

Justice Committee

Oral evidence: Work of the Serious Fraud Office, HC 575

Wednesday 13 December 2017

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Members present: Robert Neill (Chair); Mrs Kemi Badenoch; Ruth Cadbury; Alex Chalk; Bambos Charalambous; David Hanson; John Howell; Laura Pidcock; Victoria Prentis.

Questions 1 - 113

Witness

[I](#): David Green CB QC, Director, Serious Fraud Office.

Examination of witness

Witness: David Green CB QC.

Q1 **Chair:** Good morning, everyone. Good morning, Mr Green. Thank you very much for coming to give evidence to us. I will start by dealing with the formalities and ask Members to declare their interests. As I think the director certainly knows, I am a non-practising barrister and consultant to a law firm. We have known each other for many years.

Victoria Prentis: I am a non-practising barrister, married to a practising barrister.

Bambos Charalambous: I am a practising solicitor.

Alex Chalk: I am a barrister, married to a barrister and a member of the SFO panel of counsel.

Chair: There are some non-lawyers here as well, so it is not too bad.

John Howell: We try to keep him in order.

Q2 **Chair:** Director, thank you very much for coming to see us today. It is about 14 months since you were last here, in October 2016, although we appreciated the opportunity to visit the offices and meet a number of your staff. I am very grateful to you for the courtesy we had when we visited. It was very useful to us.

I will start with the obvious topical question. We know that you are going to depart next year. The advert for your successor went out yesterday.

David Green: Yes.

Q3 **Chair:** The crunch issue is this. What sort of job is that person going to do? Are they going to run an independent prosecutorial body, or are they going to be an arm of a national economic crime centre?

David Green: I think it is pretty clear that the independence of the SFO will continue. What you may be referring to, Chair, is the proposed NCA power to direct the SFO. That is worth examining in a little detail.

First of all, there is already a power vested in the director general of the NCA to direct chiefs of police and the British Transport police. Interestingly, since 2013 that power has been used once. On that occasion, it was at the request of the chief officers of police and not at the initiative of the NCA.

The previous director general of the NCA, Keith Bristow, tellingly said that if he ever had to use that power he would regard it as a failure. I entirely agree with that sentiment. In so far as it reflects the genuine desire of everybody on the economic crime waterfront to co-operate and work together, who on earth could object to it?

It is also worth pointing out that the power could not be exercised, as I understand it, without the consent of the Attorney General and the Home



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Secretary. That is a very important constitutional safeguard for the SFO's independence. Certainly I have been unable to identify any case which, in my time, the SFO should have taken on and did not. I am pretty relaxed about that.

Lastly, one has to bear in mind that there is already a power vested in the director general, exercisable in the same circumstances, to direct the director of the Serious Fraud Office to provide specified assistance. There is also already a general duty of co-operation. Indeed, the Home Secretary and the Attorney General have governance over the NCA to direct the director of the SFO to provide specified assistance, so there is an enormous amount in place already.

In all honesty, quite what this proposal adds I do not know, but in so far as it is intended, as I said, to increase and guarantee co-operation between the many agencies on the economic crime waterfront, who could possibly object? I certainly do not.

Q4 **Chair:** I get the sense that you are telling us there is that co-operation already.

David Green: I hope so. I would be deeply disappointed if there was not.

Q5 **Chair:** Perhaps it puts it on a formalised basis.

David Green: Yes, indeed. Let me make it clear: I have no objection to it.

Q6 **Chair:** I understand that. I think the public will want to be clear. As director, you could be tasked, but when it comes to a decision whether to prosecute or not, whose decision is that?

David Green: That is slightly technical. My statutory role is that before I can open a criminal investigation I have to have reasonable grounds to suspect that the relevant conduct may involve serious or complex fraud, or bribery. I suppose there is a possibility that conduct could be referred to me that I did not think met that threshold. Generally speaking, I cannot conceive of a situation where a direction had to be given. A phone call might take place saying, "Could you have a look at that?" That is how things work.

Q7 **Chair:** Ultimately, the decision as to whether or not you charge someone is down to you as the prosecuting body.

David Green: Of course; it is up to us.

Q8 **Chair:** No amount of tasking alters that, as I understand it.

David Green: Indeed. Overall, I do not think this power of direction impinges on SFO independence, or the independence of the director.

Q9 **Chair:** In terms of governance, your responsibility still lies to the Attorney General rather than to the Home Secretary.



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David Green: Indeed. I operate under the superintendence of the Attorney General, which as I understand it gives him or her the power to probe, test and question my decisions, but not to direct except in one circumstance, and that is where national security may be involved.

Q10 **Chair:** And none of that has changed.

David Green: Indeed.

Q11 **Chair:** I am very grateful for that clarification.

David Green: If the Attorney were, in that situation, to give me such a direction, he or she would have to make a statement to the House.

Q12 **Chair:** That is understood. You will be in post until the end of April 2018.

David Green: Yes, the afternoon of Friday 20 April.

Q13 **Chair:** I can see the notches being ticked off already. It will have been five and a bit years.

David Green: Six years, virtually.

Q14 **Chair:** You set out objectives when you became director. I think there was a concern about the situation of the SFO at that stage, and its operational effectiveness. What are the principal achievements you would like to be remembered for, and what issues do you think you are handing over to your successor that they need to pick up?

David Green: I always worry about this question because I think it is for others to say what successes we have had. Looking at it objectively, since 2012, 66 of 94 defendants have been convicted, which is a conviction rate on defendants of just over 70%, and 31 cases out of 36 have been successful—a case success rate of 86.1%. Considering the sort of work we are dealing with and its complexity, and indeed those we are up against, that is pretty good.

In addition, we have secured five convictions thus far in relation to LIBOR. We have had four deferred prosecution agreements, which have brought in £650 million. We have been extremely active in enforcement. Indeed, in the last financial year I see that I signed 650 section 2 notices, and we conducted 140 section 2 interviews and another 80-odd PACE interviews. We have been pretty active.

We have put in place governance changes as recommended by HMCPsi: in particular, the appointment of a chief operating officer and the setting up of a new strategic board, and an executive group underneath it to deal with operational matters. All of that works extremely well.

