

1400

**HOME OFFICE – JUDICIAL COOPERATION UNIT**

**EVIDENCE SESSION**

Monday 11 April 2011

**PANEL:**

Sir Scott Baker (Chair)  
David Perry QC  
Anand Doobay

**IN ATTENDANCE:**

Richard Alderman (Director of the SFO)

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(At 14.00)

1  
2 CHAIR: We try to make this place as friendly as we can, because if we turn the  
3 microphones around we can... The situation is that there's a transcript of  
4 everything being prepared, so there's a tape, and we do eventually intend to  
5 publish the submissions that we've had, including the oral submissions, but  
6 you'll have an opportunity to change anything that you wish before it goes  
7 into the public domain, so please feel free to say what you want to and feel  
8 you can change it if necessary.

9 MR ALDERMAN: I'm working on the basis that I will not be discussing the facts of  
10 cases that are not in the public domain.

11 CHAIR: Right.

12 MR ALDERMAN: If you wanted a separate briefing on that, I would be happy to do  
13 so, although I'd have to check whether your distinguished colleagues were on  
14 the other side in those cases.

15 CHAIR: I think we're content to deal with what's in the public domain and  
16 hypothetical situations. But the reason that we've asked for you to come at  
17 I'm afraid what was relatively short notice is one of the matters that we've  
18 been specifically asked to look at is the forum bar and whether it ought to be  
19 implemented. In looking into this, we've heard a good deal of evidence from  
20 those who are opposed to implementation as to the chaos at the courts if it was  
21 introduced, and the problems etc, etc. And our thoughts have been moving  
22 from there and we had the CPS and Keir here last week, and we were busy  
23 exploring the issues that arise when there is a case that could be prosecuted  
24 here or somewhere else – in particular, the United States – and we were  
25 looking at the way in which these decisions are made because, speaking for  
26 myself – and I think my colleagues are probably on the same sort of lines at  
27 the moment – we think that 'forum bar' is putting things perhaps slightly  
28 wrongly, and one really ought to be looking at 'forum considerations', as it  
29 were.

30 But there seemed to be a certain amount of lack of clarity – and certainly  
31 from the public's point of view – as to what actually goes on and how the  
32 decisions are taken. The *Daily Mail* would no doubt say that the decisions  
33 were taken over a cup of coffee and a nod and a wink, but we realise that it's  
34 not like that, but on the other hand, when we were discussing matters with

1 Keir, he seemed to be not unsympathetic to the idea that there ought perhaps  
2 to be greater clarity as to the criteria, what weight is attached to them and how  
3 they are applied in individual cases. Of course, we appreciate that the courts  
4 have been very reluctant to interfere with prosecutorial discretion, and JR is  
5 only available in very, very limited circumstances. It seemed to us that it's  
6 very difficult to associate a forum bar from the court actually getting in and  
7 taking the prosecutorial decisions. So, that's where we are.

8 Then it dawned on us that, actually, the SFO might have very different  
9 considerations and approaches from the bog standard drugs case or murder or  
10 whatever it is that the CPS would be more regularly dealing with, and then  
11 moving on a stage from there we thought, 'What about the OFT?' We haven't  
12 got as far as that yet, but we would much appreciate – and I'm going on a bit  
13 too much – your thoughts on how these difficult decisions work when you've  
14 got a problem about whether you prosecute a case here or in the States, for  
15 example.

16 MR ALDERMAN: Can I explain what happens in practice and what we do? But  
17 could I just say at the outset that I have no difficulties whatsoever with the  
18 idea that there should be more transparency about this. Ultimately, in the  
19 decisions that we take and the reasons for them, we are subject to the courts, to  
20 judicial review, but if there is a need for more transparency as to this, then I  
21 would certainly welcome this, because, in issues like this, which are of such  
22 importance both to the individuals, their families and also, I think, to the  
23 public at large, the more transparency that there can be in this sort of area the  
24 better. So, I would be very happy with any ideas about more transparency.  
25 But can I just explain what happens?

26 CHAIR: Please.

27 MR ALDERMAN: We have a considerable number of cases with the US authorities –  
28 usually, the United States Department of Justice, because they prosecute in the  
29 US – and the reason we have such a close relationship with them is that they  
30 both investigate and prosecute in the type of case that is particularly relevant  
31 to the SFO's remit. We investigate and prosecute where there's top-level  
32 financial fraud and corruption, and the Department of Justice do exactly the  
33 same: they investigate and they prosecute. And there comes a stage during the  
34 course of the investigation where we need to think about forum. Usually,

1 what happens is that we have a number of companies involved and a number  
2 of individuals. Those individuals can be located in all manner of jurisdictions.  
3 Some of them may be US nationals or UK nationals, but they may be resident  
4 in either country.

5 What we have to do then, with the Department of Justice, is to work out  
6 who should carry out the prosecution, if it gets to that stage. And what we do  
7 is we look at the Eurojust guidelines of 2003 and we use that as the framework  
8 for the discussion. The guidelines, we find, are very helpful, because I think  
9 that they point to all of the issues that need to be taken into account, but they  
10 don't, of course, undeniably point to one solution rather than another, because  
11 if it's something that's raised for discussion between us, there are arguments  
12 on both sides, and our experience is that we have some pretty robust  
13 arguments with the Americans about this, because they have a very clear  
14 public interest in prosecuting individuals as well as corporations in the US.  
15 There are circumstances in which we say to them that, if the individual is  
16 resident in the UK and the criminality has occurred in the UK, then we too  
17 have a strong public interest in prosecuting in this jurisdiction.

18 What we try and do then is to have a look at the individual in the context  
19 of the case as a whole, and what tends to happen is that... If I give you two  
20 scenarios, without any identifying details, what I think I can probably give you  
21 is in the public domain, that involves two people who were extradited from the  
22 UK in relation to a Department of Justice investigation concerning Halliburton  
23 and some other companies. They were UK resident, criminality occurred here,  
24 but our view, looking at the Eurojust guidelines, was that the Americans had  
25 had a major investigation into this whole area, the company had reported to  
26 the Americans and had been discussing issues with the Americans, there were  
27 cooperating witnesses who were ready to give evidence in America but hadn't  
28 signed up to giving evidence to us, and it seemed to us, in relation to those two  
29 individuals, that the natural place for a trial was in America, and we agreed  
30 that it would be for the Americans to take jurisdiction there. As I understand  
31 it, one of them challenged the decision of the district judge, I think, by a  
32 judicial review but was out of time, and they both went to America, where  
33 they pleaded guilty.

34 The other scenario – and this is a live, ongoing case, where I have to be

1           circumspect – is one where we have had discussions with the Americans  
2           because our view is that we should prosecute this particular individual, for a  
3           number of reasons, and we're concerned about the overall look of the case  
4           before the courts and the impact on other cases if we were to take another  
5           view. What's happened is that we've had quite an intensive process of  
6           discussion with the Americans over the Eurojust factors. Some of them point  
7           towards the Americans; some of them point towards us, but what we've done  
8           is we've taken a view and the Americans have agreed that it should be for the  
9           SFO to prosecute in that particular case.

10 CHAIR: What would have happened if they'd said no?

11 MR ALDERMAN: What would have happened then are a number of things. First of  
12           all, if the Department of Justice had said no, it would have been open to me to  
13           ask our Attorney General to talk to his counterpart in the United States.

14 CHAIR: Under the guidelines.

15 MR ALDERMAN: Under the guidelines, yes. There could have been a discussion  
16           between attorneys. Now, I have to say that my view, and the view of my  
17           counterparties in the US, is that we had to everything possible to avoid  
18           something being escalated to the level of attorneys, because that would  
19           indicate some sort of breakdown in what's actually a very good and positive  
20           working relationship between us. But that would have been what we would  
21           have done.

22           The alternative would have been this: there could have come a stage  
23           where we could have started the prosecution against the individual and, in  
24           those circumstances, if the Americans had started their extradition case before  
25           the courts, then the courts might well have had to defer that extradition  
26           application, pending the resolution of our case.

27 CHAIR: I think they'd have had, wouldn't they, under the act?

28 MR ALDERMAN: Absolutely. Exactly. That's what I think would have been the  
29           position.

30 CHAIR: Just one thing I just want to be absolutely clear about: am I right in  
31           proceeding on this basis, that if there's already been a charge over here, then  
32           that's the end of it, and those proceedings trump any extradition for the time  
33           being, at least if the proceedings are taking place in this country? At the other  
34           end of the scale, am I also correct in my understanding that, if the Americans

1 seek extradition of somebody and you've not yet commenced any  
2 investigation, although it may be that you're thinking very seriously about it,  
3 then that would be, as it were, game, set and match to the Americans?

4 MR ALDERMAN: Can I take the two scenarios?

5 CHAIR: Yes.

6 MR ALDERMAN: First of all, if we were already prosecuting the individual, then  
7 that is a technical bar to the Americans. It is a technical bar under the act.  
8 The reason I paused just slightly there is we are talking technicalities. We're  
9 also talking about individuals who are very mobile. They are usually global  
10 business people. They will move to different jurisdictions. They will also  
11 have in mind that, at some stage, they have got to make their peace with the  
12 Department of Justice and, of course, if they go to other jurisdictions, there  
13 may be different extradition arrangements that apply. But so far as this  
14 jurisdiction is concerned, if we have charged somebody, then that would be it.

