

Justice Committee

Oral evidence: [Court and tribunal reforms](#), HC 1886

Wednesday 10 July 2019

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Members present: Robert Neill (Chair); Bambos Charalambous; David Hanson; Victoria Prentis; Ellie Reeves; Ms Marie Rimmer; Andy Slaughter.

Questions 242 - 310

Witnesses

[I](#): Rt Hon Lord Burnett of Maldon, Lord Chief Justice; Sir Terence Etherton, Master of the Rolls; and Sir Ernest Ryder, Senior President of Tribunals.

[II](#): Rt Hon David Gauke MP, Secretary of State for Justice; Susan Acland-Hood, CEO, HM Courts and Tribunals Service; and Richard Goodman, Change Director, HM Courts and Tribunals Service.

Examination of witnesses

Witnesses: Lord Burnett, Sir Terence Etherton and Sir Ernest Ryder.

Q242 **Chair:** Good morning, Lord Burnett, Sir Terence and Sir Ernest. Welcome. Thank you very much for coming to give evidence to us. I think it is the first time that we have had three of the most senior of the judiciary giving evidence to the Committee all at once.

Lord Burnett: It is our pleasure to be here.

Chair: We are delighted to see you. We are very grateful. We have to deal with a bit of formal business at the start, to make our declarations of interest. I am a non-practising barrister and a consultant to a law firm.

Bambos Charalambous: I am a non-practising solicitor.

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

Ellie Reeves: I am a non-practising barrister.

Andy Slaughter: I am a non-practising barrister.

Victoria Prentis: And I was Lord Burnett's pupil. It was a very long time ago.

Q243 **Chair:** I am sure the length of time will make no difference to the questioning.

We are delighted to have with us the Lord Chief Justice, the Master of the Rolls, Sir Terence, and the Senior President of Tribunals, Sir Ernest. Lord Burnett, I will leave it to yourselves to decide who answers which question, because we would like to ask quite a wide-ranging set of questions.

I was hoping that we might start with a bit of an overview of the process. The reform programme is something that has been explicitly badged as jointly owned by the Ministry of Justice and the senior judiciary. We have had the evidence that you kindly submitted on behalf of the Judicial Executive, which we have read and which is most helpful.

At the very beginning, you set out six principles that you, as the senior judiciary, believed that the reform programme should maintain and achieve. Are you satisfied that those are being delivered?

Lord Burnett: The short answer to that question is yes. Perhaps I can put some context around it. In April last year, when we launched a wide-ranging engagement exercise on modernisation with the whole of the judiciary and magistracy, I explained in the foreword that the aim was to "transform the way we operate the system of justice for the benefit of the public," and that the approach of the judiciary, which is shared with Government and the Courts Service, was to improve the administration of justice and, critically, to improve access to justice. The six principles to which you refer cover those matters and one or two others.



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Access to justice, with which the Committee is particularly concerned at the moment, will be improved by making it much easier for people to engage with the justice system and, in particular, to bring proceedings of one sort or another. That will be true in all jurisdictions, but particularly in the tribunals, for which Sir Ernest has responsibility, where something of the order of 500,000 cases are brought each year, in the civil courts, for which Sir Terence has responsibility, and in the family courts.

The engagement exercise, which was known as Judicial Ways of Working, sought the views of all the judiciary on all the reform projects in contemplation and that affected their jurisdictions. The views that we collected together in the course of that exercise have informed judicial engagement on reform at every level. The engagement brings to bear the particular knowledge and expertise that judges have in connection with all the jurisdictions, which will help to ensure that what emerges is practical and workable, and, importantly, holds to the underlying principles that govern and inform everything we do in the courts and tribunals and in connection with the administration of justice.

I emphasise that judges are engaged at every level in what is going on. Of particular importance is the fact that we have what are called judicial engagement groups, which deal with crime, civil, family, tribunals and magistrates. Those groups, which comprise judges and magistrates, work closely with officials in Her Majesty's Courts and Tribunals Service on the detail of the various projects. Judges are also involved in individual projects. I should say that there is much involvement, too, at the strategic level.

I appreciate that much of the evidence that has been submitted to the Committee has focused on what is perceived to be a risk of reduced access to justice.

Q244 **Chair:** You have read the evidence.

Lord Burnett: I have read much of the evidence. I cannot pretend to have read every last word.

Q245 **Chair:** That will shorten some of the questions.

Lord Burnett: A particular concern is in respect of those who are either unable or, for one reason or another, not willing to use what are called digital services. As I made clear in my written evidence, and I am very happy to repeat publicly, unlike professional users, no litigant in person will be required to use digital processes. With respect to some of the critics of the proposals, that has not been fully taken on board.

Overall, the judiciary sees the reform programme as long-overdue modernisation of our systems—which have rather ossified, to be perfectly honest, as a result of a lack of resources, over the last 20 years or so in particular—to keep pace with technological developments. The reform programme is about a lot more than simply digitisation and taking advantage of technology that is now available, but we cannot stand still.



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As the public at large, and all of us, use technology to deal with most aspects of our daily life, it would be remarkable if the courts alone, among all important aspects of society, did not attempt to keep up.

Q246 **Chair:** Being politicians, we are cynical sometimes. The risk is this. Although the programme is jointly owned, and I understand that you are satisfied with the involvement of the judiciary, it is the Ministry of Justice that actually holds the purse strings. Are you satisfied, therefore, that it is an equal partnership? You have the input, but the decisions on the resource that is committed to some of the things that may be needed to achieve the programme sit with the Ministry. How do we square that circle, to make sure that you get what you need?

Lord Burnett: It is extremely important to emphasise that the development—the shaping—of the reform programme and its individual projects is a collaborative exercise, involving judges and officials in the Courts and Tribunals Service, and it has full Government support. It is true that the purse strings, as you put it, are controlled by Government. You will be aware that the Ministry of Justice and the Courts and Tribunals Service have to refresh, as they call it, their business case for the Treasury from time to time, and it is subjected to a good deal of scrutiny. So far, there has been no question of the money originally promised by the Government three or four years ago being reduced.

We have a very loud voice in all of this. Indeed, I think it is fair to say that the Courts and Tribunals Service has been enormously grateful for and impressed with the commitment of judges at every level to shape what is going on and to try to ensure that what is proposed actually works. In any environment, there is always a bit of a danger if the planning is done at too theoretical a level. You will not find in any jurisdiction a greater cohort of experts about what really goes on than among the judiciary.

We are involved not only in the detail but at the more strategic level. As you know, under the framework agreement, the board of the Courts and Tribunals Service has judicial representatives on it, so judges are involved there. All the principal sub-committees of the board also have judges as members. We have our own structure of governance for reform, the Judicial Reform Board; we have another board that comprises the leaders of each of the engagement groups; then there are the engagement groups. And so it goes on.

Q247 **Chair:** In a nutshell, are you saying, in effect, that every element of the programme, as it is iterated and taken forward, requires a joint sign-off, and that if you, as the judiciary, were not happy with any element of the proposals, they would not happen?

Lord Burnett: Yes. That is essentially how it is working. There has not yet been any instance of disagreement. When people work sensibly and collaboratively, there is always a way of finding a sensible outcome. That is what has been happening. That is why a lot of the projects start with



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very small pilots, so that everybody is satisfied that what is being proposed works. The pilots also provide an opportunity for corrections, adjustments and developments to be made before big projects roll out more generally.