As regards the problems I am handing over to my successor, the running problem—it is not really a problem but just something everyone has to be aware of—

Q15 **Chair:** Perhaps challenge is a better way of putting it.



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David Green: We want two things. First, to keep a challenge function vigorous within the organisation, as I think I explained on your visit. We have the Roskill model, where we investigate and prosecute. The only danger of that, so far as I can see, is that we could develop a case in theory that may not be accurate. The antidote to that is layers of challenge from case controller level through to general counsel, who plays an extremely important role. There is my role. In the past, we had a retired judge assisting, which was extremely useful. My successor may or may not choose to find another one for that role.

Secondly, we must preserve the attraction that I think the SFO has developed as a recognisably useful addition to the CV of an ambitious young lawyer, investigator or accountant. We cannot compete with private sector pay, but what we can offer is extraordinarily stimulating work and the opportunity to add that to someone's CV for two or three years before they move on, which we have to be realistic and accept. That is not to say that some very useful people do not choose to spend much of their career at the SFO, and that is something to be preserved.

Q16 **Chair:** Has the speculation that was going on about the future of the SFO caused any difficulties about getting those ambitious, able people for whom it is useful?

David Green: There was always a question, and it was always something mentioned by those leaving. It is a fact, but we dealt with it and people still came.

Q17 **Chair:** Are you now satisfied that the new arrangement gives you the certainty that you can offer to staff?

David Green: Yes. The certainty is hugely welcome.

Q18 **Chair:** In terms of your own successor, I have seen the advertisement details that have gone out. Do the job requirements in the specification differ in any material way from what you have at the moment?

David Green: Not that I can see, no. I was consulted about the contents of the advertisement.

Q19 **Chair:** That is what I had assumed. Effectively, it is a like-for-like replacement.

David Green: Yes, indeed.

Q20 **Chair:** Hopefully, somebody will be in post by the time you clock off on that Friday afternoon in April. If not, will there be an interim appointment?

David Green: Provision can easily be made for an interim acting appointment, yes.

Q21 **Victoria Prentis:** You kindly gave us the figures on how much work the SFO is doing at the moment. Do you feel strongly that you are able to investigate all the cases that you want to?



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David Green: I have never turned down a case on either financial grounds or capacity grounds. The relevant example would be LIBOR, which hit me as soon as I came into the job in summer 2012. My predecessor had declined to investigate it. I thought I ought to have a good look at it. I did, and I decided to open an investigation. I realised that we would not be able to run it at proper capacity within our existing budget, so the Treasury agreed what we now call blockbuster funding to support it. That would be the case in any large investigation.

- Q22 **Victoria Prentis:** What about at the other end of the scale—the smaller cases and secondary fraud? Our Chair has met the Fairbanking group, for example, and they are concerned that smaller frauds are not being properly investigated by the organisations, not necessarily yourselves, that are tasked to investigate them.

David Green: Indeed. With respect, I think you have hit it on the nail. We are tasked very clearly to do the topmost tier of serious and complex fraud. I have to draw the line somewhere, and I have done that through our description of the cases we adopt. I have tried to do it widely but as precisely as I could in difficult circumstances. We seek to take on cases that undermine UK financial or commercial plc in general, or the City of London in particular. That is the best way of describing it.

There is a huge tier of fraud below that, which clearly, to an extent, is neglected in terms of policing. That is obviously because our police have conflicting priorities.

- Q23 **Victoria Prentis:** Is that a debate that you, with your experience, are prepared to get involved in?

David Green: I have dipped a toe into the water over the last few years. Of course, below that there is a huge slew of fraud that affects the man in the street, classically credit card fraud. With much of that lower tier stuff, in relation to credit cards and phishing scams, the answer is very much education of the man in the street by the authorities, rather than active investigation and prosecution. Frankly, we will never have the resource to cover all of that.

- Q24 **Victoria Prentis:** Are you happy with the way the split is worked out at the moment? Do you feel you have the resources to do the work you are tasked to do?

David Green: Certainly. With our core budget, plus blockbuster funding, without question we have the resource to do the work we need to do.

- Q25 **Victoria Prentis:** Are you happy with where the cut-off is?

David Green: The cut-off between what the SFO—

- Q26 **Victoria Prentis:** Serious fraud and other fraud.

David Green: With huge respect to everyone who reports a fraud to us, the problem is that they all think their fraud is serious and complex.



Sometimes it is very difficult to explain to someone that it does not fit our criteria. We always examine anything that is referred to us. We then refer it on, if it is not for us, to ActionFraud, and do our very best to see that it finds a home.

Q27 Alex Chalk: I want to move on to the issue of data and technology. In the time that you have been in post, the data gathered even in what you might think of as relatively low-level investigations has grown exponentially, and with it the complexity and challenge presented by analysing it and tackling the vital issue of disclosure. Can you update the Committee a little on the robot and e-discovery platform that you talk about in your annual report and accounts?

David Green: It seems to have attracted quite a lot of attention. What happened was this. During the Rolls-Royce investigation, which continues because we have not yet made charging decisions on individuals, Rolls-Royce, the company, showed what was described in court as extraordinary co-operation. A measure of that is that they referred to us a chunk of 30 million documents, mainly digital. In doing so, they said, "We are well aware that this bunch of material does contain material subject to legal professional privilege," which of course we are not entitled to have and we have to quarantine.

They agreed with us that we could search the material and sift that out. They also agreed with us that we could use artificial intelligence to do that task. We developed, with our IT partners, a solution, as I think they call it, which was able to scan the material. I cannot pretend to understand it, but it is an algorithm that learns. You feed it with seed documentation and words at the beginning—some 7,000 documents—and not only does the thing absorb that but it learns as it goes along. As a result, we were able to sift through those documents in probably a tenth of the time it would have taken with our normal solution, which would be to have 30 or so young barristers or lawyers sifting through them. We found that it was more reliable than human intervention, on the basis of dip sampling and checking what it had done.

It seems to me, Mr Chalk, that in time the criminal courts will be looking towards this methodology, particularly in relation to enabling prosecutors to discharge their duty under the CPIA. The other interesting angle is investigation, with a view to sifting for relevance and so forth, which would be a not dissimilar thing.

