HOUSE OF COMMONS

ORAL EVIDENCE

TAKEN BEFORE THE

JUSTICE COMMITTEE

THE WORK OF THE ATTORNEY-GENERAL

WEDNESDAY 24 OCTOBER 2012

RT HON DOMINIC GRIEVE QC MP

Evidence heard in Public Questions 1 - 32

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Oral Evidence

Taken before the Justice Committee

on Wednesday 24 October 2012

Members present:

Sir Alan Beith (in the Chair)
Steve Brine
Mr Robert Buckland
Jeremy Corbyn
Nick de Bois
Seema Malhotra
Yasmin Qureshi

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Examination of Witness

Witness: **Rt Hon Dominic Grieve QC MP,** Attorney-General, gave evidence.

Chair: Good morning, Mr Attorney-General, and welcome. We have to declare interests first.

Mr Buckland: I am a recorder of the Crown court, and until 2010 I was regularly instructed by the Crown Prosecution Service in the Crown court.

Yasmin Qureshi: I used to be an employee of the Crown Prosecution Service. A member of my family is still a Crown advocate in the Crown Prosecution Service. When I was at the independent Bar I was instructed on a regular basis by the Crown Prosecution Service.

Chair: I think that is all. We are going to start with the Crown Prosecution Service and then move on to a series of other topics.

Q1 Yasmin Qureshi: Thank you, Mr Attorney, for coming to give evidence to us. I want to put a number of matters regarding the Crown Prosecution Service, especially in light of the CPS Inspectorate's recent report and some of the concerns and issues raised by them. It started off by saying that generally things were good, but it seems that there was a reduction in the level of quality and issues about how you dealt with cases in the last year. Some of it has been put down to declining budgets and the major restructuring that is going on, such as prosecutors returning back to branches, leaving police stations and all sorts of things.

One of the things the inspectorate talked about was the failure to apply the Code for Crown prosecutors in more than 25% of cases. What role have you and your office had in improving the application of the Code for Crown prosecutors, particularly in relation to the disclosure of unused materials? It seems that some very high-profile cases were abandoned because of disclosure issues. I want to explore that area with you.

Mr Grieve: That is a very big topic, but perhaps I could try to break it down into sections. First, perhaps I can make a couple of general points. As you will be aware from the preliminary work you will have done before I came here today, the CPS is having to absorb, like the rest of Government, substantial savings: 24%. With the extra changes, we are talking of 26% over a four-year period in this spending review.

On the face of it, as things stand at the moment, I am astonishingly pleased with the way in which general performance seems to be going. Conviction rates are being maintained; indeed, in the Crown court they have been enhanced very slightly by about 1% this year. Looking at the scale of the change that is taking place, the management of it, which was always bound to be very challenging, is being done very well by the Director of Public Prosecutions. That is my general take. But that is certainly not to say that everything is perfect. In human affairs nothing is ever perfect, and the role of HMCPSI is to highlight those areas where improvements need to take place.

I fully accept that, in making sure the Code of Crown prosecutors is adhered to, or in terms of disclosure of unused material, which has been a difficult area for as long as I can remember as a barrister, these are areas in which there has to be focus. In the case of disclosure of unused materials, part of it centred on the outcome of the South Wales case, which was very dramatic in showing the problems that could be associated with unused material disclosure if it is not carried out properly. A whole series of recommendations has been made by HMCPSI, which the director is going to implement and is implementing. I am very happy to start to drill down into greater detail, but that is my main response.

You asked me a very specific question, which was how I go about my business superintending what the director does. It is a relationship that is obviously rather different from being a Minister in charge of a Department dealing with civil servants. The whole point is that the Crown Prosecution Service is independent. I have routine business meetings with the director on a monthly basis. He will come along to raise with me a whole series of issues on his agenda at the time, whether they are individual cases that may need to be discussed or, more generally, the progress of the work he is doing on streamlining the Crown Prosecution Service and making it more efficient and effective. In that we discuss HMCPSI reports. I can put them on the agenda; I can highlight my own concerns, as and when they arise from reading those reports.

In addition, in the major changes that he had to initiate as a result of the spending review, we had a whole series of structured meetings very early on in my time in office where we met almost on a weekly basis to think through how the CPS would adapt and adjust to the changes it was going to have to make in order to meet its savings. I found those very productive. We will almost certainly have a further range of such overview meetings in the near future to start looking at how matters have progressed two years down the road.

Q2 Yasmin Qureshi: As a result of the inspection carried out jointly by CPS Inspectorate and Her Majesty's Inspectorate of Constabulary, one of the areas they looked at was the process of streamlined files. Looking at that particular report, the National Audit Office recently noted that the streamlined process initiative did not seem to be following established principles of project management, and most of the officers they spoke to across the different forces didn't seem to know what documents needed to go into the streamlined files and what needed to be out. One of the main things that is supposed to be in the streamlined file is the police officer's synopsis of the key piece of evidence. That seems to be missing from a lot of files. Therefore, it would seem that that process has not been fully complied with. Does your office have any control over this, or what input does it have in relation to this matter?

