

Justice Committee

Oral evidence: [Post commencement hearing with the new Director of Public Prosecutions, Max Hill QC](#), HC 1652

Tuesday 4 December 2018

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Members present: Robert Neill (Chair); Janet Daby; David Hanson; John Howell; Gavin Newlands; Victoria Prentis; Ellie Reeves; Ms Marie Rimmer.

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Witness

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

Examination of witness

Witness: Max Hill QC.

Chair: Good morning and welcome, Mr Hill. This is the first time you have come to give evidence before us. First, it is normal procedure for us to declare our interests. I am a non-practising barrister and consultant to a law firm, and you and I have known each other over a number of years when we worked in private practice.

Victoria Prentis: I am a non-practising barrister, who worked for many years for the Treasury Solicitor's Department, and from time to time conducted law on behalf of the CPS. I am married to a recently appointed judge of the companies and insolvency court.

Q1 **Chair:** Director, you have been in post a matter of weeks. Congratulations and welcome. We enjoyed a good working relationship over the years with your predecessor. You have a five-year term.

Coming to it with a fresh pair of eyes, having been until now, as we know from your CV, somebody engaged at a serious level in private practice, largely prosecuting but also defending in the past, what are your priorities? What is your initial take on the organisation you inherit? What is the strategy and what are the key things you want to achieve?

Max Hill: Thank you very much for asking me here and for allowing me one precious month to place my feet under the table at the CPS, which is an organisation that, as you suggest, Chair, I know well in some respects, having first prosecuted for the CPS in 1988. I have three decades of experience in court, prosecuting a lot of the time, but looking across the whole of my career, defending almost as often as I have prosecuted.

Coming into the service for the first time full-time, the initial impression—let me be honest—is one of cheerfulness, enthusiasm and dedication. I will also be honest and say that, given some of the problems that the Crown Prosecution Service has experienced in the last year, that is a surprise, but a pleasant surprise. Because you asked about my early initiatives, it would be wrong to go further without immediately recognising that some serious mistakes have been made in the recent past—some serious errors that require a change in culture, a change in attitude, and a real gear shift in working with our partners, who principally include the police, who investigate cases, to make sure that we eradicate wherever humanly possible any errors in the future.

We may come on to disclosure more specifically later. At this stage, I am not seeking to go into the detail, but any director coming in as I have needs to recognise that, at one stage earlier this year, disclosure became a watchword for scrutiny of the Crown Prosecution Service. I do not seek to escape from that and will welcome any questions you have on where we have got to and where we are going next.



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Recognising past failure is an integral part of what—to answer your question directly—I want to do, which is to open up to the public to a greater extent than is currently known the real success of our national principal prosecuting authority, delivering week in, week out thousands of robust legal decisions and bringing cases before our criminal courts, with success. I might say a little more later about how we measure success, if you are interested in that.

I have had a very warm welcome. There has been a plan, as you might imagine, to try to get me round the organisation; I have not simply been sitting behind my desk not far from here in Whitehall. What I am seeking to achieve through my early scrutiny of the CPS is to really drill into all the good work that started in 1986, when we created the Crown Prosecution Service, and is still very much in evidence.

I am hugely encouraged by what I find. Even in some of the casework areas where we have been under the greatest pressure, I find lawyers who are dedicated to making robust decisions that will stand the test of time. That is what any casework lawyer should be interested in. From my perspective as an external barrister, that is what I was brought in, case on case, to try to deliver. I am very interested in continuing to work, albeit from my inside position now, with good lawyers making good legal decisions. That is the real priority, coupled with a determination to support our people. That is a picture that has changed as a result of reductions in resource since 2010. We are running just short of 6,000 members of staff.

Q2 **Chair:** It is about a third down, isn't it?

Max Hill: It is; about 30% down. It is not all lawyers, of course; there are as many non-lawyers as there are lawyers in the organisation. Supporting our people and helping them when they strive, as they do day after day, to make the right decisions is what the director is there for, together with trying to uncover and advertise externally—I am grateful for any opportunity I have here—what a successful prosecuting authority really looks like. That is what I find, and I am dismayed over the history of the last year or so to see so much talk of failure. I recognise that failure and am happy to talk about it, but we need to place alongside it the real successes that have been embedded over three decades.

Q3 **Chair:** The context, in other words. Understood. Are there any particular changes that you have decided on so far in operational or management terms, structures and so on that you can share with us?

Max Hill: Any organisation collectively holds its breath—in the case of the CPS once every five years—when a new director comes in, particularly when it is an external director who has not worked for the CPS on a full-time basis before. I have not found major structural or organisational changes to make, but one that I am very happy to share with the Committee is that I will not be having a director's legal adviser.



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That is a resource that was put in place by my predecessor but one, Keir Starmer—Sir Keir, as I should call him—and continued by my immediate predecessor, Alison Saunders. I emphasise that both of them had good reasons for asking for a small, bespoke team sitting within the private office to offer the director legal advice. Those who have held that position have worked extremely hard and to a very high standard.

There is nothing personal about my decision, which I made on day one, to abolish the role and rank of director's legal adviser. I have done that because in recent time the director of legal services, who used to be an individual, is now, essentially, an office. There are two directors of legal services. I have asked that the lawyers who were working in the director's legal adviser group should now act up to and report not to me but to the directors of legal services.

That is a significant change in the sense that it does not seem to me that my role as Director of Public Prosecutions is to take casework decisions. My role is to support decisions taken by our very experienced prosecutors. There are some aspects of casework where Parliament has required, and I absolutely understand this, that it should be a personal consent decision made only by me. For example, prosecutions brought under the Bribery Act 2010 require my personal consent. I am entirely happy with that responsibility, but across the run of criminal casework, we should place our trust in our experienced prosecutors, both in the regional area offices, 14 of them around the country, including CPS Direct, and in our specialist casework divisions that work from London but have outsourced groups of lawyers all round the country. That is where the expertise lies.

I have made it an early mission to get to know each of the chief Crown prosecutors and the heads of the specialist divisions. I had a two-day conference with them, in fact, in York last week, and I have made it clear that casework responsibility and decisions about charging rest with the lawyers who are delegated to conduct that function. I am there to understand and support those decisions, and, where necessary, to be accountable for them, but it is not for the director to take them, save in a very small number of cases. That is an organisational change that I have made and I believe it is one for the good.

Q4 Chair: As you say, it is a significant factor. The logic of the decision is that you are saying to your chief Crown prosecutors, "You take the decision. I stand behind you."

Max Hill: Yes, exactly.

Q5 Chair: Fair enough. CPS 2020 is a broad mission statement. Does it chime with your objectives? Is it fit for purpose? Do you want to update it or change it?

Max Hill: CPS 2020, which was implemented by my predecessor, has set the tone of some of the CPS's work in very recent years. Of course, 2020



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is not very far off, so my attitude towards it is that it remains in place, but I will need quite soon to see what CPS 2025 looks like, and that will have to be part of my initiative.

Q6 Chair: That makes sense. Before we get on to the more specific things, do you intend to make any changes to the way we measure performance over the five years?

Max Hill: There are a number of aspects to performance measurement. The simple answer to your question, as I tried to say before, is that a mature organisation should be open to scrutiny and challenge, whether provided by this Committee, by the CPS inspectorate or from elsewhere. I underline that I am open to a dialogue to discuss challenge and changes.

As to how we assess performance, I volunteer this. Looking at our national prosecuting authority from the perspective of conviction statistics is useful but should not be a one-stop measure of the success of an organisation. What do I mean by that? Two things. When you look at the CPS, with a conviction rate hovering between 83% and 84%, that is success by any measure, but as lawyers will appreciate, it is not the only measure of success in an organisation that does not exist merely to secure convictions.

My predecessor, may I say, should be given great credit for spending her last month in post revising the Code for Crown Prosecutors that makes it plain that the CPS is not there to secure conviction as a one-stop measure. It is our task to apply the code for prosecutors, revamped by my predecessor, and to place cases before the court where it is the court and only the court that decides innocence and guilt.

What I am trying to get across by that is that the Crown Prosecution Service exists to make good legal decisions. Very often, a good legal decision results in a case in court and conviction by a judge, the Bench in the magistrates court, or a jury in the Crown court. Equally, there are many cases when a good decision will be not to charge an individual, but to assess the evidence, to apply the code for prosecutors and to say, whatever external noise there may be and however much encouragement or even expectation that a case should be brought, that it is very important that our prosecutors, whom I am here to support, recognise where there is not a case that is fit to go to judge and jury.

