

## Justice Committee

### Oral evidence: [The work of the Lord Chancellor](#), HC 225

Tuesday 1 December 2020

Ordered by the House of Commons to be published on 1 December 2020.

[Watch the meeting](#)

Members present: Sir Robert Neill (Chair); Richard Burgon; Paula Barker; Rob Butler; James Daly; Miss Sarah Dines; Maria Eagle; John Howell; Kenny MacAskill; Kieran Mullan; Andy Slaughter.

Questions 68 - 129

#### Witnesses

I: Rt Hon Robert Buckland QC MP, Lord Chancellor and Secretary of State for Justice; Jo Farrar, Chief Executive, HM Prison and Probation Service; and Kevin Sadler, Interim CEO, HM Courts and Tribunals Service.



## Examination of witnesses

Witnesses: Rt Hon Robert Buckland QC, Jo Farrar and Kevin Sadler.

Q68 **Chair:** Good afternoon and welcome to this session of the Justice Committee. This is the concluding part of our evidence sessions in relation to our inquiry on the effect of Covid-19 on prisons, probation and the justice system. I welcome our witnesses: the Lord Chancellor and Secretary of State—it is very good to see you, Lord Chancellor.

**Robert Buckland:** Thank you, Sir Bob.

**Chair:** It is good to see you, Jo Farrar, chief executive of HMPPS. Joining us remotely is Kevin Sadler, the interim CEO of HM Courts and Tribunals Service. It is good to see you, Mr Sadler.

**Kevin Sadler:** Good afternoon.

**Chair:** Before we kick off with the evidence, those of you who are familiar with the Committee will know that we have to declare our interests. I am a non-practising barrister and a consultant to a law firm.

**John Howell:** I am an associate of the Chartered Institute of Arbitrators.

**Andy Slaughter:** I am a non-practising barrister.

**Rob Butler:** Prior to my election, I was a non-executive director of HMPPS and a magistrate member of the Sentencing Council.

**Chair:** I do not think there is anything from Mr MacAskill or Ms Barker.

**Richard Burgon:** I was a practising solicitor before being elected as an MP in 2015.

Q69 **Chair:** There is nothing, I know, from Dr Mullan. Miss Sarah Dines, who will be joining us shortly, is a barrister who has not practised since her election. Ms Eagle is a non-practising solicitor.

Secretary of State and Ms Farrar, we are talking about prisons. I am interested in your assessment—please answer in whichever way you wish to deal with the questions—of the latest developments and the latest positions in relation to Covid-19, because there was a great fear that we were sitting on a time bomb. That has not happened, but there have, sadly, been deaths and there have been quite a number of infections. What is your assessment of how it has worked and of the future risks or concerns?

**Robert Buckland:** I will ask Jo Farrar to give you an up-to-the-minute update and I will come in after that.

**Chair:** Certainly.

**Jo Farrar:** We are seeing a second wave of Covid-19. Since we last saw you, we have seen quite a dip in the number of outbreaks, but we have seen that gradually rise. It now seems to be levelling off again.



## HOUSE OF COMMONS

At the moment, we have 60 outbreaks in our prisons. To put that into context, they are not all large outbreaks. My assessment would be that, because of testing, we now have a much more accurate assessment of the position in our prisons. We are catching outbreaks earlier and we are able to deal with them more effectively. We have 22 with less than 10 positive cases as of last week, and we have only a few with large or medium-size outbreaks. Elmley, Frankland, Preston, Cardiff and Belmarsh are, probably, the ones where we are managing larger outbreaks at the moment. The rest are typically below 40 cases.

From a chief executive perspective, I feel that we have a good strategy. We have kept that in place in wave 2. We have had the additional complexity of wellbeing, because people have been kept in cells for quite a long time, so we have been opening up. We were opening up during the summer and we are very pleased to have been able to keep some of our regimes going so that we have a much less restrictive regime at the moment.

Most of our prisons are in level 3—you will remember the national framework—which is really positive. That means we have been having more social visits, more access to work and education, although we did have to pause social visits during the period of national restrictions, but we are opening that up again.

That is all I will say by way of introduction, but I am very happy to take questions.

Q70 **Chair:** You had provision for some proposed temporary additional cell accommodation to be brought on stream. Has any of that had to be used?

**Jo Farrar:** Yes. We have used 800 cells out of 1,000.

Q71 **Chair:** That is still in use?

**Jo Farrar:** It is still in use, and really positively received. I saw some the other week at Guys Marsh and Huntercombe. The people in those cells were really positive about the experience. They are en-suite. They are a little bit bigger than normal. They are single cells. Because they do not have any shared facilities, we are just putting in place some arrangements for people to be able to associate, but they have gone down really well. They will last us for a little while. They are not very temporary; they will last us for quite a few years if we need them.

**Robert Buckland:** To develop Jo's point, the benefit of buying these additional cells will be felt in our expanded maintenance programme. We will move them around the estate. If, for example, a block or a wing is closed due to maintenance, we can use the temporary accommodation.

In terms of long-term benefit, the investment was absolutely the right one to make. Of course, in the short term it has given us that additional capacity. It is interesting to note that, compared with the beginning of



the outbreak, the overall prison population lies at just below 79,000—78,800 or thereabouts—and has remained fairly steady and constant for the past several months. We are confident, therefore, that we can deal with the winter months in terms of capacity. We think that that decline, combined with all the measures we took—notably, additional capacity; the compartmentalisation strategy, which the Committee is now familiar with; the quarantining of new prisoners, and, indeed, the shielding of vulnerable prisoners and then the isolation of the symptomatic—really made a difference when it came to dealing with the need to save lives.

In the first wave, sadly, we lost some lives, but dramatically fewer than PHE's projection for a reasonable worst-case scenario. We are seeing a similar pattern at the moment.

As Jo Farrar said, it is clear that the increased use of testing has allowed us to identify more asymptomatic cases, so the overall number of reported Covid cases has gone up. Frankly, that is important. That gives us a much higher degree of information and, of course, allows us to deploy resources where necessary to deal with outbreaks. Of course, in the first wave, the asymptomatic were not identified, and therefore we feel that we are in a different place from where we were in the spring.

The regime that we deploy, which has been referred to by the chief executive, is indeed one that we developed and devised back in the summer. We published our plans accordingly. We are sticking to those differing levels. That has meant that we have been able to change and adjust the regimes so that prisoners, for example, who were being released on temporary licence for essential work have carried on doing that. That means that, for large periods of the day, they are out of their cell doing something productive. We have also been able to carry on with exercise and some education.

Therefore, in very large measure, we have avoided a complete return to a 23-hour lockdown scenario, which clearly strikes the right balance between the need to keep people safe and the need for some purposeful activity in terms of wellbeing. Of course, through this, we have continued to do everything we can to support our dedicated staff, and testing for staff has been very much at the heart of our strategy.

I want, once again, to put on the public record my deep gratitude to our prison officers and all the support staff in HMPPS for more than stepping up to the plate, and for excelling and being exemplars of the ethos of public service throughout this crisis. I am hugely grateful to them, as I am sure the whole nation is, for what they have done.

**Q72 Chair:** Yes; thank you. I am sure Committee members will want to associate themselves with those observations.

Ms Farrar, the Secretary of State mentioned the increased rate of testing. I assume that the positive tests in a prison setting will be recorded as part of the data for the local authority area in which the prison sits.



**Jo Farrar:** Yes, that is right, but it is recorded slightly separately, so when the Government are making judgments, they can tell which cases are in the prison and which are outside. We have 107 sites that are routinely carrying out staff testing, and we have 31 sites—we are increasing this figure—carrying out testing for prisoners on reception, so it has been incredibly helpful for us.

I echo the Lord Chancellor's comments. I am incredibly proud of my staff in prison and probation, who have delivered a fantastic service throughout this pandemic.

**Chair:** Indeed. Thank you.

Q73 **Andy Slaughter:** I became interested in the positive rates because of what I was told was a substantial outbreak in Wormwood Scrubs, which is my local prison. I had some difficulty, having asked some questions, in getting a clear picture of that. I will not go on about that issue, but it would be helpful, if there is any update in relation to that, if I could get something to reassure me.

It is not simply the number of positive cases—as we have seen, they have increased substantially—but the knock-on effects, such as how many prisoners are in isolation as a consequence, either because of the infection or because staff have been infected, there is a shortage and things of that kind.

I have found it quite difficult to get answers to those questions. I do not think I am the only person, because I saw from the Centre for Public Data that the MoJ could not answer 40% of questions it had been asked through the Commons since March due to lack of data, making it one of the worst-performing Departments.

In so far as you have or are prepared to release data, could you give us a wider picture of what lockdown is like at the moment in prisons—what proportion of prisoners are likely to be in isolation or affected in some way by Covid?

**Robert Buckland:** I will bring in Dr Farrar in a moment. To answer your general question, Mr Slaughter, my experience with regard to data has been a challenging one. The data that we have been collating in prisons has been of a good quality. I have certainly been able to see and chart the spread or extent of outbreaks in individual prisons. I am satisfied that the information we have with regard to numbers and important issues—wellbeing or self-harm issues—allows me to make informed decisions and allows us to predict with a reasonable degree of probability what the future might look like in terms of numbers, for example, in our prisons.

We will talk about courts later. The position with courts—I will be frank—has been frustrating in many respects. We have quite a lot of raw data, but there are issues about its collation and, of course, the delay between the receipt of management data and the production of reliable data that would satisfy the statisticians and, indeed, the national standards.



## HOUSE OF COMMONS

Despite all those challenges, I will, once again, praise all the officials I have worked with, and indeed the governors and the staff, who have worked diligently throughout this crisis, recording incidents, reporting through problems and allowing Public Health England to work directly with us in each prison where a suspected outbreak has occurred. The overall outcomes thus far have, indeed, proved to be positive and have demonstrated the ability of HMPPS to deal with what could have been, frankly, a crisis situation within enclosed spaces, such as many and large parts of our prison estate.

With regard to the local questions you have asked, of course I will make sure, as far as possible, that your answers can be provided. I will ask Dr Farrar, if I may, to furnish the Committee with that extra information.

**Jo Farrar:** With regard to Wormwood Scrubs, the position there was mainly that a large number of staff were off because of test and trace and infections in the local area. The staff position is much better now. We had lower numbers of prisoner cases. I am very happy to give you some information outside this meeting.

Across the estate, we are managing just over 800 open positive cases across all of our prisons. We have five prisons in level 4, which means there are many more restrictions there: Elmley, Foston Hall, Usk, Frankland and Styal. The rest are all in level 3, so are managing a more open regime, albeit that some wings in some prisons are more restricted. One prison is moving to a level 2 regime, Hollesley Bay. I am very happy to give people information outside this meeting. We are publishing weekly data again now on the situation in prisons.

Q74 **Andy Slaughter:** I have a follow-up in relation to the consequences of this. I have three brief points to make. The first is on time out of cell, particularly for young people in YOIs. You said that you collect that data but that you are not publishing it at the moment. Will you publish it? If young people are being locked up for more than 22 hours, that is equivalent to solitary confinement, and the figures ought to be publicly available.

My second point is on staff numbers. From what I can see, and this data is around, permanent staff numbers are falling again. Are you happy that you have sufficient staff in all institutions to deal with the number of prisoners you have at the moment?

Thirdly, on custody time limits, which you have written to us about, that has a knock-on effect in time spent on remand. Do you have up-to-date figures—again, if you do not have them here, later on will be okay—in relation to the average time being spent on remand at the moment?

**Jo Farrar:** We are not publishing data on time out of cell, but I can tell the Committee that the average time out of cell at the moment is around 20 hours a week. That figure varies. In prisons where we have tight restrictions, such as Elmley, that is quite a restricted regime, but in other



## HOUSE OF COMMONS

prisons we have up to 60 hours a week out of cell. We are moving much more towards opening up as much as possible.

In relation to the youth estate, we are encouraging as much time out of cell as possible. For our YOIs, we are insisting that we have at least four hours out of cell and more as we reintroduce education. We are very keen to open up facilities for children and to keep those open. We are also prioritising children, even when there are restrictions, for visits, for example, from their parents to make sure that they continue with that family contact. That is the first point.

On the second point, our staff absences are going down. We have seen that level off at the moment. If we take wave 1 and our band 3 to 5 officers, we had about 4,400 off at the peak. At the moment, of those band 3 to 5 officers, we have around 2,300 off, which allows us to operate stage 3 regimes.

The position is different in different areas. Sometimes we have to redeploy staff, as we did to Wormwood Scrubs, for example, to make sure that regimes can keep going. We have some innovative measures in place to make sure we can cope with staffing pressures: for example, fast-tracking operational support grades so that they can become prison officers, exploring extensions with staff who were due to leave and bringing back retired or staff who resigned. Seventy-one have come back at the moment, and another 219 are in the pipeline. We have 40-plus local recruitment campaigns going to make sure that we keep the pipeline of prison officers running.

**Robert Buckland:** I want to reinforce the point that in the past several months, since August, we have had more than 40 separate recruitment campaigns to help to maximise the number of staff. As Dr Farrar said, we have had some success in returning staff. Redeployment, as well, is very much a part of our approach.