Q28 Alex Chalk: That is very helpful. I am conscious that one of the things the Attorney wants to do is review disclosure procedures across the piece—the NCA, the SFO, and so on. Is there an issue? How you ensure that disclosure is done in a way that is fair without becoming totally bogged down and, effectively, having the wheels of prosecutorial justice gummed up is such a vexed question. Do you see that as a risk? Is there learning that you have obtained in the SFO that you think can be more widely shared across the prosecutorial system?



David Green: I would like to see the possibility of artificial intelligence carefully examined. What we have learned, and I am afraid what we see in the SFO almost inevitably in every contested case, is that in the month before the fixed date for a trial we are deluged with requests for additional disclosure by the defence. One might think about the motivation behind that conduct, but they are within their rights so we have to comply. Sometimes it has meant that the date has to go back, which is frustrating to all concerned.

What I would like to see generally is a shift in the whole emphasis so that disclosure is done early. That is probably linked to when we decide to charge someone, which inevitably means that we try to get disclosure fully sorted before we charge, but that can delay the charging process and the whole investigation lasts longer, which is unsatisfactory. All those factors have to be balanced.

Q29 **Alex Chalk:** This is my last question on this point. One of the things you mentioned when you were last before the Committee was the business about a flexible staffing model. It occurs to me that in any event you will have moments of downtime, say for the sake of argument because staff are waiting for a response to a letter of request. Equally, if in fact you now have bots doing some of the things that staff were previously doing, does that have implications for how you use your staff, and whether they can be deployed more flexibly across and between investigations?

David Green: It would, although we do not have robots working yet. We used them once in connection with Rolls-Royce. It is very much a possibility and an aspiration for the future. In terms of using staff flexibly, our staff in a dedicated case team live and breathe a particular investigation for two or three years. What we have tried to do is to say, "During quiet periods in investigation X could you take part in the case team on investigation Y?" People are willing to do that, but it needs some encouragement and one can see that it is not always attractive to people.

Q30 **Chair:** In the legal press, there is a suggestion for a robot junior clerk in barristers' chambers. I do not know what percentage the fee would be.

David Green: I am not going there, Chair.

Q31 **Chair:** Anyway, you are certainly convinced that robotics offers real opportunities in your experience.

David Green: Absolutely, yes.

Q32 **David Hanson:** Looking at prosecutions in cases, Mr Green, the conviction rate this year is a marked improvement on last year's conviction rate. To what do you attribute that?

David Green: The last time I was before this Committee I pointed out that there should be a huge health warning on our statistics over conviction rates. The reason for that is that we do not do many cases, so, if a couple of cases end in partial acquittal or acquittal in the course of a



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year, it will completely skew the statistics. That is why when we started I was careful to present to you a conviction rate since 2012. That is the only meaningful figure to look at over a period of time. In answer to your question, I do not see any particular significance.

Q33 David Hanson: Last year, you pointed out to us the difficulties you had faced with a number of cases being thrown out at half-time. Has that situation changed?

David Green: I do not think it has been a particular problem. I would regard it as a failure if a case were, as you put it, thrown out at half-time. I cannot think of any case where that has happened recently, or indeed in my time.

Q34 Chair: Not on your watch.

David Green: I don't think so, no.

Q35 David Hanson: It was a point you mentioned last year; that was all. I was referring to comments that you made.

David Green: I think what I said was that I would regard it as a failure by a prosecutor if a case was chucked out at half-time, or dismissed right at the beginning of a hearing. I slightly kick against the description in some media outlets that, when someone is acquitted, it is somehow a failed case. Our job as prosecutors is to put the best case we can before a court. Provided it is not, as has been said, chucked out at half-time, it goes to a jury.

Q36 Alex Chalk: In your defence, you did rightly say at the beginning that your statistics on conviction rates were good. One has to keep an eye on those rates as well. Wouldn't that be fair?

David Green: Mr Chalk, I couldn't say they were bad, could I?

Alex Chalk: No.

Q37 David Hanson: Could we look at a couple of the potential ongoing cases? You have made mention in the past of the potential challenge with G4S and Serco.

David Green: Yes.

Q38 David Hanson: This time last year we discussed the case and you said at the time, "The investigation continues." I wonder if you could update the Committee as to where it is, and if there is any outcome.

David Green: I know this will be frustrating for you, Mr Hanson, but the investigation does continue. That is the first point. Secondly, we are investigating conduct quite different from that originally referred to us. Thirdly, I anticipate developments over the next few months.

Q39 David Hanson: I understand the frustration. That is exactly the word you used in October 2016, Mr Green, which is 13 months ago.



David Green: I am a careful man.

Q40 **David Hanson:** Indeed. At some point, there will be a resolution one way or the other.

David Green: Indeed. It is a hostage to fortune, but I very much hope we can have some sort of decision before I leave, but that may not be possible. There is a huge amount of documentation in that case. It is a classic example of getting disclosure sorted before charging, if there are to be charges.

Q41 **David Hanson:** I take it that that is the reason for the “delay” in the outcome of the case.

David Green: It is not really delay. We are just grinding through it. These cases are huge. That is what marks an SFO case.

Q42 **David Hanson:** Let’s look at the LIBOR case. I realise that there are elements of sub judice in parts of some of the appeals. Some cases were more successful than others, and some prosecutions went to jury. Jury dealt with them very speedily and came to a resolution. What lessons have you learned from that process?

David Green: It is an interesting one. Tom Hayes was tried on his own and convicted. There then followed, in the winter of 2015-16, a two-month trial of cash brokers. After a two-month trial, six defendants were acquitted within six hours. There then followed, in the following June, a trial of Barclays traders. One of them pleaded guilty. The jury were out for two weeks on much the same sort of evidence. One was convicted unanimously; one by 11:1 and one by 10:2. They could not agree on two of them, and they were retried and acquitted.

Frankly, it is the kind of result that you get from different juries. I would certainly not regard LIBOR as a failed case. The basic issue in LIBOR, and many do not like to hear this, is honesty or dishonesty. That is always up to a jury.

Q43 **David Hanson:** There has been some criticism of the choice of non-expert witnesses. Again, given the potential sensitivities, are there any issues you wish to raise with the Committee about the assurance process for the selection of non-expert witnesses?