Prompted by your question, and thank you for it, I would say that we need more than one measure of performance or success. Conviction rates are there for all to see. We do not hide them; they are actually very good. We should also look at recognising success when, for example, there is a very significant investigation and the police bring the case to us, but, however much industry may have gone into it, sometimes it is necessary for an experienced lawyer to say, "This case does not satisfy the test, and we are not going to take it to court."



The trouble with looking only at conviction rates is that it opens the organisation to the argument that, wherever there is no conviction, there should have been no case. Lawyers know that that is a very unsound argument. Part of the way to deal with it is through a more measured and balanced approach to what success looks like. I hope to do some more work on that, and I would be very happy to show my workings and discuss that with the Committee.

Q7 **Chair:** As presaged in the Kalisher lecture that you gave recently.

Max Hill: Yes, exactly. That is my only public outing thus far, and I tried to set out some initial thoughts there.

Q8 **John Howell:** Can I move you on to the subject of disclosure? As you know, we as a Committee did an inquiry into disclosure earlier in the year. One of the conclusions we reached was that the problems in that area had been there for a number of years for everyone to see. Can you start by sharing your views on what has been called the disclosure crisis?

Max Hill: Yes. What I would say, and I was trying to foreshadow this in my initial opening comments, is that, although a huge amount of robust decision making happens day in, day out, including disclosure, the events of the last year uncovered a lack of awareness, in some cases, of the importance of disclosure at an early stage. The lesson that the Crown Prosecution Service and the police, may I say, have learned over the last year is that much more effort, training, supervision and indeed championing, which is now a term of art, needs to go into addressing disclosure early.

When we read what is now the eighth revision of the code for prosecutors, we see, which is credit to my predecessor and not to me, that for the first time at the evidential stage, which as the Committee knows is one of the two stages that any prosecutor goes through before making a charging decision, there is set out very clearly on page 8 of the code the question, "Is there any other material that might affect the sufficiency of evidence?" That is saying to investigators, police officers and prosecutors, our lawyers, alike, "You must address disclosure before charge as well as keeping it under review throughout the life of the case." That is the gap into which some cases fell, but I emphasise that it was a minority of cases.

A very good disclosure review was conducted by this Committee, and it came hot on the heels of a number of senior judicial disclosure reviews over the years—by Lords Justices Gross, Treacy and Leveson, and, indeed, by a very experienced prosecution colleague of mine, Richard Horwell, in the Mouncher report. Those reviews, and I have Mouncher particularly in mind, extol the virtue of the CPS in its complex casework. We can read in those reviews just how well the Crown Prosecution Service habitually carries out its disclosure function in significant and complex cases. Amidst all the understandable noise of the last 12



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months, I do not want the fact to be lost that disclosure is done very well, and always has been, at significant levels within the CPS.

Where the problem arose, though, to go to the heart of your question, is that in smaller cases in terms of size and complexity, because of the march of technology, we have seen a sharp rise in the sheer amount of data, the amount of information, that an investigator and then a prosecutor should be considering at the charging point. It happens that it is in rape and serious sexual violence cases that we have seen the effect of the communication revolution.

To which I say this: any case, however small, involves human beings, both those taking the charging decisions within my organisation, but, even more importantly, those who may be taken from their ordinary lives and placed in front of a court. I do not underestimate the impact on any individual of going through criminal proceedings, and we must not lose sight of that. But there are hundreds, in fact thousands, of cases in the area of rape and serious sexual violence where we are suddenly—it really is quite sudden—facing huge quantities of data.

Whereas there has been a very robust approach to disclosure in complex cases, with large teams of investigators and prosecutors, it is in the high numbers of cases where you might have a single police officer and a single lawyer involved at the prosecution stage that lessons needed to be learned. That is where the national disclosure improvement plan, again with credit to my predecessor, comes in. I was in post just in time to sign off phase 2 of the national disclosure improvement plan, where we are seeking to bed in the lessons that were learned, accepting the recommendations that this Committee provided in July, working in partnership with the police.

In my first week in office, one of the very first meetings I had was with Chief Constable Ephgrave, an officer whom I have known for a very long time. When a chief inspector, he was the senior investigating officer in the second investigation into the killing of Damilola Taylor, on which I was a member of the prosecution team. So he and I have worked shoulder to shoulder before on a single significant case, and we are doing so again now in making sure, pursuing the robust and revised code for prosecutors, that NDIP is delivered in all its guises.

Q9 John Howell: I know you are not responsible for the police, but you raised them in what you have just said. Do you think that the level of revised training in the police will be adequate to deal with this?

Max Hill: Let me answer that by saying that there is no distinction between the CPS and the police in our determination to get this right. I used the word “partnership,” and I mean that. I know you were not suggesting that I did not mean it. We are absolutely shoulder to shoulder in dealing with this. At a level of leadership and at a level of national and disclosure forum, there has been a real and meaningful sea change. I



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mentioned the word “championing,” which was put in place during NDIP phase 1; we know that as a measure of training.

Under Chief Constable Ephgrave, who has the national lead for policing, huge numbers of police officers have been put through training. Training is also being provided to Crown Prosecution Service lawyers. The learned experience has made everybody look with much sharper eyes for disclosure. It was being done in vast areas of casework, but in some areas it was not being looked at soon enough or robustly enough.

To answer your question, can I say that there will be a date by which no disclosure problem will ever arise? No, I cannot. Can I say that there will never be a human error in a system that relies on individuals to make decisions? No, I cannot. But I am seeing a pretty sharp rising curve in efficiency and training and certainly in dedication. I suggest that is all encouragement.

Let me add one thing. Learning the lessons of last year, the CPS has put in place more robust capture and analysis of decided cases. I know the previous director brought to you a sample number of cases—47 was the number given—as instances of RASSO, rape and serious sexual offences, in which disclosure may have featured. We thought that we should not stop there. Therefore, we have put in place a system where at the end of every case our prosecutors need to tell us with more specificity what has happened if the case has come to an end, judge directed or otherwise.

Let me predict what is going to happen. That will, I suspect, lead to an increased number of concluded cases in which disclosure has been a feature. Should that be a matter of alarm? I suggest not. It is evidence of how progressive in partnership with the police we are in chasing down disclosure problems.

Let me be absolutely clear about it. What we are asking prosecutors to say is: in a concluded case, was disclosure a feature that led to the outcome? It might have been the main reason why there were problems with the case, or it might have been a contributory factor. We are capturing that information. I think we will see a rising number of cases that fall into that basket, but we will then go on to analyse them and look at cases in which disclosure is known to have been a feature but where there was no fault. I suspect that it will remain a very small number of cases where not only was there a disclosure problem but there was also fault.

I will expand on that, if I may. As a trial lawyer for 30 years, I honestly cannot remember the last time there was a case in which disclosure was not a feature. What I mean by that is that, in my experience, in every Crown court trial there will come a time, sometimes before the jury is empanelled but more often than not as the trial rolls through, where the advocates will say, “Can we just consider disclosure?” Frankly, a defence advocate is not doing his or her job unless they test the limits of disclosure. They are entitled to say to the judge, and ultimately to the



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prosecutor, "Now we have told you more about our defence, and now you have heard the evidence, can you just check whether there is anything more that we are entitled to that might not have been triggered for disclosure at an early stage?" That is part of the process working, and working well.

I am not unduly alarmed if we see a rising number of cases in which disclosure is a feature. What we will need to look at is in how many cases it is not only a feature but there is also fault. I think that, over time, that will be eradicated to an absolute minimum, and that is our mission.

Q10 **John Howell:** We are waiting for the Government response to our inquiry. I think you might have seen it. Are we going to be satisfied with the Government's response?

Max Hill: I am afraid I cannot answer that question because I know that any response is only in draft. All I can say is that I must await the final version, and I will be happy to provide my take on it when received, but it is a draft document at the moment.

Q11 **Chair:** Have you been able to feed back your view on it to the Attorney General?

Max Hill: No, I have not.

Q12 **Chair:** But you have seen it in draft.

Max Hill: Yes. It exists in draft. Absolutely, if given the opportunity, of course I will feed back. That has not happened yet.

Q13 **Chair:** You have not been asked to comment on it.

