another huge case, which we would feel obliged and right to take on. In those circumstances, other cases would suffer. So, I went back to the blockbuster system and negotiated it with the Treasury in mid-2012 so that if any case is likely to cost more than 5% of our budget in any one year we have access to blockbuster funding.

There are pros and cons to it. The pros are that it allows flexibility, it allows us to move a case forward at pace, and it avoids delays in that respect. Against that, I note what the inspectorate said about value for money. It is value for money in the sense that there is a sudden swelling in our capacity, which might disappear after a couple of years. I take that point. We have to draft a business case to the Treasury, and that is a very good thing. I have to reason why we want this money. Some people say, "Doesn't this mean that the Chancellor has a veto over what you investigate?" All I can say is that I have never felt the slightest hint of anything like that or any Treasury opposition to us investigating what we would wish and providing us with what money we require. There has certainly been no evidence of interference.

Taking account of the pros and cons, it is right for the SFO—of course, I am well aware that many other Whitehall Departments would love to have access to some sort of blockbuster funding—as it fits the nature of our work.

Q60 **Marie Rimmer:** The Government are to be commended on the pathway they have followed on tackling serious fraud and their commitment to it. Given that the costs of the Serious Fraud Office have risen significantly, is there not more of a case now for a higher core funding to give you more independence? The spend has not gone down; it has doubled.

David Green: I would like to move to less dependence on blockbuster funding and more core funding, but I recognise reality; I recognise the constraints that everyone is under. The important thing is to have access to blockbuster funding as and when we need it and we can prove that we need it.

Q61 **Marie Rimmer:** But your preference would now be for a higher core funding.



HOUSE OF COMMONS

David Green: My preference would be less reliance on blockbuster funding, yes, which is probably the same thing that you are saying.

Q62 **Marie Rimmer:** Thank you; I understand. There have been claims that the Treasury's level of control over funding for the SFO poses a threat to your independence. Is that fair?

David Green: I think it is pretty unfair, really.

Q63 **Marie Rimmer:** Is it unfair?

David Green: I have never noticed even the slightest interference. To be frank with you, as an independent prosecutor, I would not put up with it anyway.

Q64 **Marie Rimmer:** Thank you for that. You did comment in your earlier statement along those lines. Does Brexit pose any threat to blockbuster funding?

David Green: Our position is, as many Departments are saying, that there are obvious ways in which Brexit might affect us. Take the European arrest warrant. It is hugely important to our business. I cannot imagine that a sensible compromise could not be reached on something as important as that. It is in everybody's interest, surely, to maintain that sort of close co-operation. I am afraid I cannot really give you a meaningful answer on that. From what I can see—and I am referring to rapid response to letters of request, Europol, Eurojust, joint investigation teams—all those things, you would have thought, are susceptible to sensible compromise.

Q65 **Marie Rimmer:** I think perhaps it is more of a political issue. For the UK economy and the absolute necessity to grow our economy, is it not a bigger threat? Do you not consider that there is a risk of Government interference in perhaps questioning whether we should go ahead with an investigation using blockbuster funding and the control they have on blockbuster funding?

David Green: I cannot imagine that Brexit would impact upon the traditional independence of English or UK prosecutors.

Q66 **Marie Rimmer:** Thank you for that. Is it a correct reading of the figures on page 8 of your annual report and accounts that the total cost of the Tchenguiz—I hope I have pronounced that correctly—brothers' case to the public purse has been of the order of £28.5 million?

David Green: Remember, this was a claim for £300 million. I settled the claim with the Tchenguiz brothers for £4.5 million. Because we settled, we had to pay their costs. This was High Court litigation conducted by City firms. Their costs were £12.7 million. In addition, we incurred our costs because we used City litigators to maintain our interest in the case. Yes, the total cost would be of the order of over £30 million.

Chair: Mr Hanson, you are going to move on to some questions about



HOUSE OF COMMONS

international co-operation and other matters.

- Q67 **Mr Hanson:** I am going to look at a couple of issues. The National Crime Agency has been around for some years. There are some people, not least of whom was the former Home Secretary, who now I believe is Prime Minister, who suggested that you could be submerged into the National Crime Agency. Is that a positive suggestion?

David Green: Is it a positive suggestion?

Mr Hanson: Yes.

David Green: All I could say is, on the one hand, that this is a matter for Ministers and, more particularly, for the Prime Minister. I recognise that all institutions are biased in favour of their own survival, but I am happy to make the case for the SFO and have done vigorously on many occasions. If I may, I will do so now.

- Q68 **Mr Hanson:** I was going to suggest that. I expect you to do that as a good civil servant, even though it depended on accepting what Government would ultimately do in terms of organisation.

David Green: Of course.

- Q69 **Mr Hanson:** But this is an opportunity for you to say what are the distinctive features that would, potentially, be lost by such a merger.