Mr Grieve: I agree with your analysis. This is an area where I am very pleased that the NAO have done a report and HMCPSI has looked at this in greater detail. HMCPSI thought that the model was effective for case progression for magistrates courts; it thought that Crown court case preparation required radical change, particularly with the early guilty plea coming in; and it highlighted that case progression was not always as good as it should be, including inconsistencies in relation to file readiness.

As you will appreciate, this is an area where the CPS works closely with the police. I have always been of the view, which I think is shared by the Home Secretary but ultimately it is for individual police chief constables, that there are savings and better efficiencies to be achieved by closer, local and more co-ordinated working. The DPP shares that view and has been working to implement the improvements. He has accepted the inspectorate's recommendations to draw up the plans and has set some stretching targets to improve in both areas. He set targets for the CPS and for working with the police in order to get there.

I think that is the right approach. The difficulty is that a lot of this work is quite routine; this is the volume casework. As I think I said when I appeared in front of this Committee on an earlier occasion, the more important or grave the crime and the more serious the casework, on the whole, the more satisfied one tends to be with the way that the CPS approaches it, but the CPS does a huge amount of volume work. It is important for the interests of justice and in the public interest that that is done effectively, but it is the sort of area where I have to accept that in human affairs one can take one's eye off the ball and it needs to be driven.

The DPP has taken on board the report; I have discussed it with him. There has been an opportunity for me to express my view that this is a priority area, because ultimately the CPS will be judged reputationally on its ability to deal with volume crime effectively and it's a high priority for him.

Q3 Chair: There was a suggestion that police forces were not getting enough feedback from the CPS. Given that one of the problems was inconsistency in how much material was in the file and how far it was summarised, is there a lack of a mechanism for feedback from the CPS to the police?

Mr Grieve: There were changes to the way in which the model was being operated, which were introduced, I thought, for rather valid reasons. For example, rather than one person having control of a case file, it was allocated to a pod. I don't know whether you have had an opportunity of visiting the CPS office. If I may make a suggestion, it is something that the Committee might consider doing because it can understand how the working takes place. The idea behind that was that, particularly if somebody went off to court to present cases, there would be somebody else on the pod who would be able to deal with it; and there would also be collective ownership, which would help to drive up standards.

The police have come back and said, "Sometimes we contact the pod with a query and we're not getting somebody who seems to have sufficient ownership of this case." Let's be quite clear about this. To my mind, that shouldn't happen, and, where I have seen the model working well, it doesn't, but that is a question of ensuring that there is a collective sense of working on the pod in order to push this work through.

Q4 Yasmin Qureshi: If I may come to the issue of advocacy within the Crown Prosecution Service, it has been accepted that with the increased use of the Crown advocate considerable savings have been made within the Department, but there are still issues there. What level of funding has been set aside for continuous advocacy training for lawyers in the Crown Prosecution Service generally?

In particular, as I understand it—I may be corrected—many years ago a lot of senior Crown prosecutors within the Crown Prosecution Service were told that they would be able to go for training to be Crown court advocates. I understand that their pay was frozen as well, and now it happens that a lot of lawyers want to do Crown advocacy but they are not able to access it. Therefore, their chances of promotion have effectively stopped, because the next level for most of them would be Crown advocate. There is also the issue that some advocates would presumably need further training. I want to ask about advocacy training for existing advocates and those who were in the CPS many years ago at the SCP grade, who basically have come to a standstill, so to speak.

Mr Grieve: The HMCPSI report on advocacy was, to my mind, a very important overview of the way in which things had progressed. I agree with you that in-house advocacy has saved the public purse a considerable amount of money—£26 million over the last five years on HMCPSI's own analysis. The current mix—I have the figures here—is that last year 69% of work has been done by self-employed advocates in the Crown court and 31% by in-house advocates. About 91% of magistrates court work is now done by in-house advocates and the use of agents is down to 9% of the work, which is a very considerable change.

What HMCPSI highlighted was something which—dare I suggest it?—I would already have known. You can do as much advocacy training as you like but the place where you learn advocacy is in court. One of the reasons the self-employed Bar remains very important, particularly for the presentation of complex cases, is because they are individuals doing advocacy day in and day out, and that is where they acquire their skills. That is not to say that in-house advocates can't acquire such skills. Indeed, HMCPSI concluded that, for example, in the presentation of pleas in the Crown court and going through what is now very much a process of sentencing, they almost felt that in-house advocates probably had the edge. However, some obvious failings remained, for example, in pressing cross-examination in a targeted way as an independent advocate would do.

The whole strategy of the DPP is to try to bring on the quality. You can ask him yourselves, but, as I understand it, he felt—there was evidence of this—that quite a lot of people had Crown advocate status who were not using it or going into court regularly at all. What he wanted to do was identify those who were going to be able to develop advocacy careers in-house within the CPS and make use of that, and that is what he has sought to do. It has been suggested that in some areas they are going to set up an arrangement—I would not like to describe it as "chambers"—so that advocates can really concentrate on delivering in-house advocacy to a high quality.