Chair: Mr Hanson will probe a little more.

Q248 **David Hanson:** Lord Burnett, could you clarify what you have just said? You said that no one would be required to use the service. Could you tell me how that would work in practice?

Lord Burnett: No litigant in person will be required to use it. I emphasise that. Professional users—solicitors and legal executives—will be required to use digital processes.

Q249 **David Hanson:** As a litigant, how do I know that I am not required to use the service?

Lord Burnett: Because there will always be a paper alternative available, if you want to use it.

Sir Ernest Ryder: When you get to the stage of a pilot finishing, the finished product on the screen tells you that you can use a paper alternative and tells you how to find it. You will not have seen that yet, because none of the pilots has got to that stage.

Q250 **David Hanson:** When you say that a paper alternative “will always be available,” what does “always be available” mean?

Lord Burnett: It will be possible, as now—

Q251 **David Hanson:** And for how long?

Lord Burnett: There are absolutely no plans to force litigants in person to use digital processes if they do not want to.

Q252 **David Hanson:** I raise those questions because we have had evidence from the Bingham Centre, Law for Life and a range of other people who indicated that the digital divide and the lack of legal support would be critical in access to justice. We want to be reassured that you, as the judiciary, are content that the system will still provide access for those who are digitally disadvantaged, of whom there are many, and those who will not have access to legal advice.

Sir Ernest Ryder: You have had very interesting evidence, both from the Bingham Centre and from a number of experts, on the question of legal capability. It is worth emphasising that we have at the moment very serious issues relating to legal capability. Access to justice for our vulnerable users—more than 60% in more than 100 jurisdictions in the tribunals, and in unreformed jurisdictions—is a daily event that the judiciary have to deal with, in order to make their access effective, particularly where legal representation is not available as of right or is unaffordable. Reform is in that context: how do we make that better?



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We made clear right at the beginning, and continue to make clear, that we have to reform process and language so that the ordinary user can understand it themselves. We have to change process when we make it digital so that it is intelligible to the litigant in person, not just to the professional user. You change that process first, before you digitise it, as otherwise you end up ossifying a poor, ancient service that is not usable at the moment by litigants.

Then your question is about support. That is really important. Let me give you two examples of the sort of support that is being put in place. Aside from the advice sector, which in these areas is a very good service, provided by a range of people, as some of whom you have mentioned, we have case officers in tribunals. They are authorised officers, working with judges at their delegation, helping people to construct their paper documents in a digital form. We have had that before in the Court of Appeal, with the deputy masters. We are now using it across all our tribunals in the reform process.

We also have something called assisted digital, which I know you are aware of. It is only a small start-up service at the moment. I entirely accept that not many people have yet used it, but the quality of what it can provide, for those who wish to do it digitally, is very good, from what I have seen. If you put together face-to-face support by case officers, assisted digital support and paper alternatives, at the end of the day you are improving what is already a difficult access to justice position.

Q253 David Hanson: Will the burden of giving legal advice fall on citizens advice bureaux, for example, and others? How will that be integrated into the system?

Sir Ernest Ryder: No more so than it does at the moment. The question, as a matter of policy, of who gets funded legal representation is not of course a matter for the judiciary. Dealing with the circumstance that we have, we have the strongest collaborations with those advice sector organisations. Indeed, we take their products. Advicenow is a classic. Without their product, which provides mandatory reconsideration letters for those appealing benefit awards, most people would not be able to succeed in getting a mandatory reconsideration, which is the threshold for obtaining the right to go to a tribunal.

I put those specialist advice sector representatives together in the Administrative Justice Council, which has 40-plus council members, to hear what they tell us about the services that are or are not there. Therefore, we get a good and strong range of opinions from them about what our users need.

Q254 David Hanson: This whole change was initially supposed to be underpinned by the 2017 Prisons and Courts Bill, which went west due to factors beyond everybody's control, with the election two years ago. Since then, we have seen a series of piecemeal bits of legislation. Does that create any problems for you, for the users or for the court system as



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a whole? Is there sufficient clarity now in the legislative underpinning of the reform programme?

Sir Ernest Ryder: The Bingham Centre has an interesting hypothesis. I entirely agree with them that a transformation programme has significant constitutional implications. That is plainly obvious; we would not be here if it were not the case. Splitting one Bill into three or four discrete Bills does not change the overall effect of the legislative umbrella within which we will work.

The Bingham Centre's hypothesis was that there ought to be more parliamentary scrutiny. With respect, I am not sure that I agree with that. We have this Committee, the Constitution Committee, the Public Accounts Committee and each of the relevant major audit agencies—the major projects reform group and all the governmental agencies that audit and scrutinise what is happening in reform—all of which report back not just to Government Departments but, through the Committees, to Parliament. If you were to put in more scrutiny, you would risk inconsistent and overbearing pressure on those who have to run reform operationally. They are spending a huge amount of their time on that scrutiny already.

Q255 **Chair:** An issue was raised with us about scrutiny of the iterativeness of the process, as it develops incrementally.

Sir Ernest Ryder: There was.

Q256 **Chair:** It may be good for testing, but how do the public scrutinise the iteration itself?

Sir Ernest Ryder: There is a very good and serious question about how you evaluate each of the iterative parts. If you have an agile programme, it is bound to develop in that way. That is the definition of it. What you need to do is to evaluate the projects. May I suggest a way to do that? I know that you have heard evidence to that effect from Dr Natalie Byrom, which the Administrative Justice Council supports. You evaluate by reference to access to justice principles, so that, in particular, your users—your litigants in person—are assured of their access to justice in each material respect through a project.

Chair: Do you want to come in on that point, Ms Prentis?

Q257 **Victoria Prentis:** Very briefly. We heard some very powerful evidence from Dr Byrom and others who are experts in this field. They were concerned that there was not enough strategic vision; that the direction of travel of the Department had not been sufficiently tested, in the absence of an overarching Bill; and that sufficient Chamber time here had not been given to the way the Government's policy on access to justice has evolved. Do you think that is fair criticism?



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Lord Burnett: I am not sure that I really understand what the criticism is getting at. The legislative part of the original Bill that has not yet come back before Parliament—

Q258 **Victoria Prentis:** And probably won't.

Lord Burnett: I shall not speculate on that, if you will forgive me.

Chair: Very wise.

Lord Burnett: It is the part that dealt with quite a lot of the changes that would be needed for the criminal side of the work. Some of it was concerned with changing some fairly basic but minor things, about the need for attendance at courts, for example. As you will remember, there was an element that set a structure for the use of video-enabled hearings and so on. That may or may not come back. The way in which the Bills have been dealt with—there is one before Parliament at the moment—has provided the legislative underpinning of what needs to be there.

Q259 **Victoria Prentis:** The criticism, if it was such—possibly it is too strong a word—of the judicial structure was that judges had embraced digitisation, because they viewed that as the way to increase the modernity of the system as a whole, and sufficient care had not been given to access to justice at all stages of the process. You do not recognise that.

Lord Burnett: I profoundly disagree with that.

Q260 **Chair:** Video hearings were mentioned in the context of open justice. You will have seen the evidence of the Magistrates Association, for example. They think that open justice has already been compromised by the way the single justice procedure works in minor crime.

Isn't there the risk that if, for example, you are in a county court somewhere, or in one of the tribunals, dealing with what might, on the face of it, seem to be routine cases to the world at large but that are important to the people concerned, and still important to the public, in terms of the integrity of the system it will be very difficult in practical terms for the level of public scrutiny to be as good as it is at the moment, which is your stated objective? How do we avoid that?

