

HOME OFFICE – JUDICIAL COOPERATION UNIT

EVIDENCE SESSIONS

Monday 4th April 2011

PANEL:

Sir Scott Baker (Chair)
Anand Doobay
David Perry QC

IN ATTENDANCE:

Commander Allan Gibson (Met Police/ACPO)
Detective Superintendent Murray Duffin (Met Police/ACPO)
Paul Evans (SOCA)
Tim Tyler (SOCA)

Transcribed from the Official Tape Recording
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SESSION ONE

(At 10.30)

1
2 CHAIR: Good morning. Can I introduce us, the panel? I'm Scott Baker. That's
3 Anand Doobay, who's a partner in Peters & Peters, and David Perry QC. We
4 are the extradition panel that you have submitted evidence to, or at least some
5 of you have submitted evidence to. And we're extremely grateful to you for
6 coming along. We're trying to make this as informal as we can, which is one
7 reason why I'm taking a few minutes to get the Court organised because we
8 didn't want to sit on the Bench. But could you introduce yourselves, please?

9 MR GIBSON: I'll begin this end, I'm Allan Gibson. I'm a Commander from
10 Metropolitan Police Service and I'm the spokesperson for ACPO on
11 extradition and mutual legal assistance.

12 MR DUFFIN: Murray Duffin. I'm a Superintendent from the Metropolitan Police
13 Service and, amongst other things, I run the extradition and international
14 assistance unit within Scotland Yard.

15 CHAIR: We saw you both, or at least some of us did, at the Human Rights
16 Committee last week and those of us who weren't there have got a transcript
17 of what was said, so we're pretty aware of all that.

18 MR GIBSON: That's helpful. Thank you.

19 MR EVANS: I'm Paul Evans. I'm one of the executive directors of the
20 Serious Organised Crime Agency, responsible for international proceeds of
21 crime, civil litigation, offender management and a number of other things.

22 MR TYLER: Good morning, sir. Tim Tyler. I work with Paul within SOCA. I head
23 up the International Crime Bureau, which includes the Fugitives and EAW
24 capability.

25 CHAIR: Thank you very much. I think you're probably aware of the five issues that
26 we've been asked to look into, which are pretty broad and fairly interpretative
27 as well. We've had a great wealth of evidence and it would be very helpful to
28 have an informal chat with you all to see how much you can help us on which
29 way we ought to be going on some of these issues. I mean, starting with the
30 EAW, it's pretty clear to us that there are some areas in which there might be
31 improvements, and we would like your help about that. I think as far as the
32 administration is concerned, it's – they come through SOCA originally. Is that
33 right?

34 MR EVANS: Indeed, sir, yes.

1 CHAIR: And the first step is to see if the warrant is actually a valid one or isn't.

2 MR EVANS: Indeed.

3 CHAIR: Can you help us about how that operates and how many occasions you send
4 them back and say, 'Well, we don't like the look of this. You'd better get it in
5 better order'?

6 MR EVANS: Might I ask Mr Tyler who actually does the work and has got the
7 numbers?

8 CHAIR: Yes.

9 MR TYLER: The process provides that SOCA is advised by way of what's called an
10 INTERPOL diffusion that there is a European arrest warrant in place for an
11 individual. We receive a large number of those. Of course, only a small
12 proportion will actually be within the UK because those diffusions are going
13 to a number of different member states simultaneously.

14 If the issue presents a high risk, if the individual is wanted for a
15 significant crime – for instance, murder or rape – or if we believe that they are
16 in the UK, from intelligence or from other means, then we'll go through a
17 process of certification. So that brings that European arrest warrant within the
18 purview of the Extradition Act and, once we have gone through that process, it
19 enables a power of arrest to be attached and for the warrant to be executed.

20 CHAIR: So the warrant, also at the same time is floating around other member states,
21 is it?

22 MR TYLER: That's correct, yes. Yes.

23 CHAIR: And what about the Schengen agreement? Where does that fit into this?

24 MR TYLER: The Schengen agreement provides a framework by which alerts or
25 information about European arrest warrants are circulated across all Schengen
26 member states. So currently that's 27 member states that are part of the
27 Schengen community. That information is available to them on an alert basis.
28 So if someone is stopped in Rome and there is a European arrest warrant
29 outstanding, then the checks undertaken by the Roman police will discover
30 that and that individual will be arrested. The UK isn't yet a member of the
31 Schengen Information System or the Schengen community, so that's the
32 reason why we learn about the existence of European arrest warrants by way
33 of a diffusion rather than through the system, the SIS.

34 CHAIR: Should we be a member of it?

1 MR TYLER: There is at the moment a very substantial programme led by the
2 NPIA –

3 CHAIR: The NPIA?

4 MR EVANS: The National Policing Improvement Agency.

5 CHAIR: Oh sorry.

6 MR TYLER: My apologies. So the NPIA currently lead a very substantial
7 programme that seeks to connect the UK to the Schengen Information System.
8 Our current projected date that we'll join is October of 2014. There are a
9 number of reasons why it's been held up.

10 CHAIR: Is that in – is that linked to the Lisbon Treaty at all or not?

11 MR TYLER: It's part of a bigger picture of which the Lisbon Treaty is –

12 CHAIR: Right, and I think I've seen somewhere that there is a potential problem
13 where, for example, if one country has executed a warrant and then decides
14 that no further steps will be taken, for whatever reason, that it's still possible
15 that the warrant's running around the system, and so the individual may be
16 picked up in other countries. Is that right?

17 MR TYLER: Yes. That has on occasions happened. Of course, it shouldn't and the
18 provisions of the Schengen Information System require that when the warrant
19 is withdrawn by any member state –

20 CHAIR: Yes.

21 MR TYLER: – that simultaneously it is withdrawn from the Schengen system.

22 MR EVANS: And proper notification made.

23 CHAIR: But that doesn't happen in practice always?

24 MR TYLER: There have been occasions when –

25 MR EVANS: A small number.

26 MR TYLER: – a very, very small number, that's correct.

27 CHAIR: Yes.

28 MR EVANS: We're aware I think of one case, but to give some idea of the scale of
29 this, we –

30 CHAIR: Yes.

31 MR EVANS: – probably receive upwards of 350,000 diffusions from INTERPOL
32 each year.

33 CHAIR: Yes.

34 MR EVANS: So we need very carefully to look across that body of work for

1 cancellations, and sometimes member states are slow.

2 CHAIR: And the system works fairly well, does it?

3 MR TYLER: Well, the Schengen Information System does, and that's one of the
4 reasons why the UK is seeking to join it.

5 CHAIR: I mean that's effectively a central computer, isn't it?

6 MR TYLER: It is. Alert-based computer.

7 CHAIR: Right.

8 MR EVANS: Which will link automatically to the police computer systems in the
9 UK.

10 CHAIR: I think it was in Commander Gibson's evidence about proportionality, as it
11 were, in relation to executing warrants. I mean, obviously, if you get a case
12 that somebody is wanted for murder in Germany, it probably gets quicker
13 treatment than chicken stealing in Poland, doesn't it? Or what differences are
14 there?

15 MR TYLER: We have a very carefully constructed system that identifies the level of
16 risk that the individual who is wanted, by way of EAW, presents. And you're
17 absolutely right. Those that are wanted for more a serious offence will get a
18 different handling, a different treatment from those that – you've given the
19 example of a Polish, for a minor theft.

20 MR GIBSON: And it's the same when the request for arrest reaches individual police
21 forces. There's a secondary risk assessment undertaken. The Metropolitan
22 Police, where Murray runs the unit, we will do the same process. We'll
23 prioritise those who present the greatest harm on the basis of that harm
24 presented to the British public.

25 CHAIR: Right.

26 MR GIBSON: Not just historical, though we are thinking of that – that harm may be
27 there. You know, that harm may be there, so, and in fact, intelligence shows
28 that people who have been arrested for serious criminality in other countries,
29 quite often, they're criminally active in the United Kingdom as well,
30 particularly, you know, we're talking about acquisitive crime, gun crime and
31 drug trafficking, particularly in the inner-city areas, that we have, you know,
32 patterns of criminality which have a very strong locus around different
33 community groups.

34 CHAIR: But do you have, as it were, a sheet of paper that tells you how quickly you

- 1 – or where in a priority scale this particular case is going to fall? Or is –
- 2 MR GIBSON: I don't, but Murray can speak to that.
- 3 MR DUFFIN: Yes, we have a formal risk assessment process and we have a scoring
4 matrix.
- 5 CHAIR: Yes.
- 6 MR DUFFIN: And depending on the level of the type of offence, depending on what
7 we know about that individual offender, what intelligence we've received,
8 either from SOCA or internally, we make a score and then the service we give
9 to that warrant depends on the score they get.
- 10 CHAIR: And you operate countrywide?
- 11 MR DUFFIN: We operate countrywide, England and Wales for Part 2 requests, those
12 outside of –
- 13 CHAIR: Yes.
- 14 MR DUFFIN: – the EU and we operate in London only for EAWs.
- 15 CHAIR: And how the... I mean if the individual is wanted in Northumbria, do the
16 Northumbria Police then have to carry out their own risk assessment?
- 17 MR DUFFIN: Yes, they do. If SOCA make a link with a force area, then that
18 warrant will go to the force area for the local police to execute.
- 19 CHAIR: And what about Scotland?
- 20 MR DUFFIN: Scotland have their own arrangements.
- 21 CHAIR: So it's quite separate?
- 22 MR DUFFIN: Completely separate, yes.
- 23 CHAIR: I did – I think reading one of the pieces of evidence, they felt that there was
24 occasionally a delay because it wasn't identified when it came in that it was a
25 Scottish case.
- 26 MR DUFFIN: Well I'll pass you over – but you have those, don't you?
- 27 MR TYLER: At the point at which we identify that a case is Scottish –
- 28 CHAIR: Yes.
- 29 MR TYLER: – then we will remit it to the committee.
- 30 CHAIR: I think their point is it doesn't happen soon enough sometimes.
- 31 MR EVANS: Sometimes it takes a while for us to discover that the person's resident
32 in Scotland.
- 33 CHAIR: Right.
- 34 MR EVANS: Certainly. And sometimes that may not show on the face of the

1 warrant.