I hope I am answering your question in a way that meets it, but you raise a concern that some people who came in as Crown advocates may find that their career prospects in that direction may not develop as they had hoped, but the director has concluded that what he needs is to identify quality and bring it on and that the previous system, by which lots of people had this title but weren't really making use of it, is not a satisfactory way of proceeding.

Q5 Yasmin Qureshi: Maybe I misled you. I was not talking about Crown advocates' careers but a grade of lawyers called senior Crown prosecutors, who are not Crown advocates and who were promised many years ago that they would be able to become Crown advocates and they chose to go for that option. As a result, because the opportunity has not come, they have a pay freeze where they cannot now get an increment in pay which they would ordinarily have got. I was talking about that group and not the Crown advocates.

Mr Grieve: I had understood that question correctly. You are right. I have to accept that, under the previous system, there may have been a view that they would progress inevitably up to being Crown advocates. While I think the opportunity of becoming a Crown

advocate remains, it is the intention of the DPP to ensure that those who do become Crown advocates have the aptitudes and competence to do that. That is not in any way to diminish the role of senior Crown prosecutors, who have a very important role to play, because case preparation is absolutely essential to its presentation in court irrespective of whether it is done by the independent Bar or in-house advocacy.

What comes out of the HMCPSI report—you will have had an opportunity to look at it yourselves—is that you have got to have excellence. After all, in court you will be up against individuals who are represented by people who ought to be competent. I am not saying they always are, but there has to be an equality of arms. That is what he was seeking to address, and that is the whole thrust of the HMCPSI argument.

Chair: We are going to have to move on because we have spent quite a bit of time on the CPS, and we need to look at the Serious Fraud Office.

Q6 Mr Buckland: I just want to turn to the Serious Fraud Office and questions that have been raised about its performance in recent years, most notably illustrated in the Tchenguiz case, which I know you will be familiar with. In his remarks about lessons to be learned, the president of the Queen's bench division said this: "It is clear that incalculable damage will be done to the financial markets of London if proper resources, both human and financial, are not made available for such investigations and prosecutions in the financial markets of London." What steps are now being taken to ensure that the words of the president are being heeded and acted upon?

Mr Grieve: The new director, David Green, is carrying out a root-and-branch review—dare I use the words?—of the way in which the SFO operates. As you will be aware, he has wanted to do two things. First, he has indicated that he sees the business of the SFO as the prosecution of the most serious, complicated financial cases that affect UK plc, and he doesn't want the SFO to be diverted into doing lesser work. That work is still very important, but it need not necessarily be done by the SFO, whereas historically in recent years the SFO has done some prosecuting work, which, although very important, doesn't come into that bracket.

Secondly, he wants to ensure that the quality of that work can be delivered to the very highest standards. One has only to look at his recruiting drive and the fact that he has brought in Geoffrey Rivlin QC, an ex-senior fraud judge at Southwark. He has been appointed as pre-trial adviser to ensure that the quality of case preparation is at a very high level. He has appointed Alun Milford, a very distinguished lawyer, as general counsel. He was previously head of the organised crime division at the CPS. He has appointed a new chief investigator and also a head of policy and strategic relations. Big personnel changes are going on. I notice it at my cost because some members of staff at HEO have been attracted to go and work at the SFO, and I am delighted that that should be the case.

This is a radical rethink of the way the SFO operates, and also in terms of building partnerships, particularly with the City Police, and being fully engaged within the National Crime Agency, which is going to be of very great importance in dealing with wider levels of economic and financial crime, which is clearly one of the big growth areas at the moment. My hope and belief, on everything I have seen happen in the period he has been in office—he came in in March, so he has been there for only six months—is that this has the capacity to be transformational.

The SFO operates within a historic budget that was settled for it. Obviously, it goes up and down according to whether Government spending goes up and down, but essentially when the SFO was set up many years ago it was deemed that certain amounts of money should be allocated to it. Of course you could have a completely different model for the SFO,

potentially, but that would require a strategic rethink by Government. It is worth bearing in mind that the SFO isn't the only prosecutorial authority dealing with fraud. The CPS has a dedicated unit with a good track record, and there are other organisations like the FSA, who also prosecute within the regulatory area.

Q7 Mr Buckland: Isn't one of the problems here that we seem to have too many organisations and a lot of time is spent on working out the criteria before a decision is made to prosecute?

Mr Grieve: I am not sure that is a big problem. I can see that, if you want to faff around playing pass the parcel, it may offer you an opportunity for doing that, and that shouldn't happen, but I think the criteria selection ought to be pretty clear. David Green has announced clearly those matters that he wants to focus on. He gave four examples that are worth repeating: cases that undermine confidence in UK financial plc in general and the City of London in particular; cases that compromise the level playing field to which investors are entitled; serious bribery and corruption, both national and international; and those cases that may have a particularly strong public interest dimension.

Once you have got that written up on the wall behind your desk, I don't think the selection of cases is going to be difficult, whereas I accept that, if one starts blurring the areas round the edges, one may start getting into pass the parcel, and that is precisely what we want to get out of. Particularly with the NCA coming on and the Economic Crime Board, which is already meeting and bringing together all these players in one place, I hope and believe that those problems should not occur.

