HOUSE OF LORDS

Constitution Committee

Corrected oral evidence: Annual evidence session with the Lord Chancellor

Wednesday 20 March 2024

10.20 am

Watch the meeting

Members present: Baroness Drake (The Chair); Baroness Andrews; Lord Beith; Lord Burnett of Maldon; Lord Falconer of Thoroton; Baroness Finn; Lord Foulkes of Cumnock; Baroness Goldie; Lord Keen of Elie; Lord Strathclyde; Lord Thomas of Gresford.

Evidence Session No. 1 Heard in Public Questions 1 - 16

Witness

I: The Rt Hon Alex Chalk KC MP, Lord Chancellor and Secretary of State for Justice.

Examination of witness

The Rt Hon Alex Chalk KC MP.

Q1 **The Chair:** Good morning. This morning, the Constitution Committee is holding its annual evidence session with the Lord Chancellor. I welcome the right honourable Alex Chalk KC MP, Lord Chancellor and Secretary of State for Justice. I hope you have been advised and had some indication of the matters that we would like to discuss with you.

Alex Chalk: I have, thank you.

The Chair: Good. Before I plunge into the first question, are there any opening comments or observations that you would like to make?

Alex Chalk: Thank you for that kind invitation. I had not planned to make any opening remarks. I will probably deal with the key issues that I wish to raise in the course of the questions. I just want to say what a genuine pleasure it is to appear before this committee. I recognise that it is an extremely distinguished and well-qualified committee. If it is not to oleaginous, I would just say that I read and reread your report, and think that it is incredibly helpful. I will refer to it from time to time. It is probably required reading for any new Lord Chancellor or law officer. I want to take this opportunity to thank the committee for the work that it has done so far, recognise its importance, and say that I am looking forward to seeking to answer your questions.

The Chair: I am delighted to hear that you have read it, particularly as I suspect that there will be questions later that refer back to some of the views that we expressed in that report. Perhaps I can open with a more general question. How would you describe your contribution to constitutional matters in the time since you have become Lord Chancellor?

Alex Chalk: From the opening moment of taking on the role, I have been very keen to emphasise points that seem to me to be self-evident but worthy of re-emphasis. I am sure that you know this but, when you are appointed Secretary of State, you sit down with your Permanent Secretary and set out your priorities. I said that my priorities are to ensure that the guilty are convicted, the innocent walk free and the public are protected.

There were people around me saying, "Why are you focusing on the innocent walking free? This does not seem to be a terribly political thing to be doing". I would say, "Actually, it's enormously important that we give that equal weight". Little did I know that what was going to be coming around the corner in January was the Horizon scandal. The British people are fundamentally fair-minded, and you do not need to reach into your black stone to know that. I know from being a practitioner that the balance we strike between the power of the state and the rights of the individual is incredibly delicate but incredibly precious, so wanting to ensure the fundamental fairness of our system was a point that I was very keen to emphasise early on.

I also wanted to emphasise, in the course of my speech when I was made Lord Chancellor, the central importance of the independence of the judiciary—not, as I put it, as some quaint, airy, historic notion but as the fundamental bedrock of our freedoms and liberties as British citizens. I sought to emphasise that in my speech but also in a tweet on the Rwanda judgment, which, I am told, got quite a lot of pick-up. So, evidently, there is some value in making those points.

I also wanted to emphasise something that was incredibly important to me when I first became a Minister: access to justice. Indeed, before I became a Minister, when I first came into this House in 2015, as a former legal aid practitioner, the first APPG that I joined was the APPG on legal aid. I recognised that it is essential to allowing people to prosecute and uphold their rights before the state in order to ensure that justice is done. I, in fact, came up with a plan called ELSA—early legal support and advice—recognising that that can be so important to ensuring that people can vindicate and uphold those rights.

Those are principles that I have wanted to set out; they have then become the prism through which I view a number of the issues that I am required to confront.

The first of my key priorities is court maintenance. I see it as extremely important to ensure that all the things that we hold dear about the independence and the value of the judiciary are upheld. It is important. Secondly, I wanted to try to address the issue of IPPs and do so in a way that removes the stain from the justice system while ensuring that the public are protected and treading that fine line. Prison-building capacity plainly remains extremely important.

I wanted to promote the sector. By the way, the great success that lies hidden in plain sight is our legal sector, the second largest in the world, which allows us to speak more loudly and with more authority on the world stage about the international rules-based order. Again, I wanted to try to promote the sector and address violence against women and girls, as well as many other matters besides—all viewed, as I say, through the prism of fundamental and important values, which I am keen to play my poor part in upholding.

The Chair: We will want to ask more detailed questions on some of those priorities that you have identified, such as legal aid. Before moving on, when you spoke in support of taking your oath, you said that, in doing your duty, you would endeavour "to leave the rule of law in our country stronger for our having been here". How do you think you have made the rule of law stronger?

Alex Chalk: To emphasise the points that I have made, when, for example, there was the Rwanda judgment, which is an important judgment, I came out with a tweet that made the point about respecting the independence of the judiciary and the judgments it handed out. It is perfectly legitimate, of course, to disagree—it is plainly everyone's right to do so—but we do so in a respectful way, recognising the extraordinary

intellect and unimpeachable integrity of our world-renowned judges. That has been important.

It is also important to ensure that, as well as speaking publicly, one speaks privately. I do just want to make one point at the outset, if I may. There is, I am afraid, what I have called a conspiracy of romantic hopes that assumes that everyone coming into this place as a Member of Parliament or as a Peer has somehow, by some obscure osmotic process, absorbed this complete understanding of the balance of our constitution and where the lines are to be drawn between those things that are legitimate and those that fundamentally subvert our constitution. I am afraid that that is not the case.

I have sought—with limited success, however, I am afraid—to propose that, as new MPs come into the House, there ought to be, if not compulsory, a strongly recommended module that sets out some of the matters that are well understood in this committee but, perfectly reasonably, may not necessarily have been absorbed by everyone.

It can be expressed quite simply in that judges must, whether they agree or disagree, apply the black letter of the law passed by Parliament, which is sovereign. The quid pro quo is that you cannot go out and insult the judges. It is fairly simple. It would not be a deeply difficult module. It could be dealt with relatively quickly but it would have value. The extraordinary thing is that, overwhelmingly, people who come into this place want to do the right thing. It is just that, often, it is not entirely clear what the right thing is. People come under intense pressure through these blinking things—their mobile phones—and can sometimes be led into error. These are good, decent and reasonable people who just have not necessarily had all of the experience that others may have had.

The Chair: It is good to hear that you are addressing that conspiracy of romantic hopes, because that was certainly one of the recommendations that we made in our report. We want to come on to dealing with the issue of protecting the innocents by going on to the Post Office (Horizon System) Offences Bill, but Baroness Goldie wants to raise a particular issue.

Q2 **Baroness Goldie:** It is a very brief question. Given that aspects of our constitution overlay the devolved structures in the UK—of course, some are specifically devolved to the devolved legislatures—I just wonder to what extent, if any, you engaged with law officers across the devolved legislatures.

Alex Chalk: I was previously a Solicitor-General and travelled to Edinburgh to meet my counterpart, the Lord Advocate. That is something that we do take seriously. I would like to do more engagement. It is something that we seek to do but it is a legitimate challenge, if I may say so, that there are occasions when I feel that we could probably spend more time consulting with one another, while always being extremely mindful of constitutional propriety.

Scotland, as you well understand, has a long-standing, distinct, proud and extremely highly regarded justice system. There are plainly things that we can discuss and learn but we have to be careful not to stray and not to barge in in a way that would be inflammatory and inappropriate. There must be consultation, but respectful always.