2 CHAIR: Okay. David?

3 MR PERRY: Can I just ask just so that I understand? INTERPOL diffusion, that is
4 where INTERPOL are effectively passing onto you information as to the
5 existence of EAWs. Is that right?

6 MR TYLER: INTERPOL is essentially a channel –

7 MR PERRY: Yes.

8 MR TYLER: – by which member states will communicate with other member states
9 to advise ‘This individual is wanted and in this instance, a European arrest
10 warrant has been issued in respect of this communication channel.’

11 MR EVANS: Which extends beyond just the 27 member states.

12 MR PERRY: Yes. So just seeing what happens if a member state issues an EAW, if
13 you’re a member of the Schengen Information System, it goes onto the
14 Schengen network.

15 MR TYLER: That’s correct, yes.

16 MR PERRY: Does it also go to INTERPOL as well?

17 MR TYLER: That’s not automated. That’s a choice for the member state as to
18 whether they choose to do that. And a large proportion aren’t diffused by way
19 of INTERPOL channel, but, nonetheless, significant numbers are. And
20 because the UK is outside of the Schengen Information System, that’s one of
21 the reasons that member states will decide to enter it onto a diffusion.

22 MR PERRY: Yes. And when you get all these notifications of EAWs, you get
23 notification of them without it necessarily being the case that the wanted
24 person is in the United Kingdom?

25 MR TYLER: That’s correct.

26 MR PERRY: What sort of resource implications does that have? I mean, are you
27 actively looking for people or are you waiting to see whether they’re picked
28 up at immigration points or arrests?

29 MR TYLER: We were speaking before about prioritising, depending on the level of
30 risk that an individual presents. In the same way as Murray and Commander
31 Gibson have set out, we will point score the individual diffusions and
32 European arrest warrants to determine how we respond to them. The lowest
33 priority, the minor theft from Poland has been given as an example of that, and
34 we will do routine cooperation checks and searches around, perhaps – very

1 little more.

2 At the highest level of risk, then we will use all the tools and investigative
3 means that are at our disposal in order to determine whether they're in the UK
4 and, if they're in the UK, to identify where they are so that we can give that to
5 a local force in order to execute. So it is a tailored response.

6 MR PERRY: Yes. Thank you. And then this point about executed warrants still
7 remaining on the system, or warrants that have been withdrawn, I just want to
8 understand that. If a warrant is not withdrawn, but one member state decides
9 not to order surrender, so suppose a person is successful in arguing that a bar
10 to extradition from the United Kingdom operates in his or her case, would that
11 mean that the warrant would be taken off the system? Or is it only when
12 they're withdrawn by the issuing state that they're taken off the system?

13 MR TYLER: It is as they are withdrawn by –

14 MR PERRY: Only –

15 MR TYLER: – the issuing state.

16 MR PERRY: – if they're withdrawn.

17 MR TYLER: But if I may, there is a safeguard built into this, in that the warrant isn't
18 effective with the power of arrest until it is certified. And part of the process
19 of certification is a contact with the member state that issued the European
20 arrest warrant.

21 MR EVANS: So it's a double-check really.

22 MR PERRY: I suppose though that... Suppose France had refused to extradite
23 someone or surrender someone and that person then came here, and the
24 warrant was still extant in Poland, and you checked with the Poles and they'd
25 simply tell you, 'Yes, it's still extant' but they wouldn't tell you that the –

26 MR EVANS: It was refused.

27 MR PERRY: – French had refused.

28 MR EVANS: That's correct.

29 MR PERRY: But you would at least be checking to see that the issuing judicial
30 authority maintained its request for surrender.

31 MR TYLER: Exactly.

32 CHAIR: But if the French had refused, you wouldn't take it any further?

33 MR TYLER: Well, in that instance, we may not know.

34 CHAIR: But if you knew, you wouldn't take it any further? Or you would?

1 MR TYLER: I think we would take legal advice.

2 CHAIR: Good answer.

3 MR EVANS: From a panel member.

4 MR PERRY: I mean I suppose the thing is that just because one state has refused to
5 surrender, that may be because of a peculiarity of their law.

6 MR TYLER: Or simply administrative. Sometimes these things don't happen
7 because there isn't resource.

8 MR PERRY: Yes, yes, yes. Or it may be for example that SOCA here didn't like the
9 look of the warrant and refused to certify it, or certified a warrant that was in
10 fact defective in accordance with our law, so that the extradition failed not on
11 the merits, but on a technicality.

12 MR EVANS: In the warrant itself?

13 MR PERRY: In the warrant itself.

14 MR EVANS: Absolutely right. I'm pretty sure the advice we'd receive would be that
15 if the warrant's extant in the country that it originated, in the member state that
16 originated it, they would still be valid for the purpose of the Act, is I think
17 what the advice would say.

18 CHAIR: I seem to remember saying in some case that I heard in relation to France
19 that there ought to be more checking of warrants because they were coming
20 through and the mandate was arguably defective. But do you get many
21 defective warrants?

22 MR EVANS: Well, we've got some numbers, right?

23 MR TYLER: Yes. We will go through a process in certifying a warrant and it's very
24 frequent to find that we're not able to certify it on first request, on the
25 information that's available to us at the time, that we need to enter into a
26 dialogue with the member state that issued the European arrest warrant in
27 order to remedy any faults or any issues that we find within it. So –

28 MR PERRY: Does that dialogue go any further with some, with a country like, for
29 example, Poland? To say, 'Well look, do you really want to pursue this in this
30 case?' or you wouldn't go that far?

31 MR GIBSON: Obviously, once a warrant has actually been certified we have very
32 little sort of discretion in saying that we won't actually execute it. What we do
33 go through is a risk assessment process so it doesn't rise to the top of our
34 priority list.

1 MR PERRY: Yes.

2 MR GIBSON: But it will eventually be discharged unless, you know, we conclude
3 that the person is not in the United Kingdom and is not locatable, but as to
4 where we stand, we have no discretion once it's been certified.

5 MR DUFFIN: An awful lot of the low risk ones will be placed upon the PNC by
6 SOCA and then individual forces may not go to any great effort to arrest these
7 people and they'd end up being arrested because they've had another contact
8 with the police. And then somebody's done a check on them and found out
9 about the EAW.

10 CHAIR: It's very easy to forget that extradition is a two-way thing.

11 MR DUFFIN: Yes.

12 CHAIR: And of course, all our emphases have been largely coming in on people
13 being extradited from this country. But what about the other way round?
14 Issuing warrants: how is SOCA involved in that?

15 MR TYLER: Well, we are the central authority, so in the same way as we certify a
16 European arrest warrant that's coming into the UK, we can do the same for
17 those that leave.

18 CHAIR: But that would be at the instigation of the police, who would get the case to
19 the point of being ready for prosecution. Is that right?

20 MR TYLER: And the Crown Prosecution Service.

21 CHAIR: Yes.

22 MR GIBSON: Has to be charge ready.

23 CHAIR: Charge ready.

24 MR GIBSON: And we have to effectively have a warrant of our own before we can
25 apply for an international warrant.

26 CHAIR: Right.

27 MR EVANS: But where we've used it extensively in recently times has been in our
28 receipt – SOCA's receipt – of fugitives in Spain and in Holland, principally,
29 where we've found the system works to our advantage quite well.

30 CHAIR: Yes.

31 MR EVANS: In each and every case, there is an extant UK arrest warrant.

32 CHAIR: Yes.

33 MR EVANS: On which the system triggers, but there been quite a successful
34 programme for quite dangerous criminals who previously wouldn't have been

1 pursued.

2 MR GIBSON: We take a very tight view on what we ask to be checked up on by way
3 of international arrest warrant. I think in 2009/10, we'd about 200 outgoing
4 requests on European arrest warrant. The incoming in the same period was
5 over 4,000. But it has –

6 CHAIR: And how many from Poland?

7 MR GIBSON: From Poland, there were 2,400.

8 CHAIR: And Germany is the next?

9 MR GIBSON: Germany, yes, was the next one. Germany's population is large, but
10 they were 235, so I would say Germany are very similar to us. They've got a
11 larger population. They're probably making similar sort of decisions around
12 how they use the warrant.

13 CHAIR: So it's only really Poland that's a problem, is it?

14 MR GIBSON: Well, it is improving.

15 CHAIR: Yes, I was going to ask you about that.

16 MR GIBSON: We have made, obviously through the Home Office and Foreign and
17 Commonwealth Office, made representations, but, and I think our own people
18 have gone out, Murray –

19 MR DUFFIN: Yes.

20 MR GIBSON: – to talk to them, to explain the difficulties that we are having. And
21 there has been a tailing off of their sort of lower level request through some
22 sort of internal process, where they are making those judgments. There is a
23 proportionality of some sort. I don't know what that proportionality test looks
24 like, but it seems to have been applied recently.

25 CHAIR: I mean is it a dramatic improvement?

26 MR GIBSON: I don't know. Perhaps you can comment on that?

27 MR EVANS: No, I wouldn't say dramatic. I think we've seen a rise in the threshold.
28 I think this is a result of significant dialogue with the Polish authorities, but
29 even the central authority in Poland, of course, will say this is a matter for the
30 investigating magistrate. There is a question of independence in that process,
31 but we keep sending the message.

32 MR GIBSON: We do have views around this, of course, but we've made them
33 known. With the potential European investigation order, we are asking for a
34 proportionality test. With hindsight, I think we'd probably be lobbying for the

1 proportionality test around the EAW. My own view is that, you know, to
2 make that work, I think it has to be at source country, the originating country.
3 I think it'd be very difficult for another country to understand a case well
4 enough to make those decisions.

5 CHAIR: Well, I think it's probably our provisional view, isn't it, David, that we've
6 been talking about that this morning?

7 MR PERRY: Yes.

8 MR EVANS: I agree with that.

9 CHAIR: Yes.

10 MR GIBSON: And we've been thinking how that might work. We are developing
11 obviously, and I've been talking to Murray around internally our
12 categorisation of offences. Certain offences will always automatically go for
13 international warrant. Other cases we would refer to a more senior decision
14 maker. And there's a third category where we wouldn't even entertain it and
15 that's based on gravity. I think if we based it purely on things like the
16 maximum sentence that might be imposed, I think that leaves you – of course,
17 offences like theft have such a broad spectrum.

