

Justice Committee

Oral evidence: [The work of the Attorney General](#),
HC 1887

Wednesday 23 January 2019

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Members present: Robert Neill (Chair); Mrs Kemi Badenoch; Bambos Charalambous; Janet Daby; David Hanson; Gavin Newlands; Victoria Prentis; Ellie Reeves; Ms Marie Rimmer.

Questions 1 - 47

Witness

[I](#): Rt Hon Geoffrey Cox QC MP, Attorney General.

Written evidence from witnesses:

– [Add names of witnesses and hyperlink to submissions]

Examination of witness

Witness: Rt Hon Geoffrey Cox QC MP.

Q1 **Chair:** Good morning, Mr Attorney General, and welcome.

The Attorney General: Thank you.

Q2 **Chair:** Thank you very much for coming to give evidence to us comparatively soon after your appointment, and congratulations.

The Attorney General: Thank you very much, Chair. I am delighted to be here. This is the first opportunity that I have had to be grilled by any Committee. I expect fully to be grilled on both sides this morning. I am at your disposal. How would you like to proceed?

Chair: First, we have to deal with some formalities that we always have at Select Committees, which are the declarations of interest. As you know, I am a non-practising barrister and a consultant to a law firm.

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

Ellie Reeves: I am a non-practising barrister.

Chair: That was a dramatic entrance.

The Attorney General: Beautifully done, if I may say so. Brilliant timing.

Q3 **Chair:** Can we start in this way? You have been here for roughly six months. It may seem shorter at times, with the pace of things. Have you worked out what you see as the key priorities for your role? I know there is one issue that clouds a great deal of it, but there are other roles as well. Can you give us a sense of how you see that?

The Attorney General: I did indeed have a set of priorities within a few weeks of coming into office; you are absolutely right, Chair. Of course, my abiding preoccupation, I am afraid, has been the necessity of studying and to get to grips with the implications of our departure from the European Union, particularly the withdrawal agreement, in all its 585 pages, and the various complex and quite profound implications of our departure in other respects, outside the withdrawal agreement.

I said, "I am afraid." It is an enormously interesting and stimulating challenge to be getting to grips at this level of detail with areas of great importance, but that has had an impact in relation to my ministerial duties. Of course, the Attorney General's role is divided into several functions, or hats, as we call them in the AGO. The first is that I am the Government's chief legal adviser. In the last six months, that has assumed even more prominence than usual. The Attorney General also has ministerial responsibilities.

Chair: Indeed.



The Attorney General: In connection with those ministerial responsibilities, as you know, Chair, and as the Committee knows very well, when I was appointed there was a live, burning and topical issue connected with disclosure of unused material in criminal cases. Having been at the Bar, and having spent a great part of my time in criminal practice, I was acutely conscious that that was an issue with which I would need to grapple. I deliberately paused the publication of my predecessor's review so that I could examine it myself, make an individual contribution to it and ensure that we were on the right track. One of my first priorities was to grip the issue of disclosure. I am extremely grateful to this Committee, as I am to many other component parts of the criminal justice system, for attacking the problem with the energy and verve that it requires.

That was a major priority. Secondly, as you know, I was more than conscious that matters connected with the administration of justice are rarely isolatable to a single compartment. The system of justice that we have is a moving machine, composed of different cogs, wheels, springs and levers, and each depends on the other. It is increasingly clear to me, not only because of the window into its operation that I have had in private practice, but as a result of grappling with the disclosure problem at a detailed level, that we need greater co-ordination within our criminal justice system between its component parts.

The Crown Prosecution Service and the Serious Fraud Office are the sponsored departments for which I have responsibility. One of the things on which this Committee specifically laid down the gauntlet to the Attorney General was, "How are you going to ensure the effective performance of the Crown Prosecution Service in connection with matters like disclosure?" Of course, there are many other matters, which, no doubt, we will want to discuss.

What I decided to do, building on embryonic work that was already being done in the Attorney General's Office, was to introduce new systems of governance within the general umbrella of superintendence. I have written to you briefly on those matters already. This is a very significant new departure. I am delighted to say that it is brilliantly timed, not because of my arrival, but because of the arrival of two excellent directors, from whom the Committee has already had a chance to take evidence.

Chair: We have.

The Attorney General: We have agreed new framework documents, with new systems of governance that effectively mean that I, as the Attorney General, and future Attorneys General will be able to be more effective in holding those organisations to account and, just as importantly, in giving them the support they need from Government. That was a second priority, but an overlapping one. I see all of these things as a question of making more efficient and effective the Attorney General's contribution to the administration of justice.



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More broadly, as you and many of those around this table know from a lifetime's experience in the administration of justice, we need to tackle problems that exist in the administration of justice. I have regular consultations and meetings with the Lord Chancellor and with all aspects and parts of the judiciary. If I set myself a long-term objective, it is that we should introduce a greater element of co-ordination between the elements and components of the system.

That is a very broad-brush view of where I got to within a few months of office, but I have to say that the No. 1 advisory role has tended to consume most of my time.

Q4 Chair: We understand that. We will drill down into some of the detail later, but can I make one point? You have alluded to it, actually. Although you are a long-standing Member of the House, you are the first Attorney General for some time to come to the role directly from active practice at the Bar. Does that give some different perspective to the role? You might not have been a Minister before, but that often happens; on the other hand, you were in active practice until recently. Does that give you a different perspective on the role? If so, what is it, and how do you apply it?