15 If we haven't charged somebody, then I think the position is likely to be  
16 this: that I don't think we would be in the position of making this decision  
17 following an extradition request by the Americans, because we would know  
18 all about their case. The way we work at the moment with the Americans is  
19 that we are engaged in parallel investigations on a large number of cases right  
20 from the outset, and so we have a good idea about what they are likely to be  
21 seeking from the UK. I think that our cases at the moment – probably 40-50%  
22 of them – involve the US Department of Justice. We have a very good  
23 relationship with them, and so we do know at an early stage what they are  
24 likely to do. The prospects of an application for extradition coming to us  
25 without our knowing about it beforehand, I think, are pretty remote. It could  
26 happen but I think it's remote.

27 CHAIR: So, you're, as it were, liaising with each other before the start of the  
28 investigation or right at the beginning or...?

29 MR ALDERMAN: Right at the beginning. Usually, when we've got some  
30 intelligence or something that we're deciding what we should do, because a  
31 company comes in and tells us or a whistleblower, then usually we would talk  
32 to the Americans at a very early stage about this and about conducting a  
33 parallel investigation.

34 CHAIR: So, they just ought to know what's going on in case they've got information

1 that might be useful or whatever.

2 MR ALDERMAN: Indeed. In our particular area of work, the Americans have got a  
3 very wide jurisdiction – not just over American companies and American  
4 individuals, but a very wide jurisdiction, which they assert very vigorously,  
5 and so, usually, when there is a case within our jurisdiction, the Americans  
6 would normally also have jurisdiction, and what we try and do is to talk to  
7 them at an early stage. This is also something that the companies want as  
8 well, because they don't want two separate investigations. They want, so far  
9 as possible, the whole thing to be coordinated.

10 CHAIR: And the Revenue and Customs, will they come to you or will they conduct  
11 an investigation of their own?

12 MR ALDERMAN: The Revenue and Customs will go to the Crown Prosecution  
13 Service, because the prosecuting agency for Revenue and Customs was the  
14 Revenue and Customs Prosecution Office, which is now part of the Crown  
15 Prosecution Service, so they would go to the CPS.

16 CHAIR: But then, if it's a case that's really an SFO case, it will eventually come to  
17 you, will it?

18 MR ALDERMAN: Not usually, because what happens with Revenue cases is that  
19 they have got very many highly skilled investigators who investigate Revenue  
20 cases and Customs cases, and then they go to the CPS. Our cases tend not to  
21 come in that particular way. Most of our cases come from intelligence,  
22 whistleblowers, people coming in and talking to us, journalists, that sort of  
23 thing.

24 CHAIR: Right. Okay. Well, that's very helpful. So, it's pretty unusual, then, that  
25 there would be a case where the Americans have got some investigation going  
26 but you've got none, but if that was the position would you bow to the  
27 Americans automatically in that or would it depend on other considerations?

28 MR ALDERMAN: No, I wouldn't bow to the Americans automatically. What I'd do  
29 is look at the Eurojust guidelines and see whether or not we should be  
30 prosecuting, because overall if the potential defendant is resident here and the  
31 criminality is here, and particularly if the victims are here, there is a strong  
32 public interest in proceeding here. It's not a final decision in terms of where it  
33 should take place, but if we have got that sort of scenario, then I would want to  
34 look to see whether or not I should be asserting jurisdiction in that case.

1 CHAIR: The Americans are not signatories to Eurojust, are they, so do they pay much  
2 regard to it in these negotiations?

3 MR ALDERMAN: They pay regard to the Eurojust guidelines, and certainly the  
4 correspondence that we have with the Americans goes through the Eurojust  
5 guidelines, goes through the various factors that are referred to. When it's got  
6 anything to do with Eurojust or whatever, it's a very helpful set of guidelines  
7 for prosecutors to use.

8 CHAIR: I'm trying to remember one thing that I picked up and I wanted to... We can  
9 come back to it in a minute. Anand, what have you got?

10 MR DOOBAY: Can I just go back slightly in terms of the start of the investigation?  
11 Am I right in thinking that, now that there are the Attorney General's  
12 guidelines which apply, essentially, if you start an investigation where you  
13 have any sense that there may be a US aspect to a case, that essentially you  
14 proactively have to go and talk to the Americans to work it out between you as  
15 to how you will proceed? Is that a fair summary of it?

16 MR ALDERMAN: Yes.

17 MR DOOBAY: So, in order for there to be an extradition request which came to the  
18 UK which you weren't aware of, that system would have had to have broken  
19 down in some way. There would have had to have been an error at the start in  
20 terms of identifying a case which might deal with both jurisdictions.

21 MR ALDERMAN: I would probably want to ask my American colleagues why it was  
22 that we knew nothing about this case until we received the extradition request  
23 and why they had not invited us to join in a parallel investigation, because  
24 there could be other UK criminality as well. So, I'd want to ask the  
25 Americans about that.

26 MR DOOBAY: Right. So, in an ordinary case, the way the guidelines work should  
27 mean that there had been some communication at an early stage, and it might  
28 be that you decided not to have a parallel investigation, or decided to have no  
29 investigation at all, but it would either be that or a parallel investigation, or the  
30 UK would decide to investigate.

31 MR ALDERMAN: Yes.

32 MR DOOBAY: As you very fairly said, the Eurojust guidelines aren't ordinarily  
33 determinative, because there are a number of factors, and often those factors  
34 point in different directions in terms of which jurisdiction should in fact



1 prosecute. And one of the things which I think certainly it's my sense is that  
2 the public often believe that greater weight should be placed upon the location  
3 of the defendant in terms of their nationality or residence than other factors. I  
4 can give you an example. Sometimes, it will be the case that a case can be  
5 prosecuted in two different jurisdictions, but it will cost more to do it in one,  
6 because it may involve the moving of evidence from one jurisdiction to  
7 another. I wonder how you in practice balance the factors under the Eurojust  
8 guidelines, where, as you say, they point in different directions. Are there any  
9 which carry more or less weight, the way you are looking at it?

10 MR ALDERMAN: I suppose the factor that carries a lot of weight with us is: what do  
11 we as criminal prosecutors actually think is the right outcome in terms of the  
12 criminal process? Let me hypothesise for a minute. If, for instance, we were  
13 being asked about a case where there were six conspirators, and the Americans  
14 wanted three of them and were offering us three, I might say that that does not  
15 seem to be a good basis in principle for making that decision, and what we  
16 ought to do – and as we do in practice – is to have a look and see where should  
17 this conspiracy involving all the conspirators be tried, because it's important,  
18 when you've got a conspiracy like that, for the jury to see all the conspirators,  
19 for them to give evidence and for the jury then to reach a decision. I have to  
20 say, from my point of view, that's actually quite a compelling factor: what it's  
21 actually going to look like.

22 CHAIR: I think you may be saying in different words what we heard from the CPS:  
23 that it was an important factor as to which jurisdiction was most likely to be  
24 the one that we would secure a conviction in.

25 MR ALDERMAN: No, that's not what I'm saying, with respect. What I'm saying –

26 CHAIR: What's the difference? It's quite an interesting point.

27 MR ALDERMAN: My point is this: that, if you've got a conspiracy, the jury have got  
28 to be able to see the full picture to decide whether there was a conspiracy –

29 CHAIR: The logic of that is that, once they've seen it and got it, then they're much  
30 more likely to get the right answer in the case, which, if you're testing the  
31 evidence as far as you can, it would be a conviction, if you were right.

32 MR ALDERMAN: Well, it might have the result of a conviction, but that's not why  
33 we're doing it. We're doing it so that the jury is able to see all of the  
34 defendants, see them give evidence, be cross-examined and form a view on

1 whether or not there was a conspiracy and, if so, who was party to that  
2 conspiracy. Having two different trials in different jurisdictions –

3 CHAIR: Would be less likely to get the right result, whichever it is.

4 MR ALDERMAN: It would be less likely, I think, to enable a jury to take a view on  
5 the key issue, which is: was there criminality there?

6 CHAIR: Which is usually: were they dishonest?

7 MR ALDERMAN: Absolutely. Were they conspiring together, were they dishonest,  
8 and to have them all together in front of a jury, in whichever jurisdiction,  
9 seems to me to be the right outcome. I would certainly resist the proposition  
10 that that's done to secure a conviction. That is not part of that type of our  
11 thinking on that.

12 CHAIR: It may be that I've slightly misrepresented the CPS's view on it, but it was  
13 certainly one aspect of it that they were obviously looking at where the case  
14 would.... Well, that was my recollection. What about yours, Anand?

15 MR ANAND: Sometimes, these things are very nuanced, because, obviously, if you  
16 have a strong evidential case, you're more likely to secure a conviction, so it  
17 can be... I'm not sure that it was very clear what they were saying as to  
18 whether that was really what they were saying about the admissibility of the  
19 evidence and what was available, but I suppose that I'm... In terms of what  
20 you've just described, I'm struggling to see how you would articulate that in  
21 terms of one of the Eurojust principles. Is it that you think that the full  
22 criminality needs to be put before a court in order for there to be a proper trial  
23 of the case?

24 MR ALDERMAN: If the case was all about whether or not A, B and C were  
25 conspiring between themselves and with D, E, and F, then my view would be  
26 that, if at all possible, A, B, C, D, E and F ought to be in front of the jury – one  
27 jury – rather than A, B and C in one jurisdiction in front of one jury, D, E and  
28 F in another jurisdiction in front of a different jury. There may well be  
29 circumstances in which it's inevitable that there is that split, but I would have  
30 thought that it's far better for a jury to form a view in the aggregate about  
31 criminality having regard to the evidence in the case and the evidence that the  
32 alleged conspirators give.

33 CHAIR: How far is it relevant whether evidence is going to be admissible in one  
34 jurisdiction or the other? The obvious example is phone-tap evidence. If

1 you've got phone-tap evidence which is very important in the case, lots of UK  
2 connections, but it's not going to get the evidence in, but somewhere else,  
3 where there's less connection but you will get the evidence in, how do you  
4 weigh that into the scales?

