

## Justice Committee

### Oral evidence: [Serious Fraud Office](#), HC 1653

Tuesday 18 December 2018

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

Questions 1 - 58

Witness

[I](#): Lisa Osofsky, Director, Serious Fraud Office.

## Examination of witness

Witness: Lisa Osofsky.

**Chair:** Good morning, Director. Thank you very much for coming to give evidence to us and welcome.

Before the questioning, we have to go through the procedure of declaring our interests at the start of each meeting. As you have probably picked up, I am a non-practising barrister and a consultant to a law firm.

**Victoria Prentis:** I am a non-practising barrister and my husband is a judge.

**Ellie Reeves:** I am a non-practising barrister.

Q1 **Chair:** Having got the lawyer fest out of the way—

**Lisa Osofsky:** Is it only the lawyers who need to proclaim conflicts?

**Chair:** I do not think we have any conflicts here.

**Lisa Osofsky:** Wonderful.

Q2 **Chair:** Ms Osofsky, you have been the director for three months now, and congratulations on that. We have had the chance to meet before. Coming from a different background, you have been involved in fraud work in many ways before, both in the public service and the private sector.

Coming to this particular job at the SFO, what are your impressions of the state of the organisation, and do you have a particular set of proposals as of now on directions you might want to change or things you might want to do differently?

**Lisa Osofsky:** First, thank you as well; I appreciate the warm welcome. Thank you very much for being willing to meet in advance so that I knew a little about what was going to happen in our work.

I came to the role looking to bring a more proactive, nimble approach to an organisation that has been around for 30 years. To me, that means investigating and charging at pace, and bringing resolution to cases in real time, when our witnesses still remember what happened, evidence is easier to obtain and we can bring confidence to the public that we are taking care of our business in law enforcement in an expeditious and thorough way.

I have been pleased to see that the people at the SFO are incredibly committed and dedicated. That is clear from the work we have been doing. Could I break it into two areas? Please stop me if I go on longer than you want. I can make it succinct—as much as I can for a barrister. I think some of my colleagues will understand that.

Q3 **Chair:** A bit of an overview would be helpful, and then we will dive into the detail later if we need it.



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**Lisa Osofsky:** Wonderful. Internally, for me, it meant that, for the first 100 days, I spent time looking at all our cases. I really wanted to take stock. If I want to work at pace; I need to learn. What do we have on the books? What are the blockers? How are we working?

I started at a very high level, working with our heads of division, and I realised that that was not going to give me the granularity I needed to understand whether we have the evidence and what the evidence is against each person or corporate we are considering bringing charges against or investigating. I have actually pulled in every case team that we have on our more than 70 cases. I am not quite finished yet. You will hear that the other part of what I have been doing means I am travelling a little bit.

In any event, I am going through all our cases at a granular level. Remember we work in teams of diverse skillsets, so I have been putting our lawyers, investigators and accountants to the test to tell me, "Where are we here? Why has this gone on as long as it has?" or "What is our next step? What is our case strategy?"—really pushing, in a way. You would have thought that maybe people would baulk at that or not appreciate it. As it turns out, the troops appreciate that the director wants to understand their cases at a granular level. It has been good for our corporate culture, as it were, as much as it has been me figuring out what we need to do to deliver the sort of results we need as a serious crime-fighting and prosecution agency.

The other side of what I have been doing is a little more external. I have spent an awful lot of time working with, often, the Americans, because we have a lot of cases going with them. There are so many avenues for co-operation there, including shared use of important intelligence information that, especially in a white-collar case, can really crack open our cases. It helps us work at pace if we can get an insider who can help us understand what the scheme was and what the relevant documents are, and then, when we come to trial, we have someone there to bring it to life. We do not just have a case where the jury looks at mountains of documents and does not have a live witness at the centre.

That has meant a lot of internal time with our case teams and a lot of external time trying to make sure of our relationships. The Americans are easy for me because I used to help run the FBI. I was an AUSA prosecutor in Chicago, I worked at the Department of Justice, and I know some of the other agencies. That is the easy one for me; that is home court for me. We speak the same language in a certain way. Even though I am a British citizen and I have been here for 20 years, they understand, and I understand their system quite well, and we get that.

I have also spent a lot of time in Europe. I have been to South Africa. I have been to Canada to help them open and launch their own SFO. Anywhere we have real interests, where we have cases together or we



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see ourselves as having the same mandates and we need support, I have spent external time.

- Q4 **Chair:** Talking about the mandate, one of the issues that was raised before you became director—it had been talked about long before that—was the position of the SFO as an independent prosecuting body. You stated very clearly that you have the Attorney General's support and commitment to maintaining that independence. Do you regard that as important?

**Lisa Osofsky:** I regard it as extremely important. In fact, it was the first question I asked when I met the former Attorney General, who initially interviewed me for the role. He made a commitment, which has been echoed by the new Attorney General. It is very clear to me that I have a five-year term. I signed a five-year contract. I have been told that every effort is made to support my independence, and that is a hugely important thing for me, because I cannot feel in any way bound by someone else's agenda. I have to do the right thing for my organisation, and I have to have the support of the Attorney General and the Solicitor General as my superintending department behind me.

- Q5 **Chair:** Have you established means by which that relationship of superintendence will work on a practical basis with the Attorney General and the Solicitor General?

**Lisa Osofsky:** Yes. We have changed the document that had been in place from 2009 that set forth some of the terms of reference as to agreement. We have a new ministerial board that is going to meet. We were meant to meet the night of an important vote that Geoffrey Cox had to attend, so we did not have that meeting as scheduled, but we are bound and determined to get it in the diary in the new year.

That sets forth some of the expectations of the superintending law officers and me. It is also done with Max Hill, the director of the CPS. I think the feeling was that we have a new CPS director, a new SFO director and a new Attorney General—let's look again and look afresh at the documents that govern the relationship.