The Attorney General: It gives me a specific perspective; I am not sure that it gives me a superior perspective. Let me be candid. The difficulty I face is that, when one comes into Government for the first time, not having been in Government, the Whitehall labyrinth is something one has to pick up fairly quickly. It has its own lore—rather than law—and one has to acquire it pretty quickly. One needs to understand that if one is going to get things done, that is an aspect of the role of any Minister that one needs to seize, so there is a disadvantage.

The advantage, as you anticipated I might say, is that, because I have had immediate, senior experience in practice and many years in the law, it is not an uncommon experience for me to have to seize very quickly very complex areas of the law and, often, make very rapid judgments in connection with them. There is a risk in making a rapid judgment in any field, particularly the law. If you have been able after, in my case, 36 years of practice to receive at least a degree of training in the making of judgments, and making them relatively speedily, it helps, because some of them are acutely difficult, exquisitely sensitive and have far-reaching consequences. Seniority and experience lend a degree of confidence, particularly to one's colleagues, when often you have to advise rapidly and in fast-evolving events.

Chair: I understand that. That brings me to Mr Hanson and some of the constitutional roles that you carry out.

Q5 David Hanson: Good morning, Attorney General. You sit in Cabinet by invitation. I want to get a sense of what your understanding of that is. Your predecessor said that they went to every Cabinet meeting and that it was never rescinded. I want to get a sense of whether you are



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attending by invitation or whether you are now, effectively, a member of the Cabinet.

The Attorney General: The formal position when I was appointed, which I believe applied to recent predecessors as well, is that you attend Cabinet. The expectation now, although it has been a varying practice over the years, is that you will attend each and every Cabinet, but although you are of Cabinet rank, you are not formally a member of the Cabinet.

Q6 **David Hanson:** How many Cabinet Sub-Committees do you sit on?

The Attorney General: You challenge me, David. They are numerous. I sit on the National Security Council, the European Union departure preparedness committee and numerous others. In six months, I am not sure that I have even attended all of them, because of the preoccupations that I described.

I see—I hope not wrongly—where the burden of your question is going; it is to describe the proper relationship between the Attorney General and the Cabinet. Of course, the purist view would be that he attended by invitation and then got up quietly and removed himself from Cabinet discussion. That is certainly one view of the Attorney General's role. Equally, in the 1920s, for example, the Attorney General was a full member of the Cabinet.

The most important thing for the Attorney General to do is to make certain that, in fulfilling the different aspects of his role, he knows precisely the principles that should apply. Of course, when I am dealing with a quasi-judicial function, I must ensure that there is no political aspect to my consideration of that in any way.

Q7 **David Hanson:** You also have a ministerial role in Government.

The Attorney General: I do.

Q8 **David Hanson:** You have departmental responsibilities that, for example, attract financial responsibilities and political judgments. On 5 December, you said to the House of Commons that it "is necessary that the public has confidence in the ability of Government and Parliament to work together at a time of national decision-making of the most profound significance." Do your ministerial and departmental responsibilities have any conflict with your legal advice responsibilities?

The Attorney General: For the reasons I have given, I think that Attorneys General have always observed the very clear dividing lines between their function as legal adviser, their function as quasi-judicial officer in taking decisions connected with the administration of justice, and their political and ministerial functions. I have known, as you have, excellent Attorneys General of both parties. I have never heard it once said that an Attorney General, in exercising his quasi-judicial functions, had been wrongly influenced by political considerations.



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Q9 **David Hanson:** I am referring just to this case. This is not a reflection on you; it is part of the challenge we have at the moment, with a minority Government in the House of Commons who do not have a majority on a number of opinions. You are the chief legal adviser to Parliament, as well as a political appointment of the Prime Minister. We had this discussion before Christmas and recently. I want to get a sense, in this more informal setting, of how you see that role. Ultimately, you are beholden for your job to the Prime Minister.

The Attorney General: I am, but as Attorney General, and as a lawyer of 36 years' standing, it would never occur to me, nor, I think, to any Attorney General, to compromise one's legal judgment on political lines. I have given my views absolutely down the line in relation to legal matters. I was asked to come to the House by the Prime Minister in order to advise the House. If I am advising anybody, whether it be the House or the Cabinet, I would be no lawyer at all if I allowed my private or political view to obtrude into my legal judgment.

Q10 **David Hanson:** What the House will want to know is, is the advice to the House on a particular issue the same as the advice to the Government?

The Attorney General: If I am asked to advise by the House, I will give no different assessment of the legal position from that which I would give anybody who properly commissioned me to give it. There would be simply no basis for me to do that; nor, indeed, would it be consistent with my professional training and values.

Q11 **David Hanson:** We had a little debate and discourse around the publication of the advice you gave the Government on Northern Ireland and the border. Ultimately, for a range of reasons we do not need to go into, that was published on 14 January. How do you see that in relation to future precedent? Is it a one-off, because the House demanded it? If the House asked again on another matter in the future, would you potentially have arguments similar to those that you put in the Northern Ireland discussions? For clarity for the public, the House and the Government, and for your own clarity and sanity, I want to get a sense of where the border actually falls in relation to your public and private advice.