Max Hill: Not yet, no. The Attorney General has been busy, I am sure.

Q14 **Chair:** I can understand that.

Max Hill: I sat alongside him and the Solicitor General at his own disclosure review—in fact in this room—10 days or two weeks ago. Given the opportunity, we welcome the Attorney General's disclosure review. We are very happy to see that a very large part of the content of that review mirrors the work we are doing under the national disclosure improvement plan. Some of the thoughts that the Attorney General has presented to us—for example, moving to a rebuttable presumption in favour of disclosure for certain categories of documents—are sensible, and we are happy to pick them up. There is some joint working.

Q15 **Victoria Prentis:** You have talked about your concerns about public perception of the CPS. About 62% of people feel that they have confidence in the CPS, with that number decreasing as people get older. Do you feel that the lack of responsibility taken by senior figures in the CPS following the disclosure failings fed into those relatively poor levels of public perception?



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Max Hill: It is very hard for me to conduct a post mortem—an ex post facto review on what has gone before—when I was not in the Crown Prosecution Service, so, politely I hope, I am going to decline. However, as I was trying to explain a few minutes ago, where the service came across significant errors and failings in important cases that were not being dealt with at complex casework unit level, it required real collective resource and determination to put it right.

My take on that is that, at senior levels in the organisation, echoed throughout the organisation, pretty quickly—because the national disclosure improvement plan was published in January this year and the difficulties to which you refer were taking place at that time—there was resourcefulness and pen was put to paper, not in some meaningless document but in a way that has been driven through. Of the 42 action points in NDIP phase 1, 40 were completed on time before phase 2 was published, and the other two are due for completion on time.

I am going to decline that very polite invitation to criticise. Clearly, there is work to be done. I am interested in the perception of the CPS externally. I am also interested in the perception internally. The staff survey for 2018 has just been completed, and, statistically, it is interesting to note that the staff engagement index, as it is called, still stands at 61%, which is not only good across Whitehall, when you compare it with other civil service departments, but good for this department, which has been through a difficult year.

Q16 **Victoria Prentis:** It is not all that good for legal departments, is it?

Max Hill: As I say, there is always room for improvement, and I would like to see that percentage go up, just as the external perception of the CPS will, I hope, go up over time.

The sense of your question is that we need to do more. Whatever our starting point and however we got there, we need to do more to imbue a sense of confidence that the system will work. I am absolutely certain that it will and can work, but there is more work to be done before we can build that trust on current levels, and that is what I am there for.

Q17 **Victoria Prentis:** That is very helpful; thank you. We heard what you said with interest about conviction rates not being the only measure. Can you suggest other ways in which as a Committee we could helpfully measure the performance of the CPS?

Max Hill: It is difficult to set out a hard and fast list now. I would suggest that taking four of the themes set out in NDIP phase 2, which are capacity, capability, leadership and partnership—a fifth strand is governance—might provide subjects of interest for this Committee to say, “That’s the stall that you set out in November. The document has just been signed off. Have you carried that through?” We are determined that we will, but some proper probing will reveal whether there is leadership



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from the top and whether it is really going down through the organisation.

Hand in hand with that, we have got to this through disclosure and the disclosure problems I have been talking about, but disclosure is one important part of a bigger piece of work. I would like, over time, without in any sense forgetting about disclosure, to start to talk about file quality on receipt from the police to the CPS, and therefore case preparation and progression. The indicators of success over time should be an improvement in file quality so that my prosecutors can make decisions at the first time of asking. Of course, a good file will contain evidence of a robust approach towards disclosure, so it resolves that as well. That is the rising curve we are looking for.

At the moment, working in partnership with the police, we see large numbers of cases being presented to the CPS for charging, but on which our prosecutors are saying, "This one isn't ready. There are documents missing. It is not clear enough what the reasonable lines of inquiry are said to be. We don't have a disclosure schedule." On any number of bases, we are holding those cases up, and deliberately so, because a robust Crown Prosecution Service will only want to bring cases to court when they are ready to go to court.

As I said earlier, that is not the same thing as securing a conviction every time, which is not our function. We are trying to ensure that when we go to court the case will run, inasmuch as that is ever foreseeable, without problems through the life of the case. I invite you to look at those sorts of features and how we are doing in reaching a charging decision; how often we are having to have a conversation with the police about more training; delivering fit for quality documents and files; and how that is rolling through the system in terms of case progression.

The other feature, which is all to do with efficiency of the system, is that, when we bring a case to court, we want to achieve the result of that case, whatever the outcome in terms of the declaration of the court may be, as efficiently as possible. That means driving down the number of hearings and making more efficient use of those hearings. I will take this opportunity to say that my own attempt at trying to get back to grassroots took me to a magistrates court, in fact in the Chair's constituency, although that was a coincidence.

Chair: We were delighted to see you.

Max Hill: On day two, I went to Bromley, and two weeks ago I prosecuted my own list in Uxbridge magistrates court. That was what is called an NGAP list. It was the first time that some of the individuals I was prosecuting had ever been in a courtroom. I wanted to go back and remind myself of that entry point to the criminal justice system.

With a proper file, two things happen. First, some people who might have thought they were going to plead not guilty actually find themselves



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pleading guilty because they are persuaded by the content of the file. That happened in two of the cases I prosecuted two weeks ago.

Secondly, with a properly prepared file for the first appearance, you are able, as I was, to progress right through to setting a trial date, making an application for special measures, such as protection for witnesses when they come to court, and even discussing such matters as bad character directions where there is admissible and relevant evidence about the background of an individual that the ultimate tribunal or court is entitled to see. You can do all that if the file is really fit for purpose at the first hearing, rather than falling into an adjournment culture where we are trying to gather snippets of information hearing upon hearing, which is inefficient and costlier. That is what we are trying to draft.

Q18 Victoria Prentis: And the lawyer has a proactive approach to case management. Believe you me, this is music to my ears. It is what I spent my time in the Treasury Solicitor's Department working on with my staff—file quality and proactive case management.

One of the worst criticisms that this Committee made of your predecessor was that she did not know what was going on with the disclosure failings. In our report, that was a significant criticism, and I am not asking you to comment on it directly. What I am asking you is: are you sure that you have the right systems in place now to ensure that you know what is going on?

Max Hill: I am as confident as I can be that we are moving quickly in the right direction. I cannot say that by a finite date there will be no problems; I have already dealt with that. Let me give an example, and this is credit to Alison Saunders and not to me, I need to say. That is important.

From late October, charging decisions within ordinary office hours are being made under our new charging standard by what we call area lawyers. The point about that is that the same prosecutors who will have conduct of the case throughout its life are making the charging decision. That is quite a powerful tool to deal with the problem that you are rightly highlighting where, if the decision is made by somebody who does not have custody of the case once the charging decision is made, with the best will in the world, it is more difficult to sit on top of case progression, quality and all the rest of it.

The fact that we are taking charging back to areas is no demerit for the CPS Direct area, which has a large number of very experienced prosecutors, who essentially through homeworking, out of hours, are available literally 24/7 to make charging decisions in certain categories of case. That is a really valuable resource. I am happy to address the threshold test if you wish.

Victoria Prentis: No, that is fine.



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Max Hill: That is work for them to do, and it is very intensive work. I place absolute trust in CPS Direct—I have sat with them; I have visited them—to make the right decisions, whether using the threshold test or the full charging test out of hours; but within office hours we think it is much better for that to be done so that there is custody of the case throughout its life. Going back to 2015 and Sir Brian Leveson’s review of efficiency in criminal proceedings, that is one of the things he suggested, and it had only partially been implemented. That is what we are doing now, so that gives me confidence.

Q19 **Victoria Prentis:** What data are you collecting at your level in the CPS that was not previously collected in order for you to show us that you know what is going on?

Max Hill: The most significant aspect coming through is that which I mentioned earlier, if we are still talking about disclosure. It is asking all prosecutors to say where disclosure has been a feature.

What is also collected on a routine basis, and this is not new under me, is a quarterly analysis of the statistics thrown up by the thousands of cases we bring. It is obviously impossible for me to open every file and to look at every case.

We do not set targets for conviction rates. The CPS does not do that, nor should it. I will not be setting conviction rate targets, and I am sure you would not suggest I do. But we do set a number of targets for all our prosecutors in terms of, essentially, the time a case takes and the steps that it goes through. They are real efficiency measures, which we may be able to change over time, and I am in discussion as to whether we can extract more data from our casework that might help me and others to show the life of a case.