Sir Terence Etherton: I can deal with the civil side. We do not see that there is going to be any diminution at all in public access. There is no doubt that, as the Chief Justice said, people who cannot use digitisation will be able to use the paper system, exactly as they do now. The real challenge there is to make sure that they are not disadvantaged by having a paper system and a digital system running side by side. That is a different issue.

As far as access to justice is concerned, and on the wider constitutional issues, what I would say—leaving aside those abstract concepts—is that we must have a very clear idea of what is actually involved in all of the different jurisdictions. First, there is not an online court.



Q261 **Chair:** Sure. It is a misnomer.

Sir Terence Etherton: People talk about an online court. There is not an online court. There never will be an online court as such.

Q262 **Chair:** I understand that.

Sir Terence Etherton: What we are talking about is providing a modernised, digitised process at various stages of the litigation process in each of the jurisdictions. Therefore, when we talk about ideas of constitutionality and public access, we have to be clearly focused on which aspect of the change we are talking about. On the one hand, there are all the processes that lead up to the court hearing, or what is now a court hearing, which is the resolution of a dispute itself. Then there are things that come after that, about enforcement.

It is unclear, but I think that most of the issues about the constitutional integrity of the process concentrate on the point at which the dispute is resolved. They do not really focus on what is a critical part of access to justice for any litigant, particularly in small claims—how do you start the process, and how do you get to the point at which there is a resolution of the dispute?

I have to say that I am an unapologetic enthusiast for digitisation, in my own area and in others. Let me give you an example of why that is so. Somebody has already referred to the importance of small claims. The online civil money claims project, which is our major project at the moment, is for claims under £10,000 and is primarily designed for litigants in person. The majority of claims in this country are such claims. They represent the majority of the claims. In fact, only a tiny minority—under 10%—of our claims are over £25,000. Of those under £25,000, the majority are under £10,000. That is what most people are concerned with.

Since digitisation was introduced for the process of making those claims online—since March last year—over 70,000 claims have been voluntarily processed online. That is an amazing figure. It represents well over the majority of claims under £10,000—and it is entirely voluntary. There, the public have voted with their feet. If one wanted any justification at all for digitisation in access to justice, that provides it.

Q263 **Chair:** That is a very considerable achievement in transactional terms, but what is the evidence that the outcomes for the litigants are better?

Sir Terence Etherton: That is when we come to the process of disposal. I am going to come to that. The process of starting your claim is very important. In order to increase access to justice, you want people to start claims and to defend them. Over 16,000 people have voluntarily defended online. The evidence is that they are defending in smaller claims than they would ever have done before, because it is easy to do from your computer at home.



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There is a satisfaction rate of just under 90%. I cannot think that there are many other new public services that run at that level of satisfaction. I cannot see how that process—what you call the transactional part—which is critical to access to justice, can be said to involve constitutional issues.

We then come to the part that I think most people are concentrating on: how do you actually dispose of the claim? At the moment, it is done in a physical setting. What is proposed in relation to some claims, yet to be determined, is that they will be determined in whole or in part by video. At the moment, we already have video representation for witnesses and so on. I think the focus is primarily on the possibility that, in due course, there will be a number of claims that will be disposed of wholly by video hearings.

The first point to make is that we have not reached that point yet. There are pilots going on in relation to those. We will have to see whether that is technically feasible, as well as what the implications are. If we take the different jurisdictions, there is no suggestion that any serious criminal prosecution will not be resolved exactly as it is resolved now. We are not dealing with claims over £25,000. At the moment, the concentration is simply on claims in civil, under £10,000.

One of the suggestions seems to be that, in addition to what I have described as video hearings, there will be some sort of online resolution of disputes, by some sort of process of computer exchanges between the client—the user—and the judge. As far as I know, nobody is actually suggesting that. One of the only possibilities, which is currently being piloted, is in relation to a tiny type of claim—of under £300. In some cases the judge may decide on the papers. At the moment, it can be done on the papers anyway for claims under £10,000, with the approval of all the parties.

Q264 **Chair:** I understand that.

Sir Terence Etherton: All the other claims will be dealt with either in a physical setting or through video hearings. We have yet to resolve whether those hearings will work and what the conditions will be. Ultimately, they will be set by the independent rule committees.

Q265 **Chair:** Is the idea of online dispute resolution a hare that has been set running somehow?

Sir Terence Etherton: Nobody has suggested some kind of situation in which the judge is sitting in their room, communicating with the parties by computer and responding by computer, without any visual setting. There is no pilot for it and, as far as I know, there is no campaign for it. There is no proposal for that.

Q266 **Chair:** Will the judiciary have control at all times of what is and is not done by video?

Lord Burnett: Yes is the short answer. You used the phrase “set hares



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running". It can be quite frustrating when we read and hear about all sorts of theoretical concerns that do not really attach to the projects currently under consideration. This is an iterative and quite careful process. Some would criticise it for being too slow a process, but the care necessary to pilot these sorts of things is, at least as it seems to me, fairly obvious.

To the extent that increased use of video will be part of what goes on, just as now it will be within judicial control. It seems to me that a lot of people do not understand how much use of video there is now. In appellate courts, we regularly hear counsel via video to save them having to travel 300 miles for a one-hour hearing. In civil courts, videos have been used for decades to hear evidence if, for example, a witness is abroad, to save them having to come to the UK. Equally, if a witness is in Manchester and the trial is in Truro—as happened for me a few years ago—we do not think of forcing that witness to give up two days to come and give evidence for half an hour.

The control of the use of video in hearings in any jurisdiction will be a judicial matter, underpinned by rules of court and practice directions. The rules of court are, in the end, made by rules committees, as you know, which comprise independent and varied groups of lawyers and sometimes others. Practice directions are essentially within the control of the senior judiciary. To the extent that there seems to be the thought that somehow we are going to run away with video hearings, it is just not what is planned.

Q267 **Chair:** A district judge sitting in Bromley has as much control over the use of video in a hearing in their court as you do in your court or the Court of Appeal.

Lord Burnett: Indeed.

Sir Ernest Ryder: A divisional judge, even if he is in a tribunal hearing room in Luton, can decide that, whatever the rule or practice direction says, in this application the user needs to see it done face to face. The whole of the fully video trial that we have at the moment, which is a very limited series of case management and paper-based hearings, rather than credibility in oral evidence hearings, is based on that voluntary concept. Nobody goes through a fully video hearing without having volunteered to be there in the first place.

Q268 **Chair:** How do you set that against the necessity test in *The Times v. Abdulaziz* decision? You might volunteer to do something, but should you volunteer something if it is not necessary to have the hearing in public?

Lord Burnett: That is almost a philosophical question.

Q269 **Chair:** I wonder how you get that balance. That was the Court of Appeal's rationale, wasn't it?



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Lord Burnett: Yes. As Sir Ernest said, at the moment what are called fully video-enabled hearings are being piloted in an extremely narrow sphere. I think some of them were in the tax tribunal; a small number of cases were run and individual appellants decided to enter the pilot. That enabled people to conduct their short tax appeals from their offices or homes.

There are many people who would like to do that, but when it comes to using videos now and for the future, or indeed using telephone hearings now and for the future, all judges are concerned with the interests of justice. There are many things that routinely can be dealt with that way and many things that self-evidently cannot be dealt with that way. The message that I hope the Committee gets is that a lot of the concern that is being expressed is about things that are not in contemplation.