18 CHAIR: Yes.

19 MR GIBSON: It doesn't work. So I think you have to make some judgment either on
20 an individual case or some likely penalty in this case or you make it on some
21 other basis, like we do for serious arrestable offences, where we talk about the
22 – some judgment about the loss for the loser, bearing in mind their personal
23 wealth. You know, the size of the gain to, you know, the person who's
24 committed the crime. Also perhaps: what would be the likely penalty on first
25 conviction? So this person previously hasn't offended. If they were to be
26 charged with this offence and found guilty, what would be the penalty? So
27 you don't go for the maximum. You try to get the scale around, you know, the
28 likely penalty or seriousness for a first offender.

29 MR EVANS: Which is the test that we'd apply for property interference or for
30 intrusive surveillance.

31 CHAIR: Is this in a way a public interest test that you're applying with a slightly
32 different name to it?

33 MR GIBSON: I think it's public interest if you broaden it to include value for money
34 and cost effectiveness because –

1 CHAIR: I mean the Crown Prosecution Service have got to apply a public interest
2 test in domestic cases.

3 MR GIBSON: Well, I -

4 CHAIR: How does that just fit into this and...?

5 MR GIBSON: Well, I'll try and broaden it because I think the public are reluctant to
6 say that you should make decisions about justice based on cost. But certainly,
7 as a public service, we had to get into that arena. We already do this. It's
8 routine for us. We have ability to circulate somebody in the United Kingdom
9 as wanted. The effect of that is that they get found, they get arrested
10 immediately, but we can also circulate them on a locate trace. Using the
11 police national computer, we put them on, so that they get told that this
12 person's come to notice on the island of - I don't know - Shetland Islands or
13 the Orkney Islands. And we then know where they are, and then we can
14 decide whether the offence for which they've been accused or, you know,
15 have been convicted and then gone on to bail for sentencing, is sufficiently
16 grave that we want to spend a significant amount of money. Or do we want to
17 approach it another way? Do we want to get the local police to serve a
18 summons on them and say, 'This is your last chance to come now'? So there
19 are intermediate steps we can use to try to manage the cost to the public purse.

20 CHAIR: But if your defendant's in Spain, it's not so easy to do that, is it?

21 MR GIBSON: No, but then I would say if I was running a local police investigation
22 unit, I would want to know if somebody wanted to circulate somebody wanted
23 internationally. For an offence like a £1,000 theft from his employer I would
24 say, 'Well, hang on. What's it going to cost the public purse to do that?' And
25 I would probably say, 'No, I'm not going to give the authority to do that.'

26 CHAIR: Yes.

27 MR GIBSON: So I'd intervene to stop them doing... There's category 1, category 2,
28 category 3, where we say some offences will automatically be circulated.
29 Others will be subject to a senior police manager intervening and saying, 'I
30 think this is an inappropriate use of public funds.'

31 MR EVANS: And so not at all.

32 MR GIBSON: Yes.

33 MR EVANS: I think the test, if I may, is broader than the public interest. It's a sort
34 of public protection test. And the question that will always be in our minds at

1 the stage of turning this into something operational would be, 'Will the public
2 be put at risk?'

3 CHAIR: One of the questions that goes through my mind is any recommendations
4 that we make with regard to people being extradited out of this country, we do
5 need to have in mind any knock-on consequences to getting people back from
6 abroad. Is there anything you'd like to tell us about that or any risks that we
7 ought to be aware of?

8 MR GIBSON: Mutuality is important. I think obviously when we talk about
9 European arrest warrant, I don't think we need to fear that test or that
10 reciprocity because we have taken a very prudent view and we're not asking
11 our partners to do anything we're not already imposing on ourselves. But
12 there is the other area which we may want to come onto in a moment, which is
13 the forum bar, when we have – I have a view and it is that we need to think
14 more widely about the ongoing relationships we have internationally if we are
15 seen to be using devices which are beneficial towards British citizens, but to
16 the detriment of investigations – major investigations – in other countries and
17 where they're thinking about the harm to their own communities and their own
18 public.

19 And the case we're thinking of is one in Argentina, where there was a
20 British citizen, a woman accused of drug trafficking, being a mule. She fled
21 the jurisdiction and she was then in the United Kingdom and she intimated
22 through her lawyer that she would be prepared to plead guilty to an offence of
23 conspiracy to import drugs into the United Kingdom; a) we're not sure if she
24 intended to import them to the United Kingdom, and b) if we were to do that,
25 it's a small part of a major investigation and it might deny the authorities in
26 Argentina a chance to speak to this woman and the information – if she could
27 be turned, it might be important to convicting some major players in that
28 investigation.

29 CHAIR: Right.

30 MR GIBSON: So we start to be seen to be using, you know, abilities to protect our
31 own citizens to the detriment of other countries and other law enforcement
32 agencies.

33 CHAIR: Argentina is a Part 2 country?

34 MR DUFFIN: Yes, it is, yes.

1 CHAIR: Is it a prima facie case country or it is a schedule 2 country?

2 MR GIBSON: I don't know that.

3 MR DUFFIN: Schedule 2 country.

4 MR GIBSON: Okay. But that's my point, is that we need to think long term and
5 think more widely.

6 CHAIR: One of the areas that I certainly would like your help about is: cross-border
7 crime is much bigger now than it ever used to be. How do you handle... I
8 know we've seen some evidence as to how you handle cases with the United
9 States, but, generally, how do you set about dealing with cases where there's
10 criminality in more than one country – UK and elsewhere – and trying to work
11 out overall where it ought to be prosecuted?

12 MR GIBSON: I think I'd invite some others to come in in a little bit. I think we need
13 to understand: is there a pre-existing investigation when this request is made
14 of us? And if there isn't, then to start one would look particularly odd. I'm
15 not saying you can't do that, but I'm saying it would appear to the other
16 country involved that this was a unusual and it may be seen, you know, in a
17 sort of unfavourable way.

18 CHAIR: Right.

19 MR GIBSON: So if we've already got an ongoing major investigation, and this
20 happens quite frequently, then we would have
21 law-enforcement-to-law-enforcement, government-to-government
22 negotiations around that and we would try to coordinate and synchronise our
23 efforts. And we'd try behind the scenes we'd come to an agreement: this is
24 the best way forward. This jurisdiction should deal with this matter and
25 another jurisdiction should deal with the other matter.

26 CHAIR: What criteria would you put into the decision making on that?

27 MR GIBSON: That could be complex. I mean it can –

28 CHAIR: But it may be quite important from our point of view to be able to
29 understand that fully, to be able to answer issues about the forum bar.

30 MR GIBSON: The first test is which jurisdiction has the best opportunity to be
31 successful, in my view.

32 MR EVANS: Who's furthest down the track?

33 MR GIBSON: Yes.

34 MR EVANS: Is the first test for me.

1 CHAIR: Sorry?

2 MR EVANS: Who's furthest down the track?

3 CHAIR: Okay.

4 MR EVANS: That would then create a dialogue between... You know, this can often
5 be three or four different states –

6 CHAIR: Yes.

7 MR EVANS: – in a very complex investigation. And then the tests would be who's
8 best placed to secure a conviction? There would be another decision made
9 around the transference of commodity; so does this involve, for example,
10 drugs trafficking or firearm smuggling? And then fourthly, there'll be a
11 question to be put about where are the victims, if it is a crime, for example,
12 like people smuggling? And those four tests together would be the basis for a
13 discussion that would, in fact, I think probably agree with any –

14 MR GIBSON: Yes, and there may be some practical concerns. For instance, these
15 are probably organised criminal international networks. And you know, other
16 countries have different sort of provisions for being able to use evidence. For
17 instance, if it's intercept evidence, if it's a charge of one country, you may
18 have intercept evidence which is evidential in this country and may not be, so
19 some of these tests or some of those considerations are quite finely balanced.

20 MR EVANS: Particularly where there is a risk that there might be an informant in the
21 investigating mix. Different rules apply in different jurisdictions.

22 CHAIR: So this is really an important factor that comes into where's the best
23 prospect of getting a conviction?

24 MR EVANS: Indeed.

25 MR TYLER: Well, it's going to be a year or two before this is formalised with the
26 joint investigation team. And there is the process of setting up, which is done
27 quite regularly.

28 CHAIR: Yes.

29 MR TYLER: And then the investigators will get down and discuss all these matters
30 that we're talking about to decide where the best place is to mount a
31 prosecution. So within the EU, it's a formal process that is under EU
32 legislation.

33 CHAIR: But it happens less frequently in Part 2 cases, I imagine, because it'll be one
34 country this year, another country next year –

- 1 MR EVANS: Indeed.
- 2 CHAIR: And so forth.
- 3 MR EVANS: With the notable exception of Colombia, with whom we have a
4 bilateral exchange treaty.
- 5 CHAIR: Ah.
- 6 MR EVANS: 1897, and has successful extradited somebody back to the UK as a
7 result of it.
- 8 CHAIR: So that's not to do with Part 2 at all?
- 9 MR EVANS: No, it's a separate bilateral agreement.
- 10 CHAIR: And how many bilateral agreements are there of that kind?
- 11 MR EVANS: I don't know. I think it's the only one. That's my thought. I think this
12 is the only one I'm aware of.
- 13 CHAIR: But a country like China, you've got nothing?
- 14 MR EVANS: No.
- 15 MR TYLER: No.
- 16 CHAIR: Anand?
- 17 MR DOOBAY: Sorry, can I just go back a little bit to when SOCA receives an EAW
18 and you perform checks to decide whether or not it's a valid warrant to certify
19 it? Do you look at the content of the warrant in terms of what it requires under
20 Section 2? Do you actually look at if it has sufficient information about the
21 person, the offence, those requirements?
- 22 MR TYLER: That's exactly what we do. There is a clear criteria that each one needs
23 to meet before we certify it. And they are the considerations that we just
24 touched upon.
- 25 MR DOOBAY: And when you apply that test, do you then take account of what the
26 courts have said in terms of their consideration, which is ongoing and so forth,
27 or is it contained? How do you sort of apply it in practice?
- 28 MR TYLER: Well, what we are presented with is: a Court has asked for that
29 individual to be arrested and authorised the creation of a European arrest
30 warrant. That's as far as we see the Court's view is – it's in black and white.
- 31 MR DOOBAY: Sorry, I should have been more specific. I mean the UK courts
32 obviously look at more and more EAWs and they're refining the text in terms
33 of what's required under Section 2 and whether you need – how much
34 specificity you need in the description. So presumably you take that into

1 account as the UK courts refine their view.