I have been keeping a very close eye on staffing levels and asking the obvious and right question about whether we are in a sufficiently resilient place to deal with the coming winter. It will not just be isolation due to Covid or, God forbid, Covid itself, but other illnesses as well. We are in a pretty strong place when it comes to the plans that we have to keep on supplementing staff who might be absent. In fact, throughout this crisis, prison officers and prison staff have had regularly and consistently high levels of attendance at work throughout the pandemic, which is to be commended.

With regard to custody time limits, the extension of a couple of months was brought in with effect from the end of September, so we will not see the effects, or the potential effects, of that for many months to come. I will endeavour to furnish the Committee with information about the overall length of remand. What is interesting is that the overall remand number of people who have not been convicted or entered a guilty plea remains stable at about 8,500. There was an initial rise at the beginning



## HOUSE OF COMMONS

of the pandemic, but there has not been an exponential increase on that number since it rose at the beginning of the crisis, which I think can lead the Committee to the conclusion that there is a lot of work going on in dealing with remand cases.

To stray over to the courts brief for a moment, between now and the spring, 80% of remand cases awaiting trial have been listed for trial. That should give the Committee some encouragement that we are doing everything we can to prioritise remand cases.

**Q75 Rob Butler:** May I continue the discussion on the youth estate and learn more about what the regime looks like under the national restrictions that we have just been through, not least because schools in the community have remained fully open? I recognise the difficulties there will have been in the secure estate. Will Dr Farrar give us an idea of what it has been like to be a child in custody during these latest restrictions?

**Jo Farrar:** I am very happy to do that. In the youth estate we restarted face-to-face education in July. We were very disappointed not to be able to provide it between March and July, although we did have in-cell and remote education for children.

We are averaging, as I said, about four hours out of cell for each child, but that varies: in some establishments, we now have quite good education provision for children. We are increasing that across the estate, particularly looking at our YOIs and how we can ensure that we have a full education provision for people. We have some restrictions because we are having to educate people in smaller groups, which is limiting the amount of time that people can have face-to-face lessons for, but we are prioritising our children.

We are also working closely with HMCTS to prioritise children who are on remand to make sure that they have their hearings. Some good work has been going on in that area recently. We are also making sure that children continue to have their social visits because we want to look after their wellbeing. Even in the period of national restriction, we allowed children to have visits from parents and other people to look after their mental health needs.

**Q76 Rob Butler:** That is encouraging news because, presumably, you were able to describe that as an essential reason for travel and it would still comply with the regulations. Has there been an increase in the uptake of video calls, which I know HMPPS has tried to do in recent years, particularly in the youth estate?

**Jo Farrar:** Video calls have been really positive for us. We have introduced video visits recently. We have now rolled them out to 110 establishments, which is all our public sector establishments, and the private sector prisons are also introducing them.

At the moment, 52,000 calls have taken place through Purple Visits. Most people are allowed a 30-minute call per month. That is in addition to the



additional PIN phone credits that we have given them so they can have audio calls, and the additional mobile phones that we have put in so that people can have in-cell calls as well.

We are also making much better use of video and audio hearings—Kevin might want to say more about that later. We are really pleased that we have been able to undertake about 46,000 hearings in the magistrates courts through video calls, and about 23,000 have been connected with the Crown courts. That is a very positive story, both on visits and hearings.

From my own experience of visiting prisons, I mentioned that I visited Huntercombe the other week and I had really positive feedback from people in prison: some who had not spoken to their families for a long time were able to see them. We have heard heart-warming stories about people feeling much more comfortable seeing their family in their own home—that makes them feel much more at home—and seeing their children’s first steps. That is a real positive that we want to keep going in the future. We have them available across the adult and the children’s estate.

**Robert Buckland:** It is important to emphasise that the use of video and telephones has helped to contribute to order and safety within the prison estate because that family contact has reduced anxiety, either on the part of the prisoners or the families themselves. Mercifully, we have not seen the sort of scenes that some other jurisdictions have sadly experienced, where prisoners have behaved in a way that endangers the safety of everybody within the estate.

The youth estate is a particular challenge. Very often the children find it difficult to accept and understand the restrictions that are placed upon them. It is important to remember that the overall context is that the number of children within the secure estate is now down to about 620, whereas at the beginning of the crisis it was just over 850. Within that proportion, the number of children on remand has remained steady but the proportion has risen because the determinate prison population—the sentenced prison population—has dropped.

Therefore, we need to understand that, with fewer children within the secure estate, that in itself helps to create a safer space for everyone. As Dr Farrar said, all the measures that we are seeking to take within the flexible framework that we have created—we did not have a bespoke framework for all the youth estate—have shown admirable flexibility. We are starting to see a greater educational input.

Let me single out HMYOI Parc, which kept education going even in the first wave, which I thought was a really impressive performance, bearing in mind the concerns that staff will have with regard to social distancing and safety, particularly at that time.

Q77 **Miss Dines:** Good afternoon, Lord Chancellor, and Dr Farrar. I apologise



## HOUSE OF COMMONS

for the lack of a video feed.

May I ask you a few questions about mental health? First, I was worried to learn that there has been an increase in self-harm, particularly in the female estate, during Covid. What plan of action have you implemented in this regard, please?

**Robert Buckland:** Thank you very much indeed, Miss Dines, for that question. The question of wellbeing and mental health has remained consistently in the minds of Ministers and officials throughout this crisis. You are right to note, with regard to the question of self-harm, that the position with female prisoners is concerning. In the 12 months to June of this year, which is the latest period for which accurate figures are available, there was a 6% increase of self-harm incidents in the female estate. However, in the male estate there has been a slight decline, albeit only about 0.4%, but none the less a decrease.

The number of individuals self-harming—it is important to note, sadly, that some individuals commit repeated acts of self-harm because of the acute nature of the condition they might have—remained steady in the 12 months to June of this year at 12,736 incidents. That represented a 1% decrease in the male estate but, sadly, a 3% increase in the female estate.

We are learning that association and the support network are particularly important in the female estate where, very often, older women will support younger women, give them advice and help younger prisoners, who perhaps are new to the estate, to learn and benefit from others around them.

The position is slightly different in the male estate in that what we are learning is that association can sometimes be very difficult for many male inmates. Perhaps smaller associations are safer and reduce anxiety. There has been quite a mixed picture with regard to how men, in particular, feel and their wellbeing with regard to the change in regime.

To deal with what sometimes happens as the ultimate and truly tragic outcome with regard to poor wellbeing or mental health, the number of self-inflicted deaths in custody in the 12 months to September of this year is recorded at 70, which is a decrease of 23% from the 91 self-inflicted deaths recorded in the previous 12 months.

With regard to deaths in prison, which include deaths by natural causes, in the 12 months to September of this year, 282 deaths were recorded in custody, which is a decrease of 8% from the 308 deaths recorded in the previous 12 months.

It is not just about a recitation of statistics, because, as I have said before, one death in custody is too many, and certainly one self-inflicted death.



## HOUSE OF COMMONS

I want to reassure the Committee that more work is going on with regard to the way in which we assess and monitor women who are experiencing poor mental health or wellbeing issues. We have revised the assessment, care in custody and teamwork framework—the ACCT framework—which is used by prison officers to record and monitor mental health conditions. We are rolling out a revised model for the female estate in the new year. It is much more tailored to the needs of the individual woman, and it is much less about process than about the outcome.

Having taken a close interest in the ACCT process since my time as prisons Minister, Sir Bob, I wanted to reassure the Committee that that approach, together with all the other improvements that we have been making over the years, particularly with regard to understanding the trauma background that will often be the cause of poor mental health, which is exacerbated in the prison estate, shows that we are working as hard as we can to improve wellbeing and to assist, particularly women prisoners, who are experiencing poor mental health.

**Q78 Miss Dines:** If I may turn to violence, I was very interested to hear the earlier evidence that the management of prisoners had been better than perhaps expected. Do you have a formal or even informal assessment of why the violence that prisoners mete out against officers and fellow inmates has occurred in these particular circumstances, and are there any lessons for future management of violence generally?

**Robert Buckland:** Yes. I will bring Dr Farrar in in a moment. The first lesson that we learned very early on was the need to communicate efficiently and directly with individual prisoners. That, of course, included a variety of means of communication. Frankly, the old-fashioned leaflet under the door was used, and rightly so, to convey clear and straightforward messages to inform prisoners that, of course, wider society was having to be restricted in its movements and, therefore, in prison that was going to have to be the case as well. Therefore, there was a sense of common endeavour, which prisoners felt part of. I received many reports of a lot of prisoners who understood that—who wanted to work with it and support staff, and who were physically and volubly applauding and cheering members of the Prison Service who had gone above and beyond the call of duty to safeguard people in prison.

There were many positives stories, frankly, about the behaviour of prisoners, and it would be sad if they went unrecorded. Thanks to the concerted communication that we saw, prisoners in very large measure understood what they needed to do, why they were doing it and what they were part of more generally. The message about safeguarding our hospitals and the NHS was very well received and understood in the prison estate, I am glad to say. Dr Farrar might be able to add to what I have said.

**Jo Farrar:** As the Lord Chancellor said, we are hearing that the communications and the common endeavour were really important during this period. We have a team that we have set aside to study what has



## HOUSE OF COMMONS

been going on during Covid-19 and collect lessons learned. It is a very unusual situation, so it is important that we do not jump to conclusions, but we want to build back better so we are learning lessons about that spirit of common endeavour and communications.

We are also hearing that people have appreciated smaller group activity, particularly children, so we are looking at how we can build that into regimes going forward. People have really appreciated the closer contact with staff. That stresses the importance of reintroducing and keeping going initiatives such as key work. They have really appreciated that contact.

We are collecting all that information. We have interviewed more than 2,000 prisoners and a large number of staff, and we will start to look at how we can build this into our new regimes following Covid.

**Q79 Miss Dines:** That was until June; do you happen to know whether that spirit of common endeavour has endured, or has it reduced slightly?

**Jo Farrar:** I believe it is enduring. At the prisons I have visited recently there has been a really good spirit between people in prison and the members of staff. We have seen some great events and initiatives, such as Black History Month, for example, where everybody came together in a Covid-safe way. Prisoners are being really supportive of the new accommodation. They have spoken very highly of staff. We should also thank our trade unions, because we have had a close relationship with them throughout this period and they have been helping us to manage these positive regimes.

Yes, I feel it is continuing, and we are seeing that, as the Lord Chancellor said, in the lack of disorder and this sensible approach. We should thank everybody in prison for the way they have coped with this pandemic. We have not seen a situation like this, and we appreciate the way people are working with us.

**Q80 John Howell:** May I stick with the question of purposeful activity, which is absolutely important for prisoners? Are you able to maintain that work, exercise and recreation that is included within purposeful activity during the pandemic? Are you able to look at other ways of increasing some sort of purposeful activity across the board?

**Jo Farrar:** Absolutely. Purposeful activity is really important to us. We are now increasing education and work. We have a number of people who are now able, because of our stage 3 regimes, to work on ROTL. We are also reintroducing our programmes, where possible, in a Covid-secure way, obviously prioritising people at the highest risk of reoffending, but making sure that they are having offender-behaviour programmes.

Most of the estate is at stage 3. One prison has moved to stage 2. We hope, as we move through this situation, that we can move more prisons to stage 2. Some of my governors and staff are keen to do that. I met a group of prison officers yesterday who told me that they are keen to



## HOUSE OF COMMONS

introduce more. We need to balance the situation in the local area—the tier system and the restrictions—but we are very keen to keep moving forward. I was really pleased that we were able to keep the level 3 regimes going, which allow more purposeful activity through the current restrictions.

**Q81 John Howell:** I heard what you said about child education in the Prison Service. Are you able to do anything different for adult education, because it requires a somewhat different approach?

**Jo Farrar:** Yes, absolutely. In fact, we are thinking in our programme to reduce reoffending about how we might deliver education differently. We are learning a lot of lessons through Covid. We have had some distraction packs for people. We have found that those have become better used now we have our education providers engaged with helping to design them. We are learning things about what people could do in cell with the right material. We are also thinking about technology and how we might use it to improve education. We have been able to make some progress through Covid with that. We are learning lots of lessons, because we will have these restrictions for a little while yet, where we can only provide education in smaller groups.

**Q82 John Howell:** I am also keen to ensure that prisoners are able to complete their sentence requirements. Are offender-behaviour programmes available to all those who need them? What is being done to improve access to those programmes?

**Jo Farrar:** It has been difficult through Covid to provide programmes. We used to do them in groups of people. We have reintroduced programmes now. We were able to keep some going. In the beginning, we were able to prioritise people who were near to the end of sentence and keep those going until they finished, but then we paused programmes. We have now reintroduced them, so we will start to see more offender-behaviour programmes, which we are really keen to reintroduce. We are prioritising those at the highest risk of reoffending, but we hope to bring more online as soon as it is safe to do so.

**Q83 Kenny MacAskill:** May I first ask the Lord Chancellor when he proposes to respond to the Committee's report that was concluded in July, some four months ago?