Q270 **Chair:** Can I put a broader point? Sir Terence referred to the success rate in enabling people to start and defend claims, which, on the face of it, seems admirable. Taking all of that on board, is there a risk? This is happening at the same time as the availability of legal aid and early legal advice, certainly publicly funded, is reduced. In some areas of practice, for a number of perhaps market-driven reasons, it is harder to find a solicitor readily available to deal with smaller cases.

Given that there may be an increase in the online money claims to £25,000, is there a risk that the ease of starting proceedings could lure people into the trap of commencing potentially superficially attractive claims without proper legal advice—the proposition put to us—and running up costs without being warned off early on? Maybe that is an issue for Government to resolve, but how do we avoid that trap? Maybe it is not a trap.

Sir Terence Etherton: I think that question has been raised in the context of increasing from £10,000 to £25,000 the online civil money claims process, for example. At the moment in relation to small claims, as you know, only in very exceptional circumstances is a cost award made. That is why they are talking about the next layer up, which is £10,000 to £25,000. We have not got there yet.

There are two points to be made. First, I do not think one could possibly say that it would be right not to make access to justice easier for a litigant by making it possible for them to litigate themselves rather than going to a professional adviser, merely because it would mean that they might undertake work on their own that they would not otherwise do. That is true at the moment in a way, so you are improving access to justice. You cannot say that you should not improve access to justice because you would make it more difficult, so that people would need legal advice. That would be contrary.

The other point is very simple: it is all on the screen. I do not know whether members of the Committee have seen the screens at work. We are not there yet for £10,000 to £25,000, but as and when we get there,



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if we do, you simply have something on the screen that says, "You must be aware that there may be a costs order at the end of the day. You may have legal advice if you are concerned about this matter." That is really not a problem.

Q271 **Chair:** It is one of the hares again.

Sir Terence Etherton: I think it is very much a hare.

Q272 **David Hanson:** Let me turn to another area that has been put to us, which relates to tribunals and the online resolution of appeals. This is probably for you, Sir Ernest. We had before us Ken Butler of Disability Rights UK. He said that in the case of benefits such as ESA and PIP he was concerned about appellants potentially not having access, as currently, to medical advice and support in front of the panel, but only at the request of the judge somewhere downstream. What is your response to that concern?

Sir Ernest Ryder: That is a reasonable apprehension, but it is nearly a hare. Continuous online resolution is run by a panel. The panel includes a doctor, as it always has, and the only way in which that can be changed—we are not proposing a change—is if the panel composition was to be changed. That is my responsibility, and in any event it would have to come before this House.

I suggest that the likelihood of that happening in a medical case, where the medical member is giving fundamental advice about entitlement to an award, is very slender indeed. I have no plan to make continuous online resolution something that is not a tribunal panel, and the pilot has a panel all the way through it.

Q273 **David Hanson:** Why do you think that hare started running?

Sir Ernest Ryder: Because I do not think anybody has thought their way through what we are going to do. That is why we set up the Administrative Justice Council. If I may say so, Ken Butler is a member and received only last week the detailed results of the very questions he was asking. He got the answers; he got Dr Byrom's paper, and expressed himself as very happy with the consequence, so in that environment we are able to discuss just these issues.

Q274 **Andy Slaughter:** What has become apparent to us is that it may not be individual changes, significant as they are, but the cumulative effect, particularly where there is already inequality of arms, for example in small personal injury claims where you now have less chance of representation because of the increase in the small claims limit, or in whiplash claims, where new portal systems have been introduced. Therefore it is something to get used to.

There is a remoteness, so perhaps the judge is not there to see you struggling if you are a litigant of that kind, and people are, therefore, falling through the net. We experience that because those are the people



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we see in our surgeries; they come to us and are struggling with litigation and simply cannot cope with that combination. Are you concerned that too much is going on at one time and there are not enough safeguards to ensure that is not happening?

Lord Burnett: Oddly enough, the criticism we often face—when I say “we”, I do not mean the judiciary in particular but the Courts Service—is that everything is going too slowly. You will know that the timescale for the project has been extended. The concern you advance is not one that I recognise.

There are real difficulties at the moment for any private individual in a one-off endeavour to litigate in the civil courts and do it themselves; it is not an easy exercise. Part of what we all hope will be achieved is not simply a digitisation of the current processes but a streamlining of those processes to make it easier. When one goes to the online civil money claims project, the form one has to fill in is, in its operation, very like the sort of thing we all encounter, if not on a daily, at least on a monthly basis. If you want to renew your insurance and you do not fill out the proper boxes, it will not let you move on to the next bit; ditto if you are renewing your driving licence online and things of that sort. A great deal of care is being taken, with input from the judiciary, to make use of the systems as easy as possible—indeed, easier than doing it filling out paper forms. Sir Terence may have more to add.

Sir Terence Etherton: That is absolutely right. It is very important to distinguish the different stages of the process. I do not think it can possibly be said that what is described as these process aspects up to the hearing are in any way disadvantaging people over their present position; it is making it much easier for them than it otherwise would be. People in this category of small claims are not normally legally represented because there is no costs order, with certain exceptions, at the end of the day, so you are improving the system by making it easier to go through the screening processes, which are very carefully worked out to make them more accessible and easier for litigants.

The real gravamen of the point you are making, which is an important one that we have to confront, is, in what circumstances should you change the dispute resolution point when you are engaging with the judge? In what circumstances should we say that that should take place not in a physical setting, as at the moment, but in a different setting? That is what the pilot is critical for. It has to be evaluated extremely carefully before we say to what category of cases and how many such cases it will apply. What will determine the judge’s approach to that? We have not got there yet. It is an extremely important and sensitive issue. I quite agree that we have to be very cautious about it.

Q275 **Andy Slaughter:** It is more about the point of intervention. Going back some years, there was greater availability of legal advice, whether legal aid or not, and court staff and judges to assist litigants who were struggling. We do not have those warning signs any more. The system



looks wonderful on paper or online, but it is not actually working for everybody who needs to use it. Where is that assistance going to come from?

Sir Terence Etherton: As I said, at the point of the hearing of the dispute, the public have already expressed their satisfaction, I suggest, with 70,000 voluntary claims online and the number defending. We have not yet got to a stage of dispute resolution between the judge and the parties, but I do not accept that in those cases, whatever they may be—they are likely to be a very small number where it is a totally video setting—judges will not be as able as they are now to give assistance, as they are required to do now under the rules. If there is a litigant in person, the rules specify that the judge must do whatever is appropriate to try to assist. There is absolutely no reason why that cannot be done in a visual setting that is not a physical setting. There will have to be precautions and care taken, but I do not accept that it would produce necessarily an unjust—or more unjust—system.

Q276 **Victoria Prentis:** On court closures, you have given us powerful evidence about your enthusiasm for digitisation. Whether or not you want to view that as separate from court closures is something we would be quite interested to talk about.

More specifically, we have heard from some judicial associations that they are worried about the level of court closures. We have heard powerful evidence from legal practitioners and NGOs on the topic. We wondered what view you have on the concerns expressed to us, specifically on the new benchmark for travel times that popped up in the course of the Government's consultation on court closures.

Lord Burnett: I will deal with this briefly. I am conscious that the Lord Chancellor is now sitting behind me.

Q277 **Victoria Prentis:** I am quite glad he is hearing this.