5 MR ALDERMAN: First of all, it's not been a factor in one of our cases. What has  
6 been one of the factors that's gone into the balance has been agreement  
7 between the Department of Justice and cooperating witnesses under which  
8 they oblige themselves or committed themselves to giving evidence in the  
9 United States. They weren't committed to giving evidence in the UK. We  
10 could have negotiated with them later about that, but their obligation was in  
11 respect of the United States. That was just one of the factors that we took into  
12 account, and I think it's perfectly proper to take that into account.

13 CHAIR: Because they had possibly negotiated a plea with the American authorities  
14 on the basis that they would give evidence against X, Y and Z.

15 MR ALDERMAN: In the United States, and it may be that we could never get them  
16 to give evidence in the United Kingdom.

17 CHAIR: But, on the other hand, until you asked you wouldn't know.

18 MR ALDERMAN: Exactly, that is true. It's just one of the factors.

19 CHAIR: Fascinating.

20 MR PERRY: Which, I suppose, when you were just talking about more likely to get  
21 the right result, whichever way it goes, I suppose an analogy may be with  
22 severance of alleged joint offenders, because ordinarily you wouldn't, with D1  
23 and D2, charge with the same offence. You'd want to try them together. In  
24 the interests of, for example, D2, who says, 'Well, it was D1 that did it', and if  
25 the jury see them both, they're more likely to make a proper and fair  
26 evaluation of that, so is that the sort of point that you're making about more  
27 likely to get the right answer – not necessarily a conviction but the jury are  
28 going to have the full factual picture rather than the full criminality picture?

29 MR ALDERMAN: They would have the whole picture, and the jury would then be  
30 able to reach their decision, whatever it is, based upon all the evidence,  
31 including the evidence of co-accused.

32 MR PERRY: Yes. And then, on the example that you gave, the first example of the  
33 two people extradited from the United Kingdom in the Halliburton case, you  
34 said the criminality occurred here. Was the whole of the criminality here, or

1 possibly there was criminality in the United States as well?

2 MR ALDERMAN: And in lots of other countries.

3 MR PERRY: Yes. So, it wasn't just here. There was some in the United States.

4 MR ALDERMAN: That's right, yes. Their criminality was mostly here, but it was a  
5 very wide-ranging case across many different jurisdictions, with bank  
6 accounts in very many countries.

7 MR PERRY: What about other jurisdictions? Because it sounds as though you have a  
8 very good relationship with the Department of Justice in the United States.  
9 There must be other cases where it's not just the United States, but there'll be  
10 an offence involving possibly several jurisdictions. Do other jurisdictions  
11 respond in the same positive way when you present the Eurojust guidelines?

12 MR ALDERMAN: Of the ones that I can recall in my time, without a doubt, the  
13 Eurojust guidelines are the way in which we discuss these cases. If we're  
14 talking about European cases, we would sometimes go to Eurojust about joint  
15 investigation teams involving the United Kingdom and the authorities in other  
16 countries, but the Eurojust guidelines do actually provide us with a matrix of  
17 the relevant considerations. We have limited experience of extraditions from  
18 other countries. I think it's mostly the United States of America where we're  
19 being asked to cede jurisdiction; very little experience of other countries  
20 involved. Where we do discuss things with them, my understanding is that  
21 they're mostly European countries and it's mostly within the context of  
22 Eurojust.

23 MR PERRY: Thank you.

24 CHAIR: Where could there be greater transparency if we were talking about that?  
25 What areas would you suggest that could make it clearer to the public what  
26 actually goes on?

27 MR ALDERMAN: I suppose more understanding and recognition of the Eurojust  
28 guidelines; more understanding as well about, shall we say, the next level  
29 down of operational activity from the protocol between the attorneys, which is  
30 an excellent document, because it sets the framework, but the response I get  
31 from practitioners is, 'What does that mean in my case, for my clients?'  
32 There, there is nothing, I think, in the public domain about what it means in  
33 practice, and it may well be very helpful for there to be more of an  
34 understanding about what we do in practice and what underlies that.

1 CHAIR: And somebody would have to draft something, presumably, which would  
2 explain how the Eurojust guidelines work.

3 MR ALDERMAN: Something could be published in a Parliamentary answer or some  
4 other document, or we could put it on our website, and it would explain how  
5 we use the Eurojust guidelines and, indeed, how we deal with the Americans  
6 in particular cases. If there was a need for some sort of wider agreement with  
7 the Americans about the next level down from the attorneys' document, then  
8 that would have to be something that was dealt with and agreed between the  
9 Department of Justice and the UK authorities.

10 CHAIR: Do you think there would be any difficulty with the Department of Justice on  
11 that?

12 MR ALDERMAN: Can I say that I think not, in the sense that it would crystallise an  
13 excellent relationship. Whether, when people start to write the detail of these  
14 documents, it becomes problematic, I don't know, because there are all sorts  
15 of issues that people then start to try and address in these –

16 CHAIR: It's that kind of thing.

17 MR ALDERMAN: It may well be, and clarity... Because a point that does concern  
18 me is, I have to say, the position of the lawyer who is trying to advise the  
19 client when there is a joint investigation, and a number of solicitors have said  
20 to me, 'We don't understand how you're going to be doing this with the  
21 Department of Justice. We know it's going to be a parallel investigation and  
22 we understand that, but what does that actually mean?'

23 CHAIR: And, presumably, they might go on and say, 'And if we knew what it  
24 actually meant, we might want to make some submissions to you that you  
25 might or might not take into account when you were meeting the Americans'.

26 MR ALDERMAN: We would usually want to invite submissions.

27 CHAIR: You would?

28 MR ALDERMAN: Yes. Because these are very important decisions and it is an issue  
29 where they have a legitimate interest in making submissions.

30 CHAIR: Because they would want to know... the experienced solicitor would want to  
31 know which was the best point to press really hard and to try and get the  
32 evidence in a way that would attract itself to you to say, 'Well, that's a good  
33 reason for this to be tried in England'.

34 MR ALDERMAN: Yes.

1 CHAIR: And they couldn't really do that unless they'd really got a proper  
2 understanding of how your integration of the –

3 MR ALDERMAN: Indeed, and it may simply be that these parallel investigations  
4 between the Serious Fraud Office and the Department of Justice have been a  
5 feature of the last, probably, two years but did not happen with any regularity  
6 before then. We are dealing with a comparatively new area, and it may well  
7 be something where we do need to give greater transparency about what we  
8 are doing.

9 CHAIR: Would there, for example, have been a meeting of this kind going through  
10 the Eurojust criteria in the Birmingham case?

11 MR ALDERMAN: I don't know.

12 CHAIR: That goes back a bit in time now, doesn't it, really?

13 MR ALDERMAN: Recalling what was said in the decision of the Court of Appeal,  
14 there's no reference to Eurojust. It appears that the Americans made their  
15 extradition request. The potential defendant then invited the director of the  
16 Serious Fraud Offence to commence an investigation –

17 CHAIR: Which she hadn't at that stage done.

18 MR ALDERMAN: She hadn't. And then he decided that this was a case more  
19 appropriately dealt with by the United States, so he took that decision himself,  
20 and then the challenge was on the basis that he should have investigated in  
21 order to preserve their convention rights.

22 CHAIR: But that rather suggests that, in that case, the extradition request came out of  
23 the blue, without any prior knowledge that the Americans were investigating  
24 and you would then be on parallel lines or talking to them about it or not.  
25 Maybe I've misread it.

26 MR ALDERMAN: I'm afraid I don't know the answer to that. It was before my time.  
27 If it would help, we could certainly ask those who were involved in the case at  
28 the time about the origin of the request and the extent to which the...

29 CHAIR: I think it might be helpful to know.

30 [Cross talk]

31 MR PERRY: I think what happened was that –

32 [Cross talk]

33 MR PERRY: You may want to confirm this, because this is only from my memory,  
34 but I think what happened was that there'd been an initial request for mutual

1 legal assistance, and, at the time that the then director received the request for  
 2 mutual legal assistance, he was then cited on the fact that there was an  
 3 investigation in the United States, and there was an initial decision at that  
 4 stage that this was a matter properly to be left to the Americans. Then the  
 5 extradition request came in and the original file within the SFO was very thin.  
 6 It dealt with the mutual legal assistance request and the fact that no decision  
 7 had been taken to take the matter further here, and it was for that reason that,  
 8 in the proceedings for judicial review, the claim was not that they should be  
 9 prosecuted here, but they should be investigated here, because there was, at  
 10 that time, no... there had been no investigation and there was no evidence  
 11 here, but you may want to just confirm that.

12 MR ALDERMAN: Would you like a note from us to just –

13 CHAIR: It would be very helpful.

14 MR ALDERMAN: We can certainly do that.

15 CHAIR: I'm sorry that I wasn't ready to –

16 MR ALDERMAN: No, no, no.

17 [Cross talk]

18 MR DOOBAY: It was also before the AGs' guidelines, so at that point there wasn't  
 19 the understanding set out in the guidelines that, as soon as there was a case  
 20 which had... It was partly that case which led to the Attorney Generals'  
 21 guidelines, so one would hope that the position would be different now,  
 22 because it was a problem which that case highlighted, which the guidelines  
 23 have helped to cure.