- Q6 **Chair:** That is very helpful. There was talk of a tasking power for the National Crime Agency. I do not think it has been enacted as yet, but you are going to need a relationship with the NCA. How would you characterise how you see that role and your working relationship with the NCA?

**Lisa Osofsky:** It is in my DNA to work with other agencies. It is how I grew up as a federal prosecutor in Chicago. I rarely had a case that did not involve multi-agencies, where we would have an IRS agent who might also be working alongside an FBI agent and a DEA agent, and we would make cases together. That is a very common thing for me, and it feels quite comfortable. That meant for me, early on, that I have not just been seeing external people in other jurisdictions. I have spent a lot of time with our partners across Government. I spend time with Lynne



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Owens. We have a really good working relationship. I am very relaxed about the way I see tasking working.

First, there is an important constitutional protection in that the Home Office and the Attorney General have to agree to a tasking. Secondly, Lynne Owens operates on a level with me where we have an informal relationship as well. The way I would expect it to work in practice is that Lynne Owens, or one of her colleagues, might give me a call and say, "There's something we'd like you to look at. Can you take a look?" Remember, she cannot tell me who to prosecute. She cannot infringe on my independence as a prosecutor. All she can do is suggest lines of investigation that we would be best placed to pursue. She is a smart person; she knows her job. It would be remiss of me not to give that credence and to see it in the piece of all law enforcement working together. That is a very laudable goal, rather than one that worries me in any way, shape or form.

Q7 **Chair:** And you stress, as I think your predecessor, Sir David, did, the fact that, ultimately, the decision to prosecute is yours.

**Lisa Osofsky:** Exactly.

Q8 **Chair:** As far as you are concerned, that must always remain so.

**Lisa Osofsky:** Absolutely, 100%.

Q9 **John Howell:** Can I pick up on one of the points you have just spoken of, which is your independence? There are other organisations that cover similar areas to yours. The Financial Conduct Authority is a good example. To what extent do you work with them and take into account the conclusions they have come to?

**Lisa Osofsky:** That is a great question. First of all, they were my client for the past five years when I served as corporate compliance monitor of HSBC Bank. I reported to the supervision side of the FCA rather than the enforcement side. Here, we would be focusing on the enforcement side.

I have already spent time with Andrew Bailey and Mark Steward to discuss ways we can work together in principle, and, as it turns out, a case that was live as of two months ago has enabled us already to work incredibly closely. It makes sense. When they are worried or concerned about informing the market about something the market needs to know, that is not my mandate or my role. When they are worried about insider trading, that is not my mandate or my role. Mine is different. When I am prosecuting a case of serious fraud and corruption, it is often the fraud angle that can have synergies with the FCA. We are already working very closely on a hot case day to day with the FCA, and we are working well.

It was in my first or second week that I got a call from Mark Steward's secretary saying, "Mark needs to see you right away. He needs to talk to you right away." Of course, I thought, "Oh no. What's gone wrong now? I've just got here." Actually, he wanted to make sure that I knew how



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well we were working with his team. He wanted to second some of his people over to us during the course of the investigation, and wondered if I wanted to do likewise so that we could share our expertise and learn from one another.

- Q10 **John Howell:** Can I move the subject on to a question about your general counsel, who I understand has gone to another firm? That leaves quite a vacancy at the top of the SFO. What implication has that had for you? Basically, who is running the show?

**Lisa Osofsky:** First of all, I am running the show, so that part of it does not worry me in a way. However, I could not agree with you more. Alun Milford was an incredible asset. David Green brought him over; he was his chosen guy. He stayed for six years and he acquitted himself admirably.

Needless to say, we need a good general counsel. I am happy to report the following to the Committee. We have gone out to the market. I decided I did not want it to be done in any way; I wanted it to be done absolutely right, so I engaged the headhunting division of the Cabinet Office. We have gone out to recruit in the market so that we can bring in people from all walks of life. Our recruitment closes on 4 January, and, so far, I can report that I have talked to a QC, two barristers, three senior people in other areas of Government and a private practitioner from a private law firm, all of whom wanted to have a sidebar conversation with me to see whether I might be interested in them. I do that with everybody. I always say yes to them, and I do it fairly to anyone who wants to talk to me. They are great candidates. I think, almost to a person, they would do a fabulous job.

What I am interested in now with my GC, which I do not think was true as much in Alun's day, is that I want my GC to do only case review and case check—quality assurance. I do not want that person managing people. I just don't. I do not want them falling in love with human beings or cases. I want them to have the objectivity that I would expect from counsel at the Bar or another independent observer to check and challenge along the way.

- Q11 **John Howell:** In the gap that you have at the moment, who has picked up the casework that the general counsel was previously doing?

**Lisa Osofsky:** To be fair, we do not really have much of a gap, in that Alun just left; his last day was 29 November. We are going into holiday season and our recruitment closes on 4 January. In the interim, we have very gifted lawyers. The heads of all our divisions are very strong; we are a lawyer-strong organisation. I do not think the SFO could ever be accused of not having a lot of good senior lawyers, so I am not seeing the gap.

We also have the good fortune to rely on counsel in a number of our cases because we seek charging decisions; we have a lot of litigation. We



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are hiring the ranks of my former colleagues at the Bar, who are obviously much more illustrious than I was. I was never a QC. We are able to hire from the best and brightest of the Bar. To date, I do not see a gap and I do not anticipate a gap, in the sense that, as soon as we get back, we are going to close our process, we are going to have a new GC in place and we are going to continue without missing a beat.

**Q12 Victoria Prentis:** Tell us a bit about your managerial experience. The SFO is a large organisation with more than 500 members of staff. Do you have experience of running large organisations?