The Chair: We will now turn to the Post Office (Horizon System) Offences Bill. Thank you for your letter, which we have looked at in some detail. Obviously, we will look at the Bill when it comes before us. I note in your letter that you recognise "the constitutional sensitivity and unprecedented nature of this legislation". There are two elements to our questioning this morning. One is on that particular issue; the other is on the issue of the Bill not being extended to Scotland and Northern Ireland.

Lord Falconer of Thoroton: Hello. Thank you very much for coming. We very much value having the Lord Chancellor here and are grateful to you for coming. We would like to back you in all the things that you said at the outset because they are things that are very dear to this committee. Can you explain to the committee what you thought the constitutional sensitivities were about the Post Office (Horizon System) Offences Bill? Could you then explain to the committee why you thought it was appropriate to put those sensitivities to one side?

Alex Chalk: Anybody who has practised in the law cherishes the independence of the judiciary, recognising that the absolute hallmark and safeguard of our freedoms is the fact that an overmighty state cannot go in and intrude on things about guilt and innocence, and that the judiciary should make those decisions—and, by the way, is well placed to make those decisions through exhaustive, careful, considered and fair analysis of the facts that come before it. That is pretty axiomatic.

Stepping back—or, indeed, stepping up—and looking at this from 10,000 feet, those of us who value, cherish and are passionate about the rule of law also have to recognise that a miscarriage of justice on this extraordinary scale is of itself an affront to the rule of law. When I was saying to my Permanent Secretary that I am determined to ensure that the guilty are convicted, the innocent walk free and the public are protected, one always has to remember that, if the British people lose faith in the ability of the system to ensure that innocent people do not go to their grave with a mark of Cain hanging over them, the rule of law faces very significant challenges indeed.

These are wholly unique circumstances taking together the combination of, one, the sheer number, with more than 980 convictions; two, the lapse of time; three, the fact that evidence appears to have been lost in many cases; and, perhaps most compellingly, four, the fact that so many entirely innocent people have totally lost faith in the system.

The point about that is that the system ordinarily relies—I feel very diffident saying this in front of the Lord Chief Justice—on individuals coming forward and persuading the Court of Appeal that the conviction ought to be overturned because it is unsafe, and the burden is upon them

to do so. This relies on them coming forward and being able to put before the court material that discharges that burden. Those four things—the lapse of time, the loss of evidence, the loss of confidence in the system and the sheer numbers—taken separately or certainly cumulatively puts this in an extraordinary position.

The other thing that I want to say is this: we should be clear on what happened here. The state—or, at the very least, an emanation of the state—broke this, and it is therefore for the state to fix it. This is not a failing of the judiciary. Incidentally, one of the reasons why I think that this is on balance the right thing to do is to avoid mischief-makers—they would be completely wrong, by the way, but that would not stop them—seeking potentially to point the finger in a way that would be wholly unjustified.

The courts have done what is asked of them and have proceeded carefully on the evidence before them, but the reality is that innocent people are dying. We have to move quickly. Indeed, if I may respectfully say so, Lord Falconer, I thought that you put it well. You said that there would not be resistance in Parliament but you also—I have not written it down—made the point that time is of the essence. You were right, respectfully, to do so.

This is difficult. Anybody who cares about the system has misgivings and we seek to tread carefully. I will make a final point then I will shut up. Where the Court of Appeal has specifically considered matters and upheld the convictions, my present view is that we ought not to stray into that territory. On balance, given the unique circumstances, making crystal clear that this is not a precedent, this is the right way to proceed.

Lord Falconer of Thoroton: I broadly agree with what you are saying but, on the timing point, suppose the courts were to say, "We can deal with these very quickly", and that a reputable official in the Government such as the Attorney or the Lord Chancellor could refer those cases that the individuals do not want to refer. Why did that not deal with your time point?

Alex Chalk: I looked at that extremely carefully and spoke to a number of people. The first thing to say is that legal opinion is split on this. I have spoken to very senior lawyers, practitioners and others; it is fair to say that there are differences of view. I looked carefully at a model that would reverse the presumption and, to all intents and purposes, impose a presumption that this was the fruit of the poison tree, so that convictions that had stemmed from prosecutions from the Post Office—or, indeed, were relying on Post Office evidence—were in effect tainted unless they could be rebutted.

Presumptions are there to be rebutted. The concern must be that, notwithstanding the scheme that had helpfully been proposed and thought up, it is not difficult to see circumstances where, perhaps perfectly properly, people say, "We need to rebut this. We need to have this set down". Then, of course, the litigants come before the court and

say, "I know we all want to get this done by July but we really can't, in conscience". The courts par excellence are there to ensure that, once they are seized of matters, they will take as long as they take to do justice on the facts before them.

Just imagine that, if there was a suggestion that the presumption had been rebutted and the whole case was put off to September or beyond because they had to consider this, that and the other, and there had to be disclosure, then it turned out that that person was acquitted and the whole thing was quashed but they had died before or whatever. The whole system would be brought into disrepute.

I fear that what would happen is that, out there, in the court of public opinion, people would turn around and say, "This lot really don't get it, do they? They really don't get that there are innocent people who've been horribly wronged, by an emanation of the state, and the state couldn't even clear up its mess". I just have to be mindful that to lose that public confidence would lose us the headroom to talk about things that I am so passionate about, which allow us to ensure that justice can be done in all these other cases. This is difficult. This has caused me a lot of thought and careful reflection but, on balance, I do think that this is the right way to proceed, with the careful limits that I have spoken about.

Here is the final point. It is incumbent on all of us, principally but not exclusively me, including the Opposition—I have sought to make this as party politics-free as possible—to say that this is not a precedent. Everyone must make that clear. Parliament has made it clear, Pepper v Hart style. If anyone comes to read what we say here or, indeed, on the Floor of the House or elsewhere, from all four corners of the House, we must say that this is not a precedent.

Incidentally, to that end, if there are people who have suggestions about how we could make that crystal clear in the Bill, for example, I am interested in that because that is the perfectly plain and proper concern that people rightfully raise. We can make some very clear remarks about that; I would invite others to do so.

Lord Falconer of Thoroton: That last point is the issue that many people raise. How can it not be a precedent that the Executive will get Parliament to overturn courts on findings of fact, which you would accept fundamentally undermines the rule of law? How do you prevent it being a precedent?

Alex Chalk: The way that we prevent it is by talking about the exceptional and unique circumstances. I talk about them taken separately or certainly cumulatively. You would struggle to find anything that was on the four corners of these facts. This is wholly extraordinary, where you have an emanation of the state that has totally abandoned respect for its Section 3 obligations to disclose material that might reasonably be considered capable of undermining the case of the prosecution or assisting the case of the defence. That is act one, scene one of what you learn as a fair prosecutor.

The findings that were made by Mr Justice Fraser in the Hamilton case and the findings subsequently in cases before the Court of Appeal are utterly shocking and damning. Point one is that this a failure on a totally egregious scale, taking together the sheer numbers, the lapse of time and the loss of evidence.

We had this case of Pepper v Hart back in the day, when it became clear that the courts or others could look behind what was said in Parliament at the time. If we speak as one, with one voice, making that crystal clear, there can be no question. In future, if people try, in an entirely speculative and opportunistic way, to pray this in aid, let the courts and Parliament speak with one voice: "You can't try that one. We thought about that and we put a stop to it early on".

Q3 **Lord Keen of Elie:** Good morning, Lord Chancellor. We are very pleased that you have made time to be here. Could I raise a number of points? First, Pepper v Hart is a tool of interpretation, not a principle of law.

Alex Chalk: That is true.

Lord Keen of Elie: If we look at the circumstances of these Horizon prosecutions, it would appear—I put it no higher—that many of these cases were contaminated by what was potentially perjured evidence. That being the case, the Court of Appeal may have been misled as to the fundamental evidential basis of the convictions in the first place. Why not stray into those cases where the Court of Appeal has upheld the conviction?