24 MR ALDERMAN: I would certainly hope so.

25 CHAIR: There is a precedent in a slightly different field – or a very different field –  
 26 from the AGs' guidelines, with regard to assisted suicide and the problems  
 27 that that gave rise to in the litigation of that. But do you see any different  
 28 criteria, really, arising from the point of view of the SFO than from the  
 29 Attorneys' guidelines in ordinary cases? Are they really exactly the same  
 30 criteria or does anything different apply?

31 MR ALDERMAN: The reason why there might need to be some specific SFO  
 32 material is really about the investigation. The question is: do we start the  
 33 investigation? It's not about a decision about the prosecution, but do we start  
 34 the investigation? And also the fact that one of the issues in our cases is that,

1 usually, the Americans would also have jurisdiction, which they're very keen  
2 to assert. We're not talking about cases where the jurisdiction is in one  
3 country or the other; we both have jurisdiction. And in all the cases that we  
4 deal with with the Americans, they have jurisdiction as well, so there may be a  
5 need for some specific SFO material.

6 CHAIR: Right.

7 MR ALDERMAN: We're happy to do that, because this is an area of work that is  
8 becoming increasingly important and accounts for more and more of our  
9 activity, and having discussed it with a number of lawyers and others, the  
10 more practised and the more that we are able to shed light on how we operate,  
11 then I think the better.

12 CHAIR: And the easier it is for your people too to be able to make consistent  
13 decisions.

14 MR ALDERMAN: Easier for our people to make decisions. It's also easier, I think,  
15 for the courts on a judicial review, because there is a clear understanding of  
16 the framework in which we are operating and how we've applied our minds on  
17 the evidence to the various criteria and then to the decision. For the courts, it  
18 makes it easier to see what we've done and why.

19 CHAIR: How often have you been judicially reviewed on these issues?

20 MR ALDERMAN: Not very often, because the number of cases that we have had  
21 involving extradition to the US has been very limited. After the Birmingham  
22 case, there was what I've mentioned of Halliburton, where there was an  
23 attempt at judicial review, but I think it was out of time. We have other cases  
24 where they're not in the public domain. They could be the subject of judicial  
25 review - I don't know.

26 CHAIR: Have you had any refusals from the United States to extradite?

27 MR ALDERMAN: We have not asked. We have had no cases where we have asked  
28 the United States to extradite somebody here in respect of one of our cases.

29 CHAIR: That's quite surprising, isn't it?

30 MR ALDERMAN: Except that, first of all, the US would always have jurisdiction  
31 themselves, and if the person is there then, with their vigorous system of  
32 investigation and prosecution, they would normally have dealt with it very  
33 quickly through some sort of plea bargain. There could be circumstances in  
34 which that individual could potentially be involved in some criminality that



1 we're bringing before our courts. The question for us would be then: could we  
2 dissuade the Americans from taking action in the American courts and  
3 granting our extradition request? I think it would be speculative of me to  
4 express a view on our chances of success.

5 MR DOOBAY: I've got a couple of disparate matters. One is in terms of this  
6 disagreement. If you were to get to the point where there was an intractable  
7 problem, where it was just not possible to reach an agreement between, let's  
8 say, the US and the UK, obviously one option is that is theoretically open to  
9 you is to commence the prosecution here, which would stop extradition. Were  
10 you to be successful or unsuccessful, assuming that any request was on the  
11 same facts [inaudible]. Has that ever arisen, that you've reached the position  
12 where you've just taken your own decision to commence a process here?

13 MR ALDERMAN: We have not had a case where we have failed to reach agreement.  
14 Whether that happened, I would start proceedings... Well, a number of things  
15 there: first of all, there would be the discussion between attorneys. If those  
16 failed, then I think we'd start to get into the political arena there, and we'd be  
17 talking about some wholly exceptional cases, but I would hope that there  
18 would be a resolution through attorneys. If not, then the question for me  
19 would be: do I start the investigation and the prosecution? If we were talking  
20 about the type of scenario I hypothesised, where I had three people – co-  
21 conspirators – who are within my jurisdiction and the Americans are not  
22 seeking them, but I also have three who are also within my jurisdiction and the  
23 Americans are seeking the return of those individuals, then I wouldn't want to  
24 take a final decision on that at this stage. I would see that there would be a lot  
25 to be said from my starting in such a case, because of the need to get the  
26 conspirators in front of one jury.

27 MR DOOBAY: A totally different point: in terms of the factors, I've mentioned  
28 residence and nationality as being one of the factors, and it is under the  
29 Eurojust guidelines, and you've talked about what you consider to be one of  
30 the most important factors, which is getting the case before a court in totality.  
31 Do you have any sense of where you would see the residence or the nationality  
32 of one defendant sitting in terms of the scale?

33 MR ALDERMAN: Residence of UK nationals – I'll put that another way. If we're  
34 talking about a UK national who is resident here, then that is an important

1 factor for me, if criminality has been committed in this jurisdiction. It's not a  
2 decisive factor, but I'd bear in mind that there's a strong public interest that  
3 UK nationals who have committed criminality in the United Kingdom should  
4 stand trial before a court, judge and jury in the United Kingdom. It's not  
5 decisive, but I think it is a strong factor. If the individual is a US citizen over  
6 here on a business secondment or something of that nature, I think there are  
7 different factors that might arise there.

8 CHAIR: I think Anand's point perhaps is that, where there's a UK citizen resident in  
9 this country, some of the criminality is committed here and some of it in the  
10 United States, how do you weigh the residence factor into this?

11 MR ALDERMAN: It's important, but I would also have to look at whether or not the  
12 Americans have also got a wider case.

13 CHAIR: But there'll all be the points of witnesses and victims and all the rest of it,  
14 but one we haven't really touched on is cost. Presumably, that must be a  
15 highly significant factor in the cost of likely proceedings here.

16 MR ALDERMAN: When I've looked at the reasoning for the teams in the cases  
17 where we have taken a view one way or the other, I don't think costs come  
18 into it. They have been issues about which is the more appropriate place for  
19 the prosecution and the trial.

20 CHAIR: But presumably you have to work to a budget, don't you?

21 MR ALDERMAN: Absolutely, and exactly – we do have to work to a budget, and it's  
22 a very restricted budget.

23 CHAIR: If other things had been equal, you'd probably like to prosecute six cases  
24 worth one million and one case worth six million.

25 MR ALDERMAN: Indeed. I would not wish to be in a position... I think it would be  
26 very unacceptable to be in a position where I could not proceed on the basis of  
27 cost in a case that should properly be tried before a UK jury, and should  
28 properly be tried before a UK jury, but is sent to America because I could not  
29 afford to do that. I think that would be unacceptable.

30 CHAIR: So, how do you cope with that situation, when it's going to be vastly  
31 expensive?

32 MR ALDERMAN: By balancing all of the various demands on us, trying to find the  
33 most effective way of getting the case quickly before a judge and jury, which  
34 is what we've been doing over the last couple of years.

1 CHAIR: Honing it down to its essentials.

2 MR ALDERMAN: Absolutely. Not taking these enormous cases that are going to  
3 last six, nine or 12 months, but trying to find the essence of the criminality and  
4 get that before the jury as quickly as possible, and making sure all the time  
5 that our working practices, how we carry out the core job of the investigation  
6 and prosecution, are as effective as possible.

7 CHAIR: You're really saying that cost doesn't come into it, or is that...?

8 MR ALDERMAN: It's not been a factor in the various cases that we have been  
9 dealing with. We've looked at all the other Eurojust factors in order to see  
10 what's the most appropriate result.

11 CHAIR: I can't remember whether cost is mentioned in Eurojust, is it?

12 MR ALDERMAN: I think there is an issue about the witnesses for instance, and cost  
13 of witnesses, although I think it's actually more important that witnesses give  
14 evidence once and are heard before one jury, rather than travel across the  
15 world to give evidence in different cases. But the costs of witnesses are not  
16 negligible but, in the overall scale of a multimillion pound investigation, their  
17 costs are small.

18 MR DOOBAY: I think the Eurojust guidelines, just to clear that, you can look at the  
19 cost of prosecuting, but only if everything else is equally balanced. So, it's a  
20 determinative factor but not a factor you would otherwise refer to.

21 MR ALDERMAN: It's not been the determinative factor for the relatively few cases  
22 where this has been involved for us.

23 CHAIR: Yes.

24 MR PERRY: I suppose there are cost-effectiveness factors within the guidelines, in  
25 any event, as you've just mentioned. It's not going to be cost-effective or an  
26 efficient use of the UK courts to fly witnesses across to the United States or,  
27 for that matter, to put in video-link facilities, where the courts have to sit at  
28 irregular hours in this jurisdiction, because of the time difference and matters  
29 such of that nature.

30 MR ALDERMAN: I suppose so, but in the context of a multimillion pound fraud or  
31 corruption case, the expenses we're talking about there are pretty small in  
32 proportion to the overall cost of the case.

33 MR PERRY: Just one thing I wanted to just pick up on is: I wonder how practical it is  
34 to involve individuals who may be defendants in the future in the decision-

1 making process. So, just looking at that, if you started inviting submissions  
2 from individuals, is that really going to work? Suppose you had the case of  
3 three individuals in this jurisdiction and three in the United States, once you  
4 started accepting submissions from one individual, wouldn't you have to  
5 accept submissions from all the individuals who had an interest in the  
6 outcome? And then what would you do if you get three in the United States  
7 saying, 'Well, actually, we'd like to be tried in the United States and these are  
8 all our reasons' and they you got three in the United Kingdom saying, 'We'd  
9 like to be tried in the United Kingdom; these are all our reasons'?