David Green: There are three things: first, the Roskill model, which involves prosecutors, investigators, accountants, computer experts, subject matter experts and all the administrative backing that is necessary, all working together. So, the Roskill model is the investigator and prosecutor. If you broke that up and put the investigators into the NCA, I suppose the prosecutors would go to the CPS and you would lose the Roskill model. You would lose a great deal with that in terms of the effectiveness on the sort of work the SFO does. That is the Roskill model.

Secondly, it is independence. I believe that if you look at the sort of cases we are doing—and you heard me mention Rolls-Royce, GlaxoSmithKline, Barclays Bank Qatar—these are immensely powerful companies and very important to the economy. I would suggest very strongly, bearing in mind the sort of people we deal with, that we need to have visible and demonstrable independence from central Government. I think the SFO model provides that.

Thirdly, it is priority. For the SFO, serious and complex fraud and bribery is its sole priority, and we are focused on that. If you were in an organisation that had eight or nine priorities—all sorts of things—they would be competing priorities. Historically, when there are competing priorities, fraud tends to lose out. So I would say Roskill independence and priority. I note that these points are very strongly supported both by non-governmental organisations such as Transparency International, and by international organisations such as the OECD.



HOUSE OF COMMONS

Q70 **Mr Hanson:** There is a sort of tiptoeing towards a merger, however.

David Green: Is there?

Q71 **Mr Hanson:** I think so. The National Crime Agency in February was given this so-called “power of direction” over the SFO. What does that mean in practice? Is it operational now?

David Green: There is a bit of confusion here. First, the NCA has long had powers, since at least 2013, to direct us and any other police authority, for that matter, to do specific things. Frankly, I would not need a power of direction. If I could assist the NCA, of course I would in any way.

Secondly, the new power that I understand they are to have or it is said they are to have is the power to task. In other words, I assume this would mean, in practical terms, asking me to consider whether to open a criminal investigation, because as the law stands I have to decide whether to open a criminal investigation. I note that the first power to do specific things, to my knowledge, has only ever been used once, and it certainly was not used in relation to the SFO. It was to do with a police force that had asked for the direction in the first place. I remember the previous director at the National Crime Agency always said that he would regard it as a failure if he ever had to issue a direction because it would mean that the normal, natural co-operation between agencies had, for some reason, broken down. I cannot envisage a situation where it would be necessary for the NCA to give me a direction.

Q72 **Mr Hanson:** So it is not really a live proposal in active terms.

David Green: In the minds of some it is a very important matter, and good luck to them, but it is not something that concerns me greatly.

Q73 **Mr Hanson:** You have argued, and you have touched on it again today, that breaking up or merging the SFO would be, “massively disruptive to existing investigations.”

David Green: Inevitably.

Q74 **Mr Hanson:** But is that not the case for any change?

David Green: Of course, exactly. That is the counter-argument; that cannot be used as an argument against any change. That is absolutely right. As a fact, I believe it would be very undermining in terms of existing investigations, staff retention and all those things. As you say, the counter-argument is perfectly principled and proper.

Q75 **Mr Hanson:** I have a small point. In the report, you have touched on the extensive programme of international relations. You have indicated that a number of visits are being undertaken, particularly to Sri Lanka, for example. For the Committee’s benefit, what is the cost of those engagements, and what is the benefit to both you and the engaged partners?



David Green: You mentioned Sri Lanka. I believe what happened there is that the head of state or certainly the head of the Government of Sri Lanka spoke to the previous Prime Minister and asked for SFO assistance. That was directed to me through the FCO. Having thought about it, I was happy to second someone to Sri Lanka for six months to assist them in setting up an SFO and building their capability in anti-corruption. That was a proper thing to do. As far as I recall, the FCO assisted us with the costs of that.

Q76 **Chair:** On that point, has the SFO been approached either by the MOJ or directly by any of the member states of the Council of Europe around the work of GRECO—the group of member states against corruption—for capacity building in some of the emerging countries there?

David Green: Yes. We have regular input to GRECO and the OECD. I chair a panel of law enforcement professionals at OECD in Paris, which meets twice a year. We have regular and detailed involvement with those organisations.

Q77 **Alex Chalk:** Stepping back for a second, you make the very fair point that you deal with a limited number of cases and, therefore, to judge an organisation like the SFO on the number of successful prosecutions or the amount you have confiscated is difficult, and I understand that. It is quite blocky. How do you think we ought properly to scrutinise and measure the performance of the SFO? What should we really be looking at to see whether it is doing broadly well or less well?

David Green: One needs to look over a decent time period. If you look at our conviction rate over four years, it is reasonable. For 2012-2016, it is 81% by case and 65% by defendant. That, of course, is a measure that people are going to look at. Confiscation is a measure that people are going to look at. That is fine, but just remember the health warnings, of which you are very well aware.

It is incumbent on us, and the chief inspector pointed this out, to prove and demonstrate that we understand and have embedded value for money in our organisation, particularly when we have access to blockbuster funding, as so much of that is on trust. In furtherance of that, I have appointed a chief operating officer and the main task I have given him is embedding and proving value for money as a priority. We have also put in place a time-recording system so that we know exactly what staff are doing and what cases they are working on.