2 MR TYLER: That's right, that's right.

3 MR DOOBAY: Looking at the incoming requests to make sure that they meet the
4 standards.

5 MR TYLER: Yes.

6 MR EVANS: And regularly advice on the point.

7 MR DOOBAY: Yes.

8 MR EVANS: So for example, where the Court has decided that there is some
9 refinement in scope, then we would take that into account in redesigning the
10 guidance, and we'd take advice on that point.

11 MR DOOBAY: I know we talked about discretion in terms of wanting it to be
12 certified and executing it, but obviously when you receive the EAW, it may be
13 that you think there might be a more suitable way to deal with this case. So
14 for example, you might think it might be suitable to serve a summons or if
15 there's some financial penalty that's been imposed. Do you ever engage in
16 those sorts of discussions to say you put out an EAW, but actually it seems
17 there might be some other form of cooperation it gives you, which would help
18 you to meet your aim?

19 MR TYLER: Not on an individual basis, no. I'm aware, if I can continue, that on a
20 different level, we've been talking to the Polish authorities around whether
21 they may use the issue of a summons on a more routine basis. But on an
22 individual EAW, then we would deal with it as an EAW. Yes.

23 MR EVANS: Within the letter of the law, really.

24 MR DOOBAY: I mean, would you see any value in – not saying who should do this,
25 but within the UK, essentially at some point considering when you see an
26 EAW, if there is a different form of assistance that the UK could provide,
27 which might meet what the requesting state is trying to achieve?

28 MR GIBSON: I think that's difficult to achieve because they want the person
29 physically in another country and they may have taken a view that this person
30 should be arrested. Now, if you took it generally or specifically, my view
31 around specifically is then we come into who is best to judge, you know, the
32 gravity to be attached to that case? And what we know: a small theft can be
33 grave because of the implications for the loser. And now should the country
34 where the person has fled to end up making those decisions, or should it be the

1 country of source? My own view is it's better that we should design a system
2 where, you know, it's the source country that makes that.

3 MR DOOBAY: Sure, and I suppose I'm not suggesting we take the decision for
4 them, but often I think it's perhaps a counsel of perfection to suggest that in
5 every case somebody's taken a specific decision to issue a European arrest
6 warrant we receive. And some people who issue the warrants may not
7 understand what else we might be able to do, and so my question is really in
8 the same way that you may talk to the Polish about issuing summons, is there
9 a need to explore whether there's something else which would in fact meet
10 their aim?

11 MR EVANS: I find it difficult to imagine an answer to that in the specific, so where
12 it's general, then I think that's probably the territory of a policy discussion
13 with the Polish authorities or with whichever authorities it may be.

14 MR GIBSON: Well, that has been piloted. Bilateral discussions have been going on
15 with all of us.

16 MR EVANS: What you're describing is a provision under the PNC and under our
17 own warrant system whereby we can do locate/trace: 'I want to know where
18 this person is, and once you've found them, let me know and then I'll come
19 back to you if we have any further request.' The system is not designed to do
20 that. It's an arrest system.

21 MR DOOBAY: No, no, I understand that, but as far as proportionality is concerned,
22 if warrants are being used for cases where it's not appropriate to be used, then
23 obviously it may take some time to get a system in place where the issuing
24 state, every issuing state has in place...

25 MR EVANS: I think the proper answer to your question from us is really the place
26 where that should be tested is in the Court. I don't know if it helps answer the
27 point you're making, but if we began to see a significant number of cases
28 failing because the Court had decided that it wasn't proper or proportionate,
29 then we would have to take that into account in the policy dialogue with the
30 requesting state.

31 MR TYLER: I think when you say 'not appropriate', that's 'not appropriate in our
32 view', so.

33 MR DOOBAY: Let's say that you saw that there was - it was apparent that what was
34 required was to simply inform somebody about a criminal process. That

1 would not necessarily require you –

2 MR GIBSON: But there are other ways that that can be done. There's the mutual
3 legal assistance.

4 MR DOOBAY: That's my point, is would you relay that back?

5 MR GIBSON: Well, if that person was wanted in another country and they had got as
6 far as issuing an EAW, they've then fallen outside of the remit of the mutual
7 legal assistance. It's then – prosecution has come to a conclusion. That
8 person is charge ready or has been charged and therefore the EAW has been
9 issued. So, I think as Tim says, we wouldn't be getting into a discussion to
10 say 'Well, have you tried this?' 'Have you tried that?' because they've made
11 that decision.

12 CHAIR: I think that what you are saying is that the check of the EAW is simply,
13 'Does it tick the right boxes to be a valid warrant?' And you don't go any
14 wider than that at that stage. The matters that Anand is raising would be wider
15 consideration, which ought to be pursued, if necessary, by a different route.

16 MR GIBSON: Well, I think that's –

17 CHAIR: As it were, prior to the warrant, and more generally.

18 MR GIBSON: Absolutely, yes.

19 MR EVANS: I mean, I think our discretion is very fettered in this.

20 CHAIR: Right. Sorry, Anand.

21 MR DOOBAY: Yes. No, I totally understood. I think I was sort of thinking more of
22 a hypothetical. What if your discretion wasn't as fettered? So can I make just
23 one residual point?

24 CHAIR: Yes.

25 MR DOOBAY: SOCA deals with Northern Irish warrants as a certifying authority.
26 Is that correct?

27 MR EVANS: It is.

28 MR DOOBAY: And so you perform exactly the same function in terms of
29 checking the warrant –

30 MR EVANS: As for England and Wales, yes. It's only Scotland that's
31 jurisdictionally different.

32 MR DOOBAY: SIS II, when it comes online, do you have any sense of what the
33 increase is likely to be in terms of EAWs?

34 MR GIBSON: We have been trying to model it.

1 MR EVANS: As part of the business case, we've been trying to do the completer
2 system modelling. I think it's fair to say we haven't really got a clue, actually,
3 if I'm being honest. We've got some modelling done.

4 MR TYLER: There is modelling around this; the business case for the SIS 2
5 programme, which is, and I quote, a "£300-million programme over the
6 10-year lifespan to connect the UK to SIS", a large component of that is
7 recognising that the savings to the criminal justice system in the UK by
8 preventing people coming into the country who are wanted by way of a EAW.
9 – so they'll be stopped at the border – those savings go a long way to offset
10 the cost of £300 million over the 10-year lifespan. So they are significant.

11 MR EVANS: I'll believe it when I see it, in the business case. I think there's going
12 to be an increase in the usage and an increase in costs.

13 MR DUFFIN: The big advantage is we don't have to find them.

14 MR EVANS: Yes.

15 MR DUFFIN: If SIS II works, then they will be stopped at points of entry.

16 MR TYLER: Or at the PNC check.

17 MR DUFFIN: When they – the whole – when they come through the point of entry,
18 when they come through into the country, it should flag up that there's an
19 EAW outstanding. Therefore my unit, my officers don't have to go around the
20 country looking for them, so there's a huge saving there.

21 MR EVANS: So there's a complementary programme called the e-borders
22 programme. And that will electrify, if that's the right word, the border entry
23 control and the border tally – that's to say the presence of a person in the
24 jurisdiction. More importantly, it can be used to deny authority to travel. And
25 you know, that's where I'm hoping that there will be some significant savings
26 by notification to other states using the SIS II system that person x should not
27 be allowed to travel from jurisdiction a. And that then I think is where some
28 of the savings lie.

29 This is a very complex programme and it is surrounded by many more
30 modern usages that we're putting to data. Part of the business has over the last
31 three years been around cataloguing who we know in the UK and who, in the
32 foreign jurisdictions, effects organised crime harm in England and Wales. If I
33 tell you that number comes to 38,000, you get some idea of the scope of the
34 way in which we need to be using data to better protect the public in the

1 future.

2 MR DOOBAY: Legal aid, I just wondered, maybe this isn't something you've got
3 any real experience of, but in terms of the police when you do make, may
4 attempt the first appearance, is it your experience that there is any difficulty
5 caused at first because of the unavailability of legal aid any other issues?

6 MR DUFFIN: There was evidence given on that at the last hearing.

7 CHAIR: Yes.

8 MR DUFFIN: By the barrister who appeared after we had given it, so I don't really
9 think that's an area that the police can comment on. There is obviously the
10 duty solicitor scheme, but how that works in practice is not really an area we
11 can help you on.

12 MR DOOBAY: I just wanted to touch on mistaken identity. It's an issue which
13 people raise in terms of their submissions and I think there are two separate
14 issues here. One is: have you got the right person?

15 MR GIBSON: Yes.

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1 case.

2 CHAIR: But it isn't going to do the system any good if it happens too frequently that
3 somebody has a cast iron defence because it wasn't them at all.

4 MR GIBSON: I don't know the data, whether anyone has actually researched this. I
5 don't think it's a common problem.

6 CHAIR: No.

7 MR EVANS: Or if it were a common problem, I'm pretty sure I'd be aware of it.

8 CHAIR: Right.

9 MR DOOBAY: The cases which I have seen, it's been resolved, and I wonder
10 whether it's been resolved I think partly due to some publicity and political
11 pressure. And I suppose my question is only whether you think there's any
12 role for you to transmit back evidence which suggests, for example, if you
13 have evidence where that person is at the time when they're said to have been
14 committing the offence, would you see it as part of your role to transmit that
15 back to the requesting state? Or would you see it as something which the
16 defence would have to deal with outside of the UK?

17 MR DUFFIN: Well, certainly, there's an awful lot of cases whereby we will have
18 mutual legal assistance work undertaken within the UK prior to a warrant
19 being issued. So quite often, the two things work in tandem, where we will
20 have gathered evidence for a requesting state to allow them to get to a place
21 where they are charge ready and they can issue an EAW or a Part 2 request.

22 MR DOOBAY: Do we provide a statement on arrest to those...?

23 MR DUFFIN: We do. We do, but that's -

24 MR DOOBAY: Significant comments?

25 MR DUFFIN: Yes, they'll be in there as well.

26 CHAIR: So if the individual produced a passport to show us a stamp that he'd been
27 in some completely different country on the day the murder was supposed to
28 have been committed, you would notify them of that?