10 I just wonder whether, in fact, as long as you've applied the guidelines  
11 and prosecuted a prosecutor, that is all that could reasonably be expected. I  
12 just wonder whether, if you involve the individual, aren't you also going to be  
13 inviting arguments about admissibility of evidence? You may get the lawyers  
14 involved saying, 'Well, our client has given you his personal circumstances.  
15 We also think your case is stronger here, because we've commissioned an  
16 expert report from a lawyer in American as to how likely it is that this  
17 evidence is going to be admissible there' or vice versa.

18 MR ALDERMAN: I think the reality for our cases is that the individuals are going to  
19 be represented by lawyers, and they are not going to be taken by surprise by  
20 any SFO action. They're represented by lawyers. The lawyers are  
21 corresponding with us all the time. One of the features that the lawyers will  
22 have in mind will be: where is this case going to go? So, whether we want the  
23 representations on that, we will get them. I think the question – and it's a very  
24 interesting one; has not arisen before, so I've not had the opportunity to think  
25 about it – would be representations from others, but I would just pause a little  
26 there. Our decision would have to be: should this person, D1, be extradited to  
27 American, and what are the considerations in respect of D2? That's not taking  
28 a decision on D2 or D3. If they want to challenge the decision or write in,  
29 obviously we would look at that, and we'd want to make sure that, overall,  
30 everything is fair and that we were reaching the right sorts of all decision, but  
31 there are all sorts of permutations here. I confess that I'm sure, as this area of  
32 work develops, we will find more and more areas that will be subjected to  
33 challenge and we will have to develop ourselves.

34 CHAIR: But isn't there another aspect of this about getting representations: that

1 you've got to be pretty careful that you don't give away critical information?  
2 Taking it at its highest, the prospective defendant might say, to use the words  
3 in one of the westerns, 'It's time to turn granny's picture to the wall and get  
4 out of town'.

5 MR ALDERMAN: That could be an issue. Just thinking about the types of case that  
6 we have, these tend to be international business people who know that they  
7 have got to face up to what's been happening. They cannot or it's unlikely  
8 that they can just disappear. They will want to try to negotiate their way  
9 through the next stages of the process and to see whether or not they should be  
10 standing trial here or in the US, but the prospects of them just simply  
11 disappearing and nobody ever seeing them again, in view of who they are,  
12 their prominence tends to be, I think, a bit remote. But I think it's a very fair  
13 point. We're always very cautious on the point about, of course, the  
14 Americans' information and how they wish to play things, and that's certainly  
15 a factor we would have to take into account.

16 CHAIR: Another aspect of it – this really just occurred to me: are there any cases  
17 where you may well come to some kind of compromise with the defendant  
18 that you will not institute criminal proceedings if they pay this, that or the  
19 other in relation to losses and so forth, and how does that key in, if that is  
20 sometimes a factor, with the American aspect, or the foreign aspects? With  
21 the Revenue, it certainly would be a potential point: 'if you pay penalties on  
22 interest and so forth, we won't prosecute you'.

23 MR ALDERMAN: First of all, it's not been an issue in any of our cases. The sorts of  
24 considerations I would have to take in mind would be these: I have no power  
25 to take a fine or a penalty. The only power I would have to take a sum of  
26 money would be under our civil recovery powers, which would mean  
27 identifying a sum of money that represents in the hands of that defendant the  
28 proceeds of crime. If that happened, then I would be able to bring civil  
29 recovery proceedings. The question then would be: is this something that I  
30 would do before sending that person or agreeing that person should be  
31 extradited to the United States, or is that something that I would leave? I  
32 have not, in any case, explored that or asked for any payment of civil recovery  
33 in respect of those sums. I would have to think about whether or not that was  
34 appropriate in circumstances in which that individual would have to go to

1 America and would be subjected to fines and forfeiture in America and  
2 whether that is also something that I should be doing. I don't know.

3 CHAIR: Would you not go for an injunction to make sure the money was secure in  
4 the mean time?

5 MR ALDERMAN: It may well be that we'd have restrained assets anyway, and that's  
6 an entirely separate area. Where we work with the Americans on restraining  
7 assets, that might be something we've done as it is, or the Americans might  
8 have asked us to help with.

9 MR PERRY: The only point I was making, Richard, in relation to submissions from  
10 individuals is not that I'm against lawyers sending in submissions; it's just  
11 whether there's a legal requirement to consider it. Because I can foresee all  
12 sorts of difficulties. Suppose you do formulate guidelines in which you say  
13 that, before reaching a decision on forum, we will accept submissions from  
14 individuals, you've committed yourself then as a matter of law that that is a  
15 relevant consideration. I just wonder whether that's a practical solution,  
16 because, if you are taking into account the Eurojust guidelines, it seems to me  
17 that you're taking into account the appropriate factors. What would you do,  
18 for example, if you had four defendants and they each sent in submissions?  
19 Would you feel obliged to share the submissions with the other defendants, so  
20 that they could all see what the other was saying? Suppose one of them said,  
21 'I don't want you to do that', that might create a practical difficulty in the  
22 process if you commit yourself to receiving submissions from individuals.

23 MR ALDERMAN: In that particular scenario, if I get submissions from different  
24 parties, I do not myself feel free to exchange them with the other parties  
25 without their consent, subject, obviously, to this: that we are talking about the  
26 criminal process. If there is something in there that constitutes unused  
27 material that should be disclosed, then I might have to do so. But generally I  
28 would not exchange the representations with other people. There may be  
29 circumstances in which it would be too problematic at the early stage to do  
30 that, but at some stage the representations have got to be looked at with a view  
31 to a final decision, and the question is: what's the most appropriate stage? It  
32 may be earlier. It may be that it's when we have the letter before action with  
33 the judicial review. That might be the more appropriate stage in some cases. I  
34 don't know. But at some stage we have to look at that.

1           And certainly, as a matter of general practice, wherever I can, if I am  
2 going to make a decision that has an impact on a party, individual or company,  
3 then, if I can, without compromising confidential information or anything of  
4 that nature, I would ask for consent. It quite often arises in relation to, 'I've  
5 got information about A; do I pass it on to the Office of Fair Trading, to the  
6 Americans' or whatever. There are circumstances in which I will not ask A  
7 for any observations, because it may be confidential from a confidential  
8 source, but there may well be other circumstances in which it's absolutely  
9 right to do that. It's a judgment call about whether or not, in those  
10 circumstances, it's right to do so. I have to say, on the occasions where I do  
11 ask for representations, I do find them very beneficial.

12 MR DOOBAY: Can I just follow that through? I think that the SFO's cases are  
13 atypical in the way that you've mentioned in that, very often, the suspects will  
14 know about the investigation, which is not typical for most investigations the  
15 CPS do. As you say, they will very often already have legal representation at  
16 a very early stage, and there will be contact. I suppose I would perhaps  
17 approach this from a slightly perspective than they do, which is that, if  
18 somebody sends you representations, I don't see how you could justify not  
19 taking account of them and still be found to have acted reasonably if they were  
20 sent to you and the court, for example, at a later stage found they contained  
21 something which was material, which could have been material to your  
22 decision. So, whether you publish it or not, at the moment it seems that, by  
23 not publishing, all you're doing is putting the uncanny suspect at a  
24 disadvantage who doesn't know to send you the representations, whereas the  
25 canny one with the good lawyer does know and does submit them to you, and  
26 you haven't got any choice as to whether you look at them or not.

27           The other point I would just ask for your observation on is that David's  
28 suggestion is really one that presupposes that these are matters of advocacy,  
29 but presumably the defence lawyers, or the defendant or the suspect, may well  
30 material which could affect your assessment of the Eurojust guidelines, so  
31 they may well say, 'Do you know about these witnesses who are very  
32 material?' or 'do you know about this evidence?' or 'have you thought about  
33 company x, which has this material?' or, indeed, 'these are defence witnesses  
34 who we'd wish to call'. If we were in America, we couldn't compel them.

1 So, it may well be that the factors that they are giving you are relevant factors  
2 for you take into account under the guidelines, not matters of advocacy in  
3 terms of what we say about them and you already have.

4 I suppose that leads me to a question. Defence witnesses: in a number of  
5 the US cases, there have been submissions made that the defendants, if  
6 extradited to the US, wouldn't be able to compel the attendance of defence  
7 witnesses, and that those witnesses might be reluctant to go to the US to give  
8 evidence on behalf of a defendant, where they might be a risk if they were to  
9 go in terms of their own criminal position. How much weight do you think  
10 should be given to the position of defendants being able to call defence  
11 witnesses and any difficulties they may encounter in terms of securing their  
12 attendance?

13 MR ALDERMAN: That is a very difficult one for me, because I do not know enough  
14 about the US system to be able to know whether or not the arguments that are  
15 being put forward were sufficiently well founded. It could be that I could  
16 discuss with the Department of Justice. I would certainly find it very helpful  
17 to have these representations. I think it always aids the decision-making  
18 process to have these representations, but ultimately it's up to the defence and  
19 their lawyers to deal with the legal system that they find. If there are issues  
20 that they bring to my attention that would affect their convention rights, then  
21 that would be a different situation, and it would be a different situation for me  
22 and also for the courts. If it's something else about the difficulties of the US  
23 system or some of the other aspects of the US system, then I'm not sure how  
24 much weight I would need to give to that. I would find that a difficult one.

25 MR DOOBAY: I think that I'm not aiming so much at the US system. Let's forget  
26 the US. Let's say it was A N Other country, because most other countries  
27 don't have the ability to compel witnesses from another country to attend, so  
28 their complaint isn't that it's the US system; it's that, 'If we are not tried in the  
29 UK, witnesses who are in the UK couldn't be compelled to come to our trial.  
30 We argue', in the same way that you were arguing that all the conspirators  
31 should be tried to argue, 'that these witnesses are required in order for there to  
32 be a fair process, where one court hears the entirety of the evidence'. How  
33 does that factor in to the decision-making process? So, it's not about the US  
34 system; it's simply being tried outside of the UK.