David Green: Obviously we await a judgment from the Court of Appeal on Mr Pabon’s appeal. All I can properly say is that, to the best of my recollection, the evidence given by Saul Haydon Rowe was not disputed or said to be wrong by the defence. Since the case, there has been an examination of his credentials as an expert witness. All I can say properly at this stage is that we are certain that we brought to his attention his duties under the criminal procedure rules as an expert witness. I am afraid I cannot go further at this stage. It may be that in due course I could write to the Committee about that.

Chair: That would be a very useful way forward.



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Alex Chalk: It relates to the decision of Lord Justice Gross in the Court of Appeal.

David Green: Of course.

David Hanson: I think we will have to leave it at that.

Q44 **Chair:** Is there anything you can say about the comments by Lord Justice Gross, within the constraints?

David Green: I do not think it would be appropriate for me to say anything.

Chair: In due course, once matters are resolved, perhaps we could return to that. Is there anything else you want to raise on these matters, Mr Chalk?

Alex Chalk: In the circumstances, it probably would not be appropriate to take it further. I think we have taken it as far as we properly can.

Chair: Fair enough. So that people understand, there are specific rules to which Select Committees have to adhere under sub judice resolutions of the House. I say that for the benefit of those who may be watching rather than for ourselves. There is some constraint.

Alex Chalk: It should not be taken as an indication that we are not concerned about it, because we are, but we will return to it at the appropriate moment.

Chair: The whole point is not to prejudice any ongoing legal proceedings, as you know.

David Green: I should make it clear that I am concerned about it as well.

Chair: Indeed. I think we are agreed on that; it is just the procedure.

Q45 **Bambos Charalambous:** I have a question on the process of selecting expert witnesses. Obviously a case can hinge on how you select an expert witness. In a personal injury case, you would not use a podiatrist if you needed a cardiologist as an expert, for instance. What is the process for selecting the best people to give evidence that could ultimately determine whether the case is won or lost?

David Green: Again, with some reluctance, I would prefer not to go there. I do not think it is really appropriate that I do at this stage. Bearing in mind that we are waiting for a judgment from the Court of Appeal on exactly this point, I am not sure it would be terribly sensible for me to give my opinions. I will be delighted to write to your Committee once the judgment is out.

Chair: I am sure we will take you up on that.

Q46 **Laura Pidcock:** I want to talk about deferred prosecution agreements. You explained last October that one of the policy intentions of those "was to incentivise self-reporting by corporates that had discovered



criminality.”

David Green: Yes.

Q47 **Laura Pidcock:** What is the SFO doing to encourage self-reporting?

David Green: What I think I said last time, and I have been reinforcing it every time I speak to an audience of, say, City solicitors, which is generally about once a week, is that in the past the complaint was always, “Oh, you asked for self-reporting, but we do not know what the offer is and what we want is certainty.”

I have heard myself say in the past that quite why a company that is a suspect is entitled to any more certainty than a burglar I do not know. But let’s assume that is correct. What we now have through DPAs, without question, is a transparent offer of what a company can expect if they self-report and co-operate with the SFO. The difference now, through DPAs, is that there is a clear offer.

The sort of case we may come across in the not-too-distant future is what you might call the Damascene conversion, where a company, through their lawyers, do not engage with us for three or four years. We run an investigation, and they suddenly realise at a certain point that the game is up and come to us and say, “We’d like to co-operate; we’d like a DPA,” to which the answer has to be no. To do otherwise would taint the DPA brand. It is absolutely crucial that we keep judicial and public confidence in that brand, as well as integrity.

Q48 **Laura Pidcock:** What kind of resources do you put into making that clear and transparent to corporations?

David Green: As I say, I speak at least once a week to various audiences: non-governmental organisations, City law, academics, politicians—dare I say it—and journalists. One puts the message out, and nobody could now say that they do not understand that if they co-operate with the SFO, and self-report preferably, they are doing all they can to get a DPA, provided that co-operation is open and genuine.

Q49 **Laura Pidcock:** Have you learned anything since the operation of DPAs?

David Green: I have learned a lot, actually. What is crucial is that we do not accept the version of facts reported to us by the self-reporting company. We always launch our own criminal investigation. That usually discovers slightly more extensive conduct than was completely painted in the original self-report. There can often be many explanations for that. What we are looking for, as I say, is genuine openness and co-operation.

One of the points about all this is that it allows us, as an arm of the state, to transfer resource away from investigating the company and on to investigating culpable individuals. That is an important policy reason behind DPAs.

Q50 **Alex Chalk:** At the risk of stating the obvious, the risk in all this is that



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we lose public confidence, because they think that people are evading prosecution by entering into what might pejoratively be called some sort of sweetheart deal. I realise you want to guard against that.

One of the things that is so striking about DPAs is the huge sums of money that end up being paid over. How do you guard against the perception, or indeed even the reality, that they could be perceived as a more financially beneficial way of dealing with criminality than might otherwise be the case? Put simply, you are receiving money rather than spending it.

David Green: First of all, obviously DPAs apply only to companies and not to individuals. You cannot imprison a company. What you can do is fine them, basically. A DPA is a mechanism by which a company can account to a court in an open and transparent way for criminal conduct, without incurring a criminal conviction and the possibility of debarment from competing in public contracts in the USA, Europe and other jurisdictions.

The amount of the fine and the disgorgement of profit is clearly set out. The mechanism for calculating that is clearly set out in the Bribery Act sentencing guidelines. The process for a DPA involves us preparing a statement of facts that is agreed and presented to the court. Then the judge at the final hearing has to give a detailed judgment explaining why he or she believes it to be in the interests of justice that there is a DPA in the particular case on the particular facts rather than a prosecution. Then the judgment is published, the statement of facts is published and we have to put both of those on our website.

It is transparent. With regard to any suggestion that companies are getting off lightly, I am not sure what the board of Rolls-Royce would think about that when they had to cough up £500 million.

Q51 Laura Pidcock: Alex touched on it, but there are organisations that see DPAs as a way for them to evade criminal charges for criminal activity, even though they are paying large sums of money. What would you say to that?