29 MR DUFFIN: Certainly, we could provide that in the statement and as Mr Gibson
30 says, we will provide a statement of arrest of identity and of any significant
31 comments that were made. But of course, that would be the role, I think, of
32 any lawyer that they instruct to go down that route. And the information could
33 be transmitted to the requesting country.

34 MR EVANS: But it would be disclosable, where it had been exculpatory that way.

1 MR DUFFIN: Yes, but it's obviously not our role to test the evidence.

2 CHAIR: No, no.

3 MR DUFFIN: Yes.

4 CHAIR: Going back, if I may, Northern Ireland, you mentioned. How many
5 warrants do you get a year in relation to EAWs from Northern Ireland?

6 MR EVANS: We have the numbers.

7 MR TYLER: I'll look at that detail.

8 MR EVANS: I'm always very nervous about the numbers because the way in which
9 we count these things varies. So sometimes we count a calendar year and
10 sometimes we count a financial year. Sometimes we count a rolling year. So
11 I think this may be a number we might have to send you later on.

12 CHAIR: I wasn't too fussed about the precise number. I was anxious to know
13 roughly how many.

14 MR EVANS: No, we don't. We'd have to provide that separately to you, if we may.

15 CHAIR: I mean is it a handful or quite a lot or...?

16 MR TYLER: I don't think it is so many, but again –

17 CHAIR: Yes. And are there any particular problems in relation to Northern Ireland?
18 I mean, they say that it's quite a big expense from their point of view because
19 of flights and so forth and getting people out of Northern Ireland and sending
20 them back to...

21 MR DUFFIN: We've identified that that issue around national carriers and very often
22 coming out of London. Beyond that, no, I'm not aware of any particular
23 issues.

24 MR EVANS: Cost is always an issue for us all on not just this front, but on many
25 other fronts.

26 CHAIR: And I mean they have to send them back from Northern Ireland, do they,
27 rather than sending them to London and getting on some chartered flight you
28 organise here?

29 MR TYLER: Well, of course, for the Polish, there is that arrangement with military
30 flights, but the extradition provisions require the national carrier for the
31 country that is being extradited to being the means by which they're
32 transported back. And they tend to operate out of the London airports so, very
33 often, those individuals are coming into London to then be moved on.

34 CHAIR: From, for example, Belfast?

1 MR TYLER: Yes.

2 CHAIR: Because Northern Ireland doesn't count as a separate country from the
3 carrier point of view?

4 MR TYLER: That's my understanding.

5 CHAIR: Oh.

6 MR TYLER: Yes.

7 MR DUFFIN: Certainly, they do. They certainly do transit through Heathrow
8 because if you're a foreign national coming in, you obviously fly on national
9 carriers, as Tim rightly says, so there will be a transit from a local carrier from
10 Belfast to London and then on.

11 CHAIR: But Scotland would be quite separate and they go from Edinburgh.

12 MR DUFFIN: We have had occasions where Scottish prisoners have had to come to
13 London for transit.

14 CHAIR: Because there's no flight back to wherever they were from?

15 MR DUFFIN: Because there's no national carrier.

16 CHAIR: Okay.

17 MR DOOBAY: Can I just come back to forum bar? We were mentioning that earlier
18 in terms of how you look at it. I wonder if I can take a different example. I
19 think some of the facts you mention go more towards the organised crime and
20 where there's a transnational scheme to do something – drug trafficking or
21 trafficking of arms. But I give you a slightly simpler example, where perhaps
22 there's an offence which is committed which has involved conduct in two
23 countries and both countries could potentially prosecute because there's
24 jurisdiction to do it. And one of the things which you didn't mention in terms
25 of the criteria which you take into account is where the suspect is. In that
26 situation where both countries could prosecute, there may well be factors on
27 either side which weigh in favour of prosecution in that particular country. Do
28 you take into account where the offender is, the suspect is, and if so, how does
29 it weigh into any of your decision making?

30 MR EVANS: Again, if there's a pre-existing investigation, I think that's highly
31 significant. If there isn't and then we've commenced one because we've
32 received a request to arrest a UK national, that's pretty odd. I think, so, you
33 know, I'll just clarify that with an example. If there's two... If it's not an
34 international criminal network, but the case where a guy who's hacking into,

1 you know, a Pentagon computer.

2 CHAIR: You've just alerted me to remind me to say something, that this is a closed
3 session. The evidence is being transcribed, but it will be sent to you and you
4 will have an opportunity of editing or amending anything before it goes
5 public, which we would intend it to do along with all the other evidence we've
6 received at some point.

7 MR GIBSON: Yes. Well, on that particular case, I think because there wasn't a pre-
8 existing investigation, I would probably say the arguments are that we should
9 cooperate with the other jurisdiction, but if we did have one and they were,
10 you know – harm's been committed against organisations in the
11 United Kingdom or other parts of the world by this individual, it wasn't just
12 that one country, then I think you've got, you know, a different judgment to be
13 made.

14 MR DOOBAY: Perhaps then if we take... Let's assume there isn't. Let's assume
15 this conversation takes place between investigators and the prosecutors before
16 this extradition request.

17 MR GIBSON: Yes.

18 MR DOOBAY: And there is no pre-existing investigation in any one country, so it
19 comes to the attention of two countries that potentially an offence has been
20 committed. There's a discussion as to which one should take the lead. How
21 then does it work in terms of...?

22 MR GIBSON: Well, absolutely the factors that we've already discussed will come
23 into play, so all those factors will be part of the discussion between the two
24 investigatory arms. And a decision would be made as to certainly where the
25 person is, where the victims are, where the evidence is, and how far down the
26 route each investigation is. And so who would take primacy would be a
27 matter of discussion between those two sets of investigators. And it's done,
28 you know, on a very regular basis. I think –

29 CHAIR: I think Anand's point is: how much weight is given, if any, to the location of
30 the suspect? I mean supposing you've got a fraud partly committed in
31 America, partly committed here. You've got investigations running in both
32 places. What – trying to look at what goes into the scales? And we know the
33 human rights aspect comes in at a later stage in the process, but how far do
34 you look at where the suspect is and where his family are?

1 MR TYLER: If I can give an example, I investigated a fraud that spanned the US and
2 the UK, very much in the way that you suggested. I worked in partnership
3 with the FBI and we agreed, and we carried out, that we would investigate and
4 that led to the prosecution of the UK nationals. The US authorities, the FBI,
5 did the same for the US nationals. That's not to say it always works out that
6 way, but that was certainly a key decision that we made early on.

7 MR EVANS: This works pretty well for serious and organised crime, less serious
8 fraud. Where there are difficult discussions often are between
9 regulator-generated prosecutions both in the US and the UK jurisdictions. I
10 think that can be contentious. And that's often about recoverable value. But
11 those are... With our experience, that's a Serious Fraud Office jurisdiction.

12 CHAIR: So we really need to talk to the Serious Fraud Office about that?

13 MR EVANS: Certainly if this point is concerning as to how a negotiation might take
14 place between the UK prosecuting authority and the Ministry of Justice, the
15 Department of Justice in the United States, then that would be something that
16 which they would –

17 CHAIR: Well, I mean I'll be perfectly open about this. The, you know that one of
18 the questions we've been asked is whether the UK/US treaty is in balance. If
19 you read a lot of the newspapers, you'll get a pretty clear answer of what they
20 think about it. We've got evidence that's come in from that direction and
21 we've also got a lot of evidence coming in the other direction saying that if
22 you look at the practicalities of this, the arrangements aren't in balance. But I
23 think that we need to understand pretty carefully what goes on in terms of
24 negotiation so we can explain the practicalities and how it actually works out,
25 and be persuaded if that's the right conclusion to reach.

26 MR GIBSON: At the operational level, the pragmatic, I don't think there are, you
27 know, issues around necessarily strong points of principle. So what's the best
28 opportunity? Where are the victims? Where is the evidence? Then we want
29 to pull together to solve and to take down –

30 MR EVANS: And what's the best setting to conclude the issue quickly?

31 CHAIR: But when you're dealing with regulators, you've alerted me to an entirely
32 new angle to this. I appreciate that things like price fixing and so forth, this is
33 an area in which the United States authorities are very interested, this country
34 perhaps more interested than it used to be, but the SOCA don't get involved in

1 that at all.

2 MR EVANS: No, not at all.

3 CHAIR: That's all –

4 MR EVANS: These have been bilaterally negotiated agreements by the Department –
5 in the case of the US, the US Department of Justice – and the
6 Serious Fraud Office.

7 CHAIR: And are they operating on the same principles as you are, do you think, or
8 will we not know?

9 MR EVANS: In the cases that I'm aware of, which are a small number, very small
10 number –

11 CHAIR: Yes.

12 MR EVANS: – they are the same principles that we've been discussing this morning.

13 CHAIR: Yes.

14 MR EVANS: But I think there are a wider number of cases that are negotiated.

15 CHAIR: David?

16 MR PERRY: Sorry, but I just want to go back to SOCA in its role as the certifying
17 authority and also the exporting centre. When you check the European arrest
18 warrant to ensure it complies with the act and then you find that it doesn't
19 comply with the act, how much dialogue is there with the overseas judicial
20 authority? Do you actually call the issuing Court and say, 'We've got this
21 warrant, but it won't comply with our legislation, but we know the individual
22 is in our jurisdiction'?

23 MR TYLER: We wouldn't normally call the Court. We would call the relevant
24 bureau, the relevant assigning bureau. And of course they're in touch with the
25 Court. Often it's around the administration of it rather than the wording of the
26 warrant itself. And we will do that as long as it takes until it's resolved. And
27 that might be just one call and exchange information. It might be half a dozen.
28 And we won't certify it until everything is correct.

29 MR GIBSON: Or unless it's withdrawn.

30 MR PERRY: How does that work then? Because we've made known to one of our
31 EU partners we won't certify this warrant. They then – they know the person
32 is in the United Kingdom, or England and Wales and Northern Ireland, for
33 these purposes. And they issue a new warrant to conform to our requirements,
34 but there's another one on the system that's different. Can they withdraw that

1 one if they issue a new order?