**Lisa Osofsky:** Thank you for the question. It is helpful to me in that I think that is one of my strong suits. I can share with you that when I was acting as the corporate compliance monitor at HSBC Bank that was just an initial assignment. I was not the court-appointed person; I was the EMEA head because I was here in the UK. I am a qualified barrister, and I was the right person to deal with the FCA and other senior people in HSBC locally.

I was part of a team that helped to build an office—a company—called Exiger, which is a risk-compliance and governance consultancy. When I started, I was the first person in London. By the time we left, we had over 500 people, so a similar size to the SFO, and I did everything, frankly, from washing windows to reviewing all legal documents. I remember someone gave me a lease, and I said, “I’m a criminal lawyer. What do I know about a lease?” They said, “You’re in a start-up. You’re reading the lease.”

I did everything there, including hiring some of the best and the brightest consultants, mostly from the big banks and other organisations where there was an awful lot of familiarity with money laundering sanctions. I knew that area because, again on the managerial side, I had been head of a team at Goldsmith Sachs International here in London, which focused primarily on anti-money laundering. I was the first money laundering reporting officer once the Proceeds of Crime Act passed in 2003. At the FBI, I was the deputy general counsel. We had an organisation of 25,000. I was not responsible for all of them, but we had a very big legal department that was my responsibility.

**Q13 Victoria Prentis:** You have been in post for three months. Would you like to share with us any structural changes that you have made or are thinking of making?

**Lisa Osofsky:** Thank you for pre-asking the question about the GC, because one of the changes was making sure we had a slightly different view of what a GC should be doing in our organisation. I wanted to make sure, to the point about pace and proactive work, that we developed our intelligence side of the house.

A couple of days ago, we appointed a chief of intelligence. Previously we had a chief investigator, who managed all our investigations and focused



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on intelligence. I know from my experience that intelligence can be a huge factor in how we investigate our cases, what sorts of trends we see and what kind of information we are able to access. It did not make sense to me to have someone who was pulled in too many different directions.

I guess, in a nutshell, the idea is to keep people in jobs they can actually do, instead of doing three, four or five jobs as well as they possibly can.

Q14 **Victoria Prentis:** Let your very senior specialists specialise rather than manage all day as well.

**Lisa Osofsky:** Exactly; that is exactly it. Also, in a way, my deputy is our COO, who was doing a lot of our corporate services work. We have just hired externally. Again, we went out to the market. I did not want just to take people I knew who might call in and then go through the civil service exams and our process. We went out to the market and brought in an external person who is an expert in corporate services. I do not want my COO worrying about—

Q15 **Victoria Prentis:** The witness.

**Lisa Osofsky:** Exactly.

Q16 **Victoria Prentis:** But are you a little bit guilty of trying to do both? You said that you had been liaising with people in the States because that is your skillset and background. Do you feel that you are doing too much casework?

**Lisa Osofsky:** Thank you for asking that. I am feeling a little tired, as I just got off a plane again. I understood that, for the first few months, I would be exhausted. When I went to the States, I was there largely to give a presentation to about 1,000 people interested in corruption—foreign corrupt practices. There was a reason for me to go.

When I was liaising with the different officials there, we all agreed that it was our first top-level meeting; the next meeting will be a working group. I have someone in-house now from the US Justice Department who has been seconded to our office. He is working side by side with our prosecutors. Maybe he is happy about it—maybe he is sad about it—but his boss in the US told me that he is incredibly good at organising things. He is organising the next symposium, where we are going to have working- level groups from all of the organisations getting together either in our offices or theirs. It will not be me from now on. I appreciate your question, because I cannot possibly keep up at this rate.

Q17 **Chair:** A lot of it is setting up relationships at the beginning, isn't it?

**Lisa Osofsky:** Exactly.

Q18 **Chair:** And processes; then the spreading of good practice, which you can cascade down.



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**Lisa Osofsky:** Exactly. Because of the background and because we had some cases where there were blockages, I felt it was important to make the effort and to be seen to make the effort initially. I am happy to report that I will not have to keep going back, because I have plenty of work to do here.

**Chair:** Sure, that is understood.

Q19 **Ms Marie Rimmer:** The Serious Fraud Office 2017-18 annual report states that core funding agreed with the Treasury is projected to increase to £54 million, an increase of 45% from last year. Does that mean that the Serious Fraud Office is growing, or is there a rebalancing away from blockbuster funding? Are you familiar with blockbuster funding?

**Lisa Osofsky:** I am. That is a great question. I think it is more the latter. I wish I could say we were growing great guns. In fact, I think it is the latter, which is actually quite good for us. Blockbuster funding meant that we were a little bit hamstrung in how we went about our work. I think of our new system more as a top-up system than a blockbuster system. When I have a case that goes over £2.5 million, I can go back and ask for more, but I do not have to designate a case a blockbuster case.

Q20 **Ms Marie Rimmer:** That blockbuster categorisation has gone completely.

**Lisa Osofsky:** It may be a matter of terminology. I do not want to say that you will not see it in anything you read, but I do want to say that we are not duty-bound to designate a case a blockbuster case to go to the Treasury and say, "This is what we are going to do." The sad feature for us was that we ended up having to hire lots and lots of temps to meet the blockbuster case. The case would be over and we would have all those temps. That does not help me on the next case. The system we have now is much more helpful; we actually get to use our resources where we need them. The people who learn from the big cases transfer their knowledge to the next case, so it is an ideal setting.

I cannot take any credit for it. I say, "Thank you, David Green," every time I go to work because it really suits our purposes, and it is going to allow us to rebalance; it already has. We do not want all temporary staff. We want some permanent hires.

Q21 **Ms Marie Rimmer:** Should you run out of funding for your cases, do you feel that the option is there to go and ask for more?

**Lisa Osofsky:** Yes; it is built into the system, provided it goes over a certain amount—5% of our budget, which is roughly £2.5 million.