David Green: Again, it is obvious in the judgment in Rolls-Royce. The judge was enormously impressed by the genuine commitment on the part of the company to ensure compliance and proper corporate behaviour from the top down. That was not just having a glossy manual on compliance. It was hard evidence of training and so forth throughout the company, and completely turning a page. The people responsible for the old regime had all gone. Of course, a DPA for a company does not mean that individuals are not prosecuted. We have yet to make charging decisions in relation to individuals there. No one is getting off lightly.

Q52 Alex Chalk: May I return to the point I was trying to make? When you or your successor look at the audit of what you have done, as director—the conviction rates and all that sort of thing—one of the metrics may be, “Well, look how much we have brought in on DPAs, and isn’t that a good



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thing?" It is a good thing. My question is, how do you avoid the perception that, when making the decision as to whether to go for a DPA rather than a conviction, you are not just looking at the bottom line and your record over the long term?

David Green: Because if we were simply looking at the bottom line, and we went to a judge and said, "Look, this company has behaved disgracefully and has not co-operated, but they are willing to pay a huge fine," the judge would say, "Sorry, I am not giving a DPA here; go off and prosecute them." Transparency is the safeguard against that.

I completely agree and totally get the point that prosecutors must not be motivated or appear to be driven by cash-rich cases. That is why, in negotiation with the Treasury, I took the SFO out of the ARIS scheme, whereby other prosecutors and investigators get a percentage of what they recover. I did not want that because I sensed among many a disquiet about that, and I agree with it.

My point on DPAs is that the process is transparent, and you do not get the DPA unless you have put in place genuine systems to prevent it happening again and, by the bye, you disgorge your illicit profits and pay a fine. If you co-operate fully, you can get a fine discounted to the tune of 50%.

Q53 **Alex Chalk:** The important point, as you say, is that the SFO does not directly benefit from any resolution. That is critically important.

David Green: Absolutely.

Q54 **Chair:** It distinguishes the approach that the SFO adopts to DPAs from some of the models elsewhere, such as American-style plea bargains and other things that sometimes muddy the water a bit.

David Green: Yes. They can muddy the water. The Americans go about things very differently in relation to DPAs. There, it is simply a bargain between the prosecutor and the errant company, and the judge is no more than a rubber stamp. Recent cases in the Washington Appeals Court have said exactly that.

Q55 **Chair:** It is important to emphasise that distinction.

David Green: Parliament took the American model and adapted it to our conditions and our context. There is full judicial supervision. You need permission from a judge to proceed on a proposed DPA. Secondly, you need judicial approval. The whole process is subject to judicial superintendence.

Q56 **Chair:** You made an interesting point about changing behaviour. In the longer term, how significant do you think it is that the SFO can or cannot be a vehicle to change corporate behaviour?

David Green: Obviously, one of the long-term policy objectives of DPAs is to improve corporate conduct. It is particularly important in the context



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of Brexit, assuming it happens. We are going to need inward investment, and to attract inward investment we need to show the world that we have a level playing field and that we are a rule of law jurisdiction. I very much hope that there will not be any let-up on enforcement.

Although it is difficult to measure and give you hard evidence, I am absolutely sure that it goes back to David Cameron's time as Prime Minister, when he put this firmly on the agenda and linked it to international corruption and corruption in the third world. This is now firmly on the agenda on the corruption side, and it is not dissimilar to the same sort of importance given now to that agenda within corporates. People are aware that there is a quite aggressive enforcement regime. In passing the Bribery Act, I think Parliament intended that that should be so.

Q57 John Howell: I want to move to the question of specialist economic courts. When you were here before, you expressed great support for them. A couple of months ago, the Government came forward with a plan for reorganising the courts in the City of London. Does that meet your aspirations?

David Green: As far as I am aware, the corporation has proposed an economic crime and possibly civil linked court off Fleet Street. That is the proposal I am aware of. I am in favour of anything where cases can get on earlier, particularly our large cases where after charge there is often an 18-month to two-year delay before a contested trial can be listed. That is not the court's fault; it is a capacity problem. If anything speeds that up, so much the better. Secondly, as I have said before, I would be very much in favour of dedicated badged judges, High Court judges included, to try our cases, some of which are extremely complex and need the most careful trial management, particularly from the very early stages.

Thirdly, I have moved from a position of completely against to agnostic on jury trial or non-jury trial in the most complex fraud cases. I can see some advantage in having the benefit of a reasoned judgment that is published, rather than an answer of guilty or not guilty—give reasons for your answer. I can see merit in that, but I can also see that it is highly controversial, so I am sitting firmly on the fence at the moment. I have moved from entirely pro jury to sort of in the middle.

Q58 Chair: It is a bit like the Roskill model again.

David Green: I will leave it to Parliament.

Q59 John Howell: Are there any specific problems that you are experiencing now as a result of not having a specialist economic court?

David Green: Delay is the problem. Let's be realistic. There might be decisions made by judges that I am not very happy with, but so what? I am a prosecutor and they are the judge; my opinion does not matter.



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Q60 **John Howell:** I am just wondering whether there were any prosecutions that have failed or are not going well because of the absence of a specialist economically trained judge.

David Green: Not that I am aware of. Generally speaking, our cases are carefully handled.

Q61 **Alex Chalk:** It struck me when I was reading this section of our brief, and hearing you, that the Government say something that sounds great: an economic financial cyber-crime centre fit for the 21st century, all singing and all dancing. Actually, the need is not for a spangly new building but for capacity. As you say, it is probably ticketed judges, like a murder ticket or a sex ticket. We need a fraud ticket. Does that not have to be the centre of effort rather than spending a bunch of money on something that sounds good in a press release?

David Green: I absolutely agree, but I think the spangly court helps.

Q62 **Alex Chalk:** Helps to deliver the capacity and the badged judges.

David Green: Exactly.

Q63 **Chair:** The judge's remit, as you said earlier on, Director, is to take complicated sets of facts and circumstances and make them digestible to a jury. It is essentially an issue of what is dishonesty or otherwise.

David Green: Indeed. Obviously that is primarily our job: to simplify a complex set of facts to a fairly clear indictment and clear allegation. Beyond that, it is the judge's function to manage a trial. These days, it is a complex and multifaceted task.