2 MR TYLER: Yes, very often, it doesn't require the issue of a new warrant. It's more
3 in the nature of the way it's administered. So for instance, had they specified
4 the offences that this relates to? And does that specification tally with the
5 number, that we know, of offences that are shown elsewhere within the EAW?
6 So it's actually around the detail of how the information is presented, rather
7 than necessarily requiring the issue of a fresh and new --

8 MR PERRY: So if there were to be a new warrant then, presumably you'd have to
9 withdraw --

10 MR TYLER: The old one would have been withdrawn before the new one is issued.

11 MR PERRY: -- issue a new one?

12 MR TYLER: That is correct.

13 MR PERRY: And then the new one would be on...

14 MR EVANS: Would be, would be the operative warrant. Just to emphasise Tim's
15 point. The deficiencies are often very technical.

16 MR PERRY: Yes.

17 MR EVANS: And generally of a high level except in one or two cases.

18 MR PERRY: And then I just wanted to ask something about what the implications
19 would be of trying to apply a proportionality test in this jurisdiction in relation
20 to prosecutions being conducted in an overseas jurisdiction? I mean
21 presumably if you wanted to make that proportionality assessment, taking into
22 account matters such as loss to the loser, the size of the gain, the penalty on
23 first conviction, you're going to have to go back to that jurisdiction to get
24 much more information.

25 MR GIBSON: I wouldn't want to make that judgment. I was thinking, can we agree
26 a common standard across Europe that will apply these principles? I think by
27 and large, we're doing it. There's only one country at the moment that seems
28 to be out of kilter. But, so if I was able to influence the way things work, it's
29 to say 'These are the principles. Let's talk about them. They seem sensible.
30 Apply them before you issue an EAW in your country.'

31 MR PERRY: I was thinking more in terms of, we've received certain representations
32 that there ought to be some proportionality bar operating in this jurisdiction in
33 relation to surrender or extradition. Now, if you were to apply proportionality
34 bar in this jurisdiction in relation to a prosecution being conducted abroad,

1 how would you see that operating if you didn't have all this information?

2 MR GIBSON: If we were to be in that situation, I would want it applied at the
3 moment it was received. And it would be -- at the gateway into this kind of
4 hearing, it would be assessed by SOCA to say, 'This seems to be a trivial
5 offence.' And the request would go back to the originating country. I'll test
6 this. It has to meet these criteria. Can you please demonstrate how it does?
7 That's for us to reject it on our own judgment of it, ask them to provide the
8 evidence to meet the criteria.

9 MR EVANS: Back to Mr Gibson's earlier point, really. This would be a very
10 invidious decision to make for any agency because of the context of the
11 original warrant.

12 MR PERRY: Yes.

13 MR EVANS: And it's so important I think that the -- where the warrant originates is
14 the place where those tests should be applied. That's as much really a policy
15 consideration as it is a practical legal one. But certainly that seems to me to
16 feel to be the right way into this.

17 MR PERRY: Because otherwise it would be very difficult to deal with the sort of
18 situation where the country that had issued the warrant says, 'Well, you just
19 don't understand. This is a very serious offence locally.'

20 MR EVANS: Well, we know this is a very serious level offence and I couldn't really
21 foresee the position that we'd ever have sufficiency of evidence, first hand
22 evidence, really, to be able to make that on strongly supported evidential
23 grounds. I think there will always be a sort of hearsay from counterparts.

24 MR GIBSON: Plus if we make any unilateral decision, completely different to how
25 the rest of the EU administers this.

26 MR EVANS: Which strikes at the roots of why we have the agreements in the first
27 place.

28 MR PERRY: And then I wanted to ask you about an issue in relation to forum and
29 cross-border crime. Without talking about any particular case, but suppose
30 another state was in a position to prosecute, but a Court said, 'Well, in fact, the
31 prosecution has got to take place in this jurisdiction,' but the other state has
32 got the evidence. So suppose you had to go back, use Argentina as an
33 example. The Court says, 'Well, actually this person has got to be tried in this
34 jurisdiction, but Argentina has got the evidence that you need to mount the

1 prosecution.' How would you go about getting the evidence from Argentina
2 to prosecute and could you be guaranteed that you would obtain it?

3 MR GIBSON: It's quite a difficult case; I've come on on the back of it, but we've
4 had some experiences of using evidence from the United Kingdom to
5 prosecute somebody for very serious offences in another jurisdiction. [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 country. That is a very difficult... we only do it for serious offences, where it
10 would be justified for the much greater cost and difficulty in achieving it. It
11 took years to achieve it, took special negotiations and imagine how complex
12 that was.

13 So it can be done, but I would say it's – what we're trying for is an efficient
14 system that has, you know, the ability to use it regularly and easily and
15 understand it. Well, Murray?

16 MR DUFFIN: Well, I was going to say there, I mean there is also the cost, of course,
17 for the cost of sending one defendant back to the jurisdiction in which the
18 offence was committed, we've got potentially a number of witnesses and the
19 evidence and you're relying upon the cooperation of that country, who could
20 quite legitimately see this as an attempt to frustrate the extradition; they are
21 submissions that we have made. In this specific case, the cost would be
22 enormous in prosecuting within the UK.

23 CHAIR: What do you do if you get a straightforward request for extradition
24 somebody who's wanted for a number of very serious rapes in some other
25 country? You're then checking his identity and you find, 'Hello, his
26 fingerprints actually match somebody that we think committed rapes over
27 here.'

28 MR DUFFIN: That's happened. Well, the domestic offence takes priority.

29 CHAIR: So say you haven't started investigating against him?

30 MR DUFFIN: Yes, I mean if it were a case as straightforward as that, where we
31 receive a set of fingerprints and it pops up with an offence – which is a case
32 we've dealt with reasonably recently, where it did pop up with an UK offence
33 with a mark from the crime scene that was unsolved at the time – it's a pretty
34 simple matter for us to institute proceedings and we would do so because we

1 would be in a very, in a position very quickly to charge with that offence.

2 CHAIR: But how do you make the balance? I mean supposing that he's wanted for
3 half a dozen rapes in Greece and there's a perfectly valid warrant and then you
4 discover that he is also the person who's burgled a house down the road here.

5 I mean where does the balance... How do you?

6 MR GIBSON: There are different ways this can go.

7 CHAIR: Yes.

8 MR GIBSON: Depends on the circumstances. The principle is that a UK offence...

9 The worst offence would take precedence and if we have a case like that, we
10 could allow that person to be extradited to the other country on an
11 understanding that they get remitted back, we get a chance to bring them back
12 so that, you know, we can do it in more than one way.

13 MR DUFFIN: There are temporary transfer arrangements.

14 CHAIR: What actually happens? Well, are there any criteria for dealing with this?

15 MR DUFFIN: Not formally, as you say. I mean in a case, in the example you've
16 specifically given, if you're talking about a number of high level sexual
17 offences in another country and a burglary here, then I think the decision
18 would be made to let that one run and let that person go to the other
19 jurisdiction.

20 MR DOOBAY: This would be a prosecutor decision?

21 MR DUFFIN: Yes. Within the EU, there are liaison magistrates and one of their
22 functions is to resolve just these kind of issues.

23 MR EVANS: But the emphasis is that this is a prosecutor's decision, not an
24 investigator's.

25 CHAIR: So, but at what point does that come into the system? I'm sorry, my
26 colleagues probably know much more about that than I do, but I'm just
27 wondering how this – at what point this happens? He's been arrested. You
28 then find the connection with the UK offence. It then has to go off to the
29 prosecutors at that point to look at it?

30 MR EVANS: Well, there would be a prosecutor appointed at that point or before.

31 MR DUFFIN: The scenario is where, for it to happen like that, to be something as
32 specific as a fingerprint or something, DNA at a crime scene. It's a very rare
33 occurrence. And when it is, it's dealt with on its merits. Same with the
34 prosecutor for that offence would be involved.

1 MR PERRY: Are you aware of any cases where prosecutors have not been able to
2 reach agreement as to forum, where there's been a serious falling out, or is it
3 something that's generally resolved by agreement?

4 MR DUFFIN: I'm not aware operationally of that kind of scenario, no.

5 MR GIBSON: Nor am I.

6 MR EVANS: I'm aware of none. I'm certainly aware of some robust discussions
7 with our American counterparts, but of none that have been, you know,
8 resulted in nothing happening.

9 CHAIR: It would go out of the system, presumably.

10 MR EVANS: Indeed, with escalation; we'd be at the limit. This would be a matter
11 for the DPP. I'm unaware that anything has ever gone to that sort of level of
12 complexity or difficulty. But I understand these conversations can often be
13 robust.

14 CHAIR: Yes.

15 MR DOOBAY: Just got two small questions. In terms of issuing authorities for a
16 European arrest warrant, it obviously depends whether it's a domestic or a
17 country making the request as to whose that is, as to whether it's the Court or
18 prosecutor or an investigating magistrate. Do you see any difference in terms
19 of the quality of the European arrest warrant that you receive, depending upon
20 what type of judicial authority issues the warrant? Is there anything you can
21 see as a trend?

22 MR EVANS: I'm not able to help with that, really. They vary. And it could be
23 largely down to the day of the week, I think, and human behaviour.

24 MR DOOBAY: Because I mean, certainly, I've seen some submissions which sort of
25 suggest that there would be a better European arrest warrant if they were all
26 convicted by a Court, which are more independent and there can be more
27 scrutiny. But I just wondered whether, from your experience, you'd noticed
28 variability in quality?

29 MR EVANS: No.

30 MR TYLER: There have been occasions when we've picked up one particular
31 country where there were ongoing difficulties and we've invested time in
32 sending staff to work with the individuals in the bureau concerned and we saw
33 an increase in quality. But that's as close as I can get.

34 MR EVANS: And we'd do that regularly if we have detected a pattern of behaviour

1 that was remediable.

2 MR DOOBAY: And the other thing I just wanted to ask you about the forum, which
3 is slightly different. If there'd been an investigation in the UK and the UK had
4 decided either not to charge, or had charged and proceeded to stop for some
5 reason, so there'd been a directive or something like that, but actually not a
6 directive – so let's say there'd been a decision, either a decision not to charge,
7 or charge but it hadn't gone to Court so there'd been no actual acquittal, so
8 there was no double jeopardy. Do you think that, in that situation, another
9 country should be able to make a request for the same conduct? So the UK
10 has investigated, but decided not to continue. That doesn't create a bar in
11 terms of a different country for the same conduct wants to prosecute and
12 makes a request. Do you think there should be any difficulty with that?