Q22 **Ms Marie Rimmer:** That 5% of the budget is still there, but not to do other cases; it is just if you are nearing the end.

**Lisa Osofsky:** Exactly. That is how I understand it.

Q23 **Ms Marie Rimmer:** You have answered the questions, and very much in keeping with the Committee's views.



**Lisa Osofsky:** Thank you; I feel very grateful. I realised I have just thanked David Green. He is probably the wrong person to thank. I should probably be thanking you, so apologies if I have missed anyone out.

**Chair:** Sir David can take the credit, but we do not mind sharing a little bit of it. It is useful that there is a shared view on the right way forward; that is the important thing.

Q24 **Ellie Reeves:** Given that fraud losses are estimated to be about £190 billion a year, what would you say is the net positive financial impact of the Serious Fraud Office?

**Lisa Osofsky:** The money part that we can clock has to do with the money we have brought into the Treasury, largely on the basis of two large deferred prosecution agreements, one against Tesco and one against Rolls-Royce. That means that between April 2014 and March 2017—a three-year period—we were able to add £4.61 million, which is a nice bit of money.<sup>1</sup>

However, I think you are asking something a little different. You are looking at fraud losses. Unless I have answered your question satisfactorily, I cannot help but at least pursue a little the position I find myself in, where I am concerned that we do not quite have the tools we would like in the fraud arena. I look at the delta between how we are able to deal with corruption and what I see down the road for dealing with corporate crime in terms of fraud and other economic crime. It is so vast and so different that I am worried that we will not always be able to pursue the fraud cases we want. We are hamstrung right now by the identification principle: if we do not have the top two, three or four controlling minds in the dock, we cannot hold the corporate liable for fraud and other sorts of economic crime. That is an old law that was developed at a time when two, three or four people ran companies in our country.

Q25 **Chair:** It is a Victorian concept basically, isn't it?

**Lisa Osofsky:** Exactly. I can go after Main Street; I just cannot go after Wall Street, and that is unfair, because we know that there are cases where it is corporate culture, corporate demand for hitting sales targets, for doing away with inconvenient health and safety rules in a certain way, that will often make employees take action. Those employees need to be held accountable and we need to go after those individuals, but we also need to look at the corporate behaviour that led those individuals to perform those acts.

It is not like a narcotics case where guys are driving around in a big Rolls-Royce Corniche. These are often people who have made almost nothing out of their criminal behaviour. They want to hit sales targets, so maybe they get their bonus; maybe they don't. They are doing it for the

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<sup>1</sup> The SFO have clarified that the organisation's net contribution to the Treasury has been of the order of £457m over the 4 year period from April 2014 to March 2018.



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company. The company is benefiting, and that company, if it has hit the criminal culpability range, ought to be held accountable. It ought not only to be the tiny little SMEs run by two, three or four people where you can get the whole board held accountable and in the dock. It is not fair that only they get held accountable for crime in this area and not the big boys.

**Q26 Ellie Reeves:** When you talk about the tools for the job, it is not necessarily about financial tools—the money to pursue the cases; it is about having the right legal framework to do it. Is that right?

**Lisa Osofsky:** One hundred per cent. Thank you for that. I was worried that I was talking too much and not making myself clear.

**Ellie Reeves:** No, it is fascinating.

**Lisa Osofsky:** I appreciate the summary.

**Q27 Ellie Reeves:** There have been criticisms of the SFO in relation to slowness to conclude cases and the length of time cases sometimes take. Does financial pressure play a part or are there other factors? What is your take on that?

**Lisa Osofsky:** That goes back to my sincere desire to speed up the pace but not to forgo quality.

**Q28 Ellie Reeves:** You have talked about that.

**Lisa Osofsky:** I do not think it is financial as much as having the right tools legally that is hugely important. Accessing technology appropriately has helped us immeasurably.

I attended the Attorney General's disclosure summit. I believe we met in this room, actually, about a month ago. I got brought in for a good news story, which was to showcase how well we had used technology to cut through some of the disclosure issues that others in law enforcement face. It is harnessing technology so that we can get through our huge, data-rich cases. It is making sure we have the right laws. It is also using co-operators under SOCPA and other arrangements. We are allowed to do so in this jurisdiction, so we get insiders to help us wade through what can otherwise be a morass of documents.

Those are the kinds of issues I am focusing on right now to move the pace. What you said is probably the biggest criticism I hear when I go out to the defence Bar and the public. I realise it is something we have to do better. There are some things we have no control over. We charge in Southwark and we cannot get listed for another 18 months to two years. That adds two years from when a defendant may be charged and waiting for trial. That is not fair; it is not right. Those are things we cannot do anything about. All our cases are international, so that means I have to go to some very unusual jurisdictions to get evidence. Sometimes it takes a long time. I cannot really control that.<sup>2</sup>



I can try to establish good relationships and try to make things work as smoothly as possible. I realise that there are some things I do not have control over, but I am really trying to focus, with our teams, on the things I do have control over. I do not want cases where we feel that for every single one we must unturn every single stone. We have to figure out how to get focused in a way. At the end of the day, I do not even think it helps, because juries have to make sense of what we present to them. If we present them with years' worth of material, God bless anyone who can follow it appropriately. Those are some of the areas I am focusing on with our team in the case conferences I mentioned at the start.

**Ellie Reeves:** Thank you; that is really helpful.

**Q29 David Hanson:** Can we turn to Europe? We all have personal views on Brexit, but I am interested in your professional view. In the SFO's latest annual report a sentence that struck me was about "a loss of EU measures and tools arising from Brexit leading to an adverse effect on investigations and prosecutions." Could you talk us through your assessment of where we are currently in terms of risk and activity?