Those things already exist and we are able to drill quite deeply down into the picture that a case presents: how many times it is in court; how often it is in a trial; when the trial date is ineffective because of witness problems; how often, when a case does not result in conviction, witness difficulties or some other difficulties such as disclosure lie at the heart of it. It is in my interest to try to be creative with the data we capture, but we prosecute half a million cases a year and therefore there are limitations on what any one individual can do. I will do my best to monitor and change over time the sorts of statistics we generate.

Q20 **Chair:** That is understood. I was grateful when you visited Bromley that the crime list was not too heavy in my constituency that week. One of the things it flagged up, of course, was the extent of disclosure issues arising in the magistrates court; the evidence to us in our inquiry from the Criminal Law Solicitors’ Association was quite striking. A lot of the public discourse has been around the Crown court. Is that evidence that you accept and do you recognise that there is an issue to be tackled?



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Max Hill: Yes. I would say two things about that. First, NDIP phase 2, which I have already mentioned, places a real emphasis on the magistrates courts and the youth courts. We find that in the phase 2 document. That is necessary because, as you infer, particularly in the youth court very serious criminality, albeit offences committed by very young people, is determined in the youth court, and disclosure, just as everything else, needs to be right there.

I am grateful for your question, Chair, because the other thing that needs saying is that we have a partnership between the CPS and the police, and we are co-signatories on the NDIP documents, but the partnership is broader than that. It is a partnership not only with the external Bar, which we rely on and will continue to rely on to prosecute large numbers of our cases—that is where I come from personally—but, equally important, with defence advocates, barristers and solicitors, who play such a huge role in case progression and in getting our cases through court.

I was very interested to observe in Bromley and then in Uxbridge the really hard work that it takes not just for our prosecutors but for defence advocates to make an effective first hearing. I do not speak for them, but I was impressed by their dedication, on a Tuesday morning with a long list of cases, in trying to make sure that there were answers to the Bench's questions and that the case could properly be progressed.

At a national level, there are very senior representatives from the Law Society and elsewhere who sit alongside the Attorney General and me in the disclosure review and who are absolutely part of the solution to the problem. That prompts me to say that the final partner, if I dare call them that in this conversation, is the judiciary, who also play an important part. Can I be clear about this? The CPS does not look to the judiciary to make our disclosure decisions for us. We do not look to offload our responsibility, which is ours by statute, to the judiciary, but in case progression and case management it is our judges who drive cases.

Part of the work that we have been doing under NDIP will bear fruit very soon, I hope with the assistance of the senior presiding judges—namely, a plea and pre-trial preparation hearing, which, as you know, Chair, is the first hearing in a Crown court and will contain as part of its standard documentation a box on disclosure. That is not just symbolic; it is so that judges, when they manage cases through the Crown court, can manage what is happening on disclosure.

It is necessary for defence representatives, who nationally have given a really useful lead, to come forward and say where reasonable lines of inquiry may not have led to information that is known to be in existence but that the police do not know about and therefore we do not know about. We do not want, in future, examples of disclosure requests that are made for the first time when the jury is already empanelled and the trial has started, when it is a matter of great ease for those on the



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defence side in court to say, "Actually, there is some information that would help us. Can you get it?" If that becomes a reasonable line of inquiry for the police, it becomes something of interest to us. As you know, disclosure management documents, which have been used in complex cases for many years, are now being created across the piece in Crown court trial work. Everybody plays their part, but I am grateful to you for prompting me. The defence community are absolutely equal partners on this, and they have lots to offer.

When I sat side by side with one of our prosecutors in Bromley on 2 November, that prosecutor herself had been a defence solicitor for eight years before joining the Crown Prosecution Service. It gives me great confidence, going back to Ms Prentis's question, when I know that we have as dedicated prosecutors people who have defended for a decade or even two decades. That has to be a good thing because they know what should be looked for in a case that might indicate that there is a hole; if you do not look, you are not going to see it. I am very encouraged by that, and I welcome to the CPS those who come from the external Bar, or solicitors who may have defended for a living but can make a good living and have a good career in the CPS, and play their part in making sure that we do not repeat the disclosure failings that we have seen.

Q21 Chair: Those observations are very welcome. I have a final observation on this point, on the involvement of the defence community, defence lawyers. One small but practical thing raised with us by Mr Bonich, the vice-chairman of the Criminal Law Solicitors' Association, has links with your commitment to file ownership and file quality. They had raised, initially some three years ago, the fact that the Crown Prosecution Service was sending out correspondence without contact details, so they did not have anybody to go to between hearings to try to speed along efficiency. Has that been changed?

Max Hill: A consequence of taking charging back into areas—to repeat the phrase I used earlier—is that that necessarily imports greater accountability. It is not always, let me be honest, to one named individual who takes the charging decision and is then the only individual who will ever look at that case, but where we have what are called reviewing lawyers they tend to stay with the case and are identifiable. Prompted by you, I will look at correspondence as a specific matter, but I believe over time that we will have greater ease of communication.

I do not suggest that is easy. The prosecutors I have sat with, and I have met a lot of them in the last month, have high volumes of cases to deal with. We do not have the luxury of a prosecutor saying, "I am going to look at this case and only this case today." Only at the most complex case levels does that happen. They have an awful lot to do. They have many tasks to carry out on an individual case, and sometimes they may superintend dozens of cases in a day. We need to bear in mind the burden on our prosecutors, but the overarching idea is for responsibility,



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accountability, attention to disclosure through the life of the case, and not to repeat past errors.

Q22 **Chair:** It is the ability for the defence, when they legitimately raise that point, to get the message through.

Max Hill: Yes, I understand that.

Chair: Understood; I am grateful for that.

Q23 **David Hanson:** Congratulations, Mr Hill. Before I ask the main questions, can I follow up on what Ms Prentis said? Do you collect data or disaggregate data on hate crime, currently?

Max Hill: I will need to come back to you, and happily will, perhaps in writing if you would like specific answers to that. Hate crime is something that has been pursued—indeed championed—by the CPS. As this is the first mention of hate crime, may I say that, as with other specialist areas of crime, our appetite for prosecuting those cases is even across the whole criminal justice system? We as a service do not pick and choose which cases we look at. We are not investigators in that sense. We are the classic demand-led organisation. Whatever cases come our way from the police or other investigators, we will look at them, and if they meet the charging standard we will charge them. But I do not know specifically about the statistics.

Q24 **David Hanson:** When looking at that, for the Committee, would you look at any information you have about the number of cases brought forward by the police?

Max Hill: Certainly.

Q25 **David Hanson:** And the number of cases that you then take on for prosecution?

Max Hill: Yes.

Q26 **David Hanson:** Would you look at a whole range of hate crimes—antisemitism, sexual hate crimes and others—so that we have some broad examination of that? I am aware of some private prosecutions that have taken place on the back of the reluctance or agreement of the CPS not to take forward police prosecution issues. I want to get some sense of how that fits in.

Max Hill: I want to be careful about any suggestion that there is reluctance on the part of the CPS to take cases forward. I do not recognise that. The CPS has been responsible, using the statutory powers at our disposal, for successful hate crime prosecutions and for successful prosecutions where the sentence imposed at the end has been aggravated by statutory mechanisms because of the work that the CPS has done. It is not right to say that there is any area of crime in which we apply a different test, either lower or higher, from other areas of crime.



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The Code for Crown Prosecutors is a one-size-fits-all document. If we are presented with any case that passes the evidential stage test and in which it is in the public interest to charge, we will charge.

David Hanson: I appreciate that, but it would be helpful for us to have an overall picture of hate crime, with the number of cases brought and the number seen through to prosecution. That would be very helpful.

Q27 **Chair:** What both Mr Hanson and I are interested in, Director, is this. You are right to be robust about the evidential test. If it meets the evidential test, there should be a prosecution. There have been instances of concern where, for example, something was said by the CPS not to meet the evidential test, but then there were convictions either privately or after a judicial review. When there were convictions, it would obviously be, in practical terms, a matter of concern to you, even if it was before you came into office, to make sure that the assessment of the evidential test was being done consistently across all types of cases. I am sure that is something you would be happy to look at going forward.

Max Hill: Yes, agreed.