1 MR ALDERMAN: There comes a stage where I think some of that actually then  
 2 becomes a matter of evidence on convention rights: can the person get a fair  
 3 trial in the other jurisdiction? If the submission is that the individual could not  
 4 be guaranteed a fair trial in the other jurisdiction, for one reason or another,  
 5 then that would be an issue for me in deciding whether or not to cede  
 6 jurisdiction, as it would indeed be a matter for the court ultimately. I'm not  
 7 aware that we've had to confront that particular issue either in relation to the  
 8 United States or in relation to another country, but I could see it could be  
 9 relevant and would require evidence and submissions in support of it.

10 CHAIR: It's quite difficult territory, in that, if one has a wholly domestic case, the  
 11 court sometimes has to consider whether to admit hearsay evidence, and  
 12 obviously various criteria apply as to how central it is to the issues in the case,  
 13 how important it is, but your position is you don't necessarily know what the  
 14 chap's defence is at all, and short of actually getting in to try to case, it seems  
 15 to me that it would be very difficult to attach a lot of weight to issues about  
 16 witnesses whose importance you're in really no position to judge at the stage  
 17 that you're at.

18 MR ALDERMAN: It would not be for me to judge the defence, nor, I think, within  
 19 certain limits, is it for me to judge the foreign legal system. I have to take that  
 20 as it arises. There are circumstances in which I would have to take account of  
 21 the foreign legal system as under the convention and some of the other issues  
 22 under the Extradition Act, but I don't think I would... It would be difficult for  
 23 me to take views on that, as indeed it would be difficult for me to take views  
 24 between the different defendants, but these are all very difficult issues.

25 CHAIR: If you've got a situation where everything turns on some crucial meeting at  
 26 which five people were present and there's no written record, and the  
 27 defendant says, 'Well, three of the key players will never be able to go to x  
 28 country and give evidence about it because the country won't hear evidence  
 29 from abroad', that might be pretty critical. It'll probably, as you say, come in  
 30 as a human-rights aspect of fair trial.

31 MR ALDERMAN: With something of that nature, where there is a question about  
 32 whether or not the case could be properly dealt with in the other jurisdiction,  
 33 then that would be one of the Eurojust factors to take into account, and we'd  
 34 want to discuss that with the Americans. The wider issue about could there be

1 a fair trial is, having a look at the foreign legal system, whichever one it is, can  
2 it be said that the defendant will obtain a fair trial? Ultimately, we can take a  
3 decision on that, but I think, ultimately, that's very much the province of the  
4 Secretary of State and then the courts.

5 CHAIR: Right.

6 MR PERRY: I find all that very difficult, because very often you have cases where  
7 there are five people present at a meeting and, by the time of the trial, two are  
8 dead. You don't say, 'Well, you can't have a fair trial'. You say, 'Well, those  
9 who are available and were present at the meeting give their account', and  
10 their evidence is evaluated in the way that all evidence is evaluated: you look  
11 at their credibility and whether what they say carries the weight necessary one  
12 way or the other. I just think that, for you to make decisions as to whether  
13 defence witnesses are important, whether you can get a fair trial in an overseas  
14 jurisdiction, puts you in an almost impossible position. Suppose you do get  
15 lawyers from letters [sic] saying, 'These witnesses are crucial and the United  
16 States is unfair'. Are you going to then say to the United States, 'I want  
17 counter-representations'? And where do the representations then end? I just  
18 wonder how that plays.

19 CHAIR: Because it came in in the NatWest Three, didn't it?

20 MR ALDERMAN: There are a lot of technical issues about the way it will be dealt  
21 with in the States, I think.

22 CHAIR: But there were issues about witnesses being available, weren't there? I can't  
23 remember what happened.

24 MR PERRY: Well, I think the way the court dealt with... Well, first of all, I don't  
25 think the court expected the director to make the decision by involving the  
26 defendants. Obviously, when they put in representations, when they put in  
27 their letter before action, that's something that you can have regard to. It's  
28 whether you're obliged to have regard to it. But also I don't think the court  
29 accepted that it was possible to have a trial here as easily as the defendants  
30 were suggesting, because the cooperating witnesses were in the United States,  
31 and I'm not sure if the court also accepted that getting witnesses to the United  
32 States would be that difficult.

33 MR DOOBAY: I think we're maybe mixing two issues there, because it's not about  
34 the fairness of the US system, and perhaps calling them defence witnesses is

1 the wrong term. In order to try a case, you obviously need witnesses who can  
2 often speak to the facts, and taking David's point, of course if witnesses have  
3 died it can happen anywhere. It doesn't matter where you hold your trial –  
4 they're not available. But the question is you can prosecute a case without  
5 every feasible witness being there to give evidence, and so making your  
6 evidential assessment as to 'do I prosecute here or here?' you could have five  
7 witnesses here, a different five witnesses here. There are so many variations.  
8 It's not really about... Perhaps I misstated it by saying 'defence witnesses'.

9 If the defence say, 'Actually, you could have 10 witnesses in the UK and  
10 they are the critical ones for the case to be fairly determined, and in the US  
11 there are five different witnesses', you would have to weigh that, presumably,  
12 in making your decision under the Eurojust guidelines, to say, 'What evidence  
13 do we have available to us? What evidence do the SFO...' You do weigh it  
14 in terms of cooperating witnesses by saying, 'The US appear to have these  
15 witnesses. We're not saying we could never get them but we're saying that  
16 they have entered into a plea agreement in the US and, therefore, we do take  
17 into account which witnesses appear to be available in which jurisdictions  
18 easily, and that forms part of our assessment'. So, if the defence say to you,  
19 'These are the relevant witnesses, you could form an assessment based on  
20 your investigation as to whether they are relevant or not'.

21 MR ALDERMAN: Can I just try and just think through what this might mean in  
22 particular cases, because I have to say that I'm... If we've got a situation  
23 where... Let's try and simplify it. If you've got one defendant in a case and  
24 the criminality is in the UK and in the US, but the US have got various very  
25 good reasons why they wish to prosecute – let's say the majority of victims are  
26 in America – we also have the power to prosecute in those circumstances. In  
27 looking at the Eurojust guidelines, we take account of various issues. I'm just  
28 thinking this through. If the lawyers for the defence said that 'our client  
29 would be able to prove innocence in court through the evidence of two or three  
30 witnesses, who would not go to America but would give evidence in the  
31 United Kingdom, who would not give evidence by a video-link or anything in  
32 America', then the question arises: could there be a fair trial? Now, I'd have  
33 to say I think we are hypothesising something quite remote, but I think that  
34 raises the issue about whether or not there can be a fair trial, which I think is

1 relevant to look at.

2 My view: I would take some persuading on this as to why it is that  
3 witnesses cannot travel to America or give evidence via video-link in order to  
4 be able to provide evidence to help the court, so I would require a fair bit of  
5 evidence on that before to a conclusion, which is actually, I think, an  
6 extremely serious conclusion for me, which would be that somebody could not  
7 get a fair trial in another jurisdiction. The reason why it's particularly serious  
8 is because I would not feel that I had all the material that I would need in order  
9 to make that, and I think that would be something where, if possible, I think  
10 that's a matter for the court to take a view, rather than for me. I would have a  
11 difficult in forming that sort of analysis.

12 CHAIR: Are we, in a way, perhaps confusing it by trying to part prosecution  
13 witnesses on the one side and defence witnesses on the other side, when, in  
14 truth, in many of these cases, what matters is witnesses who can speak to the  
15 key transactions? Maybe you've got fraud where there are, say, five key  
16 transactions, and isn't the question from your point of view: are the relevant  
17 witnesses in relation to these transactions witnesses who are going to be  
18 available in country A or country B or in the UK? You look it at and you  
19 work it out on the basis without trying to second-guess exactly what they're  
20 going to say.

21 MR ALDERMAN: I would certainly want to know about the witnesses and where  
22 they are available to give evidence. I'm just trying to hypothesise  
23 circumstances in which the defence have got witnesses... I'm travelling to  
24 some -

25 [Cross talk]

26 MR ALDERMAN: I'm trying to deal with that sort of situation where there may be  
27 witnesses who can exculpate the defendant and they're not available to give  
28 evidence. If the defence are saying that to me, I would certainly have to  
29 consider it. Whatever view I take. I have to think about that, but if these  
30 representations are being made to me, then I have to form a view about this. I  
31 may take a lot of persuading or I may not, but I would have to think about this  
32 if it's being forward on behalf of the individual.

33 MR DOOBAY: I suppose that my starting point wasn't the extreme situation when  
34 it's alibi witnesses, but as Scott was saying let's say that there's a fraud and

1 the defence say there are two bankers in the UK who have told us they're not  
2 willing to go to the US, for whatever reason. They've told us they're willing  
3 to confirm to you they're not willing to go, and they were part of this critical  
4 transaction, which agrees was the heart of the fraud, but they are willing to  
5 talk to you, so that would evidence would be available in the UK. It's not  
6 really a question of them exculpating or anything, because the bankers aren't  
7 going to say they're innocent or guilty, but it's evidence which goes to the  
8 case and it's weighing up how important it is to have that evidence available in  
9 a trial and, therefore, how it plays in the matrix of should the trial take place  
10 here or in a different country.

11 MR ALDERMAN: While I can see that it would be a factor, I would, I have to say,  
12 require a certain amount of persuasion that bankers and other professional  
13 people would not be prepared to go to another jurisdiction to give evidence to  
14 a court or to give evidence in some sort of live video-link.