**Lisa Osofsky:** Yes. For the vast majority of our cases—the ones that reach way beyond the 27 countries—it will have no impact whatsoever. We are not always dealing with Europe. In fact, it is not necessarily the majority of our casework, so I put those to one side.

I am not going to disagree with our report. However, my response may be a little more optimistic in the following sense. We have been doing multi-jurisdictional cases since the start of the organisation 30 years ago. I was a secondee to the SFO, sent by Bob Mueller, who was running the Justice Department at the time, to work on BCCI. I was at the other end of the good relations between different countries. We have been working well across borders for a long time. That good work is not going to change, I believe. Law enforcement is often very united against the bad guys, and that work will not change.

To your point that now we may have a different regime and how will it impact us, in fact there will be tools that we cannot use. For example, a year ago we got the European investigation order. It has only been there a year, but it sounded like a great idea. We have actually used it, and it is a good tool.

Remember we are operational. We are not the policy makers. We are going to work with what we have, and if we have to revert to multilateral arrangements, multilateral ways of exchanging information, or bilateral agreements that we have in place—

**Q30 David Hanson:** Can you tell us what happened with the European

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<sup>2</sup> The SFO have clarified that it takes 18 months for a case to be listed at Southwark Court, rather than 18 months to 2 years.



investigation order in relation to the usage you made of it?

**Lisa Osofsky:** Sure. It enabled us to work as a team with another country and to follow a less formal path to reaching in and getting evidence. That is true with some of our other tools.

Q31 **David Hanson:** What will it mean if we are not a party to that post March?

**Lisa Osofsky:** I do not have a crystal ball. I do not know exactly what is going to be put in place. Figuring out what is there will have a resource strain. Let's all agree to that. If there is a change, we will have to figure out what it is. It is going to take time, manpower, womanpower and money to figure it all out. That tool is a very recent tool, so, if we do not have it, that does not really worry me as much.

Q32 **David Hanson:** Let's look at some others. What about the European arrest warrant? You must use that significantly.

**Lisa Osofsky:** We use it. Not all countries that have signed up to it use it. In the past couple of years, France and Germany decided that they were not going to abide by the European arrest warrant. I am not saying that is always the case. The signatories to some multilateral arrangements uphold their side of the bargain, but not uniformly so.<sup>3</sup>

Will it make a change for us? Yes, it will make a change for us. Will it make a huge change for us? Different countries have arranged different things. For example, certain jurisdictions never signed up to the investigation warrant. What do we do? We fall back on MLAs, our treaty arrangements. They are often slower and a little more cumbersome. We are all going to have to accept that it may take a little bit longer to do our jobs, but we will work with anything we have. We are motivated, and many of our colleagues are motivated, to get at the real problems. We are pretty united when we work together. Remember our cases. The good side to having long-term cases means that we have often worked in joint taskforces with other agents and prosecutors for years. I do not think that is going to change overnight. We will still be motivated to conclude our cases.

Q33 **David Hanson:** I am sure you will be motivated to conclude your cases. If in two years' time we do not have clarity on things like the European arrest warrant and you need to bring an individual back to the UK, I am interested in whether you can do that.

**Lisa Osofsky:** I hope there are ways to work with what we have. We do not extradite a lot of people. Extradition per se is not our bread and butter work and it is not typical of what we do. In terms of what worries me, that might be less concerning. I would like to think that we could be a little creative. Let's say we hit a block around dual criminality. A

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<sup>3</sup> The SFO have clarified that France and Germany could not execute certain SFO issued European arrest warrants for legitimate reasons under the framework decision.



country says, "You need this crime and you need that crime or else we can't play ball." Oftentimes, prosecutors have a range of crimes to choose from. If we are all minded to work together, I would like to think that we will find the kind of crime that is colourable, not going outside the bounds of the law, where we can work together. If I am realistic, will we always find that? I don't really know. I have no way of knowing.

- Q34 **David Hanson:** Let's look at information exchange. Do you think we have clarity at the moment for you in a professional capacity on what happens with the European Criminal Records Information System or the Schengen Information System—SIS II—post 29 March up to whatever backstop date we have currently determined? Is there clarity?

**Lisa Osofsky:** I would love to say that there is clarity. I echo the views of most of our country now in saying that there is a certain amount of uncertainty.

- Q35 **David Hanson:** What does it mean to you? What does it mean to you today, on 18 December, not knowing whether you can access those information systems to exchange information and access records on 29 March next year and beyond?

**Lisa Osofsky:** I am old enough and I have worked in this area long enough—I played a similar role at the US Justice Department—to remember the days when we worked solely with mutual legal assistance treaties and across bilateral relations. I think we are going to be able to get at what we need. I am not confident that it will move with the same speed that it does now.

- Q36 **David Hanson:** I do not want to paraphrase you. You are saying that it will not be as effective post 29 March as you think it is now.

**Lisa Osofsky:** To be honest, I do not know. I hope we will come up with solutions that work for us at the operational level, but I do not know. I know what I have experienced before, which was a different system, where it took longer in many instances than it does now.

- Q37 **David Hanson:** What planning and preparation are you undertaking in the event of none of those deals happening? There is an element of risk that on 29 March there is no PM deal or any other deal and there is a cliff edge. I have a personal view on that, but it is still a cliff edge, so what does that mean for the SFO?

**Lisa Osofsky:** We have been planning for our focus lately, from what we read and know about; it has been what we do in the event of a no-deal scenario. We have figured out the sorts of resources we think we might need, knowing that we do not have the clarity and certainty that anybody would like. We think we will need a range of legal skills, especially, to figure out what the new landscape looks like, what the new rules are, how we will embed them and how we will work with them.

- Q38 **David Hanson:** What is the ballpark figure on that, roughly?



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**Lisa Osofsky:** I would like to come back to you with the absolute facts. When last briefed on this in anticipation of this meeting, it was an extra six lawyers to help us negotiate and figure out the new landscape and how we are going to work with it. What do six lawyers cost?