Q28 **David Hanson:** All this falls within the framework of cash and money. You will know that before your time we lost 15% of the budget of the CPS in the last seven or so years, and we have the potential for a £9 million reduction—1.7%—without inflation next year. I want to get a sense of how you feel in relation to the funding package you have. It is straying slightly into the political, but I am interested in how you are managing that issue.

Max Hill: I am grateful. I will not stray at all into the political because it is not my function to do so, but I can give you the picture, which is that it is a 30% reduction, inflation-adjusted, against a 20% cash-terms reduction when you compare our net operating expenditure between 2010-11 and 2016-17. It is a very substantial cut, and that has resulted, as previously mentioned, in a very substantial reduction in staffing of the order of 30%. It is, I would suggest, remarkable, and a measure of success that is not celebrated often enough, that the conviction rate, if we are using it, was 85.1% in 2013, at the early stages of the cuts, and was at 84.1% in 2017-18. That is telling us that the CPS has maintained efficiency and effectiveness despite being required to deliver very substantial cuts. We have delivered them year on year successfully.

Can we take any more? Absolutely not. I know that I am repeating something my predecessor said, but it is important that I repeat it. If we are to retain our efficiency and our outcomes, we cannot contemplate further cuts to resources. Because we are resourced in more than one way—the departmental expenditure limit, which is the bulk of our funding, and our annually managed expenditure, which is essentially project-based funding; they are familiar terms to the Committee—we need, as every other department does, as a matter of course to prepare our arguments when it comes to the next spending review. There are



specific areas of work, some of it necessitated by disclosure, which we have just been discussing, and some by other areas, where there is a predictable need for higher resources.

Q29 David Hanson: Your AME figure is about 1% of the total budget, which is incredibly small, given the changing nature of the CPS, because you can have very complex cases that take up a significant amount of time that may not have been predicted.

Max Hill: Yes. That is right. Having said that, it is necessary for a prosecuting authority that, essentially, takes in all criminal cases regardless of what they are, and prosecutes them if they meet the standard, to come up with satisfactory answers in the funding conversation that meet what central Government require of us. We are, largely speaking, not so much project funded; we require an operating budget, which we then apply to all the criminal cases we bring.

We are doing work that increases the time we have to spend on it and therefore increases the cost of the work. I repeat, as all Government Departments do when it is coming up to a spending review, that you would expect us to be looking very hard at what we need in future.

Q30 David Hanson: I am led to believe from figures I have seen that the case load for the CPS has fallen by 12% since 2015, but in your annual report you mention the correct assumption that many cases are becoming more complex for a range of reasons. Is that recognised by those who hold the purse strings?

Max Hill: I cannot speak for those who hold the purse strings. I can take the opportunity to underline, and thank you for the question, that, just as it is wrong to look only at conviction rates as a measure of success, it is equally wrong to look at the number of cases as a measure of workload. Coupled with some of the things I said earlier, once it is understood that the CPS nationwide receives 1 terabyte of data per day every day from the police, it shows the rise in the complexity of casework as a result of the communication revolution, as I called it earlier. Even routine cases—if I may call them that—which might result in a trial lasting a couple of days, require, according to reasonable lines of inquiry, whatever they may be, greater focus on detail than we have ever seen before. Although we are seeing a fall in overall volumes, I can say on one month's evidence at the CPS, and I am not surprised to find it, that the work rate is as high as it has ever been.

Sometimes what appears to be a fall in volume can be a false picture. Working from what I said about the disclosure improvement plan, our work to improve file quality, in partnership with the police, and the lawyers who have the conduct of the cases taking the charging decisions, it means that there is an increase in the time immediately pre-charge where new cases are sitting. I will explain that.



There are large numbers of cases, including RASSO—rape and serious sexual offence cases—where a charging decision is not made at the first time of asking, but that does not mean that the case is not being very carefully considered; a great deal of work is being done on holding those cases pre-charge to perfect the file so that it is ready for charge. That means that what may appear to be a once-and-for-all fall in overall case volumes may not be that. I am not suggesting, and I cannot suggest, that we will go back up to overall previous volumes, but I am suggesting that there are a substantial number of cases being held in the system that will become live cases, and we will therefore see a bounce in the numbers. Of what magnitude it is difficult for me to say.

Q31 David Hanson: Next year, we will be looking at the spending review for the next four to five years. Given that you have said that you cannot take any more reductions and that the complexity of cases has to be noted, what is your bid for funding?

Max Hill: I am afraid I cannot give you a figure because spending review negotiation has not commenced. I can go so far as to say that very careful work is being done to look at our workload.

If I may give an example, I do not know whether the B word was going to be a topic at this morning's hearing, but I am happy to mention Brexit for the first time.

Chair: We have done pretty well so far.

Max Hill: I am specifically aware that some very careful capacity work and capacity calculations have been done by the CPS in the relevant areas to look at the consequences of the terms under which we exit the European Union. For a demand-led organisation, that is vital because, whatever happens, we must be ready for it. As the nature of your question suggests, when a spending review is coming, it is not just expenditure for a one-month period or even a one-year period; it is looking at several years, for which we have to prepare.

We know that the terms on which Brexit occurs could have a significant impact on our work in the field of extradition, mutual legal co-operation and all the multi-jurisdiction, multiple country investigations that are part of our work. You would expect us to try as closely as we can to cost that. We have been doing that, and we will be ready to share what we say the actual cost to us as a prosecuting authority is, depending on whether or not there is a withdrawal agreement. But that comes at a cost.

Q32 David Hanson: We have had other colleagues from the justice system sitting where you are in previous weeks. They are currently facing major reductions in wider justice expenditure across the board. I want to get your assessment of how much a reduction in wider justice system funding will impact on the work that you undertake. Your predecessor said last year that the weight of budget cuts was causing the justice system as a whole to creak.



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Max Hill: I would answer that by trying to introduce the concept of a thematic approach to funding, particularly across criminal justice. What I mean by that is that, if funding is provided to one or more specific areas of work, which means that it is reasonably foreseeable—a lawyer’s phrase—that it is likely that it will have a result on our workstream, that should be thought about first rather than last.

I will give one example from my own personal history. In the last Budget there was additional resource given, for very good reason, to counter-terrorism policing, in the sum of £160 million, and it is reasonably foreseeable that the counter-terrorism division of the CPS will have more work to do. We see rising volumes of cases because of the rising incidence of crime, the dramatic increase in arrests under the Terrorism Act and therefore more cases and more work for our very specialised prosecutors to do. I encourage anybody who is looking at the criminal justice system as a whole to think thematically and to be careful not to create a bulge in one part of the system, or still worse a blockage in another part of the system, but to resource all parts equally so that they can meet an increase in demand. That is a feature we are keenly looking at.

Q33 **Ms Marie Rimmer:** Can we look at staffing, please? The CPS has a budget of over £500 million and has 5,500 staff.

Max Hill: Yes.

Q34 **Ms Marie Rimmer:** Back in 2010, it had over 8,000 staff. That is a 33% cut since then. What lessons do you bring from your previous experience to heading up an organisation of this size?

Max Hill: Thank you; that is a very good question. My first answer should be that of course this is a very significant step up and a very significant learning curve for me. In so far as it helps, I have previous representative experience over many years, having led sections of the external Bar as chairman of the Criminal Bar Association, with several thousand members, and then as leader of the south-eastern circuit with several thousand members. I also headed my own chambers with a very modest budget in comparison with the CPS, but over 100 criminal barristers and staff.

I have chaired two charities: Scene & Heard, a children’s charity based in London, which I chaired for six years; and then much more recently five years chairing the Kalisher Trust, which is the criminal Bar’s charity. Putting all that together, I hope that I have some experience of managing funds and managing people, but I am under no illusion, nor was I on 1 November when I walked into the CPS; this is a very big venture indeed.

I find that many of the initiatives the CPS has taken, some of them necessitated by financial cuts, have been very positive: the approach towards flexible working; the way we use our staffing resource nationwide, for example, where our specialist fraud division set up over



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the summer three fraud areas around the country so that there is a conversation between our regional lawyers and our London lawyers, all driving towards successful outcomes in those significant cases; and the initiatives that the CPS as an employer has taken, which I have been particularly struck by in terms of diversity, disability and social mobility. The CPS scores very highly and scores very highly around Whitehall. I appreciate that in one sense I am the employer, but it seems to me that the CPS is a very good employer, and should be; it needs to look after its people.