The Attorney General: Let me see whether I can tackle the first issue. I believe that the Law Officers' convention, which is akin to legal professional privilege, is a crucial constitutional principle. It is vital. The more complex, controversial and sensitive the issue, the more vital it is that the Attorney General should be able to give confidential advice to the Prime Minister, the Cabinet and the Government.

If you think about it, the Attorney General, by definition, tends to give advice only in exceptional circumstances. The more exquisitely sensitive and controversial they are, the more important it is that his advice should be candid, frank and targeted. One of the advantages that he has from sitting in the Cabinet is that he knows which issues his colleagues are



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struggling with, which issues have to be accentuated and emphasised to drive home the point, and which points are not necessarily so important.

That advice, which is particularly focused and targeted on the need of the moment, will, because it is designed for that moment, sometimes be given in a particular manner. At another time, when there were different priorities and understandings, he might have expressed himself differently. If the Attorney General now has to consider, every time, whether or not his advice will be put up on a 24-hour rolling news programme and pulled apart in a 45-second analysis, without the nuance, the context and the bits that were not in bold, and with only the bits in bold accentuated, he will have to consider how he expresses himself in future.

Q12 David Hanson: For clarity, while there may be verbal discussions around the advice, is all the advice that you give ultimately on paper and recorded?

The Attorney General: By no means. I would not necessarily say that the nature of the Attorney General's role is such that he can be called on at 3 o'clock in the morning, but I have had requests very late at night. By no means will all of it be recorded in writing. When it is recorded in writing, it is often on a discrete and specific point.

Q13 David Hanson: Presumably, even the advice that you give in the 3 o'clock phone call, which I have had, although at the recipient end of the Attorney General's advice, is recorded by a private secretary.

The Attorney General: Yes. It is likely to be passed on via email or through the—

Q14 David Hanson: I am just trying to get a sense of the exceptional circumstance of 14 January, and the debate and vote in the Commons. Without talking about the nuances and the political implications of that, is it, ultimately, a precedent for your advice, verbal or written, via a private secretary or through a formal note, to be published?

The Attorney General: No. I would argue that it is not, because, as I said, the principle is so vital to the conduct of good government, even more acutely so in circumstances of great public interest and controversy.

I published my advice on that occasion because of the very exceptional circumstances that pertained at the time. I took the view that it was vital that, at that particular time, Parliament should not go on feeling, as a majority plainly did, that it was being denied useful assistance. It was important that we should be able to work with Parliament.

Secondly, I say with all diffidence to the Committee, as I have already said in the House, that I have the greatest of respect for the House's judgments. It was a situation of acute regret for me personally that the House should have come to the conclusion that the Government were in contempt. I took the view that there was a public interest in the House's



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standing being upheld and that, the House having reached a judgment that the Government were in contempt, in those circumstances the Government should comply.

- Q15 **David Hanson:** I have one final question. Given all of that and the experiences you have had, do you think that there is sufficient public—by public, I mean journalistic and civic society—understanding of your role? Do you think there is sufficient parliamentary understanding of that role, and are there further steps you can take to codify/clarify the circumstances that led to the discussions we had earlier this month?

The Attorney General: I am very grateful for that question, because there is more that we can do to explain the Attorney General's role. This is one such opportunity. I am most anxious not to go on too long in my answers, because I know that there are many questions. I have been on that side of the table.

You lay down a challenge. There is a really important job to be done to explain publicly, to the House and elsewhere, the role of the Attorney General, the importance of the Law Officers' convention and its centrality, in the public interest, to the conduct of good government. I will certainly look at the other ways we can adopt.

- Q16 **David Hanson:** This is protection for you, for the Government, for Parliament and for the public. I am not clear whether what we have talked about today is codified anywhere—whether, in a sense, it is your judgment that is being argued about, defended and challenged, or whether there is a precedent of codification that is established.

The Attorney General: There are many statements in the House. There are lectures and comments given by successive Attorneys General. There is a body of published and documented principle on which any Attorney General draws when seeking solace and comfort on these kinds of matters. All I would say is that many Attorneys General from the Labour party have made statements to exactly this effect, both in the House and outside it. John Morris contacted me on the subject recently and, as ever, gave a shrewd and judicious commentary on it. There is a case, perhaps, for making it more formalised and putting something into the public discourse that would make it clearer to others.

- Q17 **Chair:** That is helpful. You raised the analogy of lawyer-client privilege. In this case, you took the view, exceptionally, for the reasons you set out, that the normal convention should not apply. I take it that it was your advice, in effect, to your client—to the Government—to disclose. You cannot disclose without the agreement of Government, I take it—or can you?

The Attorney General: If you will permit me, Chair, I would probably be betraying the very principle I am defending if I were to say what advice I had given my client. Suffice it to say that the Government took the view, and I did not dissent, that in those unique circumstances, the advice should be published, but it sets no precedent for the future.



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Chair: Precisely so. That is the point. It is a Government decision, because it is the client relationship. That is not changed by anything that has happened. I understand that.

Unless there is anything else that people want to raise on that, we will move on to the other part of your role, which is the whole question of the superintendence of the prosecuting authorities.

Victoria Prentis: Lovely. Disclosure.

Chair: Do you want to start with the superintendence role and then come back to disclosure?

Victoria Prentis: Okay. I will start with the superintendence role.

Chair: We were talking about the Attorney General's twin roles. That is perhaps the best way of dealing with it.