**Robert Buckland:** Thank you, Mr MacAskill. We have now responded to the report. I have an apology to make—we responded to other reports that the Committee has provided—in that there was an error, and this particular report was not dealt with as expeditiously as I would have liked. I apologise to the Committee for that. We have now furnished, in the form of a letter response yesterday, a reply to all the recommendations that you made. My apologies for that, but it was inadvertent and certainly no disrespect or disregard was intended.

**Q84 Kenny MacAskill:** We look forward to receiving that.



## HOUSE OF COMMONS

Outbreaks of 60 were mentioned. It seems that the second wave has been more severe than the first. Is it thought that that had any correlation with the easing of restrictions, albeit I fully understand the pressures that come from the needs of prisoners and other aspects?

With Christmas coming and the suggestion that governors will be unlocking significantly across the estate, does that cause any concern and will governors be allowed to do that?

**Jo Farrar:** Let me start. Actually, we do not believe that the second wave is more severe than the first wave. We believe that we have better testing in the second wave so it is showing us many more asymptomatic cases that we would not have necessarily known about in the wave 1. We also did not start measuring the number of outbreaks until the end of April, which was after the peak, which was 46. Our informal information is showing us that there were around 60 outbreaks during the first peak, which is similar to the situation now but, as I say, we seem to be picking up outbreaks earlier. An outbreak is declared—or can be declared—if there are two or more linked cases. We are picking them up much sooner.

We have introduced other things to keep prisoners and our staff safe during wave 2 because we are having fewer restrictions. Things like increased use of PPE, which we did not have in wave 1, and much more testing for staff so we can make sure that people do not have the virus or, if they do, we can identify that early, have allowed us to have a more open regime. I do not believe that the second outbreak is more severe than the first, although we were not collecting the same amount of data in terms of testing in the first outbreak.

Q85 **Kenny MacAskill:** Can I ask about the Christmas restrictions?

**Jo Farrar:** Of course. We are sticking to the national framework through Christmas. We are also aware of the tiers in local communities. I imagine that most of the estate through Christmas will remain in tier 3. We are now allowing some visits. We will try to make more use of video visits to make sure that people have contact with their families. I cannot see a big opening up in the estate within the next few weeks. I think we will be continuing as we are now and looking to how we can start to open up in the new year as and when vaccines become available.

Q86 **Kenny MacAskill:** It does appear that different positions are being taken by governors. For example, some governors are enforcing face-to-face teaching. Will there be national guidance both for Christmas and, indeed, for other issues, such as teaching?

**Jo Farrar:** Yes. We have a winter plan and a Christmas plan, which we have put in place. There are differences in different prisons because it depends on the circumstances in a prison—the availability of staff, the nature of the prison and the nature of infections in the local area. We will see some variation, but we have a national committee, which looks across the regime. If we spot variations, we can check out why that is



## HOUSE OF COMMONS

happening, and we can test that if we feel we need to. We look across the whole estate, although we will see some variations. We have issued guidance about winter to all our governors.

**Q87 Chair:** I would like to move to probation. That situation raises a number of challenges. Will you update us on where we are with probation, particularly, for example, on the level of resumption of face-to-face supervision, of unpaid work requirements or the reopening of those approved accommodation premises that had to close? There were a number in London, for example, that I am conscious of. What is the position there?

**Robert Buckland:** Perhaps if Dr Farrar gives the immediate update, I will then follow.

**Jo Farrar:** I am really proud of the staff in probation and the positive working that we have had with the trade unions. We have a winter strategy in place. We have exceptional delivery models that we have published, which we are operating across the probation estate. We are still doing a lot of telephone contact, although we have increased our face-to-face contact in a Covid-secure way. We are prioritising more high-risk offenders. We have different restrictions in different areas of the country and in Wales, so we have to be aware of what is happening in local areas, but we have opened up almost all of our local offices now and they have resumed some sort of service.

We are seeing an increase in the accredited programmes and unpaid work that we can offer. We are now back to about 55% for accredited programmes from what we were offering pre-March. We are looking at innovative ways of continuing to offer programmes in a Covid-secure way and also unpaid work. Some people have been at home making equipment such as face masks and so on, which has helped with the Covid effort.

We have outbreaks in six APs—approved premises—at the moment, but they are all being managed, and all of our approved premises that were closed because of Covid are now open.

Throughout, we have had HM Inspectorate of Probation reports looking at our EDMs. I was particularly pleased with the report last week that talked about the compassionate and professional response of our staff but also making sure that we were looking after people and protecting the public as we should.

**Robert Buckland:** I want to reinforce that message about the quick development of an exceptional delivery framework, which of course had to accept the reality that face-to-face meetings and visits to the probation office could no longer happen bearing in mind the restrictions, so there were changes. The telephone became very important—and the doorstep visit. If anything, we have learned quite a lot about frequency of contact. In many ways, frequency of contact has been very beneficial.



## HOUSE OF COMMONS

Of course, the use of technology has been important. Take the MARAC—the multi-agency risk assessment conference—which is a very important meeting. Of course, a lot of that can be done through the medium of Teams to make sure that all the relevant participants are available and take part in what is an important process. We are starting to think very deeply about how the offender is involved in that. I read the report from the inspectorate, which has really got me and, indeed, Dr Farrar and all of us thinking about what the future will look like with technology and how we improve not the management—I do not like that word; as Dr Farrar knows, I am like a broken record on this point—but the supervision of offenders as we revive and enhance the integrated model with other agencies such as the police, and how we use technology in the future.

It is important to remember that HMPPS and the MoJ took deliberate intervention when it came to homelessness and rough sleeping. We set up seven homelessness prevention taskforces, which were all about the importance of through-the-gate services and support for accommodation for prison leavers. My Department put its hand in its pocket and invested directly in accommodation programmes, which have continued through the pandemic. Again, that is something—forgive the pun—we are going to build upon in how we sustain more widespread support for accommodation for prison leavers as part of our contribution to eliminating rough sleeping in accordance with this Government's manifesto commitment.

**Q88 Chair:** Are you able to incorporate, perhaps, those potential longer-term lessons and changed ways of working into the new frameworks that will be put in place as we move to the new set-up?

**Robert Buckland:** Very much so. We see the probation reforms as an ideal opportunity—almost a catalyst—for us to use these new ways of working as part of a unified system. Of course, a unified system means that we can use the same technology platform. There has been an issue with differing technologies, or access to technologies by parts of the system. We think we can deal with that, and we think that the probation reforms, which are on time and scheduled for next summer, will allow us to deliver that even more effectively.

**Q89 Kenny MacAskill:** Going back to the unpaid work requirements, may I clarify whether the backlog is reducing or whether the scale of the backlog is simply decreasing in its pace of increase?

**Jo Farrar:** You are absolutely right. The CRCs have started to scale back and deliver unpaid work. As of 25 October, we are delivering more than 47% of our pre-Covid levels, but the pandemic has, undoubtedly, resulted in an additional backlog. We are discussing with the senior presiding judge how we deal with that to make sure that we do not continue with a backlog over a long period of time. We are putting together a plan to manage that. Hopefully, we can update the Committee later on with what that plan will be.



**Robert Buckland:** It is right to say, Mr MacAskill, with regard to unpaid work requirements, that as a result of the disruption of Covid we have an extra 6,000 unpaid work requirements outstanding. However, the overall context is important, because in 2019 around 32,400 unpaid work requirements were completed. The number needs to be put into that context.

Q90 **Kenny MacAskill:** Thank you for that. We look forward to the clarification.

May I ask about permanent accommodation? I welcome the comment from the Lord Chancellor about the emergency measures that have been put in, but is there sufficient permanent accommodation beyond that in the areas where that has perhaps not been put in in other geographical localities?

**Jo Farrar:** It is certainly something that we are very keen to continue with. We are assessing the benefits of the accommodation that we have been able to put in place, and we have had an agreement to continue with that accommodation through the second wave. We are now assessing what we can do in the future because we really can see the benefits of giving people at least some temporary accommodation on release while we work with local authorities and other local partners through our homeless prevention teams that we have put into our regions to make sure that people have more permanent accommodation. I cannot tell you what the plans are now but, hopefully, at some point in the future we will be able to update the Committee. It is certainly something that we are interested in continuing.

**Robert Buckland:** I want to reassure the Committee that we are absolutely focused on the need to plan for the long term. Indeed, that work is happening. We will update you with regard to what that is going to look like. Across Government, there is a sense of co-ordination—more than a sense; a proper combined purpose. We are working as part of the criminal justice taskforce led by the Prime Minister, which means I can work closely with colleagues in MHCLG and DWP, which are going to be the key Departments in helping us to deliver more sustained and widespread accommodation opportunities for released prisoners.

The statistics are alarming. I think that 56% of rough sleepers released in the last year for which statistics are available had been to prison at some time or other during their lives. If we don't deal with the issue of released prisoners, we ain't going to crack rough sleeping.

Q91 **Kenny MacAskill:** Can I ask about provision for drug, alcohol and mental health treatments? Clearly, they will be badly affected by the challenges that we are all facing.

**Robert Buckland:** Yes. Again, we recognise the complex needs of those who come into contact with the criminal justice system. The CSTR—the community sentence treatment requirements programme—means that we work very closely with our partners in health to improve timely access



## HOUSE OF COMMONS

to mental health treatment and substance misuse services. We have the CSTR now operating in courts across 14 areas of England, with a further roll-out that is planned with money that has already been committed by the NHS in its 2019 long-term plan.

Indeed, in my White Paper published in September, I outlined the ambition to achieve 50% coverage of mental health provision by 2023-24 and a similar ambition with regard to extending drug and alcohol treatment. One of the examples and manifestations of that is the success of the liaison and diversion services at our police stations and in our courts where we can have clinical staff to provide immediate assessments and referrals. That, of course, allows a diversion from the criminal justice system altogether. That can include diversion into the community or, where there is a sentenced prisoner, into a community sentence with a treatment requirement. We have the liaison and diversion services now operating across all of England in our police custody suites and magistrates courts.

Covid, of course, meant that the challenges were huge, but we have managed, with the support of the CSTR programme manager, to retain that sense of cross-Government co-ordination so that sentences continue to be provided with robust options. My abiding concern since becoming Lord Chancellor has been the need for judges and magistrates to have those options available. Through this crisis my worry was that that would start to decline, but that has not been the case. Sites have continued to assess individuals as far as possible and provide CSTR solutions. I have been watching carefully the number of community orders and suspended sentence orders being passed by the courts. I am glad to say that they have remained steady, at times increasing, but certainly not showing a decline that would cause members of the Committee concern that, perhaps, there was a problem with community sentence treatment.

Q92 **Chair:** Have you had any concerns expressed by the judiciary, for example, about the adequacy of the system?

**Robert Buckland:** No, I have not. I know the judiciary have, throughout this crisis, carried on. We will come to the courts in a moment, but in terms of their options, I have had no concerns expressed to me that they have not been able to exercise their discretion to the fullest and most appropriate extent.

Q93 **Richard Burgon:** How confident are you, Secretary of State, that everyone using the courts is currently able to do so safely? Further to that, should court staff and those who use the courts be routinely tested? Whose responsibility is it to ensure that those working in and using the courts are able to do so safely?

**Robert Buckland:** Thank you, Mr Burgon. May I say, first, that I have the fullest confidence in all HMCTS staff and their work in keeping our courtrooms and buildings safe. I readily acknowledge that at the beginning of the crisis concerns were raised about issues of safety and



cleanliness, but everybody I have talked to—court users, professionals and others—has commented with praise not just about the way in which our court estate has been cleaned but about the measures that we have taken to reinforce social distancing and to make everybody feel and be safe, most notably jurors, who are performing a very important public duty.

The investment that we have put in, which by the end of this financial year will have totalled £130 million, has gone to issues like Perspex screens, carpentry services to redesign courtrooms, and the expansion of capacity, both within the existing estate and in the form of increasing Nightingale courts. Everything we are doing is designed to make sure that not only are our courts running but they are doing so safely and sustainably.

You made a very important point about testing. Indeed, as part of the near-daily meetings that I have with HMCTS senior management, that issue is very much at the top of our agenda. I wonder, Sir Bob, whether Kevin Sadler, the acting chief executive of HMCTS, could come in.

**Kevin Sadler:** To endorse the Lord Chancellor's point, I am really grateful to everybody who is working in courts and tribunals for the hard work they have put in to maximise the safety of everyone and ensure that we follow the public health guidelines. We have put in 7,500 screens and 4,000 square metres of Plexiglass. We have a very robust process for managing Covid-19 incidents; every time we have a case of two or more people within 14 days, we report it to Public Health England. We have had 14 separate engagements with public health authorities, and they have come back with a lot of compliments for our safety arrangements. We continue to monitor this very carefully.

We have priority testing for staff and jurors where that is necessary. We are in active dialogue with Department of Health and Social Care colleagues about whether the LFD testing that is now becoming available and is being used in universities, for example, can be deployed in courts.

The incidence of Covid is at or below the incidence in the general population in courts and tribunals. Many sites have had no instances reported. We are comfortable that we are keeping people as safe as we can. We have an overall risk assessment framework that is published, and each court has its own individual risk assessment, which is reviewed every week.