Alex Chalk: Ultimately, there are limits as to what one can properly do. It would have been perfectly open for the Court of Appeal to say, "Listen, we've looked carefully at the way the CCRC framed those cases that it decided to refer". I do not have the precise text in front of me but it was broadly along the lines of where Horizon was integral to the prosecution. They could have said, "That's all terribly interesting but we think that it needs to go more broadly than that. We need to say that what emerged from the prosecution in toto was contaminated, fruit of the poison tree style". I will not use the expression "perjure" because who knows what proceedings may be coming down the track? Let those happen of their own motion.

It would have been open for them to do so, but they declined to. I cannot interfere with that. I personally think that it would be—I had better be careful what I say. One should proceed with extreme caution before stepping in where the Court of Appeal has considered it.

The final point I want to make is that those cases reward study. If you read the specific cases—I am not going to name the individuals because I do not need to but they are a matter of public record—they are very careful considerations of the facts of those cases. I have misgivings about going there.

Lord Keen of Elie: I want to move on to a point about territorial extent and raise one issue. I know that Lord Foulkes wants to come in on this.

In Scotland, the prosecutions were not at the instance of the Post Office, as you well know, because virtually all prosecutions are at the instance of the Lord Advocate, who, on behalf of the Crown Office, is required to carry out an independent review of the evidence that is presented to the Crown Office and determine whether there should be a prosecution.

I can understand why, at that level, you feel that, with a separate judicial system and the Crown Office as an independent prosecutor, it should be a matter for the Scottish Parliament. If the Scottish Parliament is willing to grant a legislative consent Motion to UK-wide legislation here, what is the objection to the Government agreeing to that?

Alex Chalk: As you rightly indicated, there is no constitutional bar to doing so, but there is a diffidence and a sensitivity before seeking to do so. At the moment, the view that has been taken is that, on balance, there is no overarching need to do so—and, by the way, there is no express invitation at present to do so. We would want to see an express, clear and settled intention on behalf of the Scottish system so to do, which is not evident at present. In fact, it is far from evident. There seem to be some mixed views as to what the correct approach is, and we would want to see far greater clarity about Scotland's position.

Lord Keen of Elie: I will leave Lord Foulkes to follow up on that, given some of the statements made by Scottish Ministers in this context. Could I finally ask you this one question? Is there any concern about who is going to have to pay the compensation, whether it be the UK Government or the devolved Government at Holyrood?

Alex Chalk: That is not something that falls into my lane, I am happy to say. That is a matter for DBT but I am sure that it would be happy to clarify the point.

Q4 **Lord Foulkes of Cumnock:** Welcome, Lord Chancellor. You said that the decision not to extend it to Scotland and Northern Ireland was taken on balance, and that you wanted some evidence that the Scottish Government want you to do that. We understand that Angela Constance has asked you to do it. It is very unusual, as I know, for the Scottish Government to ask the UK Government to legislate. If you think that it is important to get this done and to get justice for these people who have been terribly traduced, as quickly as possible, surely you should extend it to Scotland and Northern Ireland. Why do you not do it?

Alex Chalk: I do want to stress one thing. DBT is leading on this Bill, not my department. That is important. I do not necessarily want to suggest that I am personally receiving all the representations that the British Government are overall. From what I have been given to understand, the Scottish Government are not speaking with one voice on this.

Can I leave it in these terms? It has become tolerably plain in recent days that, in Northern Ireland, there is a growing consensus—there have been meetings recently with the First Minister—that there is an appetite to see the writ of this Bill extended more widely. Of course, we consider these matters, but, as presently advised, it is not my sense that there has been

such a clarity of view as you have expressed it. As I say, DBT is leading on this, so I would not want to cut across any views that it may have received.

Lord Foulkes of Cumnock: Our understanding is that Angela Constance has said, "Our priority is to ensure full parity for everyone affected ... our preferred option is to use a legislative consent Motion"—as Lord Keen said—"to extend any UK Bill to cover Scotland". She goes on to say, "We, along with the Northern Ireland Executive, urged the UK Government to introduce UK-wide legislation". The purpose of this hearing is for us to try to influence you in some way. Will you go back to your colleagues in the other department and have another look at it? If the decision is made on balance, surely it is worth having another look at.

Alex Chalk: The point is that the Lord Advocate said something rather different. When the Lord Advocate came out, she was very clear that, as far as she was concerned, the system should operate through the normal channels. In effect, forget any notions of a plan B legislation where you reverse the presumption and get into the judicial lane to that modest extent. She said, "Absolutely not. This should take its course in the normal way". I pause to note, incidentally, that the numbers of cases are far fewer in Scotland.

That is why I say that there has been a somewhat mixed message. It reflects the fact that the position of the Lord Advocate in the Scottish constitution is quite nuanced and different from that in England and Wales in terms of the role of the Attorney-General. It is different there.

I would gently push back on the suggestion that the Scottish Government are speaking with one voice. I do not think that that is right but, what I will do, respectfully, is indicate that I had already, before coming to this meeting, agreed that I would meet Kevin Hollinrake to discuss these issues more generally. That meeting will take place and I will have your remarks ringing in my ears.

Lord Foulkes of Cumnock: Thank you very much. I am really grateful.

The Chair: You have set out the reasoning. Thank you very much indeed. Could we now turn to the Rwanda Bill, which the Lords in particular are going to get very busy with later today?

Lord Strathclyde: There have been a number of Bills recently that disapply sections of the Human Rights Act: the then Illegal Migration Bill, the Victims and Prisoners Bill, and the safety of Rwanda Bill, which we will be dealing with later on this afternoon. They all disapply sections of the Act, and the Government have clearly made their case on it; I am not really after that. It is fair enough for people to ask how the Government intend to ensure the continued protection and universal application of human rights. Where is the trend on this going?

Alex Chalk: When we talk about the universal application of human rights, everyone is equal, of course, but it is also proper—this is deeply uncontroversial—to treat people differently depending on their specific

circumstances. For example, if I knock on a door in Cheltenham and speak to a US national who happens to be living in Cheltenham because they are working at GCHQ, they do not have the right to vote in our elections. Somebody who has committed a crime and is in custody does not enjoy the full Article 5 freedoms that you and I enjoy.

The central point is this: we have sought, through the Bill, to give very careful consideration to what their Lordships said in the Supreme Court, where they had concerns about refoulement. There were concerns about the extent to which individuals could really make their points, hence the independent monitoring committee, the appeals body and so on.

What we have sought to do is answer those points in a way that sits within the four corners of our international obligations, which include the convention. That means carefully going through the Human Rights Act and considering which parts of it are necessary to ensure that the irreducible minimum is complied with. The Article 13 measure in the European Convention on Human Rights is that you have to have a remedy. Of course there must be a remedy, which is why, although it is perfectly legitimate to have an ouster, you cannot have a complete ouster because that would be an affront to the rule of law. You have to ensure that some individual can get themselves before a court if they know and can persuade a court that getting on that plane means that they will not survive the flight because they have a medical condition or whatever. By the way, that is not just a matter of law but a matter of the basic fairness that the British people would expect, so that is there.

Equally, we think it right that the Section 4 element of the Human Rights Act, which is the declaration of incompatibility, is there. We say that these are the irreducible minimums to satisfy the Article 13 obligation, which means that we can say, "This is within the four corners of our international legal obligations but, by the way, we are clear that this is novel and contentious". We have been absolutely transparent about that because there was legal advice, which we published, that used the expression "novel and contentious". So that is that.

Just stepping back for one second, we have to recognise that there are 100 million people on the move around the world at the moment. That figure is likely to continue. Other nations are watching closely what we are doing. Other ECHR nations, by the way, are watching closely what we are doing here. It is overwhelmingly likely that, in 10 years from now, there will be similar schemes up and running. We have to address this.