Q18 **Victoria Prentis:** Mr Attorney General, on 22 January, you wrote to us explaining in very brief terms what it means to superintend the Serious Fraud Office. We have an earlier letter from you about CPS superintendence. In that letter you mention the new framework arrangement. We would be grateful if you could expand a little on how exactly you are planning to do that.

The Attorney General: I certainly will. Thank you for the opportunity. As I said, it struck me, partly as a result of this Committee's recommendations, that in order to make more effective the Attorney General's vital role in accountability for the Crown Prosecution Service to the House, the Attorney General needs to be in possession of detailed levels of information about the operation of the organisations. That information needs to be timely, up to date and, in my view, more transparent, so that this Committee, for example, can see what is going on between the Attorney General and the sponsored organisations, and can have a better opportunity itself to call the Attorney General to account for his accountability for the organisation.

What I have endeavoured to do is to replace the 2009 protocol, a fairly informal document with which the Committee will be familiar, with a framework document consistent with the Cabinet Office recommendations for ministerial sponsored organisations, and to institute more formal structures between myself and the two directors. Those framework agreements have been agreed by the directors. They are not imposed, nor could or should they be. They are designed to modernise the relationship between the Attorney General, the Solicitor General and the organisations. Essentially, they set up a ministerial strategic board, which I chair.

Q19 **Victoria Prentis:** How often will it meet?

The Attorney General: It will meet as often as necessary—certainly every two or three months. I had my first meeting this week, with the



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Serious Fraud Office. Typically, what it enables me and the Solicitor General to do is to go into detail—to lift the bonnet—in a formal setting on the effectiveness and performance of the organisations.

The framework document jealously ring-fences the prosecutorial discretion of both directors. Part of the function of the Attorney General is to be fierce in the protection of the directors' prosecutorial independence. It is certainly a very important duty to me, but in order for me to be properly accountable to the House, I need the information. I need to know.

Q20 Victoria Prentis: Do you get sent the information more regularly now?

The Attorney General: Yes. We get regular reports. Between the meetings, there is a steady stream. The framework document deals with the nature of the information that we expect. To save the Committee time, I am going to put both framework documents in the House of Commons Library so that this Committee and others can see them.

Chair: That is very helpful.

The Attorney General: The Serious Fraud Office framework document is signed and is already up and running. The Crown Prosecution Service document will be signed at our first ministerial board meeting. Essentially, this is designed to enable me, as the Attorney General, to get a tighter grip on the performance and effectiveness of the organisations, so that I can see problems coming, discuss them in a process of dialogue and challenge with the directors, and provide support to them, where they need it, to resolve any problems.

Q21 Victoria Prentis: We know from your previous experience at the Bar that you will have a very good grip on what information is out there. Can you give us some examples of extra information that you are now receiving, as the Attorney General, from those organisations that was not previously provided?

The Attorney General: A lot of the information was being provided, but in an ad hoc and informal way. What this does is give it structure and transparency. I ought to say, too, that I intend that the minutes of the meetings will be published, so that there will be transparency in connection with the discussions that I have been having.

All of these are innovations, and they modernise the relationship between the Law Officers and the organisations. I strongly believe in accountability. That is what is at the heart of the new organisational measures that I am taking: accountability of the directors to me, and accountability of me to the House. For example, on disclosure, we have been pressing very hard. I have not had to press too hard with the new director, who has taken it up with alacrity and skill.

Q22 Victoria Prentis: The new SFO director.



The Attorney General: Both directors—the Crown Prosecution Service and the Serious Fraud Office, but for the moment I am talking about the DPP. We are now getting and recording more information. One of the difficulties this Committee had was that it found that there was no adequate recording when a disclosure problem might have contributed to the demise of a case. In discussion with the director, I am able to get to grips with that. As you heard from him when he gave evidence in December, new systems are being installed so that that information is gathered. I will receive that information month by month as it reaches the director.

Q23 **Victoria Prentis:** Do you feel quite hands-on in this role? Do you visit the organisations? Have you been to see the CPS and the SFO?

The Attorney General: I have certainly visited CPS headquarters and the CPS in Newcastle some months ago. I have not done as much as I would like because of the preoccupations I am currently engaged in. I find it a bit frustrating because this is where I would like to go. We are incredibly fortunate this time. We have an exciting opportunity. We have a new SFO director, who is excellent. We have a new Director of Public Prosecutions, again who is excellent and who has taken to his job like a duck to water, as you might expect. We have an experienced head of HMCPSI, who can lend a statesmanlike and experienced eye to how we measure and inspect. And we have a new Attorney General; I hope that is worth something.

Each of us has new enthusiasm, with a desire to work together closely, to join up the bits where, perhaps, in the past they have not been as joined as they should be. It presents us with an immensely exciting opportunity to improve the performance of all these services.

Q24 **Chair:** I suppose it happens that both you and the two directors have in common that you come recently from active practice.

The Attorney General: Indeed it does.

Q25 **Chair:** Is disclosure something that weighs with you?

The Attorney General: A key and critical principle of my role is that I am accountable to this Committee as an organ of the House and to the House. I want to make that accountability a more efficient operation. I am not there to run the CPS; we have an excellent DPP, similarly with the SFO. I am there to get the information I need, to have a dialogue of what I call challenge and resolution with the DPP and SFO directors, to press him or her on behalf of the public where I think they need to be pressed, but, underlying it all, to support them both in the discharge of those important public interest functions.