Q8 Mr Buckland: A big test is coming up for the SFO in its investigation into the LIBOR scandal. Some pretty fundamental mistakes were made in the Tchenguiz case: misunderstanding of legal professional privilege and a lack of access to genuinely independent resource when it comes to expert advice about the financial markets. Are you confident that those pretty basic, fundamental problems will be avoided when it comes to this most important of investigations, bearing in mind the huge public interest in what happened over LIBOR?

Mr Grieve: I have no doubt that the director of the SFO is very well aware of the public interest in LIBOR, and of course I am perfectly aware of the legitimate public interest in LIBOR and the desire to see it adequately dealt with. It is also worth bearing in mind that LIBOR is an international scandal and, therefore, is undoubtedly being investigated in other countries as well as here. I have no doubt there are concurrent jurisdiction issues and a need for co-operation at an international level as to how the overarching aspect of it is dealt with.

The director is very mindful of that. He is bringing into the office the necessary expertise to deal with LIBOR. As you will be aware, there had already been quite an extensive investigation carried out by the FSA. One of the issues was that the SFO had previously taken the decision that it would wait for the end of the FSA investigation before it decided what to do. It had a watching brief over it. The FSA investigation has clearly shown these serious regulatory failures, and the SFO has now taken on the question whether there should be criminal prosecutions.

Inevitably, with a small organisation, but it would apply even if the SFO was bigger, you will never have all the in-house expertise to deal with highly technical problems of this sort. You have got to be able to be flexible and bring in external advice, and that is exactly what he is doing.

The position is quite clear. The Government have indicated that if more resources are required they will be provided. If the director of the SFO feels that that time has come, or he needs it, he will come and see me about it. My understanding is that, given the way the matter

is progressing at the moment, he considers he is able to bring into the SFO in the ordinary way the necessary expertise and resources he needs to deal with it. Of course he is aware of the importance of this. But I have no doubt that the SFO over the coming couple of years will be judged by whether it can deal with LIBOR properly and in a fair way and also show—I think this is very important—that we can co-operate properly with our partners internationally in dealing with this in ensuring that the regulatory framework for the future is such that it never happens again.

Q9 Mr Buckland: If he does have to come and see you about it, to quote your words, what will your response be?

Mr Grieve: My response would undoubtedly be to go and see the Treasury to discuss the matter with them. The Treasury are aware of the importance of this. That is my duty; that is one of my roles as superintending Minister for the SFO and CPS. Of course I have to be alive to the realities of spending, but this is a very important issue. London as a financial centre is of immense importance to the United Kingdom. In order for it to continue to be so we have to show that the regulators and the criminal justice system have teeth.

Q10 Mr Buckland: Can I turn briefly to the issue of deferred prosecution agreements? We as a Committee have just received the Government's response. We are not in a position to analyse it fully or discuss it today, but I want to ask you one or two questions about DPAs. DPAs have worked extremely well in the US, but isn't that against a background of a very strong record of the investigation and prosecution of serious fraud, which sadly we don't have in England and Wales?

Mr Grieve: I have no doubt that the DPA system has worked well in the US for a number of reasons. The US has had an aggressive policy in the Department of Justice. Therefore, I have no doubt that those who are fixed with the beady eye of the Department of Justice may well feel that it is in their interests to come up front and resolve their matters speedily. In fairness, I do not think that our record here is appalling. We have just succeeded—I make this as a gentle point—in prosecuting Asil Nadir 20 years after he should originally have been tried, in circumstances where, on the face of it, large numbers of people believed that a trial would never get off the ground. The SFO successfully accomplished that. The SFO's yearly record of successful prosecutions is not a bad one.

My feeling is that the mood music is changing. There is a perception, because of things we have done like the Bribery Act, that, in so far as we may previously have been lax as a country in tackling some areas of corruption and fraud within what I call legitimate business, that is going to stop. The director has sent out that message loud and clear when he says, to paraphrase his words, "Don't get me wrong, but the principal role of this office is to prosecute people."

That said, DPAs will be a very powerful tool to help change behaviour and also resolve cases in a way which costs less money and leads to outcomes that the public can feel are in the public interest. I am wholly in favour of them; I am delighted we are making progress and that we will table amendments to include them in the current legislation going through the House of Lords. That is what we are intending to do. The House of Commons will have an opportunity of looking at it.

Broadly speaking, I agree with your point. If there is nothing to fear because you think you are not going to be prosecuted, doubtless you won't be inclined to come up front and come to an arrangement on a DPA. It is worth bearing in mind that in the last couple of years there have been a number of instances where companies have come forward to try to clear matters up with the SFO under the current informal arrangements, which, for a variety of reasons, are not very satisfactory. Whether it is BAE or Oxford Publishing, it has been

successfully done, with very substantial agreed civil penalties being paid. If we can get this up and running, we will have a very powerful tool for dealing with this type of criminality.