13 MR GIBSON: Are you assuming that there is no difference in the evidence required,
14 because further investigation, further evidence could change it completely?

15 MR DOOBAY: I don't mean as a matter of principle in terms of whether they should
16 be prosecuted because there's sufficient evidence, but simply should the UK,
17 if it has initially investigated, should it be the country...?

18 MR GIBSON: If our investigation would only take us to a certain position in terms of
19 understanding of the case, the presentation of evidence before a prosecutor,
20 but there's further work and further evidence of import to be taken into
21 account, then my point would be that it can change quite dramatically. And in
22 principle, it should be allowed. Someone should be able to come back and
23 say, 'Well, on our evidence before us, have a different view and this person
24 should be prosecuted in our country.'

25 CHAIR: Well, you might have a situation I suppose where a decision is taken.
26 'We're not going to prosecute him because the evidence isn't satisfactory and
27 we can't get the intercept evidence in, which we'd very much like to have got
28 in.'

29 MR GIBSON: Right.

30 CHAIR: But the country seeking extradition hasn't got the same problem with the
31 intercept evidence, and having taken a decision not to prosecute here, what
32 would you do then?

33 MR GIBSON: As a law enforcement person, I would acquiesce, I think; it's in the
34 interests of justice that this person be held accountable for their actions.

1 MR PERRY: Yes. Suppose though it was slightly different. Suppose the CPS made
2 a decision not to prosecute because they didn't – there was no realistic
3 prospect of conviction, and on exactly the same evidence, the French decide
4 that they would like to prosecute because they're not so daft as to apply a
5 realistic prospect of conviction test. Just using that particular example, but
6 they just think, 'We'll have a go.' I mean should we be saying, 'Well,
7 actually, given the disruption that's going to be occasioned to this individual's
8 life, perhaps they shouldn't be prosecuted.' Or should we say, 'Well, that's a
9 matter for the French because they don't apply such a rigorous test when they
10 decide to prosecute'?

11 MR GIBSON: It's a question for law enforcement because it's based on mutual
12 recognition of each other's legal systems, and so we can't question their legal
13 system. If that's what they work to, it's not for us as law enforcement to
14 take –

15 MR EVANS: I agree with that. I think this is a very difficult question.

16 MR GIBSON: The Government.

17 MR EVANS: Yes, I think the Government may have a view. But equally, the Court
18 may have a view. The extraditing Court may have a view, and maybe that's
19 the venue where this is best tested. I think it'd be very difficult for us to make
20 those kind of judgments.

21 MR DUFFIN: I think it has to be on a case-by-case basis. You can't really have a
22 generic set of scenarios where you would or wouldn't.

23 CHAIR: Double jeopardy. Similar, but not an identical offences – how do you cope
24 with that?

25 MR GIBSON: I was asked this before. You know, this similar –

26 CHAIR: But you were asked –

27 MR GIBSON: Yes, similar but not identical is actually, you know, needs to be
28 unpacked because you can have the same circumstances and we take a look at
29 it and charge an offence which takes into account some of those facts and it
30 goes – they get charged and they get acquitted. But then someone else has a
31 look at it and there's a much broader range of consideration, much broader
32 range of evidence. And they charge a slightly different offence, based on the
33 same facts. Now, is that double jeopardy or is that, you know, just charging a
34 different offence? And that is a very complex area. And I think

1 straightforward double jeopardy is easy, but when you're talking about, you
2 know, frauds particularly, or... You get into cross-accounting, theft, all sorts
3 of things, but you can... Alternative charges and alternative ways of looking at
4 it. And it comes back to the principle, if there is clear evidence of criminality
5 and that person has defrauded, should they get away with it? And you know,
6 should our point to start off be in saying, you know, 'Do we want to frustrate,
7 you know, someone being held to account for their crimes or not?'

8 MR EVANS: And in circumstances as complex as this, I find it hard to imagine that
9 there wouldn't be a UK prosecutor working side by side with the investigative
10 authorities. That might sound like a bit of cop out, actually, but I think that
11 the tests that a prosecutor will apply to this will be much more round the
12 notion of fairness than I think we would be feeling comfortable about making.

13 MR GIBSON: Right. I can see in the case of murder, I mean quite easy, you know, if
14 you've been acquitted for murder, then you've been acquitted for the murder.
15 Even we have changed change our laws around that.

16 MR PERRY: Yes.

17 CHAIR: Accessories: do you have any – I think you've probably been asked about
18 this before. I'm not quite sure whether there are any problems about other
19 countries treating accessories differently from the way we –

20 MR TYLER: No, I wasn't asked about this before, and I don't know the answer, to
21 be honest.

22 CHAIR: Does it give rise to any difficulties?

23 MR DUFFIN: Operationally, I'm not aware of it at all, no.

24 MR GIBSON: Is it an offence in the country?

25 MR DUFFIN: Yes.

26 MR GIBSON: That's the first question.

27 CHAIR: Can I just ask you, first of all, I suppose from the Met Police point of view,
28 has the European arrest warrant scheme brought benefits to the Metropolitan
29 Police?

30 MR GIBSON: It has.

31 CHAIR: And if so, what are they?

32 MR GIBSON: I think it's a faster, more efficient way of doing business. We've
33 certainly, I think, been able to do things with more certainty when
34 investigators understand what they have to do. And it's not a load of different

1 systems for every different country, which was one of the things we've had to
2 cope with before, and it required experts to understand the different
3 relationships. With one system for the whole of Europe, prosecution service
4 and police understand it, and the Metropolitan Police had a problem when they
5 were doing it for the whole country, where we two years ago stopped that in
6 2009 and we said to the other forces around the country, 'You must deal with
7 your own.'

8 We used to go up to Northumbria to arrest somebody, you know, for some
9 assault and bring them down to the Court in London. That brings us up to a
10 certain point – I know I'm playing away here, or not my home team, but an
11 issue of, you know, for the police service of only having one Court in the
12 country dealing with this, you know, creates significant problems for forces
13 around the country. I'm speaking now as the ACPO spokesman, not the Met
14 spokesperson. And we have flagged this up before, that either the courts
15 should be able to deal with this matter electronically or to have more than one
16 Court; to have, you know, one or two regional courts would be of great
17 assistance.

18 The Metropolitan Police Service ends up with further costs as well, and
19 we've been able to discharge some of those costs through that decision
20 two years ago. We still end up moving prisoners around or other forces
21 around the EAW. This is the schedule 1 countries. Other forces come down
22 to take people, they're Polish prisoners, to Biggin Hill, but we still have the
23 cases where we are moving – we're paying for Serco to move prisoners from
24 our prisons in London to the airport.

25 MR DUFFIN: Yes.

26 MR GIBSON: That's because of a historical contract signed by NOMS whilst we
27 were the only force in the country doing European arrest warrants. That's no
28 longer the case, but NOMS say that it's not for them to renegotiate the
29 contract or to bill individual forces under the contract, they say it's a matter
30 for the Metropolitan Police. That's costing us about £40,000 to £60,000 a year
31 moving prisoners around. And I think, you know, I would say that there is a
32 responsibility on a review of extradition to look at these inefficiencies in the
33 system and to say, one, about the core and secondly, around the movement of
34 prisoners to facilitate these international agreements and do we have the most

1 efficient cost-effective way of doing it? And I would suggest that we don't.

2 CHAIR: What is the answer?

3 MR GIBSON: On the movement of prisoners, I think it's around NOMS taking the
4 responsibility to renegotiate the contract. We should be using private sector
5 contractors where we can to move prisoners. Serco, they do it all the time.
6 They could do it at a lower cost and a greater efficiency than us, and so I
7 would see that that's the answer.

8 CHAIR: But as far as the Court is concerned, I must say I haven't – anything I've
9 read so far has suggested that there are real advantages in having just
10 Westminster dealing with extradition cases; you have a core of judges who are
11 experienced and therefore can deal with the cases more swiftly. You've got
12 advocates know the form and deal with cases, or are more expert.

13 MR GIBSON: I recognise that, and can that not be built up in a second or third
14 location in the country? Is it a binding constraint? And even if you accepted
15 that was the best way of doing it, why can't we have electronic linkup between
16 courts?

17 CHAIR: Video link?

18 MR GIBSON: Yes, you know. So I just think that this system has been designed for
19 a different era and we're moving prisoners around the country a long, long
20 way. And it's taking two or three people to bring a prisoner down to a Court
21 in London. And that's a significant cost.

22 CHAIR: I made the same point for years in the courts here about bringing prisoners
23 from prisons to the Court of Appeal Criminal Division for appeals. Eventually
24 that was sorted out and we can now do that by video link. David?

25 MR PERRY: Do you think the workings of the 2003 Act have become clearer as the
26 courts are given authoritative decisions on how it's to be interpreted? And do
27 you think that things have settled down over the six years or so it's been
28 enforced?

29 MR DUFFIN: Well, yes. Operationally, of course, the role of the police is to execute
30 the warrant – when we talk about EAWs – is to execute the warrant that we
31 receive from SOCA and put the person before the Court with evidence around
32 the identity of that person and information for the Court to make their bail
33 decisions. And in some respect, that's where our remit ends. So the other
34 decisions that have been made, the stated cases around the Act as regards

1 physically removing people from the country and whether or not an
2 extradition is successful or not, is not really within the remit of the police
3 service.

4 MR PERRY: Yes. What about from SOCA's point of view?

5 MR EVANS: Equally for us, I think, provided that the procedures have been properly
6 complied with, there is little wriggle room for decision making in the process
7 in the role that we play. Certainly, the decided cases that there are have been
8 helpful to us in, if you like, enabling the dialogue with the requesting state to
9 be rather more rich. But I wouldn't say that this is a huge determinant in how
10 the system operates.

11 MR PERRY: Do you have any views on how it might – how the system might be
12 improved?

13 MR TYLER: It's interesting. The detail that there is... One particular difficulty
14 we've encountered is over where there's occasions where asylum is requested
15 prior to certification. The Act is explicit about those occasions where asylum
16 is requested after certification, but it is silent on the issue prior to certification.
17 It's a technical issue, but one that's given us a headache on certain occasions.

18 MR EVANS: About four or five cases since the Act commenced. And it's a point
19 we've made to the Home Office about clarification. It's a technical point
20 really, but one that has caused some difficulty.