Q64 **Alex Chalk:** On that point, in your experience over the last six years or so, in order to try to ensure that jurors are not inconvenienced for more than six months—which it is in a heavy fraud case—is it becoming increasingly difficult for the prosecution to get its case across in two to three months, to allow the defence three months to do their bit and for the judge to sum it up, and so on? Are these cases now so complicated that it is very difficult to get inside that six months?

David Green: No, I do not think so. Generally speaking, the yardstick I use, and I think we have been reasonably successful, is that we do not like trials going over three months. Sometimes you cannot guarantee it. That is obviously another argument to put in the balance about judge-only trials. Judges do not have pre-booked holidays in the middle of a trial, as sometimes a juror might.

Q65 **Alex Chalk:** But has the nature of alleged offending changed over the last six years such that it makes doing that within three months more difficult? Whether it is because crime has become more international, or whatever it is, has it become more or less difficult to present within that truncated timetable?

David Green: No.



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Q66 **Alex Chalk:** You do not think so.

David Green: No.

Alex Chalk: That is good to know.

Q67 **Chair:** You have moved on from carbon paper frauds.

David Green: Or sticky tape.

Chair: That is very helpful.

Q68 **Bambos Charalambous:** I want to ask some questions about your relationship with the CPS. Obviously you prosecute similar types of cases, but there has to be a distinction; you do the more serious ones, but some go back to the CPS.

David Green: We have a different model, of course, in that we investigate and prosecute.

Q69 **Bambos Charalambous:** How does that relationship work?

David Green: Very well indeed. We do our cases. It may be that we would refer a case either way between us, if necessary, although I cannot think of a time when that has happened recently. We have regular liaison. We have shared input to policy initiatives and so forth. I would say that overall relations are extremely good.

Q70 **Bambos Charalambous:** If you have started an investigation but decided that it is better for the CPS to take it on, how does that work?

David Green: I cannot think of an instance when that has happened, but, if it were to happen, I suppose we would simply pass over the investigation to the police. I cannot really conceive of such a thing happening. It certainly has not happened in my time.

Q71 **Bambos Charalambous:** On staffing, you obviously need highly trained staff in specialist areas.

David Green: Yes.

Q72 **Bambos Charalambous:** Are you confident that you have the right numbers of staff in place?

David Green: Staff numbers are always tricky, because our staffing model is that we have core staff and then we have staff brought in to assist on blockbuster cases when we need a surge in a case. In those circumstances, we might have up to 120 or so staff under that temporary model. Overall, as of 31 October 2017, we had 385 permanent staff, 130 temporary staff and 28 fixed-term staff. It is about 500. Is that enough? Yes, it is enough to do our work, but obviously we do not want to keep people on the books when we do not have a case that requires a surge. Hence the need, which is slightly irritating in many ways, to take on people for a relatively short time, but we do not know what is round the



corner and we might be expected to take on something of which today we are completely unaware.

Q73 Bambos Charalambous: I want to move on to international partners, because the nature of your work in serious fraud cases may have an international aspect. What is your relationship like with international partners on investigating and prosecuting cases that have an international nature?

David Green: Stronger than it has ever been. All our cases have an international dimension. I was in Washington last week talking to the Department of Justice, which is obviously one of our most important strategic partners. We have built very successful relationships with other financial centres such as Hong Kong and Singapore. We also have strong relations with Australia, New Zealand, Canada and the European jurisdictions. There is absolutely no problem at all. As you rightly say, all our cases have that dimension, and we speak freely and, I think, very successfully.

Bambos Charalambous: You told our predecessor Committee last October that you could not “imagine that a sensible compromise could not be reached” in terms of the UK maintaining membership of things like the European arrest warrant. Can you tell us what you have been doing since then about preparation for Brexit in so far as it affects the SFO on things like the European arrest warrant?

David Green: Isolating the things that could affect a prosecutor around Brexit, there is the European arrest warrant, Europol and membership of that, and the joint investigation team mechanism within the EU. We have at least two JITs at the moment with European allies. There is mutual legal assistance and the European investigation order. There is mutual recognition of confiscation and restraint orders. There are financial intelligence units, Eurojust and the European judicial network.

All of those are important in varying degrees to us as an investigator/prosecutor. I do not know exactly where they are in the mix at the moment, but everybody on both sides surely recognises that co-operation in relation to criminal investigation and prosecution, and the return of suspected offenders, is in everybody’s interest. I assume that that drives those interested in it who are party to the negotiations.

Q74 Bambos Charalambous: Are you doing anything yourself in the SFO in preparation for Brexit when it happens?

David Green: We supply, and stand ready to supply, information as and when required—that has been lots—to the relevant authorities in Whitehall, who need to collect information from the prosecuting agencies. We do that on a regular basis.

Q75 Bambos Charalambous: Have you had conversations with your European partners about what will happen with Brexit?



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David Green: Yes, but obviously within careful guidelines. It would be unwise of us to take initiatives in that area, but we feed into the negotiation process, albeit indirectly.

Q76 **Bambos Charalambous:** You do not think you will be hampered by Brexit.

David Green: I really could not say. It will obviously be dependent on the things that affect an investigator/prosecutor. If they last and survive in one form or another, then fine. If they do not, obviously we would have to look for an alternative mechanism.

Bambos Charalambous: We will have to cross that bridge when we come to it.

Q77 **Chair:** The arrest warrant is particularly valuable, isn't it?

David Green: Indeed; absolutely.

Q78 **Chair:** I think the Government would regard it as a top priority. Of course, since it was amended many people feel that some of the criticisms made of the European arrest warrant have been much diminished.

David Green: Indeed.

Q79 **Chair:** I was interested in another thing on that point. You feed in as necessary, but are you satisfied that there is an adequate structure in the Government to make sure that the practical experience of your organisation gets through to the relevant Government Departments that are actually doing the negotiating?

David Green: I am afraid that all I can say is that, when asked to provide information and input on possible policy, we do our job. Quite how the system works thereafter, I do not know.

Q80 **Chair:** That is for us to look at perhaps. Do you normally do that through the Law Officers' department, MOJ or DExEU?

David Green: Through the Law Officers. They are the buffer between us and other Government Departments.