Q11 Mr Buckland: I have read the impact assessment, which, to be fair, was signed off by the former Minister, the Member for Reigate, in the MoJ, but the assumption in this document seemed to be, and I may be wrong, that the existing caseload—the absolute number of cases—will remain the same, and in effect there will be a switchover from early guilty pleas to DPAs. Surely, we should be more ambitious than that and look to expand the number of cases dealt with by both the SFO and CPS.

Mr Grieve: I would have to go and look at that. I must say that was never my understanding of exactly what the consequences of DPAs would be. I have no doubt that, if DPAs can be used to dispose of some cases, they will free up resource within the Serious Fraud Office to tackle other crime that needs to be prosecuted and taken to court. Obviously, doing a DPA is not a question of just sitting down and writing on the back of an envelope; it is a process that has to be taken through the courts and is subject to judicial superintendence and supervision, and therefore it requires resources from the Serious Fraud Office in order to be done. I would hope that it is going to give a very flexible tool to the SFO and that the flexibility will also be reflected in the SFO being able to do more cases elsewhere.

Q12 Mr Buckland: So you expect and would hope that would be so.

Mr Grieve: If I have a vision for the SFO—the director will speak for himself—if in two or three years' time we are watching serious, challenging cases being taken through the courts to conviction with, as a parallel track, DPAs featuring regularly, where appropriate, on an annual basis, and people saying, "The United Kingdom and the City of London is a place where, if you transgress, you are going to be dealt with and dealt with severely but fairly", I will be content.

Q13 Chair: There is another issue about contempt, which we could come back to later, but I want to turn to the Freedom of Information Act, on which we published a report recently, under which you act in respect of previous Administrations in your primary role. That was what you did in relation to correspondence between the Prince of Wales and several Government Departments. In exercising your veto under section 53, you gave essentially three reasons. One was that disclosure of the correspondence could damage the Prince of Wales's ability to perform his duties when he becomes King; another was that the Prince of Wales engaged in the correspondence with the expectation that it would be confidential. Those are not difficult to understand. But the first of your list of three reasons was based on your view that the correspondence was undertaken as part of the Prince of Wales's preparation for becoming King—preparation that has gone on for a very long time.

That seems to me to be a rather unreal notion and the other two reasons are the real ones. It was thought to be confidential at the time and the Prince's neutrality when he becomes king should not be compromised by anything that has been said or put on paper beforehand. Can you explain this "preparation for King" argument?

Mr Grieve: Yes. Admittedly, you make the point about the Prince of Wales's lengthy preparation for kingship. That is just the way in which the accidents of heredity work, but ever since he came of age he has a particular role, admittedly not one that is strictly within the strict ambit of the constitution because the direct relations are between the Government and the sovereign. As part of his preparatory role, he supports the sovereign by travelling extensively round the United Kingdom and elsewhere and being given access to individuals who will raise matters with him, which they probably would not raise with anybody else, to take the first example.

Secondly, he has access to certain state papers, and that is by convention. Therefore, he sees Government documents in exactly the same way as the Queen. It would be a rather odd situation if, in view of the fact that he is placed in a position where he is acquiring that knowledge as somebody going round and picking up information, he should not want to communicate with Ministers and bring to their attention things he has been told and has noticed himself, and to make suggestions as to whether something might or might not be done about it, always mindful of the constitutional convention that the Prince of Wales or the sovereign has to be politically impartial and accept whatever decisions Ministers make, because that is what our constitution is all about. The Queen acts on the advice of Ministers and doesn't act without that advice, but that is not to say that one can't raise queries or points. That is what the Prince of Wales has been doing. In those circumstances, it strikes me that the three bases which I identified—you will need to look at it in detail, and I have to stand or fall by my veto explanation—are valid ones.

The alternative would be that the Prince, I suppose, should perform no public functions of any kind at all pending his becoming a monarch, or, if he does perform them, he has to do them in a state where he wanders round, listening to large numbers of very interesting things people say to him, such as, "This thing doesn't work", and, "Do you know that this could be done better?", and can't write a letter to a Minister to explain that without it being put in the public domain, ruthlessly undermining his ability to do that without appearing to have a view, which he can't publicly have. That seems to me to be the logic.

Some of those who come along and criticise it may have a criticism about constitutional monarchy. Some may wish to have a republic, but, if you have a system where the heir to the throne as part of his preparation has quite an interesting involvement in both carrying out public functions and having access to state papers, to deny him the opportunity of expressing his view to Ministers, because it would have to be made public under the Freedom of Information Act, seems to me to be rather strange, and the public interest is very much in favour of his having that.

Q14 Chair: It seems to me that your case rests on your other two arguments, in particular that it would be damaging subsequently when he becomes king if the correspondence is made known, rather than that it is still some kind of preparatory exercise. The Prince of Wales does this, as do other members of the royal family, perhaps to a lesser extent, in support of the Queen, and carries out these functions. No doubt some of them pass information on from time to time to Ministers that they become aware of.

Mr Grieve: I have set out my reasons in great detail for the veto and done my best to encapsulate them to you, but it seems to me that the preparatory role of the Prince is different from other members of the royal family in terms of the access he has to information.