Q26 **Chair:** You made the comment, Mr Attorney General, that you were going to be fierce in the protection of the director's prosecutorial independence. In relation to the SFO, can you explain to us the mechanisms that enable you to do that in relation to the tasking role of



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the National Crime Agency, and what the safeguards are?

The Attorney General: I have explored this because when I first arrived in office I was asked to look at the legislation that has been drafted for the purposes of that tasking function. I am pleased to say that I do not think that the Director of the Serious Fraud Office regards it in any way as a threat.

Q27 **Chair:** That was her evidence to us.

The Attorney General: I am glad to hear it. What is developing is, potentially, a very benign set of circumstances. The NECC is being introduced. If we get that right, it will be an opportunity for co-ordination at a strategic level, where previously, but not wholly, there was a tendency towards compartmentalisation. The tasking power is simply an ability to enable the Serious Fraud Office to be used to implement the strategy developed by the NECC. The director does not see it as a threat at all but as a tool. She will be closely engaged in the NECC. No request will be made for tasking, I suspect, that has not received her closest consultation and advice.

Q28 **Chair:** You have sign-off, in effect, in terms of that.

The Attorney General: I certainly have scrutiny of it. Were there to be any misuse of it, which I wholly doubt, I would be on it very quickly.

Chair: Perhaps we can move to some of the specifics of your work.

Q29 **The Attorney General:** My questions carry on dealing with performance but are also about the resources of the Crown Prosecution Service and the Serious Fraud Office. Given their independence in deciding whether to prosecute cases, and given your role, to what extent can you influence operational issues such as staffing, training and the performance of the Crown Prosecution Service and the Serious Fraud Office?

The Attorney General: As I have just said, I do not have an executive role in relation to the Crown Prosecution Service; we have an excellent Director of Public Prosecutions. I am, however, accountable to the House for its efficiency and effectiveness. Therefore, if I saw what seemed to me, after discussion at official level, to be a continuing problem, I am entitled to challenge the director on it and say, "Do you not think that this particular division requires some change or some additional staff?" What I cannot do, obviously, is give an executive order; nor would I seek to do so, because that would be to intrude on the proper province of the director.

In general, my role is to hold the directors to account for their performance. If I receive the kind of detailed level of information that I am receiving now—we had a lot in the past, but this is making it more formal and structured—I will be able to delve more deeply and identify systemic problems as they come up.



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This Committee rightly pinpointed a problem. Although we had been anecdotally aware of problems in connection with disclosure, Attorneys General had not been able to spot that there were systemic problems in the organisation, arguably at least, in connection with disclosure. I seek to address that with these governance reforms, so that I can have a greater, tighter and more detailed grip over the information to hold the directors to account, but I am delighted to say that both directors at the moment are doing that job superbly well for me and I do not have to do a lot of holding to account. That is the relationship, and that is the way I would exercise influence.

Q30 **Janet Daby:** Sure, but from what you are saying, if you were to see something or notice something, you would address it.

The Attorney General: I would be entitled to raise it, and I certainly would raise it.

Q31 **Janet Daby:** The new Director of Public Prosecutions, Max Hill, came to our Committee and told us that the Crown Prosecution Service had seen a 30% reduction in funding since 2010, but they “could not contemplate further cuts.” Do you believe that the CPS and the SFO are sufficiently resourced, especially to deal with the increasing amount of digital data that they have to process?

The Attorney General: It is not for me to say, but I think that is an excellent question and one that will be a matter of acute and important discussion in the coming spending review.

Let me set the context for a minute. Yes, it is true that the Crown Prosecution Service has had a 30% headline reduction—20% in cash terms. Yes, it is true that that has resulted in a significant reduction in staff. But, since 2010-11, in the midst of all those financial reductions, the conviction rates of the Crown Prosecution Service have either stayed the same or slightly increased.

Staff engagement has gone up. In 2010, the rate of staff engagement, which is an important test for the morale of an organisation, went up from 49% to 61%. It is a travesty, in my view, to describe the Crown Prosecution Service as a failing organisation, as some wholly exaggerated accounts often assume lazily. On the contrary, day in, day out, thousands of judgments are made on prosecution that are borne out in the courts. There have been some specific problems, which we all know.

This is an organisation that has managed its resources and continued successfully to prosecute hundreds of thousands of cases a year. If you ask me whether it is possible for them to sustain further cuts of the same kind, I will be frank with you: I do not believe it is. We have reached a point, and I think the Government recognise it, where the CPS has distributed and managed its resources superbly well, but we will not be able to see public expenditure reductions in connection with the CPS at the same time. It is important to stress that there has been no suffering



in the core functions of the Crown Prosecution Service as a consequence of the reductions we have seen to date.

Q32 **Janet Daby:** I am sure your two new directors will keep you briefed.

The Attorney General: I have to negotiate the budget with the Treasury for both. You can be sure that it is a subject that is raised monthly. I see each director every few weeks. By the way, the framework document and the new MSB—the board—will not replace the personal contacts that I shall continue to have every few weeks with each director. Of course, the budget is a subject of acute interest. I am the interlocutor with the Treasury. We are examining at the moment what we shall be saying in connection with the spending review, but, in broad terms, I agree with the presumption of your question.