15 MR DOOBAY: Maybe it would be that you would be able to persuade them, and  
16 that's why I think it's not a normal situation, because it would have to be  
17 abnormal in the sense that these were relevant witnesses who you would be  
18 satisfied wouldn't be able to have their evidence heard in another court.

19 MR ALDERMAN: I don't want you to think that this is a decisive factor. It could be  
20 a factor but there are lots of other ones as well. As I say, professional  
21 witnesses working for organisations, particularly in the regulated sector, I  
22 would be surprised if they were not ready to give evidence in some electronic  
23 means or in person.

24 CHAIR: Anand raises a slightly different point here, which is he mentioned these  
25 witnesses who are prepared to talk to you. My antennae went out at that point,  
26 and I thought, 'Well, hold on a moment. Is the SFO likely to be wanting to  
27 talk to witnesses in a situation where the issue is to extradite or not extradite?'  
28 Because you can then start going down a very difficult line of conducting  
29 virtually a complete investigation of your own if you're not careful. What  
30 would be your position on that?

31 MR ALDERMAN: First of all, it's not something that, in my experience, has  
32 happened. I would be very wary about doing it for two reasons. First of all, I  
33 would be concerned about getting involved in the Americans' investigation in  
34 circumstances in which, if they wanted us to interview those witnesses for

1 them through the mutual legal assistance procedure, we would be pleased to  
2 help them and we would do that. They might want us to do that; they might  
3 not, for all sorts of reasons. For us to go and see the witnesses without the  
4 consent of the Americans would be a decision for us to take. Also, I take it  
5 we're interviewing these people as witnesses rather than defendants. What are  
6 our powers? If we're conducting a criminal investigation, I can issue notices  
7 and I can require them to give evidence. If I'm not conducting a criminal  
8 investigation, then I can call upon them to give me evidence and they can  
9 volunteer it, but I have no powers whatsoever to compel it. I would be  
10 somewhat wary about getting too involved in investigating or interviewing a  
11 number of people at the request of the defence in that sort of way, unless it  
12 was something the Americans wanted us to do.

13 CHAIR: This is all just flagging up to me – I don't know whether you feel the same  
14 about this, David – that one is beginning, almost by chance, as it were, to get  
15 into the quite difficult and dangerous territory of how far the SFO ought to be  
16 dealing/negotiating with/talking to the defence in making an extradition  
17 decision on the forum. I'm concerned about it, without being able to put my  
18 finger on exactly where the line –

19 [Cross talk]

20 MR ALDERMAN: No, I understand David's thoughts.

21 MR PERRY: Well, this is the difficulty. I entirely agree that there is no problem  
22 whatsoever in looking at any representations that are sent to you by defence  
23 solicitors, if that's what they want to do. The difficulty arises, I think, if you  
24 write into any guidance that the views of the defendant are something that you  
25 are going to take into account, because then you've committed yourself to a  
26 written policy where the defendant's views are to be taken into account. It's  
27 not because I'm dismissive of defendants' views; it's just I wonder how  
28 practical it can be to take the defendant's views into account. Let me give you  
29 some examples. If you receive representations from an individual and they  
30 cannot get a fair trial in an overseas trial and you accede to that and you make  
31 that finding, what do you do if you're then judicially reviewed by the overseas  
32 territory on the basis that it's got nothing to do with you whether they can  
33 guarantee a fair trial. You're a prosecutor in England and Wales. Your only  
34 question is whether you can bring the prosecution here. It's not for you to

1 judge them, although it is for an extradition court to judge that, so that's the  
2 first thing. I think prosecutors judging other prosecutors is very invidious.

3 And then take the example that you gave: if the lawyer for the defence  
4 said, 'We've got three witnesses who can prove our client's innocence in court  
5 - three witnesses', and you say, 'Alright, I'll prosecute them here', and  
6 suppose they don't call those three witnesses. They're tried here but, in fact,  
7 they're not called because a decision is taken during the case, 'We're not  
8 going to call them'. It's going to look very odd. There may be good reasons  
9 not to call them. I'm not saying -

10 [Cross talk]

11 MR PERRY: I'm not saying that it wasn't done in good faith at the time, but you  
12 could be in a situation where you look as though you've taken a decision and  
13 you've accepted something in good faith that turns out not to be what turns out  
14 to be the position in practice. I suppose the point that I've really been putting  
15 to you, Richard, is really this: that, if you have guidelines for prosecutors to  
16 follow in their discussions with each other, that's one thing, and you can do  
17 that. There's no difficulty about that. That is the framework in which you're  
18 operating. If, having taken a decision, a defendant's lawyers put in  
19 representations, there's nothing wrong at all in taking them into account as a  
20 prosecutor, in the same way that you might take a decision to prosecute, and  
21 that, once you've taken the decision, the defendant may say, 'Please look  
22 again at public interest or evidential matters', and you would do so.

23 Take a domestic prosecution: you don't always say, 'We're thinking of  
24 prosecuting you. Can you tell us whether you're going to get a fair trial? Are  
25 the witnesses available? Can you tell us whether you think it's in the public  
26 interest for you to...' You just wouldn't engage with the defendant in those  
27 circumstances, and I just wonder whether a forum decision is more akin to a  
28 decision as to whether or not you prosecute here, rather than the extradition  
29 court's decision as to whether you should extradite. Because, clearly, when  
30 you extradite, you do have regard to what the defendant says, but that's in the  
31 structured court process where there are bars to extradition, which the  
32 defendant knows exactly what he's got to address. But as a prosecutor, once  
33 you start saying, 'I'll take into account what the different has to say in  
34 deciding where to prosecute', I just wonder whether, as a legal requirement - I

1 must make that clear – not shut him out of the process completely; it's just  
2 whether it's a legal requirement. That's the only thing that concerns me.

3 MR ALDERMAN: I understand that. The reality is that we are engaged with lawyers  
4 on these cases. I would be a bit concerned about the points made earlier  
5 about: does this give an advantage to the canny lawyer rather than to the  
6 uncanny lawyer, in that the uncanny lawyer does not write in? But by and  
7 large we do not come across uncanny lawyers. Where I would find it useful is  
8 this: that there are wider considerations, but ultimately the decision that we are  
9 reaching is on the Eurojust framework, and if we've misunderstood the  
10 application of one of the criteria to the case, then it's as well to know that, if  
11 the defence believe we've got that wrong and that there are various additional  
12 considerations to bring to our attention.

13 I can see the difficulties about this and, indeed, it may be that, as a  
14 statement of unvarying practice, it might be going too far. I just worry that it  
15 is actually the normal practice, and how do we get from there to where we  
16 need to be is something that just a little troubles me, because I think, in casting  
17 light on this area, which is developing quite rapidly and will give rise to more  
18 and more issues in the future, I think we'll come before the courts in due  
19 course. It's how we develop a satisfactory policy that protects us in the SFO  
20 in making the decisions that we should and reserving other decisions for the  
21 courts, while making sure we've applied the guidance correctly. So, for us,  
22 they are actually difficult issues.

23 In terms of the defence making a wider application, wider views about the  
24 criminal justice system, that's where I think we're getting beyond the Eurojust  
25 guidelines. Although there could be extreme circumstances in which I would  
26 have to consider whether or not those representations are well founded, the  
27 crucial question for me then would be: if those representations are well  
28 founded, would I be acting in breach of the individual's convention rights by  
29 making a decision to cede jurisdiction in that case? I think that's a perfectly  
30 proper argument that I'd have to consider. If the defence solicitors want to  
31 write to me about that and to argue that, by acceding to a request that I give  
32 jurisdiction to the other country, I'm breaching somebody's convention rights,  
33 I think I have to look at that.

34 MR PERRY: Well, I just wonder how far that travels, because, if you ceded



1 jurisdiction so that extradition proceedings take place, the question of the  
2 fairness of any trial would of course be determined in those proceedings.  
3 That's why I wonder whether, at a prosecutorial level, there's a decision-  
4 making process, and once that process has been done in accordance with  
5 established principles between prosecutors, then the question of what the  
6 defendant has to say about it is considered as a matter of, obviously, you might  
7 want to consider it but you wouldn't be obliged to seek views in every case.

8 Take an extreme case: you cede jurisdiction to the United States and then  
9 the defendant learns of the decision and he writes to you to say, 'I'm the sole  
10 carer of a handicapped child and, if I return to the United States, that's going  
11 to have terrible implications'. Well, I can fully understand why, in those  
12 circumstances, you might look again and discuss with your counterparts that  
13 this information has now come to your attention and you think it's a very  
14 compelling piece of information that has led you to conclude that you would  
15 now want to prosecute. But that's not because you involve the defendant in  
16 every case; it's because this information has come to you in those  
17 circumstances. That's the way I see it working, rather than –

18 MR ALDERMAN: I'm just a bit anxious about this situation where you're taking into  
19 account in the hypothetical case whether x will get a fair trial in whatever  
20 country it may be. You conclude that, for whatever reason, you don't think so  
21 and, therefore, you don't cede jurisdiction to that country. But isn't that a  
22 question that, in any event, has got to be decided by the judge when the  
23 extradition hearing goes before under the relevant section in the act, and isn't  
24 there a danger, if you're taking that decision, of potentially taking a decision  
25 which would be different from the decision that the judge would take, and why  
26 is it necessary for the decision to be taken twice over? That's what I'm just  
27 exploring.