Q94 **Richard Burgon:** That was useful. I want to come back to the Secretary of State with two questions. Contrary to the insistence from HMCTS that the courts are safe, both suspected Covid-19 incidents and confirmed cases have been on the rise in our courts since August. The PCS union, which represents court staff, has reported that HMCTS has been unwilling to work constructively with the union to ensure that consistently rigorous risk assessments are drawn up and implemented in every court.



## HOUSE OF COMMONS

The consequences of the lack of care shown to employees is demonstrated in a damning report from the Health and Safety Executive on numerous breaches of health and safety regulations at Westminster magistrates court, which have culminated in the court being fined for breaching its statutory obligations to provide a safe place of work.

Why, Secretary of State, has HMCTS refused to agree to a risk assessment template with the PCS trade union and to make risk assessments available to all staff simply as a matter of course?

**Robert Buckland:** Thank you, Mr Burgon. I will ask Mr Sadler to respond specifically to the particular issue regarding Westminster magistrates court and the overall question of engagement as to risk assessments. Then I will come back, if I may, with any further comments.

**Kevin Sadler:** There was a health and safety inspection of Westminster and it did find some shortcomings. It was comfortable with our overall risk assessment framework, and the shortcomings it pointed out have been dealt with. Changes have been made by managers and staff to make sure that people were not breaching distancing guidelines within that location. We have taken action there. That is the one situation in which we have been challenged. In other areas, where we have brought public health in—we have invited them in to look at our processes—they have been very positive about our engagement.

I have regularly met trade unions—and my predecessor regularly met them—throughout the pandemic, and we continue to meet them. There have been points where we have had to agree to disagree on our approach to risk assessment, but we have rigidly followed public health guidelines and always checked with Public Health England, Public Health Wales and the relevant agencies in Scotland, and we are confident that we are following their advice and guidance. Occasionally, people suggest that we should go further than that, but we have stuck to the public health guidance in all situations.

In terms of incidence, yes, there have been more cases as there have been more cases in the population, but our tracking of cases has in no way suggested that we are an outlier. We are simply following the general population. The vast majority of cases that occurred can be tracked down to transmission in the community rather than in our courts and tribunals. As the Lord Chancellor said, we get a lot of compliments from jurors—we get individual feedback from jurors at the end of a case—and from other users of courts about the safety of our buildings.

**Robert Buckland:** I just want to add, Mr Burgon, that certainly from my knowledge and experience of HMCTS staff, which goes back many years, I have been able to observe in this pandemic a real sense of initiative that has been taken by staff members and experienced court staff to help design safe spaces of work by looking at courtrooms with a trained and experienced eye and assessing what will work from a staff point of view and, indeed, from a court user or juror point of view. In Cardiff, for



example, staff members whom I have known for years, whom I saw in the summer, were taking that initiative and leading the design, because they are the people who are best placed to know what is going to work. Frankly, that is something I have very much encouraged.

There was a bit of a tendency—Kevin will forgive me—from my friends in HMCTS to try to do everything from the centre, from the top, in a prescriptive way. I said early on, “Hold on, we need that local knowledge and initiative,” not just from the staff but from members of the professions as well. Members of the Bar, for example, went in and helped to measure up courts in the early days. I wanted that to take root because that sense of common endeavour meant that it was for all of us to try to make our courts work.

Of course, we reopened for jury trials in late May. We were one of the earliest jurisdictions to open. I think Montana opened on the same day as us. We were the earliest jurisdiction in the world, along with our friends in Montana, in opening up jury trials. We have scaled up ever since. Perhaps we can come back to where we are in November. Having now more than 260 courtrooms open that can do jury trials is, again, a testament to the hard work of our dedicated HMCTS staff and, of course, staff who, during the depths of the pandemic, we worked with to give them the remote technology to allow them to work from home. We recognised that a significant number of our HMCTS staff were in what was then the shielding-vulnerable category because of their age. That work should not go unnoticed as well.

**Q95 Richard Burgon:** Thank you, Mr Sadler and Secretary of State. I have one quick question to the Secretary of State. Is it true—I hope the Secretary of State can clarify—that the 30 outbreak teams set up by HMCTS to manage outbreaks in the courts are so overwhelmed that HMCTS is urgently recruiting more staff? Is that true?

**Robert Buckland:** Mr Sadler can comment about the particular team. I have not had a report about that particular team, but we are indeed recruiting staff; as a result of the funding that my Department secured from the Treasury, we have provision for an extra 1,600 members of staff. So far, and Kevin can update me on this, my recollection is that we now have about 800 staff already recruited and working. We have about another 100 or so who are in training. I think we will pass the 1,000 mark in the next couple of weeks. Perhaps Kevin could assist.

**Kevin Sadler:** Yes. On the overall numbers, 885 people have started in post and another 157 are going through pre-employment checks—a total of 1,042. We have asked for a further 620 agency staff while we continue recruitment, and 70% of those have either started or are undergoing pre-employment checks.

On the specific point, we are recruiting into our central team because we need to rotate people. They have been working very hard to make sure that the courts are safe and to help manage those outbreaks. We need to



rotate and manage pressures on individuals, as we have done throughout the pandemic.

I should also make a point on the Westminster case, because we were not fined at Westminster. A payment was made to HSE to cover their time in terms of the work they did at Westminster, but we were not fined.

**Q96 Chair:** A lot of the HMCTS court staff are among the lower paid in the public sector. Given that we had the announcement in the spending review of the public sector pay freeze, what percentage of HMCTS staff are caught by that freeze or will not be because they are comparatively low paid?

**Robert Buckland:** That is a very important question that I am endeavouring to get a full answer to. You are right, Sir Bob, that there has been a historic issue about HMCTS staff rates. I think we all know that for many years job satisfaction has been high, which is why a lot of dedicated ushers and other staff stay for many years.

That has been an increasing challenge. There are people out there who would say that that has not been the case in the past 10 or 20 years. This is a long-term issue. I very much hope that the message I am sending through vastly increased maintenance budgets, both revenue and capital, will send the message to court staff that they are important, that they provide a vital public service and that we want them to work in an environment that is safe, functioning, clean and well maintained. I very much hope that that will start to restore and return that sense of morale that is a vital part of our court service. Perhaps Kevin could come in with regard to any information about the effect of our decisions on low pay.

**Q97 Chair:** Yes. Can you help on that, Mr Sadler? Have you had a chance to look at that?

**Kevin Sadler:** I am afraid I do not have detailed data yet, but there will be a proportion of HMCTS staff at the lower levels who will be helped by the arrangements the Chancellor announced for the particularly low paid. We can write to the Committee with more details about that.

**Q98 Chair:** I would be grateful for that in due course.

On the Covid point, I do not know whether you picked it up, Lord Chancellor, but when the Lord Chief Justice gave evidence to us, he talked about testing. By and large we have not lost too many trials because of jurors or others falling ill or testing positive with Covid, but he did raise the point about the announcement of vaccines and the prioritisation of vaccines. Is there a case for perhaps looking at the idea of vaccines for serving jurors when a case is ongoing? We know there are likely to be many multi-handed cases coming down the track. Is there a case there? Are you having discussions about what might be done not to lose the public expense and public interest by having those cases interrupted if a vaccine can be made swiftly available?



**Robert Buckland:** First, to reinforce Kevin Sadler's point about lateral flow testing, the immediacy and speed of the results can help us to deal not only with jurors or members of staff who might be symptomatic or presenting with some symptoms, but with witnesses and defendants. I can see the immediate benefit of that.

With regard to vaccination, I would not rule it out, but I have to look at the bigger picture and respect the fact that there is a developing plan on prioritisation. From all the meetings and discussions that I have had, what is emerging is that until you see vaccines starting to be applied to a larger and larger section of the population, it is difficult to work out the effect of vaccines on transmission rates. That might sound a bit surprising, but that is the expert information and evidence that I have heard. Therefore, it is right of the Government and all of us to prioritise the most vulnerable because, throughout this crisis, we have placed a premium, quite rightly, on the human cost of Covid and the need to minimise the number of deaths. Therefore, taking that as the priority, I think it is clear to everybody on the Committee that prioritising the elderly in care homes and older members of the population, working our way down through that cohort of the population, is the best way to go.

Having said that, I have made the point about older members of HMCTS staff. Of course, that will include members of the judiciary and other people who are in that older age group and who might get vaccinated ahead of, say, sprightly people like you and me, Sir Bob, or other younger members of the Committee. Frankly, we need to respect the decision, informed by Public Health England and, indeed, SAGE, that we minimise loss of life. Having said that, when we get to a phase where we have a number and range of vaccines that are universally available, I am sure we can take measures to support jurors in their important work.

Q99 **Chair:** Thanks for reminding me that I have not reached the judicial retirement age yet. That is understood.

May I come on to the spending review, which you mentioned? You talked about an increase in revenue and capital budgets. What are the key areas and issues in relation to Covid and recovery that have adequately or inadequately, in your judgment, been addressed by the spending review?

**Robert Buckland:** In summary, this year's spending review and the allocations given to the MoJ by the Treasury for the financial year 2021-22 are a continuation of the vastly improved position that we reached in the first SR that I was involved with as Secretary of State—SR19. That resulted last year in a 5% increase in revenue for the Department.

This year's settlement represents a similar important and significant increase in revenue funding. On top of that, we have welcome certainty in capital funding. The CDEL settlement is a landmark settlement for prison building and maintenance, but it is also a very important settlement for court maintenance. The £105 million one-year settlement



## HOUSE OF COMMONS

for court maintenance represents, in my view, a step change from the past. Of course, that comes on top of in-year funding for court maintenance that we received in July, which in itself represented the biggest single increase in court maintenance in 20 years.

Perhaps that tells a story of long-term issues with the court system that pre-date this Government and mean that all of us, of all different political persuasions, have a responsibility. It is one that I am determined as Lord Chancellor to do something about, as is the Lord Chief Justice. I am profoundly grateful to him and the Judicial Office for their involvement in the consultation process, as is in accordance with the protocol, so that the settlement that we have reached will, in my view, allow us in the Crown court to start to deal with the backlog, and will allow us in the magistrates court to continue the impressive progress we made in reducing the overall case load. In the civil, family and tribunal jurisdictions, the settlement will allow us to maintain the progress that we have made, for example, in family, with record numbers of sitting days, and scale up our response in those parts of the tribunal system that have, perhaps, struggled more than most.

Sir Bob, you have probably seen the headline figures. They, of course, will be subject to the allocations process. I can say that there is a reasonable expectation on everybody's part that the overall approach that we are taking to spend will remain similar. When you look at the overall funding for courts, you see a figure in excess of £300 million, which is not just about Covid; it is about the future projection of the impact of more and more police officers on our streets as part of the 20,000 extra police officers pledge, and indeed a forward look to what demands might exist in the court system in that financial year.

I am not pretending that we have totally turned the corner and that we have solved all of our problems, but we are now embarking upon that turn, in my view. This gives real certainty and encouragement to our court system that courts matter, that justice matters, and that this Government will back everybody involved in it.

I have not dwelled hugely on the other aspects of the settlement. In brief summary, there have been significant increases in investment in prison maintenance, and important support for our ongoing probation reforms, as well as direct commitments of cash to support victims services and our manifesto commitments.

Overall, it is an encouraging settlement that allows the MoJ to act with increasing confidence but with a sense that we will have to return to this in the year ahead and make sure we can sustain the progress we have made in the last two spending reviews.

**Q100 Chair:** I know that the Bar Council has welcomed the settlement. The Chairman of the Bar referred to it as "a ray of hope" and a sign that the Government were prepared to invest. It also made the point, as I am sure you will understand, that this is a one-year settlement, unusually.



## HOUSE OF COMMONS

What confidence do you have that we can continue to maintain that momentum as we move into a multi-year settlement? How important is that, in your judgment, for dealing with the issues we have to confront?

**Robert Buckland:** It is hugely important. We approached this from the outset as a multi-year settlement. Frankly, the work that we did on that assumption did not go to waste because it has already got us thinking about how we plan for the next round. It is our hope—I think it is the collective hope across Government—that we have a multi-year settlement. It is clear that this year it was right not to do that bearing in mind the absence of a fiscal event in the form of a Budget. A Budget allows all of us to look at both sides of the balance sheet.

The work that we are going to be doing in the Department will be to bear down even harder upon the need for evidence. What we did with regard to prison projections and the work and effect on the system with regard to increased police numbers really bore fruit when it came to the detailed negotiations that we had with the Treasury spending team.

On the courts side, there is still a challenge. Were the Lord Chief Justice with us here today, I think he would readily agree that the data that we have is still, to a large degree, quite fragile. More work will need to be done in order to enhance, improve and refine that. That is why increased automation and digitalisation, so that data can be collected even more quickly rather than manually, and the need for perhaps some more granularity about different types of hearing, will help inform us as we develop policy.

I will give you an example, Sir Bob. I was looking with despair at the number of ineffective trials that are being listed. When you look at it, 40% of those ineffective trials had been dealt with by way of acceptable guilty plea or plea to the indictment before trial. That to me is a success story. It shows that judges, counsel and solicitors are managing their cases well, taking instructions, getting them on and then vacating any trial dates so they can be used for other cases. I was not able to tell that story to begin with because the figures were not disclosed.