Q33 **Chair:** Can I raise a specific point that follows on from that? Both the CPS and the SFO benefit from the ability to instruct independent advocates from the Bar, particularly the CPS. Historically, there was always at least an attempt to ensure that there was broad parity of the fees paid to those who prosecute as well as those who defend. It was not always achieved in practice, but that was the objective.

There are changes being made to the legal aid advocate scheme as far as it affects the Bar in particular and solicitors. Do you have concerns that, unless there are commensurate adjustments, there will be a risk of the CPS not being able to attract counsel, in particular, of the appropriate quality and standard to act as their agents for the serious cases they are very often called upon to undertake, to make sure there is equality of arms between the two sides?

The Attorney General: The short answer, Chair, is yes, I have those concerns. The longer answer is that those concerns are going to be addressed. The director is now, in consultation with the Bar, taking on board the issues that the increases in the AGFS create for prosecution. It is obviously of critical importance. As Attorney General, I have responsibility for the legal professions, and the public interest in the maintenance of the highest quality of legal profession is of central importance, as you know, to the efficiency of the administration of justice. Particularly in connection with prosecution counsel, it is vital that we have the best and highest calibre to prosecute those cases. I do not think we can allow the prosecution fee tariffs to lag behind.

That issue is being looked at now, and we shall see where we end up. It may mean that I have to have further conversations with the Chancellor of the Exchequer. I hasten to add that that is not carte blanche for promises of large injections, but it certainly expresses my belief that there will have to be adjustments in the prosecution fees scheme.

Chair: That is helpful; I understand the caveat, but there is recognition of the pressure that exists. You have referred to disclosure and we want to move on to that a little more specifically, with Ms Reeves and Mr Charalambous.



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Q34 Ellie Reeves: Our Justice Select Committee report into disclosure raised some very serious concerns that the CPS seemed to be paying more attention to conviction rates and timeliness than ensuring that the right person was prosecuted for the right offence. From your perspective, do you think mistakes are being made because of a culture of hitting targets at the expense of proper decision making?

The Attorney General: No, I don't think that. The problems we have had with criminal disclosure do not lie in target setting or target meeting, if such there were. I do not think the CPS would acknowledge that there were targets in that sense.

We have to look for the causes in a very different place. For those of us who have practised in this field over the years, it is a very different mindset for an investigator to get his or her head around, but once he has enough evidence to charge and to bring his case home, he has to turn his mind to what might undermine that case. It should not be different, because, if you turn your mind that way around and look at it through that end of the telescope, you are likely to build a stronger case. If you have anticipated what might undermine it, where the defence may seek to exploit or look for weaknesses, you are building a more substantial case.

There is a lot of very good practice, but we are dealing with hundreds of thousands of cases a year, and in some cases it is hard for investigators to see disclosure as central and integral to their functions of building a strong, safe and just case. That problem goes on into the Crown Prosecution Service where challenges were not made. Busy Crown prosecutors will take the file, which, as the director told you in December, may not always be of the highest quality. They will not always make the challenges that are necessary at that early stage and say, "Have you investigated this? Have you inquired into that, as it might shed a different light on this particular element?"

Systemic and cultural factors are at the heart of it. I do not think it had anything to do with target setting. I think it has to do with changing the culture, training and getting into an attitude of mind that challenges and scrutinises one's own assumptions as an investigator and then as a prosecutor. If we change the culture in that way, it will in fact build stronger cases, but changing the culture is the secret. I do not think targets have anything to do with it.

Q35 Ellie Reeves: How do you think you can do that? How do you think you can change that culture? That is the big challenge.

The Attorney General: By having leadership, I think. I am particularly grateful to the Director of Public Prosecutions, and, indeed, if I may say so, to the outgoing director, because under her watch she started the national disclosure improvement plan. That is an excellent initiative. We have now had phase 2. My review links with that plan. I had a launch of my review here in the House, with every element and component part of



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the system present. What I think that has done is galvanise a sense throughout the criminal justice system of the importance of the issue.

It is crucially a question of leadership, and we are very lucky now to have leaders in the right places. My role is to sit above this and make sure that pressure is maintained; make sure that momentum continues; and ensure that the Government effort is co-ordinated in the right places to help the directors and the police get it right.

Q36 Ellie Reeves: On the specific issue of the improvement plan and its implementation, what is your level of oversight of the plan?

The Attorney General: I am leading for it in the Government. I am meeting the Home Office and the Ministry of Justice shortly on co-ordinating the Government effort. We are acknowledged within the Government to be those who are going to take pole position in driving it forward. I intend to hold to account each responsible individual, and I intend to ensure that things are getting done. To me, that is one of the central priorities of the Attorney General now.

I do not have ministerial responsibility. You are absolutely right to put your finger on that problem. I wish I did, perhaps, but I don't. What I have to do is crack the whip, and I will crack the whip, because I am determined that we do not see this blemish rise again to stain our criminal justice system and produce a dent in confidence in what is otherwise something of which we should be enormously proud.

Q37 Chair: I suppose dealing with disclosure is another of those cases where it is an advantage to have our system, where very often the advocates we have just referred to will have acted on both sides. Many of the CPS in-house staff will have started their lives in private practice.

The Attorney General: It is a huge advantage. I agree with you, Chair. If you have seen both sides, you can anticipate what the other side may say; that is always a huge advantage.