21 MR PERRY: What sort of difficulties are created?

22 MR EVANS: Litigation.

23 CHAIR: So what's the solution?

24 MR TYLER: I think the Act just needs to be explicit about the steps to take, not only
25 post-certification, but also prior.

26 MR EVANS: One way or the other, we don't express a view really. One way or the
27 other, that is a thing that needs to be clarified.

28 MR PERRY: You just need it to be clear as to where you stand.

29 MR EVANS: Exactly.

30 CHAIR: The EIOs have now replaced letters of request, haven't they? Or they're
31 about to

32 MR DUFFIN: Well, it's still in discussion around a framework decision, so we're not
33 really there yet with –

34 CHAIR: Oh.

1 MR DUFFIN: – EIOs. They're not in place, no.

2 CHAIR: And what practical difference is it going to make?

3 MR DUFFIN: Well, again, at the moment, we deal with mutual legal assistance
4 treaty requests, ILORs: international letters of request. What it will do is
5 streamline the system as EAW has streamlined extradition. So within the EU,
6 we'll have one system for asking for evidence to be gathered in another
7 country. It'll be much easier to do, more simplified. The problem will be
8 around timescales and the number of requests we may receive.

9 CHAIR: Do you know where it's got to at the moment in implementation?

10 MR DUFFIN: I don't know where we are, no.

11 MR TYLER: I believe that the UK has agreed. A decision was made we would join
12 this and that we're now in this stage of working through the practical
13 indications and how it'll be affected.

14 SPEAKER: And are you aware of any practical implications that would be relevant?

15 MR TYLER: Absolutely, yes. I think proportionality has been discussed and that's a
16 real concern. We don't at the moment know the level of work this will
17 generate and how this will be managed and the gateway that will operate on all
18 of this and how this will be synchronised with, for instance, the European
19 arrest warrant and the other provisions.

20 MR GIBSON: I think it obviously will make potential implications in terms of
21 resource commitment much greater because this is not dependent upon a
22 charge ready case. We're talking about a much wider number of cases. So
23 that's one of the things to point out. The second, proportionality, is really
24 important. Cost, we're wary about cost. The third principle would be that we
25 shouldn't be asked to do things for another country we wouldn't do in similar
26 circumstances in our own countries; so the level of intrusion, for instance. If
27 we are asked to do things which are very intrusive, if it wouldn't be
28 appropriate to do that in our legal system, would it be appropriate to impose
29 that upon a UK resident or a UK citizen for another jurisdiction?

30 CHAIR: Is this going to require domestic legislation to get it into place?

31 MR TYLER: Yes.

32 MR DUFFIN: There are a couple of other issues, if I may.

33 CHAIR: Yes, please.

34 MR DUFFIN: The other problem around the timescales is at the moment, when we

1 receive international letters of request –and again, one of the units that I
2 manage deals with London for those – again, we have a proportionality test
3 our own, when it comes to the matrix system with EAW. We do the same
4 with international letters of request. So we look at the speed in which that
5 evidence needs to be turned round, the severity of the case, the danger an
6 individual may pose to the UK. Under the proposed EIO system, there is no
7 proportionality test and there is a set deadline for every case.

8 CHAIR: You're told how to do it. You've no discretion left at all?

9 MR DUFFIN: No, and we've got no discretion on the time it takes us to do it. The
10 other problem is then when we're dealing with requests from the rest of the
11 world because of course, if we've got very tight timescales and a strict regime
12 around European requests, which we don't have around the rest of the world,
13 then are we going to end up giving less attention to everybody else?

14 CHAIR: Right.

15 MR PERRY: Nothing on that. I was going to ask about the category 2 territories, if
16 that's all right, because one of the – we had been discussing the European
17 arrest warrant, but one of the matters that we've been asked to consider is
18 whether there's an imbalance in the amount of evidence required in
19 extraditions between the United Kingdom and the United States. And in your
20 letter, Commander Gibson, you've said that, operationally, you didn't
21 recognise that there was a difference between the level of evidence required.
22 And I just wonder if you'd just amplify on that and explain what you mean.

23 MR GIBSON: My understanding is that the countries are required to show
24 reasonable ground that the offence has been committed. There isn't a
25 requirement to put a prima facie case. And so that's why I ask it in that way.
26 I don't have an extensive case study. There are a number of cases I can quote.
27 But that's my understanding of what the treaty says and what happens in
28 practice is you present evidence to show a reasonable cause to suspect that a
29 person has been involved in criminality. It's not a full prima facie case.

30 MR PERRY: Yes. Do you have experience of seeing incoming United States
31 requests?

32 MR GIBSON: I don't see them personally, other than SOCA or –

33 MR DUFFIN: I mean I have seen them, but they're not, again, with us, it's a matter
34 of we're physically going to the Court and getting a warrant.

1 CHAIR: Yes.

2 MR DUFFIN: So once we've received a request and it's gone through the CPS and
3 the Home Office Judicial Cooperation Unit and our officers will physically go
4 to the Court and swear the warrant. So there is a test there to get the warrant
5 because of course, the Court could refuse to issue a warrant. So there is a test
6 there around the information that we lay before the Court before an extradition
7 – a Part 2 extradition warrant is issued.

8 MR GIBSON: Yes. Just the question on prima facie evidence as well, that's subject
9 to wide interpretation. A prima facie case can be based on one witness
10 statement or it can be a full case file, which, you know, has a huge amount.
11 So I'd just like to understand when we're asked a question just exactly what is
12 meant about this threshold level – on a working level because we have
13 received the same wording, the same test being applied both ways, we don't
14 recognise it.

15 CHAIR: Do you think at the moment, generally, in extradition, that there is a greater
16 willingness between the states to cooperate?

17 MR GIBSON: Certainly within Europe. I think we're widening the number of
18 countries where we have bilateral agreements. Certainly I have experience of
19 working, in a very limited way, around Vietnam, for instance, where in recent
20 years, we've forged ahead. So I think there is a recognition that crime is
21 increasing global: telecommunications age, computers and so forth,
22 international movement of money, all these things are all forcing countries to
23 get closer and all possible agencies to work more closely to combat it.

24 MR TYLER: If I may, every year, INTERPOL host what's now called Infra-Red.
25 It's a brand name for an initiative that seeks to align extradition and fugitive
26 activity across the globe. I was recently in Brazil at a conference where most
27 member states sent delegates just to talk about the practicalities, from an
28 operational perspective, of effecting extradition and tracking fugitives across
29 the globe. We've recently had an initiative last year that sought to identify the
30 most significant offenders who are wanted across the globe, and to take joint
31 action against them. I know that the next initiative in this style, again branded
32 Infra-Red, will focus on Latin America and sex offenders in particular. So
33 there are a number of different mechanisms at an operational level that seek to
34 align activity.

1 MR EVANS: If I might add just one point perhaps. It would be the, in some senses,
2 disproportionate detriment caused by someone fleeing justice that we seek to
3 correct here. Or put another way, it has quite a defining effect on the
4 criminals who are captured as a result of us being able to pursue fugitives
5 abroad. So it's quite an important part of the overall harm reduction landscape
6 and one I think which will have increasing importance as we report.

7 CHAIR: The prima facie evidence rule in Part 2 cases – those that aren't – certain
8 countries aren't scheduled and some countries are scheduled. Do you think
9 that the division is right or are you concerned that there are countries that the
10 rule doesn't apply to that cause difficulties?

11 MR GIBSON: No question at all. I mean it causes no concern operationally. It's
12 really a matter for whoever's testing the evidence or the courts to decide
13 whether or not the evidence that is permitted, or submitted, is of a sufficient
14 quality.

15 MR PERRY: Say if other states started imposing the same test?

16 MR DUFFIN: On UK requests?

17 MR PERRY: Yes.

18 MR DUFFIN: Well, there's the problem with any unilateral action we may take, is
19 how would that affect our requests going out to Europe and the rest of the
20 world?

21 MR PERRY: You mentioned earlier that you'd had some notable successes in Spain,
22 but, from memory, wasn't there a difficulty a few years ago where we couldn't
23 get people out of Spain because we were applying a prima facie test, which the
24 Spanish didn't understand because it was a concept alien to their
25 jurisprudence? So I just mention that. I mean, it sounds as though the –

26 MR EVANS: Largely been corrected by 2004 legislation.

27 MR PERRY: Yes. And –

28 MR EVANS: Which is now clearly understood.

29 MR PERRY: Yes. And it sounds as though relationships with the Spanish authorities
30 now are extremely good.

31 MR EVANS: They are – I use this word rarely – fantastic. We have a fantastic
32 relationship with my opposite number in the Spanish national police. 90% of
33 cocaine seizures in Spain in the last calendar year originated from SOCA
34 intelligence. So we have a really close relationship, which is reciprocated, and

1 has expanded into activities around fugitive capture, but also fraud. Spain is
2 the venue for some very significant frauds perpetrated often on vulnerable
3 elderly investors. And on each and every occasion, we're mutually
4 reinforcing the relationship, so it's probably one of the best sets of
5 relationships we have in the world. Spain, Holland I would put in the same
6 category, the United States, obviously, Colombia and you might find this
7 surprising, Afghanistan.

8 CHAIR: Well, I think you've exhausted our questions, but if there's anything you'd
9 like to tell us that you think we ought to be concentrating on or know about,
10 that we haven't apparently picked up, do fire away.

11 MR EVANS: Nothing from us, I think.

12 MR GIBSON: I made the points around the Court and the transport of prisoners,
13 which I think cover the practical points.

14 CHAIR: Yes, okay. Yes, of course.

15 MR TYLER: I think if I may, you asked about the benefits for the EAW. And if I
16 can just add to the comment made by Commander Gibson, I think some of this
17 is latent. And when we join the Schengen Information System, then we'll see
18 the benefits of EAWs in a new way and a refreshed way.

19 CHAIR: Thank you very much indeed. Anything else? Well, we really are
20 immensely grateful to you for coming and talking to us. And speaking for
21 myself, it's been extremely useful to have a broad and, to some extent,
22 unfocused discussion where we've been able to chat about the problems that
23 we've got to make recommendations to the Government on. And we're pretty
24 keen to try and get it right, and I think you've helped us in that direction quite
25 a lot. Thank you very much indeed.

26 MR GIBSON: Thank you.
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