Q81 **Alex Chalk:** One of the things you seek assistance on, of course, is that, for other countries to do investigations, there has to be a letter of request for mutual legal assistance.

David Green: Coming to us.

Q82 **Alex Chalk:** No; when you are seeking it from other countries. Some countries will respond more promptly than others. Do you feed that back to the Foreign and Commonwealth Office and say, "Look, we are finding that there are particular delays in respect of this country and we could really do with some additional assistance," or is that not a channel of communication that you have?



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David Green: We very actively and most certainly do exactly that, mindful of the importance of our own independence. Yes, we do. What that means, Mr Chalk, is that I cannot give a huge amount of detail to the FCO in relation to our investigations, but I can and have engaged their very valuable assistance in getting something done.

Q83 **Alex Chalk:** Without naming names, are there countries where we have had to press for more timely assistance than we might otherwise have expected? In other words, are there delays that we need to chase up?

David Green: Yes.

Alex Chalk: That is helpful. Thank you.

Q84 **David Hanson:** I am interested in the process. You mentioned Europol as being a key agency. Europol's first line says that it "assists the 28 EU Member States in their fight against serious international crime and terrorism." In 15 months' time, we will not be one of those 28 international European Union members. What is the implication for the SFO if we do not reach agreement?

David Green: With Europol, not massive. I do not know; I am not part of the negotiating team, but I would have thought that some alternative arrangement will have to be negotiated.

Q85 **David Hanson:** For example, are there any non-EU state members that currently have a relationship with Europol?

David Green: I do not know. There is always a first time.

Q86 **David Hanson:** I am just trying to get an understanding of what the cliff edge means if no agreement is made, and what focus the Government have on those things from your perspective. Obviously they are key issues.

David Green: The importance of the European arrest warrant, JITs and so forth is very clearly understood. We have fed into that and we will have to see.

Q87 **David Hanson:** It is quite close though, isn't?

David Green: Yes; absolutely.

Q88 **Ruth Cadbury:** Have Government asked your opinion on the implications?

David Green: Yes; absolutely.

Q89 **Ruth Cadbury:** And you have given it.

David Green: Absolutely; yes. We feed in regularly when asked on any subject that affects us, including that.

Q90 **Ruth Cadbury:** You have provided, dare I mention the word, an impact assessment on the implications of different scenarios come Brexit.



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David Green: Yes: "If we don't have this, then this would happen unless alternative arrangements are put in place."

Q91 **Chair:** That includes things like the importance of mutual recognition of the various things you talked about—investigatory mechanisms, warrants and that sort of thing.

David Green: Yes. The Committee can be confident that we feed in on this debate and have done greatly.

Chair: The message is very clear. Thank you.

Q92 **Mrs Badenoch:** Mr Green, my questions are around funding and budget. A lot of them follow on from the session you had last year with the Committee. First, to what extent does your current level of core funding allow you to investigate and prosecute cases?

David Green: I have never turned down a case on the basis of not being able to afford to investigate it. That is based on our core funding, which is going down in 2019-20. In 2016-17, it was £35.7 million; in 2019-20, it will go down to £33.5 million. On top of that, for our larger cases—I think we have three or four at the moment—we have blockbuster funding that is entirely separate. My point is that with core funding and access to blockbuster funding we can do what we need to do. As I say, I have never turned down a case because I cannot afford it and would not do so.

Q93 **Mrs Badenoch:** I will come to blockbuster funding in a moment, but it sounds as if you are saying that the funding is adequate, and it seems that it will be adequate going forward.

David Green: Core plus blockbuster is adequate. It means that our core budget might go down to the early £30 millions, but, overall, since 2012, on average our expenditure has been around £50 million a year, with a low of £38 million and a high of £62 million. On average, it is around £50 million, which probably says something about what is required to run the Serious Fraud Office.

Q94 **Mrs Badenoch:** Last year you said that your preference "would be less reliance on blockbuster funding."

David Green: Yes, absolutely.

Q95 **Mrs Badenoch:** What do you think the balance should be?

David Green: We are in discussion with the Treasury at the moment. We will see where that goes. My preference, and I think everyone's preference in common sense, would be to have less reliance on blockbuster and perhaps a greater core budget, but it is up to others to decide quite where that balance lies. It would look slightly absurd if we reached a point where our blockbuster funding was greater than our core budget. I do not think anyone would be over-impressed by that.

Blockbuster funding is a strange system but it works. It is an answer to a difficult problem where everyone agrees that, first, we cannot turn down



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a case on financial grounds and, secondly, we do not really know what is round the corner. It gets a mixed press, in that one comes across the tired tattered old headline, "Does this mean the Treasury has a veto on what you investigate?" Answer: No, I have never had the slightest problem in putting to the Treasury a business case for a particular investigation and them supplying what was required. I have never had a hint of such interference or veto.

Q96 **Mrs Badenoch:** The inspectorate had some comments about value for money regarding blockbuster funding.

David Green: Yes. The issue there, and it was a point quite well taken, was that with blockbuster funding you can bring in temporary staff or staff on two-year contracts, you train them up and then they might leave. Well, they might leave or they might not. They might apply for a permanent post. We always have vacancies; it is in the nature of things—what we do—that people tend to move on. In our evidence handling and electronic examinations department of modern devices and so forth, we have built up relationships with universities, so that people doing a digital forensics course can come to us as part of a sandwich course and have a guaranteed job at the end of their four years. They do one year as part of their course and then they come to us afterwards. They stay for a while, or even for some years, but eventually they move on because others can pay more. That is in the nature of things and we have to accept that that is how it goes. You take other measures such as the one I have just described—the relationship with universities—to mitigate the risk.

Q97 **Mrs Badenoch:** It sounds as if you think the inspectorate was perhaps a bit harsh in its assessment of the value-for-money aspect.

David Green: I would never call the inspectorate harsh.

Q98 **Mrs Badenoch:** Moving on to governance, am I correct that you did not have a chief operating officer last year, and that is a new role that has come in to address some of the outcomes of that report?