Lord Burnett: No doubt you will ask him about it as well. Part of the original plan in 2015, when the modernisation and reform programme was being developed, was that there would be some court closures. One of the aims was to reduce ongoing property costs and to liberate capital from the sale of some courts. Behind that is a desire held by the judiciary, and by Government, that one of the outcomes of the whole of the modernisation programme is to leave us with a court estate that is in a decent condition. That might not be thought too bold an ambition, but members of this Committee will know very well that quite a lot of the estate is not in a decent condition.

Q278 **Victoria Prentis:** You have given some very powerful evidence to the Constitution Committee on that subject.

Lord Burnett: Yes. Of course, it is for Ministers to decide on court closures and they do so only after very wide-ranging consultation and making the judgment against published criteria. The court closures that



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have taken place hitherto have been sanctioned by Ministers against long-established criteria.

The new criteria published by the Government, following the general consultation process that was held during the course of last year, have brought greater clarity about the parameters to be applied. There will undoubtedly be a relatively small number of people for whom travelling to a tribunal or court hearing will be very time-consuming if they live in remote areas and have to use public transport, but in all of this I do not doubt that the Government have struck a balance to try to achieve a proportionate outcome in circumstances where, as we have to recognise, money is far from limitless.

Chair: We will ask them in due course.

Q279 **Bambos Charalambous:** We have heard that in the courts that are still open there are insufficient staff and some who are very inexperienced and poorly-trained to give advice, and that many of the public counters are closed. What confidence do you have in HMCTS to provide adequate resourcing of properly trained staff to give advice to litigants in person?

Sir Ernest Ryder: At main board level, we have a shared understanding of what functions should be provided by staff and at which locations—the numbers and the quality in the sense of training. I have seen the new training and it is very good, but we also make it very clear, as indeed the board reiterated within the last month, that we need to look at the remuneration package for Courts and Tribunals Service and Ministry of Justice staff in order to make it competitive with other Government Departments and agencies. We lose some of our best staff—hence we have temporary staff—to other Government agencies. That is a crying shame. They are our most loyal investment in the service, and we would like to see something done about that.

Q280 **Chair:** You have told us about the Administrative Justice Council, Sir Ernest, and the scrutiny there. Does the same apply to things like the Civil Justice Council?

Sir Ernest Ryder: The model comes from the Civil Justice Council.

Sir Terence Etherton: I chair that body. The answer is that the Civil Justice Council has a very strong interest in litigants in person; it has quite a large representation from the pro bono sector. As you probably know, once a year we run probably the world's largest meeting of representatives—about 200—dealing with the issue of access to justice by those with limited means. Last year, we produced a very important report, which I think has been referred to in some of the evidence, on the problems of people who do not have skills for digitisation.

The Civil Justice Council is not, however, what I would describe as a scrutiny body for every part of the reform process. It enters into and discusses matters that are of particular relevance to the civil justice system. The scrutiny is provided by many of the bodies to which



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Lord Burnett has referred. For example, in relation to civil, it is provided by the independent rule-making bodies that have on them all sorts of people and can consult if necessary. It is the same with family and elsewhere. That is the way scrutiny takes place throughout the whole of the judiciary.

Q281 Ms Marie Rimmer: It has been suggested to us that magistrates' communication needs are not being met. The Magistrates Leadership Executive advises that the reform programme "has firmly indicated that it wants to retain control of communications...largely through the Judicial Intranet." They say that there has been a struggle to resource it adequately, so it has not been relevant or timely. Some magistrates feel they are not being considered and they do not see what benefits it will bring in the end; they do not appreciate the value it will bring. What do you say to that?

Lord Burnett: I am both disappointed and, frankly, concerned that some magistrates feel their communication needs are not being met. One of the general concerns I had when I took over as chief justice in October 2017 was that we needed to communicate more effectively with judges and magistrates about the reform programme, and a great deal was done structurally to put in place new systems to achieve that. We have talked about the Judicial Ways of Working exercise. We appointed Lady Justice Thirlwall to be the fulcrum, as it were, for the reform programme for the judiciary. She has done a remarkable job in engaging with judges at all levels, including magistrates, with meetings all over the country. Magistrates were involved in Judicial Ways of Working. Their feedback for the jurisdictions in which they sit—crime and family—has profoundly influenced the product of those exercises. That is why I am a little bit surprised.

There is a dedicated magistrates engagement group for reform. Many magistrates are involved. We have had a new dedicated communications team since the beginning of this year in the Judicial Office to deal with reform, and a great deal of information is made available via the intranet, webinars and all sorts of mechanisms to try to keep people up to speed, but the very fact that the concern has been expressed—I appreciate that it has been expressed—leads me to conclude that we have to look at that again.

Q282 Chair: That is fair enough. It has been a fairly quick session, but I think we have packed into it a number of issues. We are very grateful to you, Lord Burnett, Sir Terence and Sir Ernest. Thank you very much for your time and the care with which you have given your evidence.

Lord Burnett: Thank you for hearing from us. I appreciate that we have covered a lot of ground in a fairly short time. If there are other matters that you wish to cover but we did not have time to deal with, by all means let us know and we will try to give you such help as we can.

Chair: It may be an iterative process. Thank you very much.



Examination of witnesses

Witnesses: Rt Hon David Gauke, Susan Acland-Hood and Richard Goodman.

Q283 **Chair:** Lord Chancellor, Ms Acland-Hood and Mr Goodman, welcome. We are sorry to keep you. Lord Chancellor, some of us might like to keep you longer.

David Gauke: That is very kind of you. I extend my apologies. I hope the message got through that I will need to leave promptly this morning—I hope it is still this morning—for an engagement at the Palace.

Q284 **Chair:** That is perfectly understood.

Cutting to the chase, we understand the background to the reform programme. You heard some of the evidence just now. You had the reports from the National Audit Office and the Public Accounts Committee. Frankly, they were pretty critical. The programme date has been extended to 2023. Are we realistic now? There was a huge amount of criticism about the capacity to deliver it realistically. Is that taken on board? Has it been adjusted so that we do not have that again?

David Gauke: Yes, I believe so.

Q285 **Chair:** Can you say why?

David Gauke: We welcome scrutiny of the programme. There have been criticisms, but we also have to recognise a lot of progress in early delivery of benefits. We responded in detail to all of the points raised in the recommendations of the Public Accounts Committee for the reform programme. We have reordered some aspects and we are taking an additional year, to 2023, to deliver it, but that is a realistic approach. I think it is sensible for us to do that. We were able to do it without increasing the costs of the programme, which still remain at £1.1 billion. If you look at some of the things that are already being achieved by the reform programme, it more than justifies what we are doing. I think the timeframe is very realistic.

Q286 **Chair:** One of the concerns that has been expressed is the risk that corners are cut and efficiencies are claimed before the actual reform process has been completed. I noticed that an awful lot of savings so far seem to be simply not replacing staff, rather than things working through. How do you obviate that risk? Some might say it happened with other reforms; transforming rehabilitation comes to mind in a different context. Things are pushed through at such pace that they are not properly tested before they are let loose.

David Gauke: Susan or Richard might want to come in on that, but I have one observation while they fight it out as to which of them wants to come in. As regards rushing through some of these things, some of the feedback we are getting for individual aspects of it has been extremely positive. It is well over 80% for particular aspects; on average, 82% are saying it is all very good.