- Q39 **David Hanson:** With all of that, you are saying that at the moment there is the potential for additional costs and work under a no deal, there is a lack of clarity on a deal and there are still uncertainties around the usage of a range of current European tools post 29 March. Have you told Ministers? Have you explained the consequences? If you have, what has been the response?

**Lisa Osofsky:** I am not a policy person. I am not in charge of policies. My job is a very much lower level operational job.

- Q40 **David Hanson:** As director of the SFO, it is your job to say to a Minister—some people in this room have been in that position in the past—“This is a risk, Minister. These are my contingency plans. This is what is going to happen.”

**Lisa Osofsky:** Sure. I have done that.

- Q41 **David Hanson:** I am interested in what, of all the things you have said publicly to us today, has gone to Ministers. What have Ministers said when they received that, and how have their actions impacted on anything you are now planning for the future?

**Lisa Osofsky:** I am in a number of working groups across Government that focus on economic crime. We are all aware of the Brexit world in the background. In our agency, we input the sort of information we can provide about the kinds of resources we think we might need in the event of no deal, and we clarify to others who do not necessarily have the kind of international cases we have the sorts of tools we used to use before we were in the EU. We are sharing a lot of our operational information with those around us so that they understand the landscape. I am frequently asked to provide education about the kinds of tools we use and how they work, including what happened before. That is the more operational level I am asked to feed into.

- Q42 **Chair:** Your professional assessment is that it will be slower, and it is clunkier to rely on treaties, letters of request and that sort of thing than that which we have at the moment.

**Lisa Osofsky:** Exactly.

- Q43 **David Hanson:** Outside the 27, you mentioned that there is a significant amount of work with others. Are there any risks, improvements in the relationships required or difficulties with other countries that you want to put on the table for the Committee today?

**Lisa Osofsky:** I would like to say that the ones I identified are gone. There were some issues in one country in particular that I knew were going to be important to work around. We have worked around them. We



are now sharing information beautifully. In the second week I arrived at the SFO, I brought in a team of FBI agents and senior people from the US Department of Justice, including the No. 3, a man called Brian Benczkowski, who heads the criminal division there. He came with his deputy, the head of the fraud section that does all the anti-corruption work, which is near and dear to our hearts at the SFO, as well as the person who manages all the fraud cases. I understood that there was an issue.

I brought them in, we had a summit or a discussion, we have moved on and things are working so beautifully that, as of last week, I can report that at our director's holiday party, which I sponsored out of my own pocket, I might add—no more expense accounts from the private practice; I know that it is my shout—I had a team who said, "This is great. At that meeting you walked in on the other day where we had a very senior guy from the IRS, we started talking." The Internal Revenue Service in the US is like our tax authorities. It turned out that he had flipped a defendant we have been looking at for four years; he turned Queen's evidence. My case just got solved. I already have my defendant working as a co-operator in the US, and as part of that deal he is going to come and work with us, so I am done with our case.

I have some very good news stories on that. It is not just the US. I have also spent time in France with a joint taskforce on anti-corruption work, and in other places where, I am happy to report, anything I saw as a blocker is no longer a blocker. I promise that I will be back before you telling you that there are more blockers. These things are inevitable. They were certainly true in BCCI, in the good old days, 25 years ago, and I am sure they will rear their ugly heads. I hope I am the right person to work with those issues and bring us over them.

**Q44 Victoria Prentis:** I am not asking for exact science but, vaguely, which states around the world are the most important for your work proportionately? What proportion of your work is done with the USA and what proportion with the EU?

**Lisa Osofsky:** Sure. One of the ones I can talk about is Rolls-Royce, which is a great news story, where it is us, the US and Brazil, hand in hand, with a very big settlement. Everybody is working together seamlessly. The US is a very important partner for us for a number of reasons, which I will not bore you with. They had their corruption law 40 years ago and we have just got ours. By the same token, we had our corruption law and our DPAs before France, Argentina and Canada, so we are able to work with them and tell them how to work with those tools. It works both ways. Proportionally, I do not have a good answer for you. It would be hazarding a guess. If I could beg your indulgence, I would like to get back to you with some more granularity on exactly how it shakes out.

**Q45 Chair:** That is fine. We are very happy for you to follow up with a letter about any of the specifics that you want to add more to.



**Lisa Osofsky:** Thank you very much. I have tried to give you an anecdotal framework, but I am sure we can back it with statistics.

**Chair:** Understood.

Q46 **Janet Daby:** Good morning. This question is slightly different, but you have been answering it already in what you have been speaking about. It is very much about technology. You mentioned that you have a high data reach of cases, and you seemed quite excited about some of the things you have been doing around technology. Some of this will probably just be clarification and any more information you can give me. It is just to get a feeling.

In June, we had the information that you were processing in excess of 6 million documents on average a month. Is that still the high level of documents you receive, around 6 million a month? Would you tell me a bit about your ability to analyse and review that information and to keep up to speed with it?

**Lisa Osofsky:** That is a really good question. It is a big challenge for us because we get so much paper. Our average case comprises 10 million documents, just to give you a feel for it. That was the Panama papers. Every one of our cases at least hits the Panama papers threshold, and some have more like 100 million. We have to be mindful of getting through a lot of material.

One of the things I have been pleased about is that we have been very disciplined about bringing our technology people to our searches on site so that they can tell our search teams, "Don't take those thousands of laptops or other devices when you can extract what you really want from a WhatsApp conversation," because these are criminals who we know are on WhatsApp. They are helping our search teams extract what we need rather than throwing everything in the truck, loading it up in front of our technologists and telling them to get through it. Some of it we can do ourselves by being smart about what we seize. We cannot totally control that, and sometimes there are difficult devices to crack. That is our challenge as well.