Q15 Chair: The other important point you made in your statement is that there is nothing in the nature or content of this particular correspondence that outweighs that strong public interest against disclosure. What sort of thing would have outweighed it, if it had been part of the correspondence?

Mr Grieve: When I previously came to talk about FOI, I remember explaining that one of the considerations that I have to have in mind is whether there is something so sensational or extraordinary in any Government document from the previous Administration such that the public right to know about it in some way would outweigh the other considerations. To explain, all these things have to be balanced, and ultimately it is my unhappy lot that it has landed on the Attorney-General to do this in respect of papers of previous Administrations, including, where relevant, correspondence with the Prince of Wales. If I thought or saw something that was so extraordinary that it outweighed all the other considerations, that would

be something I would have to weigh up very carefully. I simply made the point in my veto, in explaining my reasons, that I had seen nothing that came there at all.

Q16 Chair: Would I be right in thinking that, for example, the pursuit of private interests, like the Duchy of Cornwall where you would think it otherwise appropriate for the content of the correspondence to be publicly known, would cause you to raise that question when you looked at the correspondence?

Mr Grieve: I emphasise the words I used. Did I see anything improper? I didn't. I don't think I can amplify any further; I don't think I can do. But the nature of the correspondence as a generality appeared to me to be raising matters of concern to the Prince, which was a point I made, for Ministers' consideration. That is what the correspondence is about. If I thought it raised some issue of greater moment, I would have to weigh that in the balance as well, but I didn't see it.

Q17 Jeremy Corbyn: The Duchy of Cornwall issue is a very important one because the Prince of Wales has a very large holding of land and a personal interest in the success or otherwise of that operation, and Government regulation obviously impacts very greatly on how it comes about. Do you not think that the issue of the Duchy of Cornwall should be treated separately as a commercial concern and he should have no more or less rights than any other director of a commercial operation?

Mr Grieve: That is not a matter for me but for Parliament, if I may say so. The Duchy of Cornwall is a Crown estate that is allocated specifically to the Prince of Wales under historic convention from which he derives his income. It is not as if the Prince runs it personally, although he has a role in running it; it is run by trustees. Indeed, there is a level of accountability about the way it operates. It isn't a private organisation.

Q18 Jeremy Corbyn: Yes, but if the Prince of Wales has direct access to Ministers in respect of lobbying on regulation or future legislation, or a wider issue—just raising any matters that come to his attention—surely the public have the right to know why Ministers take the decisions that they do. If there is a complete lack of transparency on the paper trail of how they reached their decision because the Prince of Wales may or may not have been involved, don't you think the public have a right to know? After all, it is a democratic society with a Government accountable to Parliament, but it looks as though there is another area of influence that is not subject to any transparency.

Mr Grieve: If I may say so, in the way Government take decisions there are all sorts of areas that are not subject to total transparency. The influence that individual Ministers have on other Ministers in terms of the formulation of policy is one of the areas where, while it could potentially come under the Freedom of Information Act, a veto has been exercised. As to the formulation of Government policy by the interaction of the component parts within Government, while transparency of a greater kind has been provided than ever before, there are some areas where it is not. I don't think there are any absolutes here. You have to balance out the total package. Somebody can argue—it's a perfectly reasonable argument—that it would be delightful to know what the sovereign says to the Prime Minister every Tuesday afternoon, but there are very good and compelling reasons why we shouldn't know.

Where I perhaps disagree with you is that it seems to me the Prince has a public role. I am talking about the Prince's public role, and that includes the fact that, as part of his public status, he derives his revenue from the Duchy of Cornwall estates. I don't see that as in some way separate; it is not part of his private function.

Chair: We will move on to Mr Brine on a different subject.

Q19 Steve Brine: Good morning, Attorney, from one easy subject to another. I thought we would turn to human trafficking. We have had a look at the "Internal Review of Human Trafficking Legislation" published by HMG in May of this year, and a very thorough piece of work it is too. The number of convictions for human trafficking for sexual exploitation as a principal offence has reduced from 23 in 2009, to 10 in 2010 and eight in 2011. Can we probe with you why in your opinion convictions for human trafficking for sexual exploitation as a principal offence have reduced over the last three years quite dramatically, as the figures would suggest?

Mr Grieve: I think because it is not being used as the principal offence, because the figures show—I will try to find them so that I ensure I quote them correctly—that it is tending not to be used as the principal offence but in offences in which it is clearly a part. The data generated show that the number of defendants charged with offences relating to human trafficking was 142 in 2011-12; in 2010-11 that figure was 103, and two thirds of those defendants—94—were convicted.

Q20 Steve Brine: In March of this year you said that improvement was required in making available consistent data to identify the true scale of trafficking in the UK. What progress has been made in improving the available data?

Mr Grieve: My understanding is that steps are being taken to get this data collated. It is not the easiest of things to do, but I would wish to see the data collated. I can probably write to the Committee and give you a progress report on it.

Q21 Steve Brine: Why is it so difficult to collect?

Mr Grieve: All data may be difficult to collect, first, because of the way it is being operated by the police or CPS. I would certainly wish to see an ability to have an overview of what is available. We were able to give you the figures for 142 cases, so there is some data available. The question is whether we can drill down further.