At this early stage, in connection with disclosure, the Director of the Crown Prosecution Service, the DPP, told you in December that he is concentrating on file quality. That is important, and one of the reasons why we are having more administrative finalisations is that the police are being sent back—I know the police see this in the right spirit—to get higher quality, earlier on, so that failings do not surface halfway through a trial, with all the misery that causes to interested parties.

Chair: Absolutely.

Q38 Bambos Charalambous: Our Committee's report on disclosure found that there was not sufficient clarity about who was responsible for disclosure. In your letter, you saw it as a joint cross-departmental responsibility. Who is ultimately responsible for ensuring that disclosure failures do not occur again? Is it you or somebody else?



The Attorney General: As I was saying to Ms Reeves, the reality is that it is a shared ministerial responsibility. Of course, the Home Secretary does not run the police. Each chief constable is responsible for his own force and the operational and executive matters within it.

As I commence my remarks, I am conscious of the need for greater co-ordination. I have been in office six months, but if I am able to develop this theme over an extended period I will be looking for ways of having greater co-ordination in matters connected with the criminal justice system. I am leading for the Government on it. I shall hold to account all those component parts—as I say, I think they are galvanised to make it work—but I am afraid it is a matter that is shared in terms of responsibility across a number of Departments.

Q39 **Bambos Charalambous:** You talk in your letter about welcoming broader co-operation with operational partners. If we take that to mean the police, sometimes the CPS might say, “We weren’t aware of these documents because the police didn’t pass them on to us until late in the day, and yet we get it in the neck.” Is there more scope for working a lot more closely with the police? Obviously, there is a resource issue as well.

The Attorney General: There is. I am seeing the policing Minister, I think next week, to discuss precisely that, and how we can co-ordinate our efforts through the Attorney General’s Office, the Home Office and the Ministry of Justice.

How will we resolve it? I have ideas, but, in terms of the police, Nick Ephgrave, who leads for the national police chiefs on this, is doing a super job; 75,000 officers have now received training in disclosure. We have the disclosure champions. Real changes are being made at a fundamental level that can tackle the problem, but the momentum needs to be maintained. This Committee is rightly putting its finger on the fact that we also need better co-ordination and clear lines of responsibility.

I have asked the Criminal Justice Board to monitor and review this. I do not think it is the right place to lead it, in the sense that it cannot execute, but it can certainly oversee. I am looking for greater ways of co-ordination so that, at least, instead of just having me, you might have two or three Ministers in front of you on the issue of disclosure in future who can be said to be properly responsible, albeit that our system has constitutional checks and safeguards. The independence of the police is an important safeguard, so we have to reckon with those important factors, which can in this respect not frustrate but impede easy resolution of the problem. I am satisfied now that all parts of the system are working together, and I will be holding them to account to do so.

Q40 **Gavin Newlands:** We have already covered disclosure in a fair bit of detail, so I can probably dispose of this in a single question. The CPS and the National Police Chiefs’ Council have said to this Committee that prosecutors were recording whether disclosure issues contributed to the outcome in 100% of cases. You have mentioned already receiving a



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steady stream of information from the CPS. Can you tell us for the record what data you receive and whether you are in a position to say what that data indicates thus far?

The Attorney General: As you know, part of my resource as Attorney General—the public’s resource—is the inspectorate. My predecessor appointed and requested the inspector to look at the issue of disclosure before in fact these matters became so unhappily and sensationally topical.

The inspectorate is continuing its review at the request of the previous Director of Public Prosecutions, with my endorsement, and will build into the next business plan a continuing disclosure function. I am receiving information from the CPS inspectorate. I have had some recently, and I continue to get that.

I also have, at official level, a stream of information coming to me in connection with the performance of the Crown Prosecution Service. As I have explained, that will now carry a greater level of detail as to when disclosure plays a role. Simply put, in the IT, in the past they have not had a place where they could record secondary or tertiary causes for the demise or discontinuation of a case. Isn’t it a simple expedient? It is, frankly, one that this Committee helped to prompt. They have now altered their programs so that they can record secondary and, in due course, tertiary causes. Of course, as that information accumulates, I shall be expecting to see it.

I have also seen reports from HMCPSP. Those are not yet public. I think they will be in due course. They predate this director’s tenure. Let me say straightaway that, as one might expect when one digs more deeply, they show that there are continuing problems. They predate many of the changes we have introduced, but they do not indicate, I think, a systemic problem of a kind that is not being addressed now. In many ways, I am heartened by what I have seen, and I am seeing more information than previous Attorneys General.

Q41 **Victoria Prentis:** You are being characteristically confident and upbeat about this, but we would not want you to be under any illusion about the problems we found with disclosure as a whole or the importance of disclosure, indeed. I left full-time practice when I joined the House in 2015, but in the years preceding that decision I had been engaged with disclosure pretty much all the time. It was the most difficult thing we did and it was the most time-consuming thing.

It is fine to say that leadership is important, and we would agree with you on that. Of course, we certainly made our views clear about the lack of leadership that we felt existed previously in various places.

The Attorney General: You did.

Victoria Prentis: We were also, conversely, impressed by the police reaction to criticism. Would you agree that, as well as leadership,



resourcing is important? Disclosure is immense. Social media, phones, records and the internet have meant there is so much more of it. Also, a certain level of morale and confidence in these organisations is important, because the junior member of staff has to be able to question and challenge.