I am passionate about human rights. I am passionate about the international rules-based order. I care about all this stuff, but I also have Edmund Burke from the 18th century ringing in my ears. He said, "A state without the means of some change is without the means of its conservation". We have to ensure, if we want to uphold the rule of law, that there is buy-in from the British people, who state, not unreasonably, that we as a sovereign nation must be able to control our borders. The line that we must tread is doing so while remaining compliant with our international legal obligations; that is what we are seeking to do.

Lord Strathclyde: Thank you very much. That is extremely clear.

Q5 **Lord Falconer of Thoroton:** If the courts declare that the Rwanda Bill, if it becomes law, is incompatible with human rights legislation, which is an option that the courts have, you would presumably take steps as a Government immediately to put it in compliance, because only if you did so would the United Kingdom comply with its international obligations.

Alex Chalk: We were clear that the Section 4 part of the Human Rights Act, which is the declaration of incompatibility, should remain. We thought that that was the proper way that you can sensibly, coherently and credibly advance an argument that there is a remedy, because someone can go along to the court and say, "This is incompatible", and so on.

However, one of the things that you would not expect me to do is prejudge precisely what the court were to say in such a judgment. It was because we respect the court that we considered very carefully, line by line, what the Supreme Court had to say. Whether we welcomed it or not, we respect it and we look at it very carefully. We framed the Rwanda Bill, as well as the Rwanda treaty, so that it answered those points.

I know that you understand well the non-refoulement one but, in case people are listening and have not kept completely up to speed, it means that somebody who ends up in Rwanda cannot be sent back to a nation, be it Syria or Afghanistan, where they could come to harm. In effect, they have the right to stay there, whether they are granted asylum or not, or to come to the UK; those are the options. That was a significant concern for the Supreme Court and we answered it. What I cannot do here is credibly or fairly say to any future court what we would do because you have to read the judgment carefully, which is what we would do. I emphasise the point that we kept Section 4 in there for a reason.

Lord Falconer of Thoroton: That seems a slightly slippery approach, if I may say so, because you have said that you are complying with the obligation to provide an effective remedy in part by keeping the ability to get a declaration of incompatibility. That is of value to somebody only if, once there is a declaration of incompatibility, the Government then move to change the law. For you to say, "We would have to read the judgment", gives the Government a big get-out.

Alex Chalk: I do not think that it does.

Lord Falconer of Thoroton: Could I just finish the question?

Alex Chalk: Yes, of course.

Lord Falconer of Thoroton: It seems to me that one has little faith on that basis that the ability to get a declaration of incompatibility is a real remedy.

Alex Chalk: I do not agree with that. It is only sensible to say that you would want to consider what the High Court had to say about a

declaration of incompatibility. The essence of the rule of law is that, if the court makes an order, those orders must be complied with; that is axiomatic and self-evident. It is also perfectly proper and right to say that you have to take these things in stages. You have to understand the arguments that have been made on both sides, how the court deals with those arguments and what it is that then underpins that judgment if they get to it. History is littered with examples of people falling into error by prejudging, pre-assuming or speculating on what the court is going to do.

My view is that it is only sensible and proper to wait and see. It is also legitimate to stress this: it was appropriate, in my view, to say that certain parts of the Human Rights Act—you might think of Section 3, for example, which is deliberately framed that it should provide a power only in the event that the underlying legislation is unclear—could therefore be considered otiose because the legislation is super clear. Rwanda is a safe country. That is why, while those could go, Section 4 should remain. That was deliberate; it perhaps follows that, if it is deliberate, we think that it should have some currency.

Lord Falconer of Thoroton: The Rwanda Bill involves Parliament saying that Rwanda is a safe country.

Alex Chalk: Yes.

Lord Falconer of Thoroton: That is a question of fact that Parliament is deciding for all time.

Alex Chalk: Is that the question?

Lord Falconer of Thoroton: Yes.

Alex Chalk: Lest we forget, we have all sorts of arrangements with other countries. We have signed a prisoner transfer agreement with Albania, for example. The 1,400 Albanian nationals in our prisons are the highest number of foreign national offenders. We have an arrangement to ensure that they can be returned to Albania, where they will serve their sentence. Plainly, we have to be satisfied that the conditions in which they are going to be held are compliant with Article 3—on torture, inhumane and degrading treatment, and all that stuff—so we would seek to do that.

If, in fact, it came to light that those conditions were no longer acceptable, Parliament would have to consider that. People can make hue and cry in the proper way, whether it is an Urgent Question or whatever, in order to get it before Parliament. If Parliament said, "This is completely unacceptable", the state would be expected to act. One always has to be mindful that there are opportunities—people will have those opportunities—to get before Parliament concerns, if they exist.

Here is the other really important point. If you look at the policy pack, which I brought a copy of and which is public, you will see that it talks about the monitoring committee. You have it.

Lord Falconer of Thoroton: I do.

Alex Chalk: You are brilliantly organised; I would expect nothing less. It talks there about the "enhanced provisions" in the treaty—I am looking at paragraph 101—"to provide independent scrutiny of Rwanda's asylum procedures aimed at preventing the risk of mistreatment ... This addresses the findings in the Supreme Court proceedings that under the previous arrangements the work of the monitoring committee (MC), acting on behalf of the joint committee (JC), would necessarily be retrospective", and so on. It talks about the eight independent experts—

Lord Falconer of Thoroton: Sorry to interrupt you. That is really helpful. You have referred us to paragraph 101 and the monitoring committee. You will understand that the monitoring committee is a committee independent from Rwanda and the UK that monitors whether the Rwanda-UK agreement is being complied with.

Alex Chalk: That is correct.

Lord Falconer of Thoroton: What you have in mind is that, if the monitoring committee were to say, "The treaty is not being properly implemented by Rwanda", Rwanda would at that point cease to be a safe country.

Alex Chalk: That is correct. It can make unannounced visits to accommodation. It can sit in on interviews in the first instance bodies. It can observe hearings before the appeal body. It can, of its own motion, make reports. The central point I am making is that those reports are providing the greatest transparency to allow parliamentarians—such as yourselves in the House of Lords or, indeed, Members of Parliament—to raise these issues on the Floor of the House of Commons and for there to be no doubt about the conditions as they apply.

Lord Falconer of Thoroton: You are right to say that the monitoring committee allows transparency on whether Rwanda continues to be safe. If the committee reported that it is no longer safe, the foundation of the Bill would go away. Do you have any objection to it being said in the Bill that, if the monitoring committee says that Rwanda is no longer safe, the foundation of your Bill—namely, Parliament saying it is safe—goes away?

Alex Chalk: So far as the Bill is concerned, all these things have to be considered by way of collective agreement, so it is not necessarily right for me to be drawn personally on my view. The central point that I want to make on behalf of the British Government is this: we think that there are mechanisms here. There is a period of enhanced monitoring where, absolutely rightly, people want to find their feet. They can report to the joint committee in this period to include weekly and bi-weekly reporting, as required, and it produces a formal written report.

All I am saying is that we have deliberately elevated the status of this committee. We have deliberately ensured that it becomes open and transparent. Given that we have to deal with the practical realities and

likelihood of the lives that we lead, the reality is that, if that IMC produces some scathing or damning report, you can be sure that it will be ventilated at some length and at some volume in our democratic bodies—and, indeed, in the media. In and of itself, that creates an important drum beat so far as the pressure on Governments to act is concerned.

This is something that we have to be realistic about. You and I well know that, contrary to what might appear in the media, there was a huge amount of work taking place in Horizon to try to provide compensation for people and so on, yet this ITV drama in January this year suddenly expanded that to the wider population. That creates political pressure in and of itself. We have to be credible and realistic that we have ensured that we have set in train opportunities for these important issues to be brought to the attention of the British people, which, in turn, creates its own political momentum.