Q101 **Chair:** They were not showing anything beforehand, just that they were vacated.

**Robert Buckland:** Exactly. We are now trying to work out ways in which we can reveal that information and help tell a much more positive story.

Let me go back to the courts for a moment. Some of the joint working party operations in the courts give us lessons for the long term: the fact that listing officers are talking to each other across the country, and the fact that senior judges are involved in an operational way, in perhaps a way that they had not imagined before. All this has been extremely positive. It is something I want to hold on to, as does the Lord Chief Justice, as we develop the system further ahead.



It is not a matter of compromising or trespassing on the constitutional roles that we hold and the important independence of the judiciary and the courts system, but just making it work in a smarter way so we can get cases on and deliver justice at the earliest possible opportunity for witnesses and victims of crime. That is why I am encouraged by the approach that was taken by the Chief Secretary and the Chancellor, and buoyed up by the strong support I have had from the Prime Minister, whose commitment to swift justice and to enhancing the justice system is demonstrable and very clear.

Q102 **Chair:** Would you regard this as a whole-systems approach that we are seeing?

**Robert Buckland:** I would. The work of the criminal justice taskforce is really helping to focus that. In our regular work with the Home Secretary, the Attorney General and the policing Minister, we work as a team, understanding that the Ministry of Justice is a downstream Department. That means that if you do certain things to the investigation and prosecution of crime it will have an effect on us. That now is absolutely understood. It is increasingly being baked in by the Treasury in the way in which it approaches the resource issue.

**Chair:** That is very helpful.

Q103 **John Howell:** Lord Chancellor, remand hearings, which were going to be undertaken by the police and were going to take place from police stations, are apparently not going to be held there now. The Lord Chief Justice said that he deeply regretted that. What is being done to try to solve that problem?

**Robert Buckland:** Thank you, Mr Howell. Video-remand hearings have been a singular success story with regard to the response to Covid in our courts. It allows remote hearings to be held rather than the defendants being brought to court in the van. The issue has been around who provides the support staff service to those hearings. At the moment, because of legislative constraints, police officers are the only ones who can exercise that custodial function. We have looked very carefully at the legislation that underpins all this. It was written and passed at a time when remote and virtual hearings were not contemplated. Therefore, it is predicated upon the transference of the prisoner from one place to another, which does not happen remotely. Therefore, it seems to us that the current primary framework prevents the use of PECs—prison escort custody officers—from doing what the police can only do.

Therefore, we need to change the law, and we are going to do that in the new year. However, that does not get us over the particular challenge that we have between now and then. Colleagues on the Committee will have heard that in many instances police forces are saying that they will pull out from using the video-remand system by the end of the year. We are working very closely with the Home Secretary and Home Office



officials to develop practical solutions to deal with this problem in part, if not in whole.

We have just finished something called a sprint, which involves intensive work by officials in my Department and in the Home Office, to work out where the pinch points are and, where there are particular courts in large urban centres, where the demand for video hearings is particularly high, to come up with some tailored solutions to allow them to continue. That will involve a bit of money as well. Both Departments will have to support that. I am confident, bearing in mind the work that has already been done, that we can achieve a range of practical solutions to help to deal with those particularly important courts where the demand for video-remand hearings is high. We will keep the Committee posted as to progress. The Home Secretary and I will be writing to our police colleagues with the outcome of the officials' work. We have another month to get this right. Both the Home Secretary and I will continue to review this very closely and frequently in order to achieve a practical solution.

**Q104 John Howell:** We have been hearing from police and crime commissioners that they have made suggestions about locations for additional courts but have so far received no response. Will you be writing and discussing this with them? What does that indicate about how you are working with local areas to ensure that they have the resources to tackle the backlog?

**Robert Buckland:** I am sorry to hear that, Mr Howell, because I have been working very closely with PCCs and, indeed, the Association of PCCs, using the association as a conduit for regular information from HMCTS. I know that my colleague the policing Minister, who is, of course, Minister of State for Justice as well, regularly engages with PCCs. I will be seeing one of the PCCs, who represents them on the Criminal Justice Board, when we meet tomorrow morning.

I reassure you that we are very interested in the local input of PCCs. I will give you an example. In Gloucestershire we have now reached agreement about the use of a Nightingale court in Cirencester. A lot of work was done between HMCTS and the local PCC. There was an issue about the building, which had been bought from the courts service by the police in Gloucestershire. It needed, frankly, a bit of maintenance, which was their responsibility. There was a negotiation, which has now been resolved. I am delighted to say that we will be able to use Cirencester court for Nightingale purposes.

That has been very much what is happening. Yes, there have been examples of national initiative, worked through by HMCTS locally, to create Nightingale courts, but we will see, with the additional £30 million of funding that last week we secured from the Treasury for this year, a new phase—a new tranche—of Nightingale courts that will be rolled out across the country, which will give us more courtrooms. My ambition is to



## HOUSE OF COMMONS

get 60 or more additional courtrooms through the Nightingale project, some of which will be dealing with crime, but many of which deal with a range of different types of jurisdiction, freeing space in the existing estate to help us do more jury trials. That part of the Nightingale project has perhaps been overlooked in what we have been doing.

I can assure members of the Committee that I am all ears when it comes to local ideas. Not all of them are going to work, but we need to listen. I can assure you that I do, and I would expect my colleagues in HMCTS to do the same. I wonder whether Kevin Sadler has something to say about that.

**Kevin Sadler:** We have been regularly engaging with the Association of Police and Crime Commissioners. I heard some anxieties being expressed towards the end of the summer. All my regional delivery directors reached out to every single police force to make sure that they were connected and their concerns were being heard.

We have had lots of suggestions for Nightingale court sites. In some cases the suggestions have turned out not to be suitable, for various reasons. The requirements, particularly for Crown court work, are very specific, and the need to keep everybody safe and to keep jurors away from defendants and defendants' families, and so on and so forth, are significant, but we have had some really useful suggestions and we have progressed some of those. In some of those, it has just not turned out to be suitable, but we are committed to working as effectively as possible with PCCs and listening to all their suggestions and any propositions. Cirencester is a good example of where we have been able to move.

Q105 **James Daly:** Chair, I had better make my declaration of interest in that I am a practising solicitor and was a legal aid solicitor for a number of years, although my firm does not practise in that area of law.

Lord Chancellor, I want to ask you a big question but, hopefully, a brief question. One of the issues that blights the criminal justice system, in my view, is release under investigation. That is a matter for the Home Office, but it impacts on the flow of work coming through the court system. What discussions have you had with police and crime commissioners to improve the situation and the backlog of cases?

**Robert Buckland:** Thank you, Mr Daly. You rightly say that RUI—release under investigation—is, indeed, a Home Office responsibility. You will, of course, note that the Home Office has consulted on reform to that programme. We will introduce legislation as soon as possible to change the framework in order to improve it and to give the public a higher degree of confidence about the investigation of crime and the status of suspects during those ongoing investigations before charge.

We are paying very close attention to the issue of RUI. There are regular conversations—again, Mr Sadler can help with more details here—with police colleagues about the status of ongoing investigations and what is



## HOUSE OF COMMONS

out there in terms of cases that are going to come forward with regard to charge and then come into the criminal justice system. It is very important that we send a clear message out, as we are doing through our expansion of the court estate and the capacity to deal with criminal cases, that we are ready to deal with fresh cases and that the police can safely investigate and charge knowing that cases will be brought on, particularly in cases of domestic and sexual abuse. We have always prioritised those cases in the system and will continue to do so despite the ravages of the pandemic.

My first and foremost duty is to give that message of reassurance and confidence to police colleagues that we can do that. I have done it with my own local chief constable, and I know that that is happening across the country. I wonder whether Kevin Sadler might add to my comments.

**Chair:** Okay. We are going to need to speed up a little to get everything in. Perhaps all of us can put short questions and make short responses.

**Kevin Sadler:** We engage through local criminal justice boards with police and other agencies. As the Lord Chancellor said, the magistrates courts are performing really well. We are clearing more cases than we are receiving now. We are clear that we do not want to see anything held back; we want it to come through into the system as quickly as possible so that victim and witness attrition is minimised as much as possible.

Q106 **Miss Dines:** Lord Chancellor, let me turn again to the backlog of Crown court trials. You told us in June that you thought the situation might be under control by Easter. In a High Court case last week, it was said it might be significantly longer, perhaps a couple of years away at least. Could you let us know what the situation is and when you will publish your new modelling on how the backlog of Crown court trials can be disposed of?

**Robert Buckland:** We have already published our Crown court recovery plan, which gives a clear blueprint for the way in which we plan to manage the case load. It is right that in that recent divisional court case involving custody time-limit extensions there was a noteworthy decision, in the sense that the approach that we have taken with regard to court recovery, and the way in which the official who provided the evidence explained it, had great weight when it came to the deliberations of the court.

I would say that, in looking at that evidence, the particular position then was before the spending review settlement. I think it was right to say, in terms of the overall management of cases, that we would be looking, on current listing patterns, at getting back to the pre-Covid position by, I think the witness said, Easter 2023. That, of course, is a pre-Covid figure of 39,000 or so Crown court cases.

The truth is that it is a moving picture. The figure of 39,000 or so Crown court cases is not an historically high figure. In 2014 there were 55,000



## HOUSE OF COMMONS

cases in the system. There are now just over 50,000 cases. It may well be, because of increased throughputs, increased charges and more cases coming in, that we will not get back to a figure of 39,000 any time soon, nor should we be.

The most important figure for me is not the overall headline but the proportion of trials within that number. Clearly, cases that are definitely going to have to be resolved by trial are going to take more time and space and need to be managed very carefully. At the moment, it is right of us to note that 80% of remand cases have been listed between now and the end of March 2021.

When you look ahead—Kevin Sadler might be able to help here—with regard to the overall listing of cases, for cases listed in September of this year, 95% of them were going to be heard before the end of 2021. While it is right that cases are being listed into 2022, there has been a lot of talk about the listing of cases into 2023, which is just not right. While I accept that there is an increasing risk that that might happen if we carry on without getting the investment that we have secured to help deal with the backlog, it is correct to note that what is happening in the system is an increased emphasis on the need to manage cases so that they result in acceptable pleas of guilty and trials are avoided.

Secondly, with the new investment we have got, listing officers can look again at their lists to see whether they can draw in some of those trial-listing dates to an earlier stage. With the certainty that we now have, the allocation process and the agreement of sitting days that will need to be reached with the Lord Chief Justice, listing officers can now plan for the year 2021-22 and start to administer their lists accordingly.

While I do not pretend that this is anything other than a very big task, I am somewhat more confident now than I was that we can start to see a difference being made in those cases within the next year. I have described it as turning a corner. I very much hope and believe that we can now start to do that in the year ahead and see the proportion of trials being reduced, particularly as we use the new in-year money that we had from the Treasury to scale up facilities for those multi-handed cases that are particularly difficult to list because of social distancing.

Listing at the moment is based on the assumption that social distancing will continue until the end of June next year. Some people might think that that is an unduly pessimistic projection, but, having looked at it carefully, I think it is a sensible and measured way of doing it. If we end up in a position where social distancing can end slightly earlier than that, that will give us an immediate gain, but I think it is right of the court system to have come to that reasonable assumption and based its listing upon that and all the other factors that come into play.

Q107 **Chair:** The casual observer might think that getting a great percentage of cases resulting in guilty pleas and not going to trial might posit some more proactive approach to plea bargaining, for example, or something of



## HOUSE OF COMMONS

that kind. Is that what is in mind? What is going to create the greater percentage not going to trial?

**Robert Buckland:** First, listing is a matter for the judiciary and the administration of justice is entirely a matter for them, but I am a Lord Chancellor who knows quite a bit about listing, probably more than any of my predecessors. I know what a good list looks like, and I am seeing it happening. I am seeing resident judges list in a proactive way, but in a way that serves the interests not just of the court but of the public, because the earlier we can get cases listed, the earlier witnesses can give their evidence and finish their part in the process, and the earlier victims can get redress and justice.

May I pray in aid what we have done with regard to technology? Technology here can easily be overlooked. The use of technology in the Crown court has scaled up in a way that judges could not have imagined, and we have finally completed the roll-out of the section 28 cross-examination process—hugely important work that will help vulnerable witnesses and deal more effectively with case management. We have done that despite the pandemic because we know that court reform is such an important part of what we are doing.

Q108 **Chair:** So it is better case management.

**Robert Buckland:** Yes, and digitalisation has yielded its own benefits as well. I am confident that in the Crown court we can do this, even though the road might seem rather long.

Q109 **Miss Dines:** Do you have any update relating to the position in the youth court, Lord Chancellor? How many outstanding cases, if you happen to know, are there, and what is that situation?

**Robert Buckland:** I wonder whether Kevin Sadler could assist with regard to the specific information.

**Kevin Sadler:** Yes, I can. The latest published data, unfortunately, is only up to June 2020. We had 617 cases outstanding in the Crown court in June 2020, as opposed to 622 in January—the figure went slightly down. The magistrates court figure was up.