Q22 Steve Brine: It says in the document that you expect to legislate to expand the unduly lenient sentence regime to non-sexual exploitation offences. When do you expect to be bringing that forward?

Mr Grieve: It is a matter for the MoJ when it goes through. Perhaps you would bear with me while I check. I want to see it, but it is not my legislation. I very much hope it is something that can be done in the next Session; that is what I would like to see happen.

Q23 Steve Brine: If you can write to the Committee on the point, that would be very helpful and we will move on.

Mr Grieve: I will write to you.

Q24 Nick de Bois: Turning to something more topical this morning, Attorney-General, many people regard having the vote as a civil right, not a human right, and are sceptical of the ECHR requiring the UK to grant prisoners the vote. First, do you believe that this requirement by the ECHR should be resisted or that the UK Government should, as is being suggested today, bring forward legislation to enable that?

Mr Grieve: I make perhaps two points. I sometimes think that civil and human rights are in some areas rather merged. I am not sure I draw a very tight distinction line. I would only make the point that the protocol to the European Convention on Human Rights that provides for the right of the population to express its view in free and fair elections is

something that the United Kingdom signed up to, so, whether it originates as a civil or human right, it is in the convention.

Secondly, the decision by the court in the case of Hirst and the final decision, after a series of challenges, in the case of Scopola, which was a decision in May of this year, place a duty on the United Kingdom as a signatory to the Council of Europe and the European convention to implement change to the Representation of the People Act in this area. Exactly what the United Kingdom should do is not specified; indeed, it is quite clear that there is going to be or is a great deal of latitude in what the United Kingdom can do in respect of implementing the Scopola judgment. The Scopola judgment, in a nutshell, said that a blanket ban by statute on convicted prisoners being able to vote was—I suppose this is the way to describe it—too much of a blunt instrument. While it was perfectly proper to deny some convicted prisoners the right to vote, and, indeed, on the basis of the Scopola judgment, to deny some prisoners subject to non-custodial sentences, or indeed individuals after release, the right to vote—despite that—the current blanket ban is in breach of the protocol to the convention.

The United Kingdom Government are adherents to the convention and it is one of our international legal obligations. Successive Governments, including this one, have always put great emphasis on the observance of our international legal obligations. We live in a world where international law matters increasingly, and the United Kingdom has always been seen as a role model in areas of international law as to how we go about our business and the fact that we observe international obligations imposed on us. It is, of course, entirely a matter for Government to make proposals but ultimately for Parliament to determine what it wants to do. Parliament is sovereign in this area; nobody can impose a solution on Parliament, but the accepted practice is that the United Kingdom observes its international obligations. That is spelt out in a number of places, including the ministerial code.

Q25 Nick de Bois: While I would suggest to you that the ECHR when it was first conceived was not conceived as a living document and its original intention was not to burrow down into the issue of prisoner voting rights, as a matter of practicalities would you agree that, notwithstanding your point about international obligations, the reality is that, if Parliament decided not to support this, there is no chance of Britain being thrown out of the Council of Europe, or little chance of even a fine, and we would be joining a long list of other signatories in registering our protest and disagreement with a decision? I put it to you that that is the worst sanction against us and, therefore, Parliament could be the final decision maker on this with no real penalty.

Mr Grieve: I am not sure I entirely agree with the premise of the question. I am not in a position to speculate one way or the other what the outcome would be if the United Kingdom Government and Parliament decided not to respond to the Scopola judgment. What would happen in practice is a matter of speculation.

Q26 Nick de Bois: There is quite a lot of evidence to suggest that is what has happened in the past.

Mr Grieve: I am not so sure I agree with you about that. What may or may not have happened in the past is one thing. It is at least technically possible that we would certainly be in breach. An issue that has been canvassed previously, because I spoke about it in Parliament, is that damages claims would be stacking up against the United Kingdom Government in respect of individual prisoners who would claim that their right to vote had been denied them. Therefore, that would be costly to the United Kingdom Government, unless they chose not to pay those, in which case that would be a further breach of their international obligations.

As to what the endgame would be—whether it would mean that the United Kingdom decided to leave the Council of Europe or be expelled from it—I would not wish to hazard a guess. It is at least technically possible that a country in breach of its obligations can be removed, although I recall that the only occasion on which it ever happened was when the Greek Government jumped before it was pushed in the 1960s after the putsch by the generals.

If I may say so, I am not sure that that is the issue. The issue is whether the United Kingdom wishes to be in breach of its international obligations and what that does reputationally for the UK. As I have stressed, ultimately this is not a matter where there is not parliamentary sovereignty; there plainly is. Parliament gives and can take away; Governments can leave the Council of Europe if they choose to do so. All I am saying is that it is quite clear, and is accepted by the Government, that in so far as the Scopola judgment is concerned it imposes an international legal obligation on us.

Q27 Nick de Bois: Can I clarify—because the reports are slightly confusing today—that, if legislation is to be brought forward, it will be brought forward by the MoJ? Is that your understanding?