28 MR ALDERMAN: I think, from my point of view, these are judicial decisions. The  
29 question I would have would be this: if the defence wrote into me and sent me  
30 a very compelling explanation of why extradition to the other territory would  
31 result in them getting an unfair trial there, with chapter and verse explaining  
32 that, it may be that I could simply say that's a matter for the Secretary of State  
33 and for the court. The question I would have would be whether or not, in  
34 taking that decision and saying that I would be prepared to cede jurisdiction,

1 that would be a breach of the individual's human rights, or whether or not the  
2 answer to that is, 'I don't have to worry about that because the statutory  
3 framework has actually built in that protection in another way'. But I would  
4 want to take some advice on that and to think that through.

5 CHAIR: Are you a public body.

6 MR ALDERMAN: Yes, absolutely.

7 CHAIR: You have to pay regard to –

8 MR ALDERMAN: Exactly.

9 CHAIR: So, you've got –

10 MR ALDERMAN: Even before it goes to the court, for instance, there's the potential  
11 of a judicial review. If I say that I'm going to cede jurisdiction and that it is  
12 for the court on the later extradition issue to make this decision –

13 MR PERRY: But you wouldn't be acting incompatibly, because all you've done is  
14 cede jurisdiction. As Scott says, the defendant will suffer no breach of his  
15 convention rights until a court decides whether or not his extradition would be  
16 compatible.

17 CHAIR: So he's got an alternative remedy.

18 MR PERRY: He's got an alternative remedy. So, you can say – and it wouldn't be  
19 amenable to legal challenge, it seems to me; I may be wrong, but it wouldn't  
20 be amenable to legal challenge for you to say, 'Any question as to the fairness  
21 of the trial in the overseas jurisdiction is a matter that you can raise in the  
22 extradition proceedings, and your safeguard lies in that process', because  
23 otherwise there's a danger, isn't there, that you will make the decision, you'll  
24 then be judicially reviewed by the overseas jurisdiction, your decision is  
25 quashed. You then say, 'Alright, I think it can be fair', and the court reaches  
26 exactly the same conclusion that you've reached – that it can be fair – that  
27 shows your original decision was inconsistent with what the extradition court  
28 would say.

29 MR ALDERMAN: I can see that it would be, and from my point of view the outcome  
30 I would seek would be that I have not acted in contravention of somebody's  
31 convention rights by ceding jurisdiction, rather than, 'Yes, I have, but there is  
32 a remedy through the courts'.

33 MR DOOBAY: The decision you take is not the decision to extradite; it would be the  
34 decision whether or not to cede jurisdiction or to prosecute in the UK.

1 Therefore, if you were to take the decision to prosecute in the UK because one  
2 of the factors is you feel there might be a less fair trial in the other jurisdiction,  
3 I'm not sure how you could be successfully judicially reviewed by the other  
4 state to say you're not allowed to prosecute this case in the UK because there  
5 would still be a case for you to prosecute in the UK, you'd still have to satisfy  
6 the evidential sufficiency, public interest criteria. It's not an extradition  
7 decision. Your decision is – surely, am I misunderstanding? Your decision is,  
8 'I will prosecute in the UK, and one of the factors I've taken into account is  
9 the potential fairness of a trial in another country. I still believe I've got  
10 enough evidence and the public interest to justify prosecuting in the UK'.

11 MR ALDERMAN: Yes. What I'm positing is I'd be going through an exercise in  
12 accordance with the Eurojust guidelines, and assessing where the balance lies.  
13 Clearly, if I've decided that the balance lies in favour of a prosecution here,  
14 that's fine. If I'm about to decide that the balance is in the favour of a  
15 prosecution in another territory and I then get this compelling case, I would far  
16 rather not get involved in issues about another jurisdiction. The reason I pause  
17 is simply that I would just want to be reassured that, by taking the view that I  
18 can leave that to one side for the court and take my view on the Eurojust  
19 guidelines, I am not acting in contravention of somebody's convention rights.  
20 If I can quite safely and properly leave that to the courts, then I will take a  
21 view simply on the Eurojust guidelines and where the case should actually be  
22 held.

23 MR DOOBAY: One other small matter: representations. Am I right in understanding  
24 that you weren't suggesting that somebody would be required to give  
25 representations? It's more that, if they wanted to put submissions into you,  
26 then you would take them into account in...

27 MR ALDERMAN: What is happening is that we are getting comments in cases, and  
28 generally I find this helpful, but I have to say, as the discussion has continued,  
29 I have been able to see more and more problems involved in a practice or the  
30 announcement of some sort of practice that we would always accept or ask for  
31 representations. I can now see that there are many more difficulties. I think  
32 the question is this: that, in practice, we're getting a lot of representations from  
33 lawyers. Do we crystallise that into some sort of legal obligation? I think that  
34 might actually, in view of the discussion, be going a little too far, but how, on

1 the other hand, do we ensure that, in your words, the canny lawyer does not  
2 get an advantage, or his client, over the uncanny lawyer?

3 MR DOOBAY: Because I suppose I'm looking at the situation David explained to  
4 you – the domestic situation – and I don't see any difference. Under the code,  
5 I, as the defence lawyer, virtually always write to the prosecutor before they  
6 take a decision to prosecute. In my view, they have to take into account my  
7 representations in reaching their decision as to whether or not to prosecute,  
8 and under the code they have a continuing duty to keep under review whether  
9 they continue to prosecute. Therefore, if I write to them after they've taken  
10 their decision, I still think they have an obligation to look at it. So, I'm not  
11 sure where the difficulty lies between the domestic situation in terms of an  
12 initial decision to prosecute and continuing the prosecution, and the position in  
13 terms of a decision on a forum and the continuation of that decision on a  
14 forum.

15 MR ALDERMAN: I think the decision on a forum can be reviewed later, but it is a  
16 decision with decisive consequences in that it's not a decision that I keep  
17 under review in the same way as a prosecutorial decision. Although I'm not  
18 aware that it's happened before, if circumstances change I suppose it's always  
19 possible to look at it, but it's not in the same way as a prosecutorial decision,  
20 where you do keep it under review in connection with any new evidence or  
21 material that comes to light.

22 CHAIR: Well, we've had a very interesting debate on that. Can I ask you about one  
23 other matter? The Secretary of State's discretion: we have been looking at  
24 this. Part 1, there's no particular issue. As far as Part 2 is concerned, it's a  
25 matter of some concern that cases do seem to be going back to the Secretary of  
26 State after they've been through the courts, and then human-rights issues  
27 afresh are raised. It's the decision of the Secretary of State to extradite, and  
28 ultimately it seems to us that he has to exercise some discretion in relation to,  
29 for example, a death-penalty case or a specialty case. But we've been just  
30 questioning whether it's sensible, right, appropriate for him to have another  
31 crack at human rights after the court has already dealt with it.

32 On the one hand, he or she is a public body and, therefore, has to take into  
33 account human-rights consideration, but that could be got around if that  
34 discretion was taken away from the Secretary of State to the extent that there

1 was a power given to the court to look again at an exceptional issue that's  
2 arisen, raising, for example, human-rights issues after the rest of the process is  
3 complete. We would be minded for it to go to the High Court, rather than the  
4 district judge, because what we're trying to get rid of is the ping-pong appeal  
5 process, and it would only be exceptionally that it would be looked at again  
6 and if particular criteria were met, rather like the *Taylor v Lawrence*  
7 jurisdiction in the Court of Appeal. This would have the advantage of, at least  
8 to an extent, depoliticising the Secretary of State's decision, but do you see  
9 any problems with it going back to the court, and what do you feel about it?

10 MR ALDERMAN: It's not been an issue for the Serious Fraud Office. We've not had  
11 any issues concerning the Secretary of State's discretion. The sorts of  
12 scenarios that I'm seeing in other cases have involved the CPS and the Home  
13 Office with a succession of challenges in respect of subsequent events –  
14 medical history, human-rights issues, all sorts of other issues. Finality is  
15 always to be desired in these circumstances. Whether the ultimate discretion  
16 of the Home Secretary can ever be excluded in these circumstances, I think,  
17 would be something that would need to be thought about, and I'm not sure I  
18 could really quite help you on that.

19 CHAIR: Thank you very much. We're immensely grateful to you for coming, and  
20 certainly we've had, I think, a very, very useful discussion from our point of  
21 view. It's only really about talking about these things one can try and flush  
22 out the problems and see what can be done.

23 MR ALDERMAN: Well, thank you very much for the invitation to come here this  
24 afternoon.

25 CHAIR: Anything else you think we ought to know or think we ought to have in  
26 mind?

27 MR ALDERMAN: I don't think so.

28 CHAIR: Do you have much communication with the OFT or are they really...?

29 MR ALDERMAN: A certain amount of communication with the OFT and, of course,  
30 one of the issues that I watched with interest, of course, has been their marine  
31 hoses cases involving how to deal with these joint cases, and that's been very  
32 interesting to see. But I think you might want to ask the OFT, because I  
33 cannot speak for them.

34 CHAIR: No. We think we probably do too.

1 MR ALDERMAN: Could I just add for completeness: the terms of reference ask  
2 about experience of the European arrest warrant, and it's not something we get  
3 involved in.

4 CHAIR: No, we realise that.

5 MR ALDERMAN: So I can't help you with that one.

6 CHAIR: Thank you. If you have any further thoughts that you want to put us, for  
7 example, on matters we've been discussing today that really you've come to  
8 slightly cold, in the sense that we've been firing questions at you, you're very  
9 welcome to put anything else into writing and we would obviously...

10 MR ALDERMAN: Thank you. I'll do that. I'll let you have a note about the origins  
11 of the Birmingham case and how that happened. We'll talk to the people who  
12 were involved in that, but thank you very much.

13 CHAIR: Thank you.

14

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*(End of session)*