When the next published data is published in mid-December, I expect the magistrates numbers to go down because magistrates courts have treated youth cases as a particular priority to make sure that they are not hanging around in the system. I expect that number to go down. Unfortunately, we do not publish the weekly data to that level of detail.

Q110 **Miss Dines:** I have one further question, but I do not want to take up too much remaining time. Is there anything in relation to technology that can assist in reducing the backlogs in both areas?

**Robert Buckland:** As I have already alluded to, Miss Dines, we have been using phone technology and the cloud video platform to great



## HOUSE OF COMMONS

measure in all hearings that the judge or the magistrates or the district judge deems to be appropriate. I have seen it in action where you might have counsel or a legal representative being remote, or the defendants themselves. Clearly, there are going to be certain criminal hearings where that becomes very difficult. I think, in particular, of jury trials.

Let me record my unswerving belief in jury trials. My professional career was all about jury trials. I lived with it; I believe it, I breathe it, live it, eat it and sleep it. Nothing will shake my belief in it.

Early on in the pandemic, we discussed in this Committee various ideas about whether a war-time jury could be used or, in some cases, a judge and two magistrates. I am not persuaded by that latter proposal. With regard to smaller juries, I am no longer sure what that would deliver in increased capacity. One other idea is the remote jury, which has been used in Scotland.

**Chair:** Indeed.

**Robert Buckland:** The JUSTICE group in England and Wales has done some interesting work on it. Again, I would need to be persuaded that there was a clear evidence base that the remote jury was giving us considerably more capacity to embark upon it. There is natural concern. Having sat myself and had the responsibility of the stewardship of a jury, you want to know that you have that contact and rapport with them, and it might be more difficult when their face is on a screen and you have never physically met or spoken in the courtroom. Therefore, these things should not be embarked upon lightly.

However, if I thought we were not making the headway that we need to, that is an idea that I will certainly remain open to. Indeed, it is an idea that I have discussed with other parliamentarians of different parties. It is something, if we did embark upon it, for which we would need primary legislative change. It is something on which I would want to work on a cross-party basis, because I believe that the jury principle is so important that any change to it needs to be done consensually.

At this stage, I am focusing on the other measures that we are taking. I have not mentioned Covid operating hours. That, at the moment, is subject to a consultation. There are strong views about it that I think we are aware of. There is some body of evidence that suggests it does lead to more outcomes and productivity, but we will await the outcome of that consultation. I will not seek to prejudge it until we have gone through the due process—the proper processes that everybody would expect.

Q111 **Chair:** When do you expect that to be?

**Robert Buckland:** We are working on the consultation now and during the next few weeks. There will then need to be a considered response. I will hope to have the decision made during the next month or so.



## HOUSE OF COMMONS

**Chair:** Thank you. Andy, do you want to come in on the criminal jurisdiction point?

Q112 **Andy Slaughter:** Very briefly, Chair, bearing in mind the time. Lord Chancellor, I was not entirely sure whether you were resiling from what Ms Hewison said in the Woolwich Crown court judicial review case. Are you sticking by your 2021 date or the 2023 date, which I thought, from her evidence, took into account the extra spending? That is for clarification.

Irrespective of which version applies, we do have a big backlog of trials. The Chair mentioned plea bargaining. Perhaps it is not formal plea bargaining. Have you looked at some sort of triage system, so, whether it is early pleas or a reduced charge, there is some intervention—some mechanism?

On behalf of a constituent who is a retired judge, I wrote to and received a helpful letter back from Chris Philp about this, saying it was being referred to HMCTS. It seems that we need something more radical than just working through the backlog here.

**Robert Buckland:** Let me deal with your second point first, Mr Slaughter. Throughout this crisis, I have tried to be very open and grown-up about the debate. That is that when proposals were made potentially to change the way in which jury trials operated, I was ready to listen to them rather than dismiss them out of hand and ignore them. Some people misinterpreted that as some sort of lack of belief in jury trials, which was entirely misplaced. I believe we need to take care that, when we approach what is an unprecedented crisis, we do so in a way that strikes the right balance. That means there are certain irreducible necessities that we should always keep and adhere to. I am not in the business of trying to substitute due process, fairness and justice in the interests of expediency. I am not saying you are suggesting that, Mr Slaughter, but I am afraid, from my bitter experience, that every discussion such as this leads to people making that imputation. I do not think you would welcome it at all.

Questions of the management of cases are for the judges. From my own experience, resident judges who vigorously manage their case load will list matters that they know would require the intervention of either counsel, properly instructed, or indeed the judge themselves. We have mechanisms already well established in law that allow courts, for example, to give indications pursuant to the authority in *R v. Goodyear*, which allows a judge to, in an open way, indicate a potential sentence that might be passed against a particular defendant. There are plenty of existing mechanisms that can, in effect, allow the courts to do, for want of a better phrase, the triage work that you suggest.

I am not persuaded that there would be another form of ADR that would deal particularly with the criminal process. Having said that, in other jurisdictions we are seeing the increasing use of mediation in civil, and



## HOUSE OF COMMONS

ADR approaches in family, for example, that are yielding real results without compromising that sense of fairness and the need for all parties to be heard. I just think that in the field of crime, it is particularly sensitive and more difficult to import that type of dispute resolution mechanism, bearing in mind the importance, frankly, of the adversarial process and the need for both sides to be heard in a way that I think we all understand matches not just our own common law principles but article 6 compatibility.

With regard to your first point, it is right to go back to the witness statement itself, which, of course, had important caveats in it. In talking about the model that was referred to, this was said: "The number of assumptions in the model, and in particular the sensitivity of the model to those assumptions, means that it is not sensible to attempt to draw any definite conclusions or specific target recovery dates." What the witness was talking about was made subject to those caveats. She then went on to say: "The most recent modelling suggests that HMCTS may be able to reduce the outstanding jury trial case load."

That was before the spending review announcement, so it is not predicated on that. Yes, there was additional in-year spending of £83 million, which my Department and I secured from the Treasury earlier in the summer, but it did not, importantly, include the extra £30 million that we secured last week. While I am not going to say that that suddenly means we will hit the pre-Covid levels by late 2021, for example, it allows us to be more confident that we can make significant progress next year on reducing those levels.

**Chair:** Thank you very much. We are going to go back to Sarah Dines in moving on to family and civil matters.

Q113 **Miss Dines:** What is being done to bring down the backlog in family cases and to get more of them resolved quickly?

**Robert Buckland:** Thank you, Miss Dines. I know of your experience of family courts and family practice. Very often, disputes that reach litigation become very intractable; parties are unreconciled and, sadly, litigation is the only way in which these matters can be resolved. I want to come back to some long-term issues about the way in which we deal with family cases, and, indeed, the publication of the family harms report earlier this year was a very important moment in the evolution of family courts policy. I know that the president of the family division, members of the judiciary in the family division and other senior practitioners are focused on the potential that reform can bring us.

What do we do here and now? I am glad to say that the family courts have seen record levels of sittings during the summer period. We have been able, therefore, to list as many cases as possible during that time. The use of cloud video technology has allowed the hybrid hearing to evolve, where family judges will hear an expert on the live link, saving time and money, and the parties will, at different times in the hearing, be



## HOUSE OF COMMONS

present in court to give their evidence and to make their representations. Therefore, we have seen a huge scaling up in the use of technology and the number of sitting days.

A remaining frustration is the question of productivity—whether all those sitting days are able to be fully utilised to list as many cases as possible because of the inevitable obstacles that can exist when it comes to early listing, such as expert evidence not being available. I am acutely aware of the need for us to comply with the statutory 26-week limit on care cases. That, of course, has proved extremely difficult to meet in an increasing number of hearings, but it is something that we are bearing very much in mind when managing case loads into the next year.

With increased staff as well, we can support family judges and family courts in their operation, particularly the family proceedings courts, where lay magistrates will often be involved and the need for legal advisers is very clear.

We are continuing to improve training and guidance and to use those alternative processes that can make a difference when it comes to dispute resolution. More work on that will be done in the new year. As things stand, we are doing everything we can, within the existing constraints, to deal with family cases. I do not know whether Kevin Sadler might have a brief observation to make about the family jurisdiction.

**Kevin Sadler:** I have just a couple of additional points. We have 600 courtrooms available for civil and family now, so courtroom capacity and video capacity is not the challenge here. As the Lord Chancellor said, we are sitting at record levels. In our latest published data, we disposed of more public law cases and more private law cases in the final week of October than we did pre-Covid. Disposals are above pre-Covid levels now. I expect the next set of published data to continue that theme.

As the Lord Chancellor says, we are not getting so much per sitting day at the moment because of the social distancing restrictions and the need to manage traffic in courts, but I am very pleased that we are up to pre-Covid levels of disposals and continue to work with the president of the family division to maximise what we can do.

Q114 **Andy Slaughter:** I have just one question on the civil courts. When the Lord Chief Justice gave evidence a couple of weeks ago, he was quite critical, comparatively, of the position in civil, both in terms of it being what he called an “entirely paper-based court” and on the lack of reliable data. Do you agree, Lord Chancellor, with both those points, and what are you doing to deal with them? Specifically, do you keep figures for people with protected characteristics? For example, it is difficult to tell whether disabled people are being particularly disadvantaged by not having cases determined. Will you be able to produce those figures?



**Robert Buckland:** Thank you, Mr Slaughter. I will ask Mr Sadler to deal with the point about protected characteristics. It is clearly important and is one that I recognise.

Let me say, in short, that I do agree with the Lord Chief Justice. One of the issues we have had in this civil jurisdiction, particularly in the county court, is that it is one of the last redoubts of paper in the system. We have made huge progress in crime. The e-filing system in the High Court has been working very well, but I am afraid that we are not there yet in the county court, which is why the court reform programme is so important in this context. We have already invested over two thirds of a billion in court reform. The common platform, which has started to be used in Derby and other parts of Derbyshire, is an example of what that can yield.

We need to finish the job. I am keen to make progress in the year ahead with, if you like, the end phase of the court reform programme, which will, I believe, start to deliver the changes that we need to see in the county court. It has been frustrating for both the Lord Chief Justice and me that, because of this, we do not have the ease of access to the sort of data that we have elsewhere in the system. This is what I was alluding to earlier when it comes to the fragility or lack of data.

Having said that, there are some interesting and encouraging figures. With regard to small claims, of all the tracked claims that we have, we are up to 90% of pre-Covid levels in small claims hearings, and fast-track hearing levels are now up to about 68% of pre-Covid levels as of September.

I want to pay tribute to the work of the judiciary, and particularly to the group chaired by Sir Robin Knowles, on the preparations for the resumption of possession hearings. The courts are in a strong position to deal with what may come with regard to resumed possession hearings. We have taken a sensible approach to possessions. We stayed possession hearings and enforcement. We have maintained that through this period and, indeed, the Christmas truce, which was originally a voluntary agreement, is now enshrined in secondary legislation, but ultimately, of course, that will result in future cases. The judiciary is working extremely hard to prepare the courts to allow a small resumption of cases.

We have big ambitions on mediation. Our aim is to increase capacity to accommodate nine out of 10 parties who want mediation, rather than four out of 10, which is what we have at the moment. We are recruiting additional mediators to help to achieve this.

Let us not forget in civil that the online money process, introduced in April 2018, has now resulted in more than 175,000 claims being made in that way and a satisfaction rate of 91%. There is already some welcome innovation in civil, but there is much more to do, I accept.

**Chair:** Anything else, Mr Slaughter?



Q115 **Andy Slaughter:** I have one other question, but I thought Mr Sadler was going to deal with the protected characteristics.

**Kevin Sadler:** Yes. On the protected characteristics point, as the Lord Chancellor says, we are keen to introduce reform into the civil jurisdiction, which will really help us with gathering data. As part of that, along with all of our reform systems, we will start collecting protected characteristics data through those reform systems. There will be opportunity for people to record that through there. We have a programme of action to introduce that in our reform systems as they come online.

To add to the Lord Chancellor's point, the number of tracked cases that are awaiting hearing has been going down during the past couple of months. We are making inroads into the challenge created by Covid.

Q116 **Andy Slaughter:** It looks like substantial parts of the country are going into tiers 2 or 3, depending on the votes today and in February, for some months to come. At the moment, you have the eviction ban expiring in January. Given the level of restriction, if that is the case, are you going to extend that ban for tier 2 and 3 areas as long as they last?

**Robert Buckland:** Mr Slaughter, we are examining that very carefully. At each stage, we have anticipated potential change, and at times we have had to move quickly because of the speed at which changes have been effected.

I think the balance that we are striking is a good one in that egregious cases can proceed. We must remember that there are two stages. There is the issue of possession proceedings themselves—we already have the six-month period, which of course elongates the effect of any action—and then enforcement itself. As you have seen, we have taken action, which was initially advisory and then later statutory, with regard to the position of enforcement agents and bailiffs, who, quite rightly, have to observe the same social distancing and restriction rules that apply to other workers in the population. I see no reason why that would not continue to be the case.

We need to calibrate it in line with the rest of the community so that we strike the right balance between the need to make sure that people are safe and the quite correct concerns that many of us have about people who, through no fault of their own, find the home that they own and perhaps want to live in again, because they have been abroad or working elsewhere, is not available to them. We have to bear that in mind too. I think the current policy we have strikes the right balance, but we will return to this very soon in order to make sure that we have a stable regulatory regime in the new year.