The Chair: Can you just answer the point, though? While accepting lots of ventilation, press and publicity, if the evidence shows that it is unsafe, what does it mean about the premise of the Bill?

Alex Chalk: The Bill is not dissimilar to plenty of other treaties and international obligations that rely, in effect, on a deeming set of arrangements, for example that Albania will incarcerate nationals fairly. That, in effect, is the treaty. Nothing in it says, "By the way, if things change, you've suddenly got to stop doing it", because that is implicit in all these treaties, is it not? You could think of any number of examples but, if things changed, you would expect a British Government, acting in accordance with their fundamental British values, leaving aside the European Convention on Human Rights, to seek to respond.

I am not suggesting that this is an academic point. It is a perfectly legitimate and reasonable one. There will be those of us who will have advanced some of these observations as well, but I also need to recognise that we have to make sure that we look at the practical reality: if those points emerge, they will garner their own political momentum.

Lord Falconer of Thoroton: If somebody was going to be extradited to Albania and said that, despite the treaty—

Alex Chalk: I know what you are going to say—"deeming". Please go on.

Lord Falconer of Thoroton: I am a slow-witted chap but, if evidence came to light that somebody who went to Albania was going to be killed or tortured, they could raise that in the courts, could they not? You cannot raise this question in the courts so it is a rather different situation.

Alex Chalk: It is, save for the fact that you can get before a court, albeit only in narrow circumstances, as I set out. I understand the point, so the issue here is about the ability to get behind deeming provisions. There is the political momentum point, which I think is valid, but I totally understand the representations that you have made. It is a reasonable point to make but it is also reasonable to note the wider political context.

Lord Falconer of Thoroton: This afternoon, in the House of Lords, Lord Hope is going to say that, if the monitoring committee says it is no longer safe, the apparatus of the Bill no longer applies while it is not safe. Perhaps you could go back, between now and the time we consider that, and see whether the Government would be willing to consider it, because it would be consistent with what you have been telling us about the importance of the monitoring committee. You read sections of Mr Cleverly's policy statements on how important the monitoring committee would be. We would be very reassured in the Lords if you put your money where your mouth is and said, "Yes, if the monitoring committee says it's not safe, we, the Government, will give effect to that".

Alex Chalk: I have heard that invitation. Thank you.

The Chair: I am afraid that we have not quite finished with this issue.

Q6 **Lord Keen of Elie:** You mentioned "deeming". In terms of this Bill, Parliament is deeming Rwanda to be safe. Do you agree that Parliament uses deeming provisions in legislation all the time? There is nothing unique about this.

Alex Chalk: There really is not. In fact, even when this committee considered this point, it recognised that that is a perfectly proper thing to do, just as ousters are proper so long as they are clear and are not a complete ouster, which they are not in this case. There is nothing unusual. The Crown in Parliament is sovereign and, if the Crown in Parliament seeks to do this, there is no constitutional bar to doing so.

The thing that would be wrong would be not to take account of what the Supreme Court has said, but this has been deliberately tailored to take account of those specific concerns and, indeed, to advert to those specific concerns in the policy statement that is referred to and in the way that the treaty is framed. It seems to me that that is a sensible, proportionate and respectful path. Although constitutionally striking, it is not innovative. It is a continuation of principles that have already been applied many times in the past.

Q7 **Lord Foulkes of Cumnock:** I wanted to touch on the European Convention on Human Rights and the European Court of Human Rights. Four times a year, Lord Keen and I, along with some of your colleagues from the House of Commons, go to Strasbourg and elect the judges to the European Court of Human Rights. So I take it that you do not agree with some of your colleagues that this is a foreign court.

Alex Chalk: Is it foreign or international? We are getting into semantics. We are a member of the European Convention on Human Rights and have been for a long time. I went there recently. The interesting thing is that, when you go into the office of the senior figures in the European court, what do you see on the shelf? A bust of Churchill.

Lord Foulkes of Cumnock: Exactly. It was founded 70 years ago.

Alex Chalk: We had great Scots Conservative lawyer, David Maxwell Fyfe, and all that. The point I made about Edmund Burke was not entirely flippant. We have to ensure that we can deliver on what are the proper, fair and reasonable priorities of the British people while remaining within the four corners of our international legal obligations. I think we can do it. I am not suggesting that it is easy or without controversy. Lord Falconer has made his opposition crystal clear but we have a duty to try to find a way to walk that tightrope. The British people would expect nothing else.

Lord Foulkes of Cumnock: If an individual's case was taken to the European Court of Human Rights and a judgment issued in relation to their being sent to Rwanda, would you accept that judgment?

Alex Chalk: You have to accept judgments. That is fundamental. Of course, that is what you have to do if there is a judgment, but you have to read the judgments. All I am saying is that, as a courtesy to that court, it is important to wait and see what is said. Judgments can be nuanced. They are almost always carefully crafted and considered. The whole point of the rule of law is that you can disagree with judgments but you have to accept them. That is how it works.

Lord Foulkes of Cumnock: When you say that, you are speaking on behalf of the Government and of all members of the Cabinet.

Alex Chalk: That is the position as I see it.

The Chair: I am conscious that you have a hard stop coming up and we have some important issues—legal aid, court backlog and data collection—to address so I will try to push us on at pace to deal with some of those.

Q8 **Lord Beith:** When you took office, you inherited what I would describe as a mess in an area where you are personally very concerned: access to justice through criminal legal aid, with the massive departure of solicitors' firms from the business of criminal legal aid and the loss of barristers from that field. The Government were in the position that they had been challenged successfully in the High Court over failing to examine or interrogate arguments for the 15% figure that your now colleague, Lord Bellamy, had recommended in his previous guise in the CLAIR report. What are you going to do now?

Alex Chalk: The first thing to say, somewhat flippantly, is that I am a legal aid barrister on a career break. I care deeply about legal aid. I am also acutely conscious that we need good people to be going into criminal law. We have wonderful chancery and commercial law barristers doing wonderful wills and trust work and so on, but we need to have really high-calibre people doing this work. I completely get that.

This perhaps goes back to my earlier point on reading judgments carefully but it is important—I know you will have done this—to read the Law Society action. The claimants were not successful on the access to justice point. However, let me be crystal clear. Some extremely

trenchant, sobering and striking remarks were made by the court, which I have read carefully and very much taken on board. The specific point was the Thameside issue—whether we could or should have considered whether a lower figure than 15% would have done the trick—so I totally get that point.

Just stepping back for a second, it is important to note that, first, we have increased fees at the police station by 15%. Secondly, we have increased fees in the magistrates' courts by 15%; that really matters because there is a general consensus, whether you speak to Lord Bellamy or any practitioner, that that early intervention—sitting there in the police station, giving that person advice on the initial disclosure that has come from the police and asking them what they are going to say and whether they should do a prepared statement, et cetera—is absolutely critical.

We also increased the basic elements of the litigators' graduated fee scheme. That is, in effect, the general case fee for the offence type, the hourly rate, the daily rate and so on; it went up by 4%. The thing that we did not do is the PPE stuff—the pages of prosecution evidence—because there was a concern that, frankly, the system was bent out of shape and that, in effect, because people were claiming on the basis of that evidence, it was distorting the cases. A small number of firms were often getting quite a lot of money far down the case when the Crown serves a whole load of telephone evidence, for example, which, in the heat of preparation for the trial, counsel is most focused on, and there was not enough money going up front. That was a legitimate concern.