On top of that, succession planning is always vital for any big organisation. I have done that with trainee lawyers in a smaller way in the practice I have come from, and I am very impressed to see the legal trainee scheme that the CPS has for both pupil barristers and trainee solicitors. I am spending time this evening with our latest intake of prosecutors. They have started their journey in the organisation at the same time as me. I have already met and am spending time this afternoon with the unions representing staff both in senior legal positions and in other positions in the CPS. All that is part of the conversation, and part of the success of the CPS going through very challenging times, but maintaining, as I said earlier, a staff engagement index score at 61%. I would like to drive that higher, but it is quite successful.

Q35 Ms Marie Rimmer: It is quite something to top, isn't it? It is very impressive to read about the investment in people and the personnel policies. It is absolutely superb.

We have heard concerns about high workloads for prosecutors impacting on the quality of decision making. Do you think that CPS prosecutors have too much work?

Max Hill: I do not think I can give the very straightforward answer that they have too much or they have too little. I am all about quality, and for that matter, I am more interested in quality than quantity. As an indicator of leadership, I am very keen that our lawyers who make very important and sometimes life-changing decisions should make them in good circumstances where they have time to make sure they are robust. That was the message that I carried to our senior leadership group at the two-day conference I held in York last week.

My answer to your question, if I can put it this way, is that I am in conversation with our senior leaders about the balance between driving through quantity, which must be done, and preserving time to ensure that quality is high. These concepts are sometimes slightly intangible. The answer, though, is to listen not just at a leadership level but at a grassroots level as to how people are coping.

One of the initiatives I started on day one was spending time every day speaking one to one with a member of CPS staff. Of necessity, I have to do that over the phone sometimes, but almost on a random selection list I call somebody every single day. I have made 30 of those calls already.



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That is an opportunity to say, "We can't keep up with the workload," but that is not the message that I am getting, and I am speaking very widely across the organisation. There are stresses and strains. You would expect that. There are issues coming to my attention, which I welcome, but I am finding an energetic and ambitious group of staff. I am finding really encouraging signs from those who qualified outside the organisation but have come in to work for the CPS, and that is because, although the workload is high, all those staff initiatives, particularly around flexible working and disability awareness, help to get the message across that we are there for our people and we take the overarching concept of wellbeing very seriously indeed.

Q36 Ms Marie Rimmer: You have already started on a reasonable workload, and it is about investing in people.

We have heard reports of low morale in the CPS following budget cuts and coverage of disclosure, in particular, but the results of the civil service survey show that staff engagement scores have improved. What has happened there is quite amazing. What are your early impressions of how staff at the CPS are feeling? Do you think morale is low?

Max Hill: I expected to find evidence that it was lower than it is. The engagement survey shows that it is holding. There will be details in the survey that we need to look at. It is a national picture, and we need to look very closely at the regional picture, but it is holding on a nationwide basis. When I have sat with prosecutors, as I have, in our RASSO units, and when I have spoken to non-lawyers and others on the administrative side of the organisation, I found a level of frustration at the perception of the CPS and a level of frustration about the way the work of the CPS is sometimes reported very negatively.

When you take the trouble to go on to the floor of an area office, almost unannounced, as I tend to do, and speak to five or six individuals, that is their golden opportunity to say, "We are not happy and morale is low," but that is not the evidence I am finding. When I specifically asked RASSO lawyers in London whether they felt beleaguered as a result of the disclosure problems of the last year, the answer was, "We are resolute in what we are doing. We know what we have to do to deliver good casework and we are determined to do it." Those are their words, not mine. I am hugely encouraged by that.

I hope I can play at least a small part in increasing the external impression of the Crown Prosecution Service, and in increasing positive messaging about what we do well and have always done well. That will help. My overall answer to your question is that there is more resilience and dedication than you might expect in the Crown Prosecution Service, and that is a really good thing.

Q37 Ms Marie Rimmer: Last year, the CPS did not reach its target of fewer than 4% vacancies, yet this year the annual report shows that the figure is 0.3%. Why do you think there has been such an improvement



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compared with last year?

Max Hill: In filling vacancies within the service, the CPS is quite creative in moving resource where it needs to go. It is early days for me to answer that question, but the picture I have is that, where vacancies are being advertised externally, the resilience of the service sometimes can be covered by lateral moves internally, but there is still a long-term intention to fill by external recruitment positions that remain vacant. In any given annual period, we can and do move staff around the organisation, but I do not want to give the impression that that means we could not do with more staff, because we could.

One of my initiatives as a new arrival is not just to create more creative careers within the CPS, and see our talented lawyers and others moving around within the organisation as they move up, but also to create a sense that, because we are part of the wider civil service, people who have civil service careers should look increasingly to the CPS and spend time in the CPS as a necessary part of their career progression. I give that general answer on how we are looking at it. I am not close enough yet to deal with percentages, and the precise ebb and flow of particular divisions and positions that have not yet been filled. There are some positions yet to be filled, and I very much hope that they will be as soon as possible.

Q38 **Ms Marie Rimmer:** What have you done personally to promote diversity and inclusion in your previous roles, and what do you intend to do to promote diversity and inclusion as DPP in the CPS?

Max Hill: To answer that in reverse, I found that a huge amount of very good work was already being done. We have an excellent human resources department, which I did not know at all. I knew the CPS through casework but I did not know about HR until I arrived, and I have been hugely impressed, so thank you for that question. That means there is less to do than I had thought.

In terms of my background, both the charities I chaired in the past have, as a main thrust of their activities, included, in the case of Scene & Heard, dealing with disadvantaged children living in the Somers Town area, around Euston and St Pancras, and in the case of the Kalisher Trust encouraging people to come to legal careers who lack the means or the contacts to do so otherwise. That has been, I hope, a strand that has run through a lot of my work over a long time.

In tandem with that, going back to my years in chambers at the Bar, I hope others would agree—I am sure they would—that I championed movement with a view to increased diversity in my own set of chambers. The evidence for that would be that people we identified through the Kalisher Trust, who undertook placements with the big legal charities—for example, Justice—are now undertaking full pupillage at my former place, Red Lion Chambers. It is pointless just looking at somebody through a



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charity lens. You need to follow through, create opportunities and make sure that it happens.

One thing I am happy to share with you is that, in the space created within my own private office by no longer having a director's legal adviser or advisers, I intend to create placements for able, ambitious lawyers in the CPS to spend time in the private office to improve their own careers. Diversity will be a feature of that, I can assure you.

Q39 Ms Marie Rimmer: I have read the report and I have listened to you today. It is pretty clear that the CPS has an excellent human resources function. What do you attribute that to? It is much higher than anywhere else in Government and the civil service.

Max Hill: Clearly, it is work that happened before I arrived, but my perception is twofold. The first is a recognition that even if you are not a lawyer, even if you are involved in business management or administration, you are adding value, in whatever you do, to the legal outcomes of the CPS. The CPS should be recognised as a very successful national law firm, because that is what it is, but there is a majority of non-lawyers under our roof, and those at senior levels and right through the organisation really value the non-legal work, and recognise that it is of equal value to the legal work. That is extremely important.

The second thing is that, if you have a sense of working together, what you are dealing with—it is not for me to compare other departments—in significant criminal prosecutions is a very stressful case load. It is very stressful work. This is not 9 to 5 work, and we have flexible working to deal with that. A good employer, particularly in our area, will pay proper heed to the stress that people are under when they work in specialist units that can involve the most appalling areas of criminality.

My early observation is that pretty careful attention is paid to lawyers and non-lawyers working in those units. There is a sense of superintendence, of looking after those people. There are initiatives to rotate people out of the most stressful areas and move them elsewhere in the organisation. That is partly for career progression and partly to give respite from some of the most difficult areas. If you do that well, and I think the CPS is doing it well, it breeds a spirit of dedication to the service and value. That is why so many people stay as long as they do.

Q40 Ms Marie Rimmer: During our work on disclosure, we heard concerns about CPS prosecutors not having ownership of cases from start to finish. Indeed, our Chair touched on that earlier. We heard from the CPS that case management used to be seen as from cradle to grave for prosecutors and caseworkers alike, but now it is pods. The emphasis has shifted from file ownership. Then we had the Met Police on the case of R v. Allan: "Ideally, once a prosecutor makes a charging decision, he/she would then maintain responsibility for the case throughout." Daniel Bonich of the Criminal Law Solicitors' Association said: "The old concept of being able to pick up the phone or write to a lawyer at the CPS who



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had responsibility for the case has mostly gone.” Now there are pod schemes and giant lists. As our Chair commented, sometimes contact details are not available. What do you think is the right model for case management?