**Chair:** Before we move on, I am going to hand the Chair to Maria Eagle because I have to go and speak in the Chamber, and I can see from the call list that I am not far off. No discourtesy is meant, Lord Chancellor, Ms



## HOUSE OF COMMONS

Farrar and Mr Sadler, but Maria will take over the Chair remotely. It is the first time we have done that in this Committee, but I am sure it will work well for the remainder of the meeting.

*[Maria Eagle took the Chair]*

**Chair:** Thank you, Sir Bob, and good luck with your speech. My apologies for not being present at the beginning of the meeting, but I, too, was in the Chamber speaking in the public health regulations debate.

We are up to the section on legal aid, the professions and the impact of Covid. Richard Burgon would like to come in at this point.

Q117 **Richard Burgon:** Secretary of State, what have the Government done to ensure that legal aid providers can continue to operate beyond this pandemic, and how much money has been injected to date as part of the accelerated package? In total, how much is planned to be injected in the next six months?

**Robert Buckland:** As you know, the legal aid position has been a difficult one during this pandemic. I am particularly concerned about criminal legal aid providers, solicitors and members of the Bar, who found at one stage that the work they were doing was not available to them due to the restrictions.

We took immediate action to make sure that the facilities of the Legal Aid Agency were geared towards getting those payments out as early as possible to criminal practitioners. We saw, in particular, a change to the thresholds for emergency funding—a dramatic reduction in that threshold—to allow claims to be made for much smaller but still important amounts that could make the difference for many practitioners. Indeed, the way in which claims were to be processed was also speeded up. We worked at huge pace to try to make sure that that welcome injection of support was maintained.

Of course, we have to remember legal aid in other jurisdictions, not just criminal legal aid. I know that the Legal Aid Agency worked extremely hard to make sure that there was timely payment, and early payment, in order to make sure of that cashflow, which I know from my own experience as a busy legal aid practitioner of 20 years standing made the difference between success and failure when it came to balancing the books.

It is right to say that many legal practices took advantage of Treasury incentives or schemes, like the bounce back scheme and other loan schemes, which were made available by the Chancellor. Those schemes have helped to keep firms afloat and to keep them going for the medium and longer term.

One of the most important things we had to do was to ensure that the source of work to the firms was kept going. That is why the court



## HOUSE OF COMMONS

recovery programme and the court Covid response was at the heart of everything that I wanted to achieve, to keep those cases coming—to keep the supply going—so that solicitors, barristers and legal executives could get to work, could work remotely and could do the cases that then allow the claims to be made.

But we have not just looked at this on the basis of a Covid response, because work is ongoing for the long term. In particular, in criminal legal aid, in the summer I announced the first phase of CLAR, the criminal legal aid review, an important piece of work that is ongoing. We could not wait for the final outcome of that, which is why I announced in the summer a reform to the graduated fee scheme—a welcome injection of up to £51 million extra of revenue, which, of course, was translated into an improved way in which rates were applied for various types of criminal case, and, for the first time, the payment of work done by advocates on the review of unused material.

I do not pretend that that is the answer to all the issues, but it is certainly a significant improvement on where we were. Those of us who have a long memory know how the graduated fee scheme, introduced back in 1995, was eroded over a 15-year period significantly before 2010. I declare my previous interest, having experienced what happened in those years when we were called “fat-cat lawyers” by the previous Labour Government. That was not very nice. We are in a different position now. The work that goes on between officials at the MoJ and the professional bodies is productive, positive, professional, respectful and is the sort of exchange that, frankly, benefits everybody, not least the public, who are served by professionals.

We are going to embark shortly upon the second stage of CLAR. I wanted to get that started before the end of the year; I want to appoint a chair, and I have already worked hard on the terms of reference. That will allow a much longer-term solution to be brought to bear, not just about advocates’ fees, important though they are, but about the way in which solicitors are remunerated for their important work at the police station, to really get under the skin of the existential issues that are affecting criminal practice and make a sustainable difference for criminal legal aid.

A lot is going on in the field of civil. We, of course, have made £5.4 million of emergency funding available for not-for-profit providers of specialist legal advice to allow them to carry on during the crisis giving that important assistance, and giving them the breathing space they need to carry on offering their services.

There is much more to be done when it comes to utilising technology and understanding what the effect of Covid will be on future cases and the emergence of legal problems. Therefore, getting coherence across the sector is very much part of the plans that we have.

Much is going on and there is much more than I could say, but I appreciate that we need more questions, so I will stop at that point.



## HOUSE OF COMMONS

**Q118 Richard Burgon:** The Secretary of State shared his analysis of the approach of the Labour Government—indeed it was a long time ago, back when I was a teenager—so we have dealt with that. It would be good to deal with the record of Conservative Governments more recently, since 2010 and onwards, because cuts to legal aid and restrictions placed on legal aid eligibility during this last decade have left the justice system in a state of crisis.

That has had a real and pressing impact on people's ability to access justice. During the past year alone, the number of criminal legal aid firms has dropped by 10%, which means 124 fewer legal aid firms in operation in 2020, compared even with 2019. I want to quote the Bar Council, Secretary of State: "The crisis in the funding of the criminal justice system gets worse each year."

With the pandemic putting additional pressure on a system already in crisis, it is important to be frank about the future of legal aid. The Secretary of State was very frank about his views of the Labour Government in the '90s, which did many great things, although I agree that the rhetoric used in relation to so-called "fat-cat lawyers" was certainly not welcome.

However, will the Secretary of State admit that successive Conservative-led Governments have undermined citizens' fundamental rights of access to justice through cutting legal aid? Will you also admit, Secretary of State, that immediate and fundamental changes to the running of the justice system will be needed for the courts system to survive and thrive?

**Robert Buckland:** Thank you, Mr Burgon. I forget that you are a little younger than me and therefore should not be held personally responsible for the failures of the Labour Government in the '90s.

There have been significant changes in legal aid—of course that has happened—but it did not start in 2012. The Access to Justice Act 1999 really ended civil legal aid in England and Wales. It was a significant change to the way in which provision was made and issues started then. Yes, we were faced with some horrible decisions in the early part of the last decade. I know we can argue about it, but I would say it is very clear why we were left in that position.

The current situation is that we spend £1.7 billion on legal aid—a significant amount of public money being spent on important services. Of course, as a result of the review that was carried out on the effect of LASPO, we have been looking carefully at things like the exceptional cases rule, which it seems was not used as much as the then policy makers envisaged.

It is clear to me that we need to do more and better, which is why I am a strong advocate of creating more provision for early legal support and advice. Indeed, the Parliamentary Under-Secretary, Alex Chalk, talks and acts in a way that is entirely consistent with my wish to see an enhancement of those early services.



But that is not the be-all and end-all of how we are going to deal with this. The investment that we announced last week in our court system—crime, family, civil and tribunals—is itself a significant generator of the sort of work that will keep and sustain practitioners in all those fields in the years ahead. If we see more criminal cases being dealt with as a result of more police officers, and if we see a more efficient use of technology, which will allow us to deal with more family cases expeditiously, all these supply-side changes, for want of a better phrase, will enhance the prospects of everybody who is involved in the legal aid sector. While it will take time to improve, evolve and change in a beneficial way, we have to accept the fact that this is a result of many years of decline rather than just the last eight or 10 years.

Therefore, I do have a long-term view. I sit here, in one sense, as an apolitical figure because the Lord Chancellor's role—the particular duty that I have—transcends in many ways that party political argument. If I looked back at my time in high office and I had not done everything I could to improve and enhance the resourcing of our court system, that would be a very big regret for me indeed. That is why, here and now, I am busy putting the evidence together, seeking the support and encouragement of the judiciary, making sure that officials in the Department have the information they need to make the continued case for more investment in the court system and, through that, increasing confidence in the providers of legal service, so that the future starts to look that much brighter than what has been, I readily accept, a very tough era for legal aid practitioners indeed. I believe that the combination of those approaches will start to yield at least some fruit in the years ahead.

**Q119 Andy Slaughter:** Lord Chancellor, you were quite expansive earlier about the spending review, but it is true, is it not, that there is nothing for legal aid in that review? There is nothing on eligibility or rates, or funding generally. You mentioned the criminal legal aid review. Will you say more about the civil side and what you are going to do on sustainability there, because that has taken a huge blow under LASPO, and that has not been dealt with by the LASPO review so far?

**Robert Buckland:** Mr Slaughter, you are right to say that this was a one-year spending settlement, so there is—I have alluded to this generally—more work to be done. I am not pretending that my job is finished. If next year we have a multi-year review, then the work will continue, and part of that work will, inevitably, be questions about legal aid eligibility; they are very much on my radar now.

I have the question of eligibility and the overall question of the current framework within which we operate and the need for us to think imaginatively about ways in which matters that, at the moment, are becoming legal or litigation issues are diverted from that path earlier on, in the form of early legal support and advice, and alternative dispute resolution. In particular, in the field of family law, there are some



innovations that could really make a difference for families without putting them through the pain and the frustration, very often, of family proceedings, which can be very traumatic and difficult for all involved, not least the children of any relationship who might be the subject matter of applications.

Without seeking to use the enormity of the task ahead as an excuse to do nothing, I intend to do whatever I can in every jurisdiction to try to make that difference. Therefore, there needs to be a combination of approaches: the revival of investment in our courts; the improved throughput of cases as we recover from Covid; the revision that will take place to the way in which we remunerate practitioners for criminal legal aid; the enhancement and improvement of early intervention in what become, otherwise, civil disputes; and reforms in family law. All of those matters will make a difference.

I do not want to forget tribunals. It seems to me that, in many respects, the tribunal system has responded well to the Covid challenge. There have been difficulties in parts of the system. Again, there is work to be done there about improving the initial decision making so that fewer cases have to be resolved by the tribunals process in the form of appeal.

Frankly, this is not going to be done quickly, but I believe that we have, in the Department, the will to tackle those immediate issues that, cumulatively, will make a difference. I am sure you will hold me to account when we return to spending issues and, indeed, the future of legal aid provision.

**Q120 James Daly:** Lord Chancellor, we do not have much time, so if it is okay, I am going to fire some quick suggestions for your comments or views. As a previous criminal legal aid solicitor, I must ask whether consideration is being given to restoring the 8.75% cut in legal aid fees that criminal legal aid solicitors were impacted by a number of years ago.

In relation to civil legal aid—I am on the APPG for legal aid—many civil practitioners were asking or campaigning for civil and family practitioners to be funded for one hour's free legal advice, which would help them to keep many more cases out of the court system.

My third point, Lord Chancellor—I do apologise—is that one of the negative impacts of remote court hearings is that the junior Bar, in particular, is suffering. The junior Bar got a lot of their legal aid work from the fact that more senior colleagues could not go to the various courts. That is impacting very much on the work of the junior Bar. I wondered whether I could bring that to your attention and what views you have on it.

**Robert Buckland:** Thank you very much, Mr Daly. On the latter point, it is interesting to note that the old constraints on physical availability will no longer apply in some cases. However, where one door might start to close, another one opens. I know that the Crown Prosecution Service is



## HOUSE OF COMMONS

increasingly using counsel again in representation at the Crown court because of the need to keep its in-house lawyers working hard on case review and case management. Therefore, new opportunities are emerging for the Bar and the junior Bar to do more prosecution work, which is welcome.

In terms of civil and family, that is an interesting idea. It is very much in tune with the thinking we have in the Department about the way in which early advice and support can make a difference. While that specific proposal might not fit in terms of what we can offer, it is certainly worthy of a further discussion to see how it matches to our aspirations on enhancing early legal support and advice.

When it comes to criminal solicitors and their work, I think it is right for us to use CLAR 2 as the opportunity to do more than just talk about restoring a particular cut or trying to put a temporary sticking plaster on the issue. This is about the way in which we remunerate solicitors and barristers for the work they do. I know, in past years, that the way in which criminal cases are worked upon by professions has changed. From when I started nearly 30 years ago, so many practices have evolved, so many procedures have changed and so many hearings are of a different nature, and the system has not evolved in a way that reflects that.

I mentioned earlier the vital importance of advice at the police station. I know that a well-trained, well-qualified professional, be it a solicitor or even a legal executive—I say “even”, but very often legal executives are extremely experienced—can make a difference at the police station by making the right representation to the custody sergeant, either about the question of bail or the charge itself, which can sometimes end the matter there and then.

I know that the issue of remuneration in the police station and presence at interviews is a real issue for criminal practitioners and criminal solicitors. I want to try to make sure that any reform or review under CLAR starts to reflect that better. If that involves a change in the way we remunerate professionals, that is something we should be doing. What I cannot promise is unlimited resource. That would be foolish, and I do not think anyone would believe it, bearing in mind the experience that all of us have had as legal aid practitioners.

However, I can assure you, Mr Daly, that in the Department there are officials and Ministers who know about the subject, who care about the subject and, while we have to work within constraints, will do all that we can to make sure that the public investment in legal aid is spent in the wisest possible way and in a way that reflects the work that is being done by professionals providing that important public service.