There is also an area that I have asked the COO to look at—we will have a discussion about this in due course with senior management—and that concerns our dedicated case teams. It is about whether we have sufficient flexibility in the case teams. In other words, say they are waiting for a letter of request. There will be a certain amount of downtime in the investigation. Are we making proper use of all the members of that team during that downtime? One model, possibly, is to buddy-up two or three investigation teams so they can be swapped



HOUSE OF COMMONS

around. All those things will help us establish and demonstrate value for money. I was genuinely grateful to the chief inspector for pointing that out because it is something that is incumbent on us to demonstrate, particularly in the context of blockbuster funding.

Q78 Alex Chalk: This is the last point from me. His Honour Judge Rivlin QC was well regarded and it was thought that he had made a very important contribution to the SFO. He is no longer in place—probably enjoying a well-earned retirement. Are there plans to replace him?

David Green: I have looked at that position carefully. The organisation is in a different place from where it was in 2012 when Judge Rivlin joined us. I think his appointment was a great success. I will have to decide whether such an appointment is necessary or appropriate in the new context. It worked very well and it was the first time that a retired judge had worked for a prosecuting authority.

Q79 Alex Chalk: It may be that he is irreplaceable, of course.

David Green: Of course, he was a one-off—he is a one-off—but there we are.

Q80 Chair: Those who know Judge Rivlin would say that that is certainly right. He was an exceptional public servant and individual. It is worth paying tribute to the work that he did and I am glad that we have done so.

There is just one other matter from the inspectorate's recommendations. It did express some concern that where it has either not been possible to bring a prosecution because of the threshold or a prosecution has not been successful but there is clear evidence that, on the civil test, it might be met, should not the SFO be doing more about pursuing civil remedies, for example, in the way that the Revenue is much more aggressive about doing it to make sure that there is a penalty for wrongdoing?

David Green: That is a fair point, if I may say so, with respect. I like to think that we pursue our civil remedy whenever appropriate, whenever we cannot prosecute or in different circumstances. I have expanded our Proceeds of Crime Division from six, when I came, to some 27 or 30 now. They are fully occupied and very busy. I like to think that we do everything we can to recover money.

Q81 Chair: And you have increased capacity in the way you have told us.

David Green: Indeed.

Q82 Chair: We are nearly at the end. One specific matter that has been raised with this Committee and has concerned us, because of our interest in the broader aspects of the criminal justice system, sentencing and so on, is the issue around the tagging contract with Serco and G4S. Subject to the constraints of the rules on sub judice and so on, can you help us at all as to what the status is of those investigations, launched some three years ago?



HOUSE OF COMMONS

David Green: The investigation continues and embraces conduct that is different from that which originally drew it to our attention.

Q83 **Chair:** I will not push you any further on that. That is helpful to know. I am grateful.

Director, that has been an extremely useful session. I am very grateful to you, as are our colleagues. At the moment, your term of office has been extended to 2018. In 2018, if you were to leave the SFO, but you may not, what would be the summing-up as to what you sought to achieve and how far away are we towards getting there?

David Green: Putting it back to doing the sort of work it was intended to do and to having success in that work. I think all those big investigations that we have taken on will reach some sort of conclusion by the end of my term.

Q84 **Chair:** In terms of getting that done, reputation within the financial sector, as I understand it, is key and critical.

David Green: Absolutely. Although these things are quite difficult to estimate, the response I get is that the reputation of the SFO has, to a large extent, been restored. More importantly, almost, staff morale, for instance, at the SFO has increased quite dramatically. From when I started, on the civil service census, which is the annual people survey, in 2012 the key figure for staff engagement was 53%, which was 9% below the best in the civil service. Now it is 66%, which is 3% above the best cohort in the civil service. People like the work; it is very good work and very stimulating work. One of the things I am most proud of is the extent to which we have managed to attract absolutely top-quality people, albeit for maybe two or three years. That does not matter; they can earn far more in the private sector than I can pay them. By attracting really good people to do our work, on the one hand it gives them access to very exciting and unusual work, and, on the other hand, it is very good for their CVs, it is very good for us and very good for the firms that loan them to us.

Q85 **Chair:** The Roskill model, coupled with the independence of yourself as a prosecutor, is critical.

David Green: Roskill, independence and priority are absolutely crucial.

Q86 **Chair:** Mr Costa, you are not asking any questions. Do you need to declare your interests?

Alberto Costa: I should have declared them at the outset when I came in. I am a practising Scottish and English solicitor.

Chair: Are there any issues you want to raise with the Director?

Alberto Costa: No. I think all the issues were covered, Chair. I very much enjoyed listening to the evidence.

Chair: It has been very comprehensive. I am very grateful, Director, for



HOUSE OF COMMONS

your time and the evidence that you have given. I hope we will be able to keep in touch and I am sure we will look forward to developments. Thank you very much indeed.