Max Hill: We live in a digital age. I appreciate that the common platform is not a reality yet, but the CPS is one of the organisations signed up and dedicated to bringing the common platform into being. While we wait for that to happen, we have our own case management system. It is an entirely paper-free digital platform. Picking up the phone is something we all like to do from time to time, but it is not the only way of communicating now.

At a low but important level, when I have sat in the magistrates court for two days, as I did in the past month, I have seen, on every occasion, the prosecutor making sure that a point of contact, which will tend to be an email point of contact, is recorded on the case file. That is taken from the defence advocate, whoever appears, at the first appearance. It is about providing a unique point of contact per case. It may be decreasingly over the phone and increasingly using electronic or digital methods, but it should be possible to stay in touch. That is something that changes over time.

Going back to what I said earlier about case progression and early hearings in the Crown court, it is all about making sure that the participants in a case maintain contact with each other. There is a burden on prosecutors and defence advocates, and a supervisory burden on the judiciary. We all have to play our part in that.

To go back to what I said earlier, with the best will in the world, we have dedicated and experienced prosecutors who are dealing with high case volumes. That is one of the consequences of the reduction in staff that we were talking about a few minutes ago. I cannot get rid of that overnight. It is necessary for an individual prosecutor to have responsibility for more than a single case, save in very rare circumstances. I encourage defence advocates to make contact, to let us know if there are difficulties and use all digital means of communication, but please bear in mind that a significant workload is being undertaken by prosecutors, just as there is by defence advocates.

Q41 **Janet Daby:** Good morning, Mr Hill. Congratulations on your new role. What do you perceive are the challenges when working with cases where there are clear mental health concerns or existing mental health diagnoses?

Max Hill: One of the lessons learned in recent years is the astonishingly high proportion of cases in which there is something akin to a mental health concern. I have spent a lot of my practising life at the Central Criminal Court, the Old Bailey, dealing with homicide cases. It is a fact that in serious crime, at that point of entry into the system, young people who have never been diagnosed before are diagnosed for the first time



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when they come into the system, and they may have significant disorder issues and deficits.

Casework and trial work has leapt to the aid of people, with a real structure. That is why we have intermediaries in court acting as communication assistants for defendants or other parties to criminal proceedings. In the case paperwork, it is extremely important that at every stage the prosecutor has in mind the specific characteristics of the individual. That is particularly relevant when applying the public interest test in the revised code for prosecutors; a number of issues are specifically flagged in the code test that make it important for a prosecutor to consider the individual with whom they are dealing.

For example, under the public interest stage test, the suspect's age and maturity at the time of the offence must be taken into account. Taken to one extreme, that can never mean that somebody who, for example, has a form of disorder is automatically exonerated from prosecution simply because of that disorder. There are individuals on the autism spectrum who, none the less, have been taken through serious criminal proceedings. You need to be aware of the disorder and, where necessary, provide assistance to take people through legal proceedings.

I do not think there is a one-size-fits-all solution. We have, as a matter of statute, a suite of measures, generally called special measures, which can be put in place to assist people when it is necessary for them to come to court and go through a part or whole proceeding. We need to be flexible in using those measures. The sense of your question, about which I think you are right, is that there is a rising curve of people who have issues, if I can put it that way, but a mature system is able to cope with that and define the right outcome.

Q42 Janet Daby: How do you think you will be able to monitor how your lawyers work to ensure that there is a type of equality of practice?

Max Hill: In terms of their approach towards suspects when taking charging decisions?

Janet Daby: Yes.

Max Hill: I have given the best answer I can, which is to robustly apply the code for prosecutors. Where that results in somebody being charged who may require assistance, that assistance will pretty rapidly be given when the charged case goes to court. The other side of that is that, when significant features about an individual need to be borne in mind when taking a charging decision, it is incumbent on prosecutors to do that. Save where certain legal tests apply, that does not exonerate an individual from criminality that they may have committed.

Q43 Chair: Matters might go to mitigation but not to the appropriateness of bringing the prosecution.

Max Hill: Yes.



Q44 Gavin Newlands: Moving on to complex cases, RASSO and terrorism, I have a question that is somewhat related to the points Ms Daby was raising. You may be aware that over the summer there were stories on the practice of the CPS prosecuting vulnerable women. In relative terms, the CPS has a high prosecution rate for perverting the course of justice regarding false rape accusations, and a high proportion of those cases involve women with mental illnesses. Coincidentally, it is the same group that is least likely to get a rape conviction as complainants.

One example of many would be the case of Eleanor de Freitas, who was prosecuted for making a false allegation of rape, despite the fact that she was bipolar. She had been previously sectioned, and the prosecution was against police advice. She committed suicide just before her trial.

Notwithstanding the point you have just made that people can never be totally exonerated just by dint of the fact that they have a condition, would you consider looking at the culture of prosecuting those cases, because they simply do not exist in other western democracies? Touching on the points Ms Daby was making, would you look at whether national training for all prosecutors is required on the CPS guidance for mentally disordered defendants?

Max Hill: I certainly agree that in any charging decision no prosecutor must ever forget the humanity that lies behind the decision that is being taken. That is to be applied equally to individuals who come to the CPS making a complaint of crime and to suspects who then become defendants charged with crime. There is always a human story behind whatever the case is, with very few exceptions. That must never be forgotten.

What I want and hope for is confidence that the system will work and will be applied in an even-handed way. Particularly in the context of rape offences, it is very important that those who are victim to offences of that sort have confidence in the way the system works and that the rules are applied.

Let me give an example that I think is on point. We were very encouraged when the Court of Appeal, on my first day in post, delivered a judgment in a case known as the Crown and E, in which the Court of Appeal looked at, essentially, the disclosure approach in a sexual allegation that the CPS had taken. There were those outside the case who might have argued that rape complainants were being treated in an unequal way, for example, by being required to hand over all their communication devices, their iPhones, for automatic scrutiny by the police and ultimately by the CPS.

In fact, as E shows, that is not the crude approach that is taken, either by the police—they speak for themselves—or certainly by us. There are cases in which it is necessary, given the private nature of certain sexual offences, for there to be scrutiny in the way people communicate in private, and that means looking at their mobile phones, but that is not



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automatic scrutiny. It is only where it is necessary and where it flows from a reasonable line of inquiry. There is flexibility. As far as the Crown Prosecution Service is concerned, we do not impose any different or harsher test on rape complainants than we do in the context of any other area of crime. It is one charging test and one that fits all.

Sometimes, there are cases in which an allegation is made that, on investigation, is proven to be false. That is why we have offences of perverting the course of justice, and sometimes it is necessary for them to be brought to the court to be properly aired, and for a decision to be made by the court, not by us, as to guilt. It is very difficult to make broad or sweeping generalisations. The answer lies in the flexibility and humanity with which you approach your casework.

You mentioned an individual case. I am afraid I cannot deal with individual cases. Again on one month's evidence, I suggest that in our RASSO units, where we have specialised and experienced prosecutors, they are alive to the nuances, for want of a better word, of that particular area of criminality. I encourage anybody who has fallen prey to that sort of offence to have confidence, and to come forward in the knowledge that the system should work for them just as it works for anybody else. We need to balance the interests of the privacy of the subject against the imperatives of an investigation. Sometimes that can be unpleasant for complainants, whether it is sexual offending or other areas, but we will try to apply the balance as sensitively as we can.

Q45 **Gavin Newlands:** In the last year, there has been a reduction in the proportion of people being charged with sexual offences after they have been referred by the police. Do you think that the CPS has become overly cautious in this area?

Max Hill: I hope not, because I do not think that a prosecution service that is merely risk averse is carrying out its duty. If we were entirely risk averse, you would expect the conviction rate to be at or near 100% because we would only bring cases that we knew were going to result in conviction. Of course, a moment's thought shows that that is not what happens, and that is not the approach we take. We are not the ultimate decision maker on the guilt of an individual.