**Q121 James Daly:** I am grateful, Lord Chancellor, for what you said about police station attendance work. In Greater Manchester, where, as you know, I am a Member of Parliament, police stations less than 5 miles apart have different fixed fees for solicitors' work at police stations. I am



glad that you are reviewing that, but will you take the higher figure as the one that we should pay to solicitors rather than the lower one?

You also know, Lord Chancellor, that the way the fixed fee in police stations works is that it is not proportionate to the hours of work involved. May I ask—I know you will do this, Lord Chancellor—that you review that part of the fixed fee for police station attendance as well?

**Robert Buckland:** Of course, Mr Daly. As part of the CLAR, the independent chair and the panel will look at all these issues. I am going to ask them to do that sort of work. It is right as well to remember the LGFS at the other end—the litigators' fee system, which I think all of us agree needs to be examined closely—so we can get the right balance and make sure that dedicated solicitors and legal executives are getting paid for the work that they do. That is going to be a matter for the review.

I am sure that you and other practitioners will feed into that review and make sure it has all the information and data it needs to make an informed decision for the future of criminal legal aid.

Q122 **Chair:** Lord Chancellor, I am conscious of the fact that we are taking a lot of your time, but we have a few more questions to ask. I ask that we all try to be as succinct as possible in order not to keep you for too long.

If you can keep your answer to this question succinct, you will be doing well. How is raising the judicial mandatory retirement age going to affect the recruitment and retention of judges and magistrates, in your view—probably in your shortened view rather than your extended view, Lord Chancellor?

**Robert Buckland:** Thank you very much indeed, Ms Eagle. The consultation is now finished. A response will be due. I will be talking to the senior judiciary and others about what that might be. Change is going to come. The question is whether it should be 72 or 75.

I need to bear in mind some important considerations. One, from the magistrates' point of view, is the importance of retaining qualified and experienced magistrates who do an excellent job, particularly in the family proceedings courts, and making sure that we do not lose unnecessarily that supply of talent.

At the same time, while we might retain some more senior magistrates, I want to recruit an increasingly diverse pool of younger magistrates with different life experiences reflecting the true diversity of our society. That recruitment work will continue apace. We have a number of recruitment exercises currently under way. We must also remember that, for some people who might have had a mid-career break or who come to the magistracy or to a judicial appointment late, having a later retirement age could be a very good thing. Of course, I am thinking about female practitioners or women who have had a career break because of pregnancy and parental responsibilities who have not, up until now, been



able to carve out the time to have a longish period either on the bench or sitting as a full-time judge.

There are pluses here in terms of diversity that we need to look at. In particular, a later retirement age could help people from a non-traditional legal background who have come to the profession much later than others into a judicial career. However, I need to bear in mind other factors, such as making sure that we have people who are at the absolute peak of their capabilities making important public decisions on often difficult matters of law and fact. Therefore, I need to balance all those issues and take them all into account before making a final decision. I will, of course, make as early an announcement as I can about the decision on the mandatory retirement age. I will aim to legislate on that in the next year.

At the same time, a lot of progress has been made on judicial pensions. I want to make sure that we have a complete package that deals for the long term with a lot of issues that have been bubbling along for far too many years and have led to a drop in morale and a drop in numbers, particularly of magistrates, and needed to be resolved before now.

**Q123 Andy Slaughter:** Changing the subject again, Lord Chancellor, in your role you tread a fine line between the law and politics. We have heard a great deal recently—perhaps too much—about activist lawyers. May I ask you about the other side of the coin, which is politicians trespassing on the law? Let me give you two examples from today for you to comment on.

We hear that the Bill to repeal the Fixed-term Parliaments Act is going to be published. That is, effectively, taking power from both the legislature and the judiciary and giving it all to the Executive. Are you concerned that it will be within the gift of the Executive, through the prerogative, to make decisions without Parliament or judges having a say?

Secondly, you will probably have seen the controversy arising out of the Elphicke case, in which a number of MPs wrote and expressed their view about judicial decisions, which led the Lord Chief Justice to say today that, perhaps, it is appropriate for him or his colleagues to remind Members of both Houses of Parliament about the need to respect the independence of the judiciary, perhaps by way of a briefing. Do you agree with that, and do you think it is a good idea?

**Robert Buckland:** Yes. With regard to the second part of the question, I entirely agree with it. I can use your Committee here and now to remind all colleagues in both Houses that the independence of the judiciary is not just a slogan but a vital part of our constitution. When it comes to an ongoing case or a case that might be subject to an appeal, all of us have to take great care not to be either seen, perceived or in any other way to seek to intervene or to make some sort of approach to the judiciary, or the judge involved in a particular case, about anything to do with the merits of that individual case.



## HOUSE OF COMMONS

There are, of course, plenty of occasions where, as Members of Parliament, we will be approached by constituents about individual cases that may raise greater issues or themes about policy or, indeed, about the administration of justice and the timeliness of cases. It is entirely in order for parliamentarians to raise those issues on behalf of their constituents, either with HMCTS or with me or other Ministers, so we can then provide an informed answer on a general theme or policy. But I reiterate that it is wholly inappropriate for any of us to intervene, or to be perceived to seek to intervene, in proceedings in court relating to specific cases.

I very much hope that in the months ahead we can provide more information about this. If parliamentarians wish there to be any more formal guidance, intervention or information, I will look at that very carefully indeed.

I think it is fair of me to assume quite a high degree of knowledge and awareness on the part of all parliamentarians. I am conscious that in this instance the matter has been referred to the parliamentary Standards Committee, so it would be wrong of me to talk about this particular issue. In general, if parliamentarians have thematic issues to raise, of course they should do that. However, if they, frankly, relate to individual cases, let us remember that that is a matter for the judges and the magistrates, not a matter for us.

With regard to the other point, on the Fixed-term Parliaments Act, first of all, it is a report, and I am not going to start to talk about the detail of any potential legislation that may emerge. It is clearly a manifesto commitment and we are going to do it, but I am not going to comment about the precise form of the legislation that might emerge.

For many generations, the prerogative was used with regard to the calling of elections, and I do not think anyone seriously said that the exercise of that was an erosion of the rule of law. In fact, it was very much part of the unwritten, evolving constitution of the United Kingdom, where we had seen the prerogative, initially being held by the King or the Queen as their particular power, being devolved upon the Executive and the elected Government, which had the political authority and the legitimacy, through our parliamentary democracy, to make these decisions. I do not think there is a particular issue about that.

There has been a discussion as well about whether there might be some form of ouster clause used. Again, in the context of parliamentary legislation, the ouster clause is entirely familiar to us. We saw it in the Fixed-term Parliaments Act, in which certain provisions and procedures were designed not to be susceptible to challenge in court. Indeed, the Parliament Act 1911 itself has those very words within it when it comes to the issue of a Speaker's certificate and the procedures under that Act.

I do not think there is anything new here when it comes to potential proposals under the Fixed-term Parliaments Act. To elide the issues



## HOUSE OF COMMONS

relating to that with some of the other issues that we have seen in recent months is incorrect. The two, in my mind, are very distinct, bearing in mind previous legislation and our own recent experience of the prerogative and exercise of power under it by the Prime Minister to call a general election.

Prime Ministers of all colours have used it over the years in a responsible way. The proposals in our manifesto reflect the need to remove the artificial constraints of the Fixed-term Parliaments Act and some of the rather unfortunate consequences that we saw, for example, in late 2019, which I thought merited the approach that we took in our election manifesto and the platform upon which we were elected 12 months ago with a resounding majority.

*[Sir Robert Neill resumed the Chair]*

Q124 **Chair:** Thank you very much, Maria. I managed to make my speech and return.

We have talked about some of the constitutional issues, Lord Chancellor. You are consulting on the possible change of the retirement age. Do you have any view on how the raising of that would affect recruitment and retention of judges and magistrates?

**Robert Buckland:** Sir Bob, you are to be forgiven because of your necessary absence, but I have already been asked the question about the MRA, and I hope that the Committee feels that I have answered the question on retention and recruitment.

**Chair:** I am grateful for that. I can see that Mr Slaughter has dealt with you about a number of the other matters. We have talked about the position in relation to lawyers.

**Robert Buckland:** Yes.

Q125 **Chair:** May I ask you, if we have not already, about where we are with Brexit?

**Robert Buckland:** Of course Brexit, in its strict sense, happened in January. What we are talking about now is the future relationship and the nature and extent of that. The negotiations are ongoing. It would be idle and wrong of me to start to speculate before your Committee, Sir Bob, on what the outcome might be. Whatever the outcome, it is clear that a change is coming at the end of the year that requires businesses and indeed all of us to recognise that legal structures are changing, whether it is in the form of civil legal co-operation and all the work that I am doing to try to make sure that we accede to the Lugano treaty and that there is a minimal gap in any provision there, or with regard to developments on immigration and the change today that we saw with regard to the migration system.



Already, legal changes are happening around us as a result of EU exit. While I make no bones about it that I fervently hope and want to see a deal—I have always been a pro-deal Tory; at every stage I have argued consistently in favour of a deal, as I do now—I believe that we were right to prepare for all eventualities, which is what the Government have been doing not just this year but ahead of last year's decision process. Therefore, we are in a position where we can look forward with confidence to the future, whatever that might be, whether we get a further deal or whether we have to operate on the current structure, as agreed within the provisions of the withdrawal agreement.

**Q126 Chair:** The concern that a number of lawyers have is what the Ministry of Justice is doing to make sure that issues like accession to Lugano, data adequacy and data-sharing arrangements—which are critical for many of the security co-operation issues—and the broader issues of the future of professional relationships between the UK legal professions and those of the EU, and access to justice, therefore, for EU and UK citizens on a reciprocal basis, are maintained. What involvement does your Department have in the negotiating process around that?

**Robert Buckland:** On all issues that are relevant to the functions of my Department, there has been an appropriate level of involvement both by me and my officials. Without delving into the detail, I would say that we are pushing as hard as we can to secure a realistic outcome.

I do not pretend that we can secure everything. When you look at it, the status quo ante did not mean that we had the maximum integration of services in terms of a single market that perhaps we would have wanted to see here in the UK, but I accept that, because of the change, there are consequences for the way in which some legal services can be provided, such as advice on EU law. The important point is that we need not just intergovernmental engagement but sector-to-sector engagement as well.

I pay tribute to the work of the Law Society of England and Wales, the Bar Council and the Law Society of Scotland for engaging with their counterparts in other European countries to maximise practical measures that can help to ease movement, or, in lieu of that, to make sure that the necessary arrangements are in place to allow legal professionals to carry on their work.

Over and above that, there is a high degree of engagement that I am working on with other parts of the world. This morning I opened the virtual UK-Africa legal services mission. We are engaging over the next three days with South Africa, Ghana, Kenya and Nigeria in order not just to maximise opportunities for the expansion of UK legal services in those jurisdictions but for there to be a mutual approach with sectors supporting each other and learning from each other while remembering that we have a shared common law tradition.

When it comes to civil legal co-operation, we have done everything we can domestically to prepare the ground. The Private International Law



## HOUSE OF COMMONS

(Implementation of Agreements) Bill has now become law—it is close to or is about to receive Royal Assent—which means that, if and when we accede to Lugano, we can proceed by way of debate in this House under the provisions of the Act to incorporate it directly into domestic law and, indeed, to use that mechanism for a range of other private international law provisions that, while in and of themselves they are not major treaties, make a practical difference when it comes to the recognition of judgments in civil or family cases. The Department is working as hard as it can to prepare for all eventualities.

Q127 **Chair:** With the best will in the world, we are not going to be in a position to accede to Lugano by 31 December or 1 January.

**Robert Buckland:** Well, it has been difficult. We have done all we can to get the support of EFTA countries and the EEA. We filed our application in a timely way. It is perhaps inevitable but unfortunate that what I regard as a separate issue has in effect played into aspects of the negotiation. The EU, of course, has a veto on our accession to Lugano. They have not yet decided what they are going to do. Despite our best efforts, we were not able to get them to make a separate decision, which means there will be a gap. My aim is to make sure that the gap is as short as possible.

Q128 **Chair:** Do you have any assessment of how swiftly the UK might be able to accede to Lugano were the EU to withdraw its—

**Robert Buckland:** I am afraid I do not. What I do know is that if we are able to reach agreements now on free trade and the future relationship, our next task will be to work to secure civil justice co-operation.

Q129 **Chair:** Finally, do you have any assessment, or have the Government made any assessment, of the potential damage done, either to British commercial interests or to individuals, by the inability to enforce judgments in the gap between us leaving reciprocal enforcement and recognition and accession to Lugano?

**Robert Buckland:** It is difficult to make a precise assessment. There are pre-existing mechanisms. The truth is that it is a question of time. I believe that we can use existing mechanisms to bring about the right outcomes, but it will take longer. The precise impact of that is very difficult for me to assess. As I say, my aim is to try to minimise that gap.

**Chair:** Thank you very much. I thank members of the Committee for what has been a very long session, I thank Maria Eagle for chairing part of the session, and I thank the Lord Chancellor, Dr Farrar and Mr Sadler for giving evidence. I am grateful to you for your time, and for your very full evidence to the Committee this afternoon.