However, here is an important point. On 29 January, we announced a crime lower consultation, which, if we proceed—the consultation closes in two weeks—would lead to an additional £21 million being invested in the profession. That would bring the overall increase up from 9% to 11%, so some significant funding would take place if that follows through. For those who say, "All you care about are the barristers, not the solicitors", I care deeply about both. That would mean, if that happens, £85 million going to solicitors and £44 million going to counsel.

The bottom line is that, yes, I have read that judgment. The sobering and striking remarks made were not lost on me. I will do everything I can to support the hard-working, diligent and extremely important criminal defence solicitors who do an exceptionally important role.

Lord Beith: As you said, the judgment was really about whether you had made sufficient inquiry as to the viability of the lower figure in dealing with the crisis I described and the lack of modelling on what the outcomes might be. We now know a little more about what the outcomes could be because this trend of solicitors leaving criminal work has continued, has it not?

Alex Chalk: I am very clear. We want to have more criminal defence. In fact, when I was sitting on the Justice Select Committee, I myself made the point that the average age of police station lawyers was too high. So this point is not lost on me. I can say that, every day, I think about what

we can do to strengthen this issue. I have written back to the Law Society indicating that I am prepared to meet it to discuss this issue, and I will do so in an entirely constructive way, mindful that we share a common interest; indeed, that the rule of law insists that we look carefully at this issue. I will continue to do so within the boundaries of what I can afford and what I can extract from the Treasury.

Q9 **Lord Thomas of Gresford:** What is it that you can extract from the Treasury? Do you feel that you have enough clout?

Alex Chalk: There are two issues there. First of all, it is very good to see you again, Lord Thomas.

Lord Thomas of Gresford: It is very nice to see you too.

Alex Chalk: I am not sure whether I need to declare to the committee our case in Kingston Crown Court. We did a case, which is one that lives in the memory—that of Bina and Asemani, as I recall—about an immigration fraud.

A noble Lord: Did you win?

Alex Chalk: The prosecution wins no victories and suffers no defeats. But yes, I did.

Lord Thomas of Gresford: I lost.

Alex Chalk: Justice was served. The central point is this: on funding, lest we forget, we are putting up to £141 million into criminal legal aid. That is extremely significant. At the same time, we want to ensure that, as we try to heal the system after the scarring effect of Covid, the more than 20 Nightingale courts remain open. Sitting days are running very hot at the moment. Incidentally, one reason why legal advisers are a rate-limiting factor is that you are running the criminal courts so hot and the number of sitting days is that much higher, so it is not entirely surprising. We are also increasing the number of judges by over 1,000.

On clout, the Treasury has been helpful in allowing us to make a number of changes from CDEL into RDEL—capital into revenue—and so on to meet these challenges. It is a point that I continue to make—those conversations are necessarily private—but you can be assured that I well understand and am never slow to emphasise the importance of getting through case loads.

Lord Thomas of Gresford: You will see from the report that we produced and that you have read that the view was taken—by this committee and certainly by the ex-Lord Chancellors who sat on the committee—that it is necessary for you to have the responsibility for prisons in order to have enough clout to get money out of the Treasury. Would you agree with that?

Alex Chalk: There was a difference of view on this. In fact, the former Lord Chief Justice has spoken powerfully. It must be very difficult for

him; he is having to bite his tongue throughout this entire hearing. I suspect that, if he were to speak, he would say that he takes a different view.

Of course, there are issues. You have your oath, which is to provide resources for the courts—I paraphrase—but that bumps up against the obligations of the discipline that comes from being a whipped MP and Cabinet collective responsibility. So there are, inevitably, tensions in that. There are those who say that you need to have the heft of a big spending government department, otherwise you become, as someone called it, an adornment or a bauble—something that is considered somehow remote and removed.

There are arguments that cut both ways. It is finely balanced. Your committee ultimately decided that it is not perfect but, when Lord Falconer wrestled with this, he had to wrestle with imperfect options; by the way, that is often the business of politics. The view of this committee was, "There are arguments both ways but there's a huge amount of disruption that comes from a big judicial office reconfiguration and it ain't worth the candle, frankly". I broadly agree with that, but that is not to say that the current arrangements are beyond reproach. They are not; indeed, distinguished figures have made the arguments against very powerfully.

The Chair: Sadly, I am going to invite the former Lord Chief Justice and former Lord Chancellor again to ask questions.

Q10 **Lord Burnett of Maldon:** We are still on legal aid so I will bite my tongue—but not for ever. The volume of work that went into the criminal courts leading up to 2019 was on a steadily declining path. At the same time, the rates of pay for criminal legal aid lawyers were frozen, broadly speaking, except for one or two adjustments. One of the consequences is that the number of practitioners, both solicitors and barristers, diminished. You have referred to the courts now running hot—in other words, about 25% ahead of the volume of work that was being dealt with in 2019-20.

Lord Bellamy's report was designed to provide a basis for the reconsideration of legal aid fees. He looked at this for some time, although he acted very quickly and reported in 2022; we have been hearing about his 15% base recommendation. Of course, at about the time that his report occurred, we had inflation hit an unprecedented rate—at least in recent times—so everything that Lord Bellamy recommended has already, in effect, been eaten up by inflation.

To what extent are the changes you are making likely to support both growth in the number of solicitor practitioners in criminal legal aid and a return to criminal legal aid at the Bar? As we know, a lot of cases are being lost at the moment—by which I mean adjourned and put off, sometimes for months—because there simply are not the lawyers available to deal with them.

Alex Chalk: There are a number of points there. The first is that it is certainly true that the case load in the Crown Court went from around 48,000 in 2010 to around 39,000 just before the pandemic. That partly reflects the fact that crime has come down. Burglary is right down. Although I would love to take the credit for that as a Government, I have to recognise that sometimes people do not think that there is anything worth burgling. There are trends that have changed. Violent offences are right down. By the way, reoffending is also down from around 31% to 25%.

I will make a brief plug because this is an important innovation that we have made; I will then return to the points. There are 12 weeks' guaranteed accommodation for people coming out of custody. I went to speak to a probation officer at Luton and Dunstable who has been doing it for 30 years. He said that, in those 30 years, this is the single most important government innovation, which has led to crime rates and reoffending rates going down. There are things that have happened that underpin why that figure dropped to 39,000. That is point one.

Point two is this: you said that there had not been injections of money. That is not quite the case. In 2020, the AGFS got an uplift of around £23 million.

The third thing concerns this business of how you attract people into it. On where we have got to, I recently spoke to a number of RASSO practitioners. The reality, according to the practitioners I spoke to, is that the fee you get for, say, a five-day rape case—as we know, it can sometimes bleed into a sixth day if the jury goes out and takes a while to come back—can be about £4,500. It is not a trifling sum of money—it is a significant sum—but these cases take an awfully long time to prepare. That is point one.

Point two is that you can have a Section 28 hearing, which, as you know, can really disrupt diaries. I have increased the funding from £670 to £1,000 to try to address this issue.

The other issue that is raised is that these cases are gruelling. If you have to go, back to back, from rape case to rape case to Section 18, these things are extremely onerous. What are we trying to do? We are, as I say, increasing the fees where we can, within the boundaries of the funding that is available.

The other intervention we have created is something that I never got the benefit of: we now pay people to review disclosed material. You, as a practitioner, know, as will other practitioners here, that the key to your case can often be in the disclosed material. When Lord Thomas of Gresford was considering material that we disclosed to him in the case of Bina and Asemani, he would have been up until 2 o'clock in the morning reading this stuff, for which he was not paid a penny piece. We changed that so that he would in future be paid for it.

The final, and perhaps most important, innovation to avoid this situation where you lurch from problem to problem is the CLAAB advisory body, where you have Her Honour Judge Taylor there to help give an indication of how to keep the system calibrated so that it provides those incentives.