The Attorney General: I completely agree. There is no doubt that resources play a role, in the sense that my recommendations in the review—some of the points that this Committee has illuminated—will require and have resource implications. What those are will have to be worked out, particularly in the context of the spending review. That is a subject, along with counsel's fees in relation to the CPS, on which I am in active dialogue with the director.

For example, if we are really to expect earlier engagement with the issue of disclosure, some excellent tools are now being devised and developed, such as the disclosure management documents in all Crown court cases and in magistrates court cases, which this Committee has pinpointed. We are looking at a presumption of disclosure in relation to an agreed list of documents, which will make it more streamlined and will be the expectation in each case. Some good tools are being developed, but they will have resource implications, particularly if we want early engagement with the issue.

Across the piece, there are the changes to the case management hearings at the outset of a criminal case, where disclosure is going to be included as a specific item for the judge to look at; the use of disclosure management documents; the training of police officers; the engagement of Nick Ephgrave; the Attorney General's review and the national disclosure improvement plan. Tremendous developments are taking place, partly as a consequence of this Committee's scrutiny but also of concerns throughout the criminal justice system. We need to maintain that momentum. Leadership is crucial. Part of leadership will be ensuring that the necessary amount of resource is present at the necessary place in the system.

Chair: That is helpful. The final topic we want to touch on is your public interest role, which manifests itself, for example, in relation to how to make a reference under the unduly lenient sentence scheme. Ms Rimmer is going to lead on that.

Q42 **Ms Marie Rimmer:** Back in 2017, the Conservative party committed itself to extend the scope of the unduly lenient sentence scheme so that a wider range of sentences could be challenged. In December of that year, Members of the House were told that more than 40% of sentences referred to the Attorney General are refused simply because they fall outside the scheme. The then Attorney General, in May 2018, said that he hoped he would go further in extending the scheme because it had been extended with the terrorism scope being added.

Justice Minister Rory Stewart told the House in March 2018 that he was in



discussions with your predecessor regarding whether the unduly lenient sentence scheme might be further extended. Do you plan to further extend the scheme? If so, when and how?

The Attorney General: I do. The commitment remains. It has proved singularly successful. As you may know, the number of sentence referrals has trebled since 2010—the number of sentences considered. It is a material factor in enabling the public to have confidence in the sentencing system that they can refer a sentence. My office and the Law Officers are obviously very careful to ensure that sentences are referred only when the sentence falls outside the range of sentences that were available to the sentencer.

We are not there to act as an appellate body, where we might disagree that the sentence is a little too harsh or a little too lenient—in this case too lenient. We are there to catch cases where the sentencer has fundamentally gone wrong. They have failed to take into account an important factor and have departed from the range of sentences that any sentencing judge in those circumstances could legitimately impose.

We need to look at what are the appropriate offences that are the subject of a ULS referral, but there are some clear anomalies. There are some cases where, in a particular type of offending, a particular sexual offence may be referable, but possessing indecent images is not. What I am committed to doing is analysing where the anomalies are, and, in the first instance, extending the scheme at least in so far as those anomalies are corrected.

That work is continuing. We are reaching a point where offences are being identified, and I expect to make an announcement in due course, this year, in connection with the extension of the scheme. I am afraid I cannot say more than that at the moment, but the answer to your question is that, yes, we are still committed to it; yes, we are going to extend it; we are identifying the right sentences to extend it to; and I hope to see developments later in the year.

Q43 **Ms Marie Rimmer:** At present, the unduly lenient sentence scheme places a 28-day time limit for referring a sentence to you. It has been argued in the House that this is unfair to many victims and other affected persons who may miss the deadline for reasons beyond their control. Would you support the introduction of a discretion to the 28-day limit so that victims get the opportunity to refer a case to you even if they are out of the present time limit of 28 days?

The Attorney General: I am certainly willing to look at that, particularly, for example, where reporting restrictions on a trial mean that the public are sometimes not aware of the sentence until the 28-day limit has expired. We are actually taking part in a pilot now where, in connection with sentences where reporting restrictions have been imposed, we can look at those outside the 28-day limit. I would need to think carefully about the consequences of extending it across the board



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or having a discretion, because, once you exercise the discretion, you have to identify the principles on which you will exercise it, and it is not always easy to confine a discretion like that.

I have taken your point, Ms Rimmer, and certainly I hope some comfort is given on the question of reporting restrictions, in that the delay in the public becoming aware of the sentence is under active review at the moment. I will certainly look at whether we can extend the deadlines. I do not want to make any promises in connection with it, but I will look at it.

Ms Marie Rimmer: Thank you very much.

Q44 **Chair:** I suppose you have to balance that with the legitimate obligation of the state to give a sentenced person a measure of finality and certainty within a reasonable period of time as to what the sentence they serve must be.

The Attorney General: Chair, you have put your finger exactly on it. It is a question of certainty and predictability. There is a case for looking at the 28 days, but there must be some time limit on it.

Q45 **Chair:** The point is taken. Mr Attorney General, thank you very much indeed for your time and your evidence, and for your candour, as always. Thank you too for the promptness of the correspondence about the framework.

The Attorney General: Chair, in so far as and as long as I remain in this office, I am keen to work together with this Committee. I am extremely grateful for the work it did on disclosure, and I hope to have a very fruitful, co-operative and transparent relationship with you.

Chair: Thank you. The session is concluded.