From that headline, you are absolutely right, Mr Newlands, that there is a fall in the number of suspects charged. I cannot speak any more than I tried to in my previous answer about the volumes of individuals coming to the police. That is where the investigation kicks in and that is not a matter for us, but I know that there is a fall in charging numbers, which I touched on earlier. The fact is that, because of our rigorous approach, rather than a risk-averse approach, in applying the revised code for prosecutors, there is a large number of cases—it runs to a few thousand—which are being held in the system pending charging. That is not because we are approaching charging on a risk-averse basis and only bringing the strongest cases. We bring a case when it satisfies the code test, whatever that case may be.



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Where cases that come to us for a charging decision and have not been charged, there are numbers that will be charged—it is about improving the file quality before we can do that—and there are others that will, ultimately, be administratively finalised. Let me touch on that, because it is a phenomenon in this area and I need to explain it.

An administrative finalisation is a case in which no final charging decision has been made, because the police present their file and for good reason prosecutors say that further additional work needs to be done. The police and investigators then realise that there are gaps in the case, which means that it cannot satisfy the code test. When we say it is administratively finalised, it does not mean that the Crown Prosecution Service has taken a decision that we are not going to charge that case; it means that we have indicated to the investigator what is required, applying the code test, the same as in every other crime, and on second review, the investigator has realised that there are one or more fundamental gaps that cannot be filled. Therefore, the case simply does not come back. It is never presented to us for a final charging decision.

I am trying to make the distinction between a negative charging decision—a no charge decision, which is not what we are doing—and necessary conversation, two-way communication, between the prosecutors and the investigators, setting out what a court expects in terms of evidence and what a file requires before it can satisfy the code test. That is where we are seeing administrative finalisations.

Q46 **Gavin Newlands:** Can you enlighten us as to why the number of cases being administratively finalised was one in five last year compared with one in 30 in 2009-10 and one in 10 in 2016-17? That is quite a jump.

Max Hill: Yes. The jump, as far as I can see, is caused by the new approach to responsibility for charging. What that specifically means is ensuring that our area prosecutors, during office hours, take the charging decision. Where national file standards have been brought into being, it is much clearer now than it was before what a police file requires, and the documents and the data that should be in that file. That chimes with the Attorney General's disclosure review in which almost any case will generate certain types of document, and you would expect to see them in the file. There is, as I mentioned earlier, a rebuttable presumption in favour of disclosure.

Over a very recent period, we have seen a jump in communications technology. We all know that the proportion of the populace who have smartphones or iPhones is extraordinarily high and has risen very sharply over the last handful of years. That is generating much more information. Where we are applying a more rigorous standard to every case, it results in more cases being held pre-charge. That, of course, is coupled with all the ongoing education through disclosure championing in police forces nationwide; there are very large numbers of police officers who need assistance in what a file requires, and need help and training in the outcomes for an investigation.



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Although on one level the jump seems alarming, the answer is that it is because we are controlling more rigorously the quality of the file that we require before a case can go through charging. There may be other features in play that I cannot answer, such as changing crime trends, changes in reporting and people coming to the police. Those are questions that you need to put to the investigators, and I am not one of them. We can see, as I have tried to explain, why there will be an element of fluctuation.

Q47 Ellie Reeves: The conviction rates for sexual offences remain the lowest of all crime types recorded by the CPS. Why do you think that is and what do you think can be done to improve it?

Max Hill: In addition to what I tried to say about rape cases previously, it is incumbent on anybody in the system to ensure that a fair and robust trial is provided. It is the job of every prosecutor when presenting a rape case to make sure that it is intelligible to a jury, to make sure that the evidence is seen for what it is and that cases are tried only on what is heard and seen in court. By its very nature, being a private although very serious offence committed normally in the absence of any external witness, it is probably the most difficult area of criminality in terms of gathering evidence. We can all imagine other areas of criminality where, through CCTV capture, eye witnesses or other means, you can build the case file and a surrounding picture of evidence. In rape cases, it will tend to be by its very nature one person's word against another. There is very little surrounding evidence, subject to forensic evidence, that can be brought to bear.

What that means, as I am trying to explain, is that it is very important that those actually charged with the duty of trying the case, which is never us but always a jury, are given all the help they need to ensure that they try the case on the evidence they are presented with. The judiciary bear a heavy responsibility in giving very clear instruction. Your question may have been inferring the difficulty, the discussion, which I recognise around the so-called rape myths, which are sometimes discussed in the media and elsewhere. We do not recognise rape myths as any basis for judging criminality or assessing evidence.

Every time a jury is sworn in by a Crown court judge, that jury is given instruction on what their function involves. They are told that they must decide the case only on the evidence they see and hear in court. Over time, those instructions sometimes need to be amended and further strengthened in particular classes of cases. We had a rash of cases a few years ago in which people, not necessarily in sexual offences, were surfing the net, going online, looking at Facebook and extracting information from outside the courtroom, which they might have brought to bear inside the courtroom, and individuals were sentenced to imprisonment for that. Very robust instructions are given by judges.

In the field of sexual offences, it is more important than ever that people try cases fairly but only on the evidence they hear. It is absolutely not for



me to dictate how the judiciary run their courts. I know for a fact that very careful and clear instructions are given. Our part is limited to trying to explain in very clear terms what the offence involves, what the evidence is and why we assert that it can satisfy the very high standard that a jury imposes, namely, of being satisfied so that they are sure. Wherever a jury is sure in the category of case you mention of the truth of what the complainant or victim has said in their evidence, that can be sufficient for a guilty verdict, which should be returned in those cases.

Q48 Ellie Reeves: Terrorism cases are very often complex, so when it comes to considering charging decisions and whether to prosecute, they involve a huge amount of work for the CPS. Are they well equipped to cope with that?

Max Hill: The special crime and counter-terrorism division is one of the specialist divisions of the CPS and is dedicated to that area of work. The counter-terrorism division has had its resources increased, and the number of lawyers in the division increased, in recent years to cope with the rising number of terrorism prosecutions. The mix of those cases, which are by no means all related to what are generally known as Islamist terrorist activity, encompasses extreme and far right-wing activity, where our legislation does not distinguish between the two.

When there were the awful events in London and Manchester last year—for example, the Manchester Arena attack—three specialist prosecutors were dispatched, almost literally overnight, from London to Manchester to sit with the police team, under the guidance of the chief constable of Greater Manchester Police, to provide early investigative advice in the context of that investigation. When other terrorist atrocities occurred in London, literally within hours, members of the counter-terrorism division—lawyers in the division—were ascribed to those cases. It provides an excellent service. The resource needs to be kept up, particularly if the number of offences and investigations were to continue to rise. The direct answer to your question is that we are very conscious of the work of the counter-terrorism division and just how valuable it is.

Q49 Ellie Reeves: You mentioned the far right and Islamist terrorists. Statistics from the Home Office show that 41% of Muslims arrested for terrorism offences are charged, but when a person of unknown religion is arrested for terrorism offences, they are charged in only 32% of cases. There is quite a big disparity. Do you think there is a risk of bias or unconscious bias when charging terrorism offences?

Max Hill: There should not be any risk. Speaking for our prosecutors in the counter-terrorism division, they are gender, race, ethnicity and religion blind when it comes to charging advice and bringing cases. There is a statistical imbalance in the number of those from certain backgrounds who find themselves arrested under the terrorism legislation as compared with other areas.



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Also to be borne in mind is the fact that the suite of legislative tools that are used to bring those cases is very mixed. What I mean by that is that many of the most serious terrorism cases are not charged under the Terrorism Acts. Many of them are charged under common law or other general crime statutes. You would need to look below and beyond any headline statistic to get a real picture of the charging that is being applied, particularly when you compare those from an Islamic faith background and those from other or undeclared backgrounds.

The story of the last year to 18 months has shown a very sharp increase not only in the level of detection of extreme right-wing activity but in the level of prosecution. That is a sign of a system that is working and is the opposite of a race or religion bias. I agree, of course, that we need to look at that, but I do not accept on a single statistic that there is any evidence of bias in the system.

Chair: Director, thank you very much. This has been a very comprehensive evidence session. I am grateful to you for your time and for the care you have given to going through the evidence with us. There are some things that we want to follow up, which you very happily said you will take on board. Generally, we have a session on the work of the Crown Prosecution Service about once a year. Hopefully, we will see you at some time in 2019. I am sure that much will happen in between.

I wish you every success in the post, both personally and on behalf of the Committee, and I convey the thanks of the Committee for the work that is done by your staff and colleagues in the Crown Prosecution Service, who carry out a very important public function. We are very grateful for your time and your evidence today. The session is concluded.