Mr Grieve: It is certainly not brought forward by me. The Ministry of Justice is the lead Ministry when it comes to matters concerning the Council of Europe. As you will be aware, I worked with the last Lord Chancellor and Secretary of State for Justice in the reform programme, which we initiated and led to the Brighton declaration last March. Although I had a role in that, I did it to support the Justice Secretary. The lead role in that was taken by the Ministry of Justice. As a little throw-in at the end, some rather important reforms were initiated, which, in the longer term, may have some bearing on the way the court approaches some problems in terms of the doctrine of subsidiarity and the margin of appreciation, but it doesn't have any relevance to the Scopola judgment.

Q28 Chair: You made an interesting point in passing about denial of the right to vote being a penalty paid by people in custody but not by people sometimes on quite long non-custodial sentences. Does that indicate that part of your thinking would be that the boundary line between those denied the vote and those who retain it might be in the wrong place? For example, to deny the vote to someone serving a short sentence of custody, which happened to coincide with a general election, may be less appropriate than for someone serving a long non-custodial sentence in an attempt to make them change their life dramatically and give up reoffending, who ought to be deprived of it?

Mr Grieve: Looking at the Scopola judgment, it was unusual because this was not an examination of the United Kingdom's practices. We intervened. I went over to argue the case personally. Although we intervened, it was a case concerning Italy. Italy's practices are slightly unusual. I hope I have got this right. If you are sentenced to more than five years' imprisonment, you lose your civic rights to vote for life, but you can get them back by applying for them. What comes out of the Scopola judgment is that considerable flexibility is available, which Parliament might or might not wish to look at, in relation to whether people who have been released from custodial sentences but are out on licence should be able to vote, or, for example, whether they might be able to vote only if they carry out a civic responsibility course. These are clearly within the scope of the Scopola judgment. All I am saying is that there is quite a lot of flexibility.

An interesting example is somebody who is not sentenced to prison for an offence that deliberately seeks to undermine the integrity of the electoral process. Under the Scopola judgment there would be nothing to prevent a country, even the United Kingdom, saying that such a person automatically gets disqualified from voting for a set period, if that is what the country wanted to do. I simply make the point that the Scopola judgment is not about the

United Kingdom directly. It is indirect because it relates back to Hirst; it reiterates that the blanket ban on convicted prisoners voting is, in the court's view, wrong. I leave to one side whether or not that is a mistaken approach. I have expressed my view on that on the floor of the House, but that is what they have decided. I am simply stressing that the consequence of that is not that Parliament has got to lift the blanket ban for everybody or, for that matter, that, if Parliament wishes to revisit this issue, there are not quite a lot of new ways in which disqualification might be approached.

Q29 Chair: The loss of the right to vote might be seen as a more significant penalty by somebody sentenced for political corruption than someone who was sentenced for drunken fighting on a Saturday night.

Mr Grieve: All that is possible. Ultimately, if there is to be a change to the Representation of the People Act, as I emphasised at the beginning, that is a matter for Parliament.

Q30 Mr Buckland: We talk about the blanket ban, but there are people in prison who do have the right to vote: contemnors and fine defaulters.

Mr Grieve: Yes.

Q31 Mr Buckland: Does your evidence amount to this? With the flexibility the Scopola case seems to suggest, if the UK Parliament came up with a proper rationale for potentially denying the vote to, say, prisoners who have been convicted and sentenced by the Crown court, as opposed to the magistrates court, that could be one basis upon which Parliament could make a decision?

Mr Grieve: Forgive me if I am slightly cautious. I am simply stressing that there are numerous ways in which Government or Parliament could, if it wished, approach the issue of change to the blanket ban. That approach need not necessarily be entirely in the direction of having to give more convicted prisoners the vote. There is an in-built flexibility in the Scopola judgment, which was not present in the Hirst judgment, which made me think, when I came back and finally read the judgment, that we had been quite successful but not as successful as some people would have wished.

Q32 Jeremy Corbyn: Don't you think that the whole debate, which in a lot of the media is couched in terms of "defying the European Court of Human Rights"—I know it is something you don't particularly want to do—is very damaging to any complaints we make about any other breaches of human rights, of which there are many, among other Council of Europe members, and that we should be approaching this on the basis of wanting to co-operate with the decision of the European court rather than defying it?

Mr Grieve: I hope I made clear that the United Kingdom has an enviable reputation in relation to human rights standards and adherence. In my time as Attorney-General I have done quite a lot of foreign travel, including outside Europe. Most of it has been connected with what I call rule-of-law agenda, trying to persuade countries that have poor rule-of-law records to put in place the necessary structures that human rights are respected, that the police don't beat people up in police cells and that standards are raised.

We are at the forefront of that. If I try to identify an area of benevolent soft power that the United Kingdom has to offer, it is one of our great prizes. Inevitably, if we were to be in default of a judgment of the European Court of Human Rights, while clearly there would be some people who could put forward logical arguments as to why we should be, equally I have absolutely no doubt that it would be seen by other countries as a move away from our strict adherence to human rights norms.

Chair: Mr Attorney-General, thank you very much indeed. We are grateful for your help this morning.