You could even make the challenge that some of these things we could possibly have pushed out earlier, not waited for longer. Although it is clearly a large reform programme, and there are many individual elements to it, I think one can say that we are trying to do it at the right pace. There might be some areas where we could have rolled it out quicker. I do not sense that there is any cutting of corners. I think it is a sensible approach.

Susan Acland-Hood: I want to address the point about whether early delivered benefits are about other types of efficiency, such as letting people go. There was a conscious choice to try to make sure that we were thinking forward about the number of staff we were likely to need at the end of the programme, and the balance between permanent staff and agency staff. If you look at the profile of staffing reductions, there were some quite significant reductions in HMCTS's total staffing when it first came into existence as HMCS, and when the tribunal service and magistrates courts came together. Then there was some reduction in the year I first took over. It has levelled off quite a bit since then, partly because demand has increased in many jurisdictions and partly because we have very consciously been trying to make sure that we are managing and thinking about the changes we bring in.

The other thing worth saying is that not all the change is digital. To take the example of the single justice service, we have started working that procedure in advance of having new technology and have managed quite a bit of efficiency through that, which will increase as we bring on the digital system. I do not think it is illegitimate to count that as part of the reform, because reform is not just digitisation; as the judiciary said earlier, the reform is also about the business process change around it.

Richard Goodman: There is a broader point about efficiency and improved service. We have been very clear that we have to do both. They often come across as being enemies of each other, but they are not really. Most of the time, when we deliver a bad service, it drives inefficiency for us, because we have designed the thing not around the person at the end of the process but for our own benefit.

Looking at phone calls, more than a third of people call us to find out what is happening about their case, and we do not have the infrastructure at the moment to give people rapid answers to that, because we are chasing down a bit of correspondence that is in a filing cabinet in a corridor. Designing the service better, as we did on divorce, where we took three pages of forms plus three pages of guidance into two questions on the online form, is better for the individual involved, but it also saves us money. I do not think that they are enemies: most of the time, when we design the service better, it saves us money, too.

Q287 **Victoria Prentis:** On open justice, which I think is still a cornerstone of our system, how can we make sure that cases conducted online or video hearings do not interfere with the principles of open justice, and might



indeed enhance the general public's access to what goes on in court?

David Gauke: It provides an opportunity to enhance. I do not see that there is inconsistency between using video hearings and having transparency and openness, but we may need to do things differently. We need to take the opportunity, to make it more convenient for people to be able to follow hearings, for example.

We are still at the stage where we are piloting video hearings and examining our approach. Our current thinking is that we would allow people to observe from within a court building fully video hearings that are in progress. Obviously, that needs to be subject to judicial agreement and the successful integration of software with courts. That is something that could increase transparency and openness and make it easier for people to see it.

Q288 **Victoria Prentis:** What about putting more judgments online?

David Gauke: I was thinking in terms of fully video hearings, but yes, there are opportunities as to what we do. These are issues that need to be worked through with the judiciary. As I think you have probably heard, there is significant—

Victoria Prentis: Appetite.

David Gauke: Yes, there is appetite among the judiciary to go as quickly as we can on greater openness and transparency, with judicial remarks being broadcast, and what have you. There are obviously some sensitivities as to what could and should be shown, but we are clearly moving in the direction of greater openness.

Susan Acland-Hood: I completely agree with that. I think we have set a very important principle, which we share with the judiciary: we will absolutely not tolerate less openness than now, when we have a choice. If we have to do something differently, there will sometimes be a place where you have the choice to be slightly more open or slightly less, and we will err towards slightly more rather than slightly less, because that is an important principle.

We have some examples of places where we started to do that. We have started to publish single justice procedure lists centrally online. That has to be an increase in transparency compared with what we were doing previously, which was printing out vast lists of single justice cases—for example, Transport for London cases—and sticking them on the wall of Lavender Hill magistrates court. Technically, that conforms to the requirements of open justice, but it does not really feel quite there.

Q289 **Victoria Prentis:** No. Have you been surprised by how little uptake there has been of the assisted digital service?

Susan Acland-Hood: Probably there has been a bit less than we expected. When we step back and look at why, I may be more surprised



than I should have been, if that makes sense. We still have paper channels open for people, and we give people telephone advice and talk them through it on the phone. Our call handlers spend a lot of time doing that, and we get quite good feedback from people, who say things like: "He was very polite and patient. He explained everything step by step and did not rush me off the phone." We have tried to make the services as easy to use as they can be.

What we are not doing is trying to force people who would rather use a paper process into assisted digital. It is for a group of people who kind of want to use a digital service but for whom phone advice and support is not enough. When I stand back and look at that, and at the fact that it is a relatively small group, I am not sure that I should be surprised by it.

There is still a bit more work we can do. This month, we are extending the number of centres we operate from. We have now seen 98 people, which is about double what the figure was when we put our evidence in. We are increasing the ease with which people can walk into those centres and get advice, as opposed to getting a phone appointment from us when they ring us up. We are looking at ways of seeing whether there is a bit more unmet demand that we have not captured.

Sometimes, there is a bit of a risk that people use the phrase "assisted digital" to mean all help for people who have difficulty with digital services. We tend to use it for a quite specific slice of that help. It is important that we carry on seeing it as part of a continuum, where you can still use a good, well-designed paper form and you can still ring us up, and we will help you. We are about to introduce webchat and screen-sharing so that, if people are willing, we can literally show them and say, "Now click this bit." It has to be part of the wider spectrum of support for people.

Q290 Victoria Prentis: A much greater worry for this Committee on access to justice is the low level of legal knowledge in the general population, which is a barrier to their ability to access justice when they need to, or even to be aware that it is something that they can do. Of course, that in turn creates a barrier to their accessing digital justice, because they do not know that it is something that is open to them.

Do you have a plan in the Department for increasing legal awareness and providing early access to legal advice, where necessary, or assisting people to get into the system? I accept all you said about digital systems being helpful and the way you support people, but we have to get them there in the first place.

David Gauke: As we test our services, it is important that we identify what works best in supporting users to get to the legal advice they need, and how we signpost that. We have been doing research with organisations to understand who and where we signpost to, such as the citizens advice bureaux, the Money Advice Trust, Law for Life and the PSU.



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We are working with the advice sector to develop our signposting approach. To give an example, our online divorce service signposts users to consider legal support at regular points that we know will be most beneficial, such as when considering their financial arrangements following the breakdown of their marriage.

You raise an important point. Whether it is digital or otherwise, there is clearly an issue, but there is a point as to whether it creates opportunities to signpost people to getting the legal advice they need.

Q291 Chair: Can I raise one other issue around video hearings? I don't think that any of you have appeared in the criminal jurisdiction, as I used to. Online video hearings for preliminary hearings can be very sensible, because they save people being brought from remand, and so on, and prisons prefer that, but you have a 15-minute slot for defence lawyers to advise clients beforehand, we are told. Have any of you actually tried to advise a client you may never have met before in 15 minutes on what the merits of their plea might be, or what the adequacy or otherwise is of the brief that you have from your solicitor, who may not be very well remunerated on legal aid?

David Gauke: As you said, Chairman, none of us has appeared as criminal barristers. I am not sure whether this is specific to the technology or to the wider policy.

Q292 Chair: My concern is a specific thing. You may be able to help us, Ms Acland-Hood. It is a 15-minute slot for technical reasons, but I suggest that it is a technical constraint that is wholly removed from the reality of criminal practice. Very often advocates do not have enough time, and they are either pressured into giving insufficient advice to their clients, which cannot be in the interests of justice, or they have to seek adjournments, which wastes time. How are you going to get around that?