One of the greatest things we have been able to do is to use what has been termed our SFO robot. I do not know if that is a new phrase to you. We have been able to use a robot to go through documents for legal professional privilege. I can talk about one example, the Rolls-Royce case. The reason why it was important is that, in that case, we had 30 million documents, and we could not hand over documents to the case team until we were sure we were not handing over privileged materials.

We initially started with barristers and counsel going through the documents in the way we always do. After two and a half years, they had been through 2.9 million documents of 30 million. I am not strong in maths, but even my maths said that it would be years and years before we ever got to the case. It was a negotiated arrangement, not a contested trial by that point; Rolls-Royce had agreed to work with us,



under the terms of a DPA, a deferred prosecution agreement. We used our LPP—legal professional privilege—robot to go through the rest of the documents. Within one month we went through 5 million. That meant we could release the documents to the case team and the case team could get to work.

That is an example I can talk about of the ways we are using technology to move our cases along. The issue there is that it was an agreed case. It would be for the defence to challenge the use of technology in certain cases. Needless to say, the lawyers in the room will recognise that a lot of these techniques are already used in the civil context. It is just in the criminal context where we face a bit more persuasion.

**Q47 Chair:** You need to collaborate on an agreement of search terms, for example.

**Lisa Osofsky:** Exactly, and on the use of artificial intelligence to extract just what is relevant. We are working on that. We have technologists in place to focus on it and get better at it. We will need more judicial buy-in. I was heartened to see Brian Leveson note in the Amazon case something like, “Technology got us into this. Technology needs to get us out.” We are even hearing from senior members of the judiciary that we have to be smart in using technology appropriately.

**Q48 Janet Daby:** A more negative side is the fact that the Committee published a report earlier this year that concluded that there are long-term failings in the disclosure of evidence in criminal cases. What lessons have you learned from that, and how are you moving forward?

**Lisa Osofsky:** You will be aware that the SFO was not as much the focus of those findings because we find ourselves in a unique position. We are not getting materials handed off from another agency. We are the investigators and the prosecutors. My investigator is sitting next to me. It is not that the police are putting together a case and bringing it to me; we are all developing the evidence together, so we do not find that we face the same sort of gap in turning over information. That is why we did not feature as the focus of that report.

When we met the Attorney General and the Solicitor General about a month ago to hear the Attorney General’s findings on disclosure, it was a happier story for me. I was there to talk about using technology effectively. Because our cases are so big, we have been using some of the tools they are now asking others to use, such as document management systems, which put disclosure first and foremost. We have to do that because we know that we have huge data issues in our cases. It was nice to go to a meeting and be seen as someone who had been doing some things right. I do not think it is because I am brilliant—I was not in post—so I am taking credit for other people’s work and some of the input of your Committee and others. By necessity, we have had to be smart about those things and very proactive about how we map out our disclosure. Some of the most aggressive lawyers are on the other side of



our cases, and, boy, are we held to the task. We have really had to apply ourselves to those areas for quite some time.

- Q49 **Janet Daby:** This month a high-profile case was ruled by the judge as too weak to be put to the jury. I do not need to know any of the details of the case, as we cannot discuss any of that, but what are you doing to ensure that cases you bring are as strong as possible? You have already answered the question somewhat, but is there anything you can add?

**Lisa Osofsky:** That is a fair question. Obviously, there are reporting restrictions right now with that case, so I cannot be as forthcoming as I would like to be. Maybe next time we meet I will be able to talk more freely about it, when reporting restrictions have lifted. Just so you know, the judge said that the case was too weak at half-time to go to the jury, so it never reached the jury. It was a retrial of a case where the exact same case was presented and it was allowed to go beyond the halfway mark. At the time, another judge, the senior judge at Southwark Crown court, thought at half-time that the case was strong enough to withstand the challenges and could make it to the jury. In fact, it did not make it; someone had a health issue and the case had to be stopped. It was retried. A different judge found differently. He found that the evidence was not strong enough.

What do I take from that? I take what I hear from every judge very seriously; they are senior members of the judiciary and they serve a function by telling me something about my work as a prosecutor. I have to listen. That case was a harder one to decipher because we had two different views of the evidence. One said it was good enough and the other said it was not. That means we have to go back and do the kind of forensic examination that I am trying to do with our case controller teams to figure out what was missing. Even if it is one judge and not another judge, why did that judge find that? Where could we have done better? In such cases, and in that particular case, it would be way beyond my remit to talk more until the restrictions lift. Then I would like to be able to give you a full, open and transparent answer.

- Q50 **Janet Daby:** You are obviously analysing, evaluating and seeing how you can improve or take things forward in some aspects, as you say that you are doing.

**Lisa Osofsky:** Absolutely. I have had a compliance background, not just a legal background. That means I have used auditors to great effect to kick the tyres. I ask myself, again and again, "How can we get better? What do we need? How do we have quality assurance at every phase of our investigations?"

- Q51 **John Howell:** Can I move you on to deferred prosecution agreements? They are seen by some as being the ability of organisations to evade criminal charges for criminal activity. What is your approach to them? How many have you signed and how are you using them?



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**Lisa Osofsky:** I have not signed any yet, but our office has signed some. So far there have been four. One has to do with fraud and the three others have to do with corruption. As a prosecutor, my job is to look at the evidence and determine where the evidence leads us. It is not to have a favourite tool to use. I do not intend to favour a DPA over the prosecution of individuals. I have to look at the evidence and see where I have jurisdiction, where I have the evidence, where I need the threshold standard and then the evidential standard.

If we focus solely on DPAs, because I think you want me to talk a little bit about my belief on them, I have seen them work as a unique tool in the following sense. They can help raise the bar for long-term sustainable corporate culture, because, under our law, the defence to our failure to prevent offence is that they have adequate procedures. In corruption, where the failure to prevent exists, it is a strict liability offence, meaning that the company has done it, unless they have the defence that they have adequate procedures in place to prevent bribery.