Stepping back, we want to ensure that it is properly funded. This is not meant to be a one-off. We want to look again and make sure that the system continues to be funded properly; we have set the processes in train for that. We want to listen to the professions when they come back to us on issues such as Section 28—I have done that—but let me just say this, if you will forgive me a gentle push-back: we will never say that we want to derail the gravy train of legal aid, impugn legal aid barristers or suggest that they are somehow on the take, as others sought to do. We will never vilify legal aid barristers. We will always recognise them for what they are: hard-working, passionate and dedicated people who are committed to strengthening justice in our country.

Q11 **Lord Falconer of Thoroton:** I am not clear from what you are saying whether you accept Lord Bellamy's recommendation that you need 15% from the figures to ensure that the criminal justice system continues to function effectively. Are you resiling from that? How are you going to comply with the Divisional Court's requirement that you consider whether the criminal justice system can survive without a 15% overall increase?

Alex Chalk: No, we do not resile from that.

Lord Falconer of Thoroton: So you accept it.

Alex Chalk: Hang on. We do not resile from that—absolutely not—but, if you read the report, you will see that profound concerns were raised about the PPE system. He made a number of points—it was a very detailed and authoritative report—but one of the central points was that you need to front-load the resource in the system. You need to ensure that solicitor A is turning up and giving proper attention to the critical conversation that takes place in the police station, when the police have provided an initial disclosure about what the witnesses are saying, and then, of course, have the interview.

Secondly, when you are preparing the case and tipping up at the magistrates' court, if you need to go and instruct an expert because that is going to be critical to the case, you need to ensure that the resources are going in at that point.

There were concerns that he raised about the PPE thing. If we want to ensure that this is sustainable and that we do not simply go back to the previous, unhelpful system, it is right that we consider that. We will of course comply with what the court indicated, which is why the Thameside point has been raised and why we are looking at it again. That is exactly what we have been asked to do and exactly what we will do.

Lord Falconer of Thoroton: Do you accept his basic premise, which he gave in November 2021, that you need "at least 15% above present levels" to ensure that the whole CGS can function effectively?

Alex Chalk: Of course we accept the basic premise of it. It is also worth reflecting that some really important steps have been taken. I am moving away from crime for a second but we have injected £10 million a year into housing loss prevention advice. We have taken special guardianship orders into the scope of legal aid. We have taken things such as joint marital assets, which are illiquid assets, out of people's assessment of their assets for the purposes of legal aid. The means test review, once it is fully implemented, will inject £25 million or so.

We care deeply about this stuff and want to increase access to justice. By the way, those reforms would lead to an additional 2 million people coming within the scope of legal aid. You will know why I say this, Lord Falconer, but it is important that we do not fall into the trap of vilifying legal aid barristers. I had to live with a system, when I was in practice, of hearing Government Ministers trash us and name and shame me because I earned more than you said I should earn in one month. I had to be publicly rebuked for that because there was an environment that basically said, "This lot have got their snouts in the trough. They're on the take. They're bad people". As I say, we will not do that.

I just want this committee to understand that, for a long time, there was a very negative attitude towards legal aid barristers. Although I welcome the zeal of the converted, there are people who took a very negative approach to us. I hope that that is all in the past.

The Chair: You have certainly championed legal aid barristers. I am sure that they will be pleased to hear that. We are now going to turn to court backlogs, which have been worrying this committee for a long time.

Q12 **Lord Thomas of Gresford:** May I say first of all that my recollection of our case is that I made five trips to Kingston for interim applications without being paid a penny.

Alex Chalk: There you go.

Lord Thomas of Gresford: Whether that applied to prosecuting counsel, I could not possibly say. What action is being taken to reduce the outstanding case load in the Crown Court? The view that I heard expressed recently by the chairman of the Bar Council is that there is a lack of prosecuting and defence counsel—that is, it is not so much judges or courts, but there are not sufficient people to conduct the cases.

Alex Chalk: It is a great limiting factor. There is no doubt about that. It is important for us to recognise that we came under a lot of pressure during the pandemic to bin off jury trials. There is literally no system on God's green earth that is less suitable to run during a pandemic than a jury trial, for reasons that are obvious. You have small retirement rooms. You have often relatively cramped courtrooms. When there is a point of law, they have to go out and go down narrow corridors, et cetera. I strongly believe that, if we had listened to that, we would have made a profound mistake. As I say, juries are the lamp of our liberty. This does not mean, by the way, that I necessarily think every single either-way

case should be an either-way case, but that is perhaps a discussion for another day.

We were right to hold on to that. So we have to be clear that, if you take that decision of principle, there is a price that you pay for principle. It inevitably meant that the rate was going to tick up, from 39,000 or so to the figure that we have today, which is of course higher than we would like. It is also important to note that what we inherited was 48,000, which went down to 39,000.

The second issue to bear in mind is this: contrary to what you might read in the media, the number of rape cases being prosecuted compared to 2010 is 32% higher. It means that, instead of the case load in the Crown Court—I am exaggerating now to make the point—being a whole load of handling stolen goods, which are susceptible to pleading, there are a load of cases that tend not to plead. People do not tend to admit to being a rapist, for example, so it is a stickier case load.

How do you go about dealing with it? There is no silver bullet. It is perhaps not showy and does not lend itself to a great big reveal, but you have to do all the basics. You have to make sure that you, first, recruit more judges and, secondly, have a sensible working relationship with the senior judiciary to talk about things that can make a difference. For example, I think that it is an attractive and sensible option to talk about a virtual bail court so that you can encourage bail application, as it were, and so that the courts can make their decisions entirely independently on the facts in front of them about whether people need to be in custody or can be sensibly and safely remanded, given that our remand population has gone up by 6,500 since Covid. That is an inevitable, remorselessly logical and arithmetic consequence of the pandemic.

Lord Thomas of Gresford: It is 15,000 or something.

Alex Chalk: It is more than 15,000. It was 9,000 before. That has to be addressed in some way, so you deal with that. You have that sensible relationship with the senior judiciary. You also invest in legal aid—as I say, there is £141 million—and you keep the Nightingale courts open.

You then just have to do prioritisation. The judiciary has jurisdiction over listing but we saw the SPJ making his announcement about those rape cases that have been in the system for longer than any of us would like. The system will heal. It is going to heal. We just have to be sensible about it and address it in a way that encourages people into the profession.

There are things that we can do. I meet with the chair of the Bar Council, circuit leaders, the inns and so on. There are things that we can do to attract more people into the profession but some of the steps we have taken, particularly so far as legal aid funding is concerned, are a step in the right direction. That is borne out by steps such as ensuring that, when the Bar came to me and said, "We need to increase the Section 28 figure", I did it. If I can do it, I will.

Lord Thomas of Gresford: Can I suggest one thing that you might consider? In the teaching field, maths and physics teachers, who are in short supply—just as the junior Bar is in short supply in the criminal context—are given bursaries. Have you considered a bursary for potential criminal barristers? I declare an interest in that I have a grandson who is about to—

Alex Chalk: Does he want to do it?

Lord Thomas of Gresford: Yes, he wants to do it.

Alex Chalk: That is great. He should do it; if he is talented, has integrity, believes in public service and wants to ensure that the guilty are convicted, the innocent walk free and the public are protected, I hope that he will.

As you know, the inns are brilliantly supportive. I had the good fortune to benefit from a scholarship, and plenty do. I am at Middle Temple but Inner Temple provides fantastic scholarships, as do Gray's and Lincoln's. We consider all sorts of things.

I was with TheCityUK last week and spoke to a number of the magic circle firms. They care about this stuff as well. They care deeply about us being one Bar and one legal system. That means that the Commercial Court is really only as strong as access to justice throughout the system. They want to play their part as well. We just need to think sensibly, carefully and calmly, with all parts of the system, about how we can encourage more into it.