David Green: Yes. I am choosing my words carefully. When I came in, the post of chief operating officer was perhaps not one that one wanted to take forward, so I got rid of the post. We shared the duties among the senior management team. Over time, it became apparent that there was a need for a dedicated role, and the inspectorate agreed. Indeed, the incumbent is sitting behind me.

Q99 **Mrs Badenoch:** What changes has he brought in since then? What has changed?

David Green: He has taken over responsibility for all the corporate functions, which previously we had to share out among ourselves and at various levels below. Finance, HR, HR policies and all the things that go on in an organisation that are separate from operations are his responsibility.



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Q100 **Mrs Badenoch:** Is your operating model now finalised or are there further changes? If so, would you be making recommendations to a successor?

David Green: There comes a point when it would be unwise for me to fiddle with something that seems to be working fairly well. There are one or two changes I would make were I staying longer, but I shall pass those on to my successor and see what he or she thinks.

Q101 **Mrs Badenoch:** Finally, I have a question on the financial impact. Last time, you talked about the net positive financial impact of the Serious Fraud Office. The figure you gave then was £325 million over four years. I think I know the answer to this question, but what has changed since then?

David Green: What has changed on the figures?

Mrs Badenoch: Yes.

David Green: Between April 2014 and March 2017, our net contribution to the Treasury was £461 million, but again with the health warning and caution that Mr Chalk rightly identified: prosecutors are not in this for the money. It just happens to be a figure that appeals to some, and some in the media, so I am happy to give it to them if it makes them happy.

Q102 **Mrs Badenoch:** For my own understanding, I would like to ask how the figure was derived. The proceeds of crime order values seem much less than that, but when we were talking about DPAs the fine for Rolls-Royce was much in excess of that. How is that number derived?

David Green: It is basically money in from DPAs plus confiscation, less the running costs of the SFO.

Mrs Badenoch: It just did not seem to add up. Am I missing something?

Q103 **Alex Chalk:** If I may, do you think you are generating enough of that from confiscation? It seems very lopsided in favour of DPAs.

David Green: We could have a discussion about the difficulties of recovering money and about proceeds of crime.

Q104 **Alex Chalk:** Are you comfortable with the ratio at the moment?

David Green: I am never comfortable with such ratios. From 2012 to 2017, we obtained orders to the tune of £102 million and we have received £65 million. In 2016-17, we obtained £25.3 million in orders and we received £20 million from previous years. If you make an order, you do not get the money immediately; it might take years.

Our recovery rate in orders over the last four years—this is probably a really important figure—is 80%. That is not bad. There are all sorts of difficulties. I cannot give you the exact figure at the moment for our share of the outstanding debt in relation to proceeds of crime, but it is due in part to three particular orders. Obviously we are pushing very hard



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to enforce them. They are immensely complex. The sums include interest, which builds up over time, but please do not imagine that we give up and walk away. Far from it.

Q105 Alex Chalk: Let me explore that a bit further. When the Proceeds of Crime Act was enacted in 2002, it was perceived to be very draconian because, of course, it created assumptions and suggested that the state could really start to clean up individuals in a way that hitherto we had not experienced. Do you think the time has come to look again at that piece of legislation? A lot of people might take the view that actually it has not wiped out the Mr Bigs in the way that we might have liked. It has proved incredibly difficult to get the proceeds of crime off people. Has the time come for a review?

David Green: It is the kind of thing that needs to be kept under continuing review for the reasons that you and I have highlighted. One can also see the new tools we will be getting. From February, unexplained wealth orders will be a very interesting tool available to us. We are anxious to use them where we can. Should proceeds of crime legislation be looked at again? I would say yes, all the time, and regularly. We come up against real difficulties, but we are not unsuccessful.

Q106 Alex Chalk: Can I move briefly to the issue of staff? I am sure you would accept that the success of your organisation depends upon your staff.

David Green: Quality of staff.

Q107 Alex Chalk: Absolutely. You have to make sure that the SFO is an attractive place to work for high-quality staff.

David Green: Yes.

Q108 Alex Chalk: True, your sickness levels are below the civil service average, which is a good thing, and no doubt you can say, "Come and work for us because it is high-quality work, looks great on the CV," and so on. But pay remains an important factor, does it not? In 2014-15, the median pay for staff was £35,000, but by 2016-17 it was down to £34,553. Are you paying your staff enough?

David Green: I think you would find this a fairly generalised complaint among the public service at the moment and over the past three years. It is a fact of life. Where we can, and where we can demonstrate a difficulty in recruitment or retention in relation to a specific group of staff, we have gone to the Treasury and got permission to change the structure so that they are paid more. Remember that the Treasury will always say, with some force, "Well, you say you want to pay your lawyers or accountants more, but you don't seem to have any difficulty recruiting them, so why don't you bear your part of the burden in current circumstances?"

It is a very difficult one. In recent years, some people have left senior positions to go to jobs that pay maybe 15 or 16 times what I was paying,



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but that is their worth in the real market and it is actually a tribute to the quality of staff that we have. I do not lie awake at night worrying about retaining staff or attracting the best. We are very lucky in that we have been able to do that, and that is because of the quality of work we do.

Alex Chalk: Thank you. That is all I wish to ask.

Q109 **Victoria Prentis:** Do you still pay incrementally more than the CPS and the other parts of the Government legal service?

David Green: I think it is about the same, although there are differences where they pay more. The pay structures are very complicated. The chief operating officer explains them to me.

Q110 **Chair:** At the end of the day it is all about the integrity of the institution.

David Green: Completely; the integrity of the brand.

Q111 **Chair:** And its independence.

David Green: Indeed.

Q112 **Chair:** And you are satisfied that you leave that in good shape.

David Green: I very much hope so.

Q113 **Chair:** Many people would say there is a marked change in what has been happening at the SFO over the past six years, and a change for the better. I think you, Director, and your senior members of staff—some of whom are here today—can all take credit for that. Assuming that nothing occurs that might make us want to speak to you again between now and April, and if this is the last formal appearance you make before us, I thank you for the co-operation that you have shown the Committee throughout your tenure in office; and for the co-operation we have received at all times from the staff of the SFO. From the Committee, and personally, I wish you every success for the future, and hope that your successor can take on the challenges that remain to come.

David Green: I hope so. Thank you very much.

Chair: Thank you very much, Mr Green.