Q52 **John Howell:** May I interrupt you? I want to pick up on something you said. You said you had seen them in action. Is that in the US or in the UK? How would you see the difference between the two?

**Lisa Osofsky:** The one under which I worked was joint; the FCA, the US Department of Justice and the Federal Reserve Board were all regulators and prosecutors behind the HSBC DPA on which I worked for the past five years, before my current role in the Serious Fraud Office. There was input from both Governments. A nice feature of some of these agreements is that they allow multi-jurisdictional input.

They are different in the US versus here. In the US, you do not need a judge overseeing them. That is the key feature and difference. Here Sir Brian Leveson has presided over all the DPAs we have had in place. It is meant to be a more transparent process. We initially evaluate the public interest when we determine whether we are going to invite a company to talk to us about a DPA. Then he will do a public and searching analysis of whether the public interest factors are met to make a DPA appropriate in a particular case.

Again, I do not want to bore you with all the different details, but in the US they have a tool called an NPA, a non-prosecution agreement. We do not have that here. There are differences. The big one is how much judicial involvement we have. In the UK, we have quite a bit. In the US, we can have circumstances where there are court-appointed monitors, as we were in HSBC, but there are other situations where you do not necessarily have a lot of judicial involvement, especially in the early phases, in the way we do in the UK.

Q53 **John Howell:** How are you going to use DPAs? What are the criteria against which you judge them?

**Lisa Osofsky:** At the outset, I have to decide whether there is evidence of a crime or whether there might be evidence of a crime. We look at



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whether the full evidential test is met or whether there is a slight variant under the DPA code that allows me to look at whether I think, over time and investigation, the full code would be met. Our initial phase is the evidence part.

Then we look at the public interest factors, which include things like whether we have a recidivist on our hands or whether it is a one-off problem. Have they cleaned house with the board or do they have all the people we think did something wrong still running the show? Have they put in place adequate procedures to guard against this in the future, or are they just hoping it is all going to go away, and they can conduct business the way they always did and act like they are immune from the law? Those are the kinds of features.

In the Rolls-Royce case, Judge Leveson made a very public statement on whether it would harm the shareholders and the country. That is a fair thing for the judge to ask at the end of the day. For my purposes, I am also very interested in whether the company is co-operating with me. I am not interested in a company telling me to go away, and that they are not going to give me anything, and then thinking that they will get a DPA. That is not going to happen on my watch.

Q54 **Chair:** There has to be acceptance of liability, hasn't there, at the end of the day?

**Lisa Osofsky:** Exactly. There has to be a little bit of accountability, remorse and making things better. The goal of the tool is to end up with better corporate governance at the end of the day. It has worked for us. In the corruption space, I would like to see change whereby companies have to get in place processes and procedures around their anti-corruption efforts. That is their defence. If they do something wrong, and we all know things can go wrong, it has been really heartening as a former compliance officer and prosecutor to see how much it has moved our corporates. It is absolutely critical that we hold the rest of the corporate world to account in the same way, not just on the corruption side but on the fraud side.

Q55 **Chair:** That is very helpful. You have talked about the relationships that you have been building since you have been in post. You mentioned that you have met the new Director of Public Prosecutions, Max Hill, and others, so obviously you have a satisfactory working relationship established with him.

**Lisa Osofsky:** Yes.

Q56 **Chair:** One thing that sometimes is raised is the thought that, although the SFO is tasked up and a specialist in dealing with very serious fraud, and the CPS is dealing with other types of fraud, some of which will go to their fraud unit, some types of fraud fall through the gaps in the system. Have you looked at the way even the smaller types of economic crime, which do not have the reputational damage for UK plc that your types of



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cases can have, can do damage to individuals, communities or businesses? Are all of you satisfied that there are adequate means of making sure that any economic crime, whatever the monetary value, is prosecuted at the appropriate level? Is there a system for making sure that that happens?

**Lisa Osofsky:** You have asked me a great question. I am so pleased I am not responsible for making sure that all economic crime and all fraud gets prosecuted. In an ideal world, of course, that is the case. Yet my remit is fairly narrow, as you say. I would like to think it is important, but it does not mean being responsible for making sure that every bit of fraud gets prosecuted.

I believe I have a good news story that happened on my watch after I hosted the FBI and others. The next day we had a big win in a case involving solar panels that were sold around Liverpool and various other regions in the United Kingdom. It was a case where each sterling loss was between £10,000 and £15,000. We had 1,500 victims. The total was more SFO quality, so it was closer to £17 million. We were able to prosecute that case. That is the kind of case I can feel great about because so many vulnerable pensioners and others had lost their life savings.

Why did we do it? The ROCUs, the regional organised crime units, did not have the resource and they could not treat each individual case as big enough for them, but collectively, with our remit, our specialist skills and our ability to work with all the victims—we have a fabulous victim-witness care area, where we have really upskilled—we were able to get out to a different jurisdiction. We were not in London where many of our cases are, and we were able to make sure that the bad guys went down, and they got significant prison terms. Where we can do that, where each of the events is not worth £20 million but they are worth that collectively and there is a reason to bring in our specialist skills, I shall be looking with great interest to make sure that we go after those cases. That is very important to me going into my new term.

Q57 **Chair:** That is very helpful. Fraud is not just about financial instruments.

**Lisa Osofsky:** Exactly.

Q58 **Chair:** Director, thank you very much for your time and for your very frank and helpful evidence to us. I am grateful to you. We wish you well in your tenure of office and look forward to seeing you again in front of the Committee on future occasions.

**Lisa Osofsky:** Thank you so much. I appreciate your questions and your kind attention. We will get back to you with the additional information.

**Chair:** Thank you very much indeed. It is much appreciated.