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## A Last Hurrah - David Green CB QC's Final Appearance Before the Justice Committee

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On 13 December 2017, the Justice Committee held an evidence session on the work of the Serious Fraud Office (“SFO”). In his last scheduled appearance before the Justice Committee, David Green CB QC—Director of the SFO—presented evidence on a number of issues, including the recent proposal for the National Economic Crime Centre (“NECC”), staffing and funding, deferred prosecution agreements (“DPAs”) and the impact of Brexit on the SFO’s work with its international partners.

Naturally, Green was positive about the work of the SFO during his tenure as Director, and its ability to continue to fund investigations in future. He acknowledged that there remains uncertainty about the future relationship between the NECC and the SFO, as well as the impact of Brexit on the operations of the SFO. It was clear Green is concerned about international cooperation post Brexit, noting that equivalent structures for ensuring international cooperation need to be in place before the United Kingdom leaves the European Union.

### **Proposal for the National Economic Crime Centre**

Green was asked by the Justice Committee to opine on the Government’s recent proposal to set up the NECC, which will have a power to direct the SFO to carry out investigations. In Green’s view, it was unclear what this change would add to the existing level of governance over the SFO. Green pointed out that there already existed a number of similar powers, such as the power of the Director General of the NCA to give directions to the SFO to provide specified assistance. Green welcomed any change that would increase cooperation amongst governmental agencies but made clear that he viewed it as important that the SFO remain an independent prosecutorial body.

### **Funding and staffing**

Green was adamant throughout the session that he had never turned down a case on financial grounds. He reminded the Committee that his predecessor had declined to investigate LIBOR, but that he (Green) had re-opened the investigation despite budget constraints and had the Treasury agree to provide blockbuster funding.

On the subject of blockbuster funding, he noted that the SFO is currently in discussion with HM

Treasury to increase the core budget. He expressed a preference for *“less reliance on blockbuster funding and a greater core budget”*, noting that it would *“look absurd if we reached a point where blockbuster [funding] is greater than the core budget”*.

Throughout the session, Green also commented on the difficulties facing the SFO with respect to the retention of skillful lawyers, investigators and other staff. Despite *“the attraction”* that the SFO was now *“a recognisedly useful addition”* to the CVs of such individuals, Green acknowledged that the SFO had difficulty retaining those members of staff due to its inability to pay competitive wages.

### **Deferred prosecution agreements**

When asked about DPAs, Green said they provide *“a transparent offer in what a company can expect if they self-report and cooperate with the SFO”*. According to Green, DPAs also provide *“a mechanism by which a company can account to a court in an open and transparent way for criminal conduct, without incurring a criminal conviction and the possibility of debarment from competing for public contracts”*.

Green dismissed suggestions that DPAs were a way in which companies could avoid criminal charges, noting instead that a DPA would only be entered into if a judge was satisfied that there was *“a genuine commitment on the part of the company to ensure compliance and proper corporate behavior from the top down”*. He also emphasized that it was crucial to the operation of DPAs that the SFO did not simply accept the version of facts presented by the self-reporting company, but launched its own criminal investigation into the matter. It was Green’s view that this investigation *“usually uncovers further conduct than what was included in the report”*.

When asked what steps the SFO had taken to encourage self-reporting by companies, Green explained that he made weekly public appearances before various audiences, including non-governmental organisations, City law firms and academics, in order to encourage cooperation with the SFO. In his view, companies are now aware that if they cooperate with the SFO and self-report, they may have the option of a DPA available to them, provided that the cooperation is *“open and genuine”*.

### **Use of artificial intelligence**

Green referred to the Rolls-Royce investigation, in which the SFO agreed with the company to use artificial intelligence in the disclosure process. This technology, Green explained, was developed with IT partners to allow the SFO *“to sift through [documents] at a tenth of the time that it would normally take”*. He suggested that this technology might be useful to criminal courts in the future, particularly to ensure that criminal prosecutors are properly discharging their duties under the Criminal Procedures and Investigations Act 1996.

### **Potential impact of Brexit**

Green identified a variety of issues arising out of Brexit, including future use of European arrest warrants, EUROPOL, the Joint Investigations Teams mechanism (JITs), Mutual Legal Assistance and the European Investigation Order and mutual recognition of confiscation and restraint orders.

He noted that “*all are important to varying degrees*” to the SFO, and warned that if any of these mechanisms did not continue to exist in some form post-Brexit, “*we will have to find an alternative*”.

### **Principal achievements as Director**

When asked what he considered to be his primary achievements during his six years in the role of Director, he referred to a conviction rate of more than 70%, with sixty-six out of ninety-four defendants convicted since 2012. Green also mentioned the five convictions with respect to the LIBOR matter, and four DPAs, which have brought the Treasury approximately 650 million pounds.

Without doubt, Green will leave a very different agency than the one he joined six years ago. However, with many significant charging decisions still outstanding, concerns about expert testimony on LIBOR and navigation of the relationship with the new NECC to consider, the new director will have plenty of opportunities to make their own mark.

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