Susan Acland-Hood: There are a couple of things. We do not have a standard operating procedure that says that it is a 15-minute slot.

Q293 Chair: Why do professional associations think that?

Susan Acland-Hood: It will vary a lot in different places. But we have some constraints at the moment that are related to the fact that the justice video service, the system we use in the criminal courts, is a closed-loop system. In other words, from a court video link, you can talk only to another court, a police station or a prison. You cannot talk to anywhere else. That means that we have constrained access to both ends of the link.

As the solicitor, you can appear only from a designated booth. One of the things we are testing over the summer—we have started testing it in Norfolk and Suffolk—is the ability for legal professionals to link into those end points from any machine that can do video, which is now almost any laptop in the world. That would not be appropriate, in my view at least, for appearing in trial, but it can be appropriate for giving advice. If there



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is a trade-off between a longer and more flexible slot for giving advice and being in front of a bigger fixed end point, it is worth us testing. It is one of the things we are looking at. If it is successful, it would address well the problem that you have raised.

Q294 **Chair:** It is one of the unintended consequences. What seems a good idea can create practical problems for the advocate.

Richard Goodman: There is an important point that comes through some of the testing work that we were describing earlier; it is about trying to look at the process as a whole and not just trying to look at whether the kit works. These are all different components of the criminal justice system.

Q295 **Chair:** They are all different parts of one system.

Richard Goodman: Exactly. The important thing is to look at the system as a whole and not just to focus on whether a particular video link works or not.

Q296 **Chair:** Then you have to think about the appropriate remuneration for giving people early advice on matters like that, so you cannot decouple it from other considerations that we are not talking about today. I think that is a fair point, Lord Chancellor.

David Gauke: You make your point, Mr Chairman.

Q297 **Andy Slaughter:** I was very reassured when the Courts Minister told me at questions yesterday that there are no further rounds of court closures planned, at the moment at least. That is perhaps not surprising. You may disagree with this, but we have reached a stage where courts are being closed for commercial rather than operational reasons, and we have lost about half of some types of court.

Are you concerned, and what plans do you have to review the new travel guidelines on the length of time that it is acceptable to travel? The time limit during the day is from 7.30 am to 7.30 pm. What are you doing other than online to increase flexibility with supplementary and new venues that are available in that way? You must realise that this is a continuing concern.

David Gauke: It must be right, when we look at our estates, if buildings are underused and we have a constrained budget, as clearly we have for some time, that we have a responsibility to the taxpayer to use resources carefully. A lot of court buildings were very underutilised. Some interesting analysis has been done on the impact of the court closures that have happened in terms of the percentage of people able to get to court using public transport and being able to do that in the 7.30 to 7.30 time slot. There has been a very marginal difference between what would be the case if we had the estate that we had in 2010 and with the estate that we have now—very little difference as a consequence of those changes.



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As I said yesterday, no other round of court closures is imminent, but we always have to ensure that we use our resources sensibly. We have to take into account the fact that people will make greater use of technology that does not mean that they are necessarily going to be physically present, as has been the case in the past. We have to ensure, within our very strong desire to make sure that people can attend when they need to, in a reasonable way, that we use our resources effectively.

Susan Acland-Hood: That was a perfect answer.

David Gauke: Thank you very much.

Andy Slaughter: You have had a chance to rehearse it over the last year.

Q298 **Chair:** If you want people to give perfect answers, keep him.

David Gauke: I am finally getting the hang of it.

Q299 **Andy Slaughter:** There is a feeling that, because of the substantial and growing cost of the reform programme, you are finding the savings first to fund that. Part of that is capital income through court sales, but it is also, in relation to services that are left, or in theory are left, that they are just not fit for purpose—for example, when it is not possible to get through on the telephone at court offices that are closed. That is not my imagination: it is what constituents and practitioners tell me. That is a real change over the last few years. The service that is supposed still to be there might be there in theory but, in reality, it is not accessible.

David Gauke: Susan is itching to come in but, before she does, I am going to pick up on a point that I am sure she would make. There is no growing cost for the reform programme; the reform programme is still on budget. I shall let Susan deal with the other points.

Susan Acland-Hood: It is entirely right that, as part of our business case, we said that a certain amount of the cost of the reform programme would be met from reducing the estate to take out courts that were underused. We also said that, as we went through, if we found that people moved to using other routes, and the use of those courts continued to go down, we would keep that under review.

So far, we have somewhat overdelivered on the amount we said we were going to raise from sales of buildings, and we have not done that by selling more buildings than we said. We have done it by selling them for more money than we said. I am completely unrepentant about that, in every possible way. I have a very good team, to whom I briefly pay tribute, who do my court sales, and have done them utterly brilliantly.

From my point of view, if we are to be in the business of funding it in that way, we have to look at all the money we spend on an equal basis. We cannot privilege the money that goes into the physical estate over other things; we have to make a sensible assessment of where we put our



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money to get the best effect. If we are going to sell buildings, I would like to sell them for the largest possible amount of money I can, to reinvest it in the reform programme and in justice. I am somewhat over my totals at the moment. When we rephased the programme, one of the things we did was to move our assumptions about further changes to the right, to match the extension of the programme and give us more time to make sure that we are not making closures in anticipation of change.

The points you make about other types of service are well made and reflect the fact that we have had a period when, like many other public services, we have been trying to live with a somewhat reduced funding envelope. We have done that so far by trimming and squeezing the way we have always worked, rather than by thinking differently about how we work and realising some of the efficiencies that Richard talked about earlier, which come from changing the way we work to think more about people.

On answering the telephone, for example, which is incredibly important, at the moment I do not even have a system that tells me how many calls we have not picked up in individual courts and tribunals, because the telephony does not allow it. Where I have moved into national business centres and the new courts and tribunals service centres, I can now identify unmet need, so I can tell how many calls we are not picking up and how long it is taking us to answer them, and I can move resource to meet those calls. You can see that clearly now in the figures for how the telephone is answered. Where I have modern infrastructure and ability to move the resource to meet the need, I can answer calls much more quickly. We are answering calls across all service lines to the national business centres at the moment in under six minutes.

Q300 Andy Slaughter: I am sure that the improvements you are putting in will come to fruition at some point. That is not the impression I am getting at the moment; the impression I am getting is that we are in a hiatus phase when cuts to existing systems mean that there is a very poor response rate, or there is just nothing there, and new systems have not clicked in. Do you accept that you may have closed down existing systems or reduced existing staff levels before you had alternatives in place?

Susan Acland-Hood: There is always some friction as a result of going through change. For example, the figures I cited a moment ago are this week's figures. They were not as good as that a month ago; I completely accept that. It is something we monitor and look at very carefully. As you go through change, sometimes your ramp-down and your ramp-up do not match as perfectly as you wanted them to. I am hugely attentive to that, but I am not going to claim that we have got it perfectly right under every circumstance, at every point through the change programme.

What I will say is that as soon as we see an issue we respond, and the new systems we have in place enable us to respond more quickly and effectively than we could in the past. If you look back over our



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performance in various areas, you will see fluctuations over a long period of many years. There is a pattern of doing better and doing worse, but we did not have the ability to respond quickly enough and get ahead of it, to predict and provide in a way that means we can give the consistently good service that we want to in future.

Chair: Okay, we have got the point.

Q301 **Ms Marie Rimmer:** We have heard from legal practitioners that they have had problems getting the telephone answered and even that there have been unacceptable delays in getting an answer to emails. Do you actually have targets set yet?

Susan Acland-Hood: Yes.

Q302 **Ms Marie Rimmer:** Obviously, you are monitoring them. Could you let us have something in writing on what the performance has been in the last few months or so?

Susan Acland-Hood: Yes, I will happily do that. As I say, I have the ability to monitor that in my service centres much better than in the courts and tribunals, so it may be partial in that regard, but I am very happy to write to the Committee.

Q303 **Ms Marie Rimmer:** We would appreciate that. We also heard that closing court counters has created serious problems for users, especially anyone making an emergency application. Do you intend to reopen counters?

Susan Acland-Hood: Court counters were closed between 2012 and 2014, some time ago, separate from the reform programme, after a piece of work that looked at the sorts of work that was coming to the court counters and other ways we could do it. We have put in other contact mechanisms that the piece of research we did before the court counters were closed suggested would work better for most people. For urgent applications, there are still appointment systems, and we also have mechanisms in court for receiving things.

There is something about what happens in a court or a tribunal when you have a mixture of people who are supporting hearings, people who are supporting the public coming through the door, and people who are doing back-office administrative work in the court and tribunal building. One of the things I see a lot in my courts is staff being pulled into administrative work and away from the front of the office, or vice versa, in a somewhat reactive way. Through the establishment of the courts and tribunals service centres, we are seeking to move administrative and processing work to a place where we can do it more effectively and meet demand, as I described a moment ago. Also, importantly, we want to free up staff who are working in courts and tribunals to concentrate on supporting hearings and supporting the public.



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We are looking to increase the front-of-office presence of people who can help you to work out what you need to do in various ways. I do not think that will take the form of a manned counter because, a bit as you have seen when you travel on the tube, when they take all the chaps out from behind the counter and put them on the station concourse, you actually get a better service, because they can scan, work out who needs help, and come to them. It will be more like having people who can proactively work out who needs help.

Ms Marie Rimmer: The issue that was raised was that there was no one to make an emergency application to.

Chair: Thank you, that was very helpful.

Q304 **David Hanson:** How are we going to evaluate all of this at the end of the three-year period?

David Gauke: We have some work that we are already undertaking from the law education centres—an external evaluation.

Richard Goodman: There are several levels to evaluations. There is the overarching evaluation of the programme, which is being done outside HMCTS management by the central department. That is supported by an independent advisory panel of academic experts.

Q305 **David Hanson:** What is the baseline for that?

Richard Goodman: In what sense?

Q306 **David Hanson:** The concerns we have had are about, for example, the issues you have heard on access to justice and the number of people getting involved, engagement and a whole range of issues. I am not clear what the baseline is for your assessment of the current level of service, versus maybe in three years' time, at the end of the programme.

Richard Goodman: The evaluation is looking at outcomes—for example, whether they change as technology introduces changes in the way sentencing happens. It is also looking at access to justice, and it is doing that on a quantitative and qualitative basis. There are plans to survey people and take opinions and views, as much as there are around data. It is also looking at cost to users and whether we have reduced that, which will include things such as travel time as well as ease of filling in forms. There will be an interim report on that in 2021, ahead of the final report in 2023-24. That is a balance of the fact that we obviously cannot evaluate something until we have done some of it, but we do not want to wait until the end to establish whether it worked.

It is worth saying that other parts of the evaluation, which the Lord Chancellor referenced, are happening all the time in the background. The London School of Economics, for example, did an independent evaluation of our first test of fully video hearings in the tax tribunal. The LSE will also evaluate what we are doing in civil and family injunctions. Natalie



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Byrom is an independent academic expert, who has been looking at the future and how we use data, which is partially designed to address your baseline question, around what is available to us now and what should be made more readily available in future.

We also do that on a service-by-service basis all the time, with the judiciary, to spot errors that come through a lot quicker. One advantage of the digital system is that we have visibility when people drop out. If somebody does not complete a page, we know that there is a problem and that we need to do further research into it. It is happening at a number of different levels, but the overarching evaluation—

Q307 **David Hanson:** A lot of the things you have mentioned are around convenience and how easy or difficult people will find it to go through the system. We have had it put to us as well that there is no assessment of the outcomes, or the fairness of the outcomes. I want to get your sense of whether that is a fair criticism, or not.

Richard Goodman: Outcomes form part of the independent evaluation of the programme. It will look at whether the changes we have made have influenced outcomes. Obviously, it is not for me, or anyone at HMCTS, to determine whether the outcomes that are judicially determined or determined by juries have changed in one direction or another, but the overarching evaluation has outcomes in its purview.

Q308 **David Hanson:** When will the first public evaluation be published?

Richard Goodman: The interim evaluation will come out in summer 2021.

Q309 **Chair:** We have talked about a lot of transactional matters, and I am grateful for the information on that; if we need any more, perhaps we can come back to the Department.

Lord Chancellor, we have talked about the transactional, but isn't there a deeper point, ultimately, about the role of the court system as part of the rule of law and the broader pattern of ensuring justice in this country? Is enough of that central to our thinking and communication about what we are seeking to do around this programme?

David Gauke: Yes, I think it is, but the point I would make is that, as new technology becomes available and new options emerge, the court system has to change. It has to reflect changes in technology and new opportunities. That is not just about efficiencies, finding savings, living within our means and all those points, important though they are. It is also about providing an improved service.

I look at some of the things that we are able to do in terms of improving the way our court or legal system is administered, so that for the user—whether they are going through a divorce or making a civil money claim—we can improve that process and that experience very significantly. Ensuring that we improve the system and that it is one that works for



members of the public is an important part of the rule of law—that there is a means to seek redress or deal with a particular issue in a way that is effective, efficient and user-friendly. The ambition of this reform is to deliver exactly that.

Richard Goodman: Every week, I read the feedback that we get through on our online systems about how people have found it, and I think that the access to justice dividend is real, from my perspective. We have had somebody email us to talk about how the probate service considerably improved their life, because they were undergoing cancer treatment and they did not have to turn up somewhere. We had someone aged 71 write in on civil money claims, talking about how easy the system was, when they had thought that it was something they would not be able to do. We have had people write in saying that their partner suffers from depression and anxiety and found getting online notifications less stressful.

At one level, those are all individual transactions that can sound quite process-like, but the real dividend from them is that those are people who previously felt intimidated by the system, incapable of using it or not prepared to engage. With something like civil claims, the real dividend from the programme is some better digital services that are faster to use. So far, so good. The broader dividend is that people who previously thought, “I can’t go to the county court, because I don’t know what I’m doing; I’m intimidated by this process; it is all too frightening and I don’t know where to start,” are people who can now engage in the justice system in a way they could not before. That is a real access to justice dividend.

Q310 **Chair:** Any final thoughts, Lord Chancellor?

David Gauke: Final thoughts?

Chair: For this evidence session.

David Gauke: For today, yes. Can I make a wider point? Thank you for the session this morning. In the 18 months that I have had so far in this post, I thank the Justice Committee for what I hope has been a very constructive relationship, with very good engagement. I hope that, somehow or other, that can continue in the future.

Chair: We are grateful for your engagement and that of your officials. We, too, very much hope that we will continue to engage together. We are grateful to all of you for your time and your evidence.