Lest we forget, the principal issue here is that the courts are running far hotter and at a far higher rate than pre Covid, which inevitably means that some rate-limiting factors are going to pop up from time to time. We have worked methodically through those problems.

Q13 **Lord Burnett of Maldon:** This is a subject that you and I used to discuss pretty well every week until I left office at the beginning of October last year. Can I just pursue one thought with you? One of the real problems in the criminal justice system is that, even with what appear to be relatively straightforward cases, there is a large number of actors, as it were, who all need to work together to make the system efficient.

One of the things I was very concerned about, as you and this committee know from when I used to come here to give evidence, was that there were too many silos in the system. Institutions and organisations were looking too much at their own small part and not at the impact of what they were doing on other parts. As you know, one of the initiatives that we in the judiciary pursued was what became known as the Crown Court Improvement Group to bring together all of the players in a private environment. That avoided what tends to happen in public: when there is criticism, the leaders say, "It's not me, it's him or her".

For some time, there has been in existence a Criminal Justice Board.

When it was established eight or so years ago, it was designed to bring together the real principals in the system: the Lord Chancellor, the Home Secretary, the commissioner of the Metropolitan Police, the Attorney-General and so on. My sense is that it slightly flagged; perhaps Covid had a part in that because we were all very focused on other matters. What do you see the role of the Criminal Justice Board being? Am I right in thinking that you chair it?

Alex Chalk: Yes.

Lord Burnett of Maldon: How do you see the role of the Criminal Justice Board in driving through improvements that require all the different parts to work more efficiently together?

Alex Chalk: The CJB is brilliant. It is an incredibly valuable forum to do exactly as you say: discuss the challenges that we all have a shared interest in trying to solve. It can provide some overarching direction. By the way, having the police in the same room as the lawyers can be unbelievably valuable. We have reheated or revived it—call it what you will—and it is, dare I say, working pretty well and is very valuable. I have been hugely assisted by its wise and thoughtful input, so that is great.

The CCIG—the Crown Court Improvement Group—is fantastic, particularly locally. We all have to model ourselves on Wales. What it did during Covid was fantastic. There was a real sense of a "team Wales" approach, where there was such good communication between the governor of the local prison and the resident judge, whether it was in Swansea or Cardiff. If there was a problem of people being produced, you would just get on the phone and say, "What's going on?" You would speak to the local PECS co-ordinator; it worked incredibly well. That is the model and can be enormously effective. We are seeing it working very effectively in parts of the country such as the West Midlands. It is about providing a local esprit de corps—that can-do spirit—and, above all, communication to try to resolve some of these issues. The early signs are that it is extremely effective but I want to see more of that, not less.

Q14 **Lord Falconer of Thoroton:** In relation to the Crown Court's case load, are the prisons full at the moment?

Alex Chalk: The prisons have faced acute pressure. I know that you had this. We should just be clear and adult about it. The prison system comes under intense pressure from time to time. I remember being a practitioner—if I have the details of this wrong, you will correct me, I am sure—at the time when John Reid was Home Secretary. I remember you having to say to him, "Sorry, chum, you're not putting prisoners in Inner London Crown Court cells". There was acute pressure at that time and you rightly said, "I'm not doing it", which was absolutely the right thing to do.

Lord Falconer of Thoroton: Those are not quite the facts.

Alex Chalk: That is how it was reported in the *Guardian*, so it is probably wrong.

Lord Falconer of Thoroton: The position was that there came a point where we got close to it and had to make various changes. What are you going to do to deal with the fact that, as you run the Crown Courts hot, as you put it, the number of people who are going to prison may go up and the prisons will fill up more quickly than the Home Office estimates?

Alex Chalk: As you say, they may not be the facts. I quote: "It was the news John Reid didn't want to hear. 'It's unacceptable', said the Lord Chancellor on Wednesday. And in two words, the Home Secretary's room for manoeuvre became ever more restricted". That was talking about the Home Secretary's plan to house prisoners in the cells of the Inner London Crown Court.

Lord Falconer of Thoroton: Who was the author of that?

Alex Chalk: Gaby Hinsliff, Ned Temko and Jamie Doward from the *Guardian*. The article, headed "Reid runs out of time as prisons run out of space", was published on Sunday 28 January 2007.

The Chair: You obviously have a team prepping you.

Alex Chalk: No. That was me googling this morning; there is no team. To the point, they are running hot and we have been clear about that. It is worth reflecting that, at that time, the prison population was around 81,000. It is now around 88,000 because there has been a considerable expansion. We have the largest prison-building programme since the Victorian era. We have opened HMP Five Wells and HMP Fosse Way. HMP Millsike will open next year. There is planning permission for Grendon, Gartree and, we hope, Garth in due course. There is pressure but I do just want to make one point.

Lord Falconer of Thoroton: Before you do, this is the key point that I am interested in. You are getting to a point where the prisons are literally going to be full. The courts have to sentence people in accordance with the law. What are you going to do when the prisons get full? You are plainly under huge pressure—people in the prison system are making that clear to everybody—so what are you going to do?

Alex Chalk: There will always be sufficient place in the prisons to ensure that we can give effect to the decision of a court to remand someone or sentence them to custody. We are prioritising expansion of capacity. As I say, we have prisons that are being built. They are fantastic prisons, by the way; they are safe, decent and rehabilitative prisons. We have really come up with an excellent formula for that, dare I say.

We are also bringing back capacity that, for whatever reason, is offline. You may recall that HMP Liverpool had a disastrous HMIP report. We have invested heavily into it. I went back and said that prisons, as well as prisoners, can be redeemed. It is a fantastic prison. It is working really well now. We are bringing on an additional 300 places there by doing intense damp works. We are putting up new house blocks in Hatfield, Sudbury and Rye Hill. At Morton Hall, we have some additional capacity

coming on as well. Birmingham is getting a great deal of investment. We are bringing on rapid deployment cells as well. We are doing all these things to increase the supply of spaces in the system. As I say, at HMP Millsike, which is Britain's first ever all-electric prison, a capacity of about 1,400 will come online.

I have also been clear that one thing that has frustrated me in this job—I dare say it will have frustrated you too—is that the planning system can sometimes be restrictive. There has been a delay because we have not had permission for Garth, Gartree and Grendon/Spring Hill. We have it now, but it took longer. That is why I have £35 million to buy land up front, way ahead of when you need it, and to get the planning permission way ahead of when its needed so that it is never a rate-limiting factor.

Lord Falconer of Thoroton: The frustrations I found were that the Prime Minister and the Chancellor of the Exchequer would often not understand the pressure. Therefore, you would find that you would get behind and end up in the situation that I believe you are currently facing, where, despite your best hope that there will be places in prisons, there comes a point when there are not.

Alex Chalk: In fairness to the Prime Minister, he, as Chancellor, funded the largest expansion of prisons since the Victorian era. For the avoidance of doubt, the first of these prisons, at Five Wells and Fosse Way, are at the thick end of a quarter of a billion pounds each. These are expensive prisons. The money was made available to do so. I absolutely commend the Prime Minister on doing so. By the way, these things are difficult to build. I remember you saying in your day that you were going to build these Titan prisons, but you never did.

Lord Falconer of Thoroton: We never could because of planning.

Alex Chalk: Exactly. You could not get the planning. All I am saying is that these are vexed issues. It is not perfect. In 2010, the prison population was 81,000; it is now 88,000, ergo we have created more capacity and we are creating more. That is not to say that there are not difficulties but the central point is worth making, and this is really important.

Lord Beith: Ought not this situation lead to a more mature debate about the use of a very expensive resource in the prison system, whether we are using it for the right people and whether we are using alternatives effectively?

Alex Chalk: I would love to deal with that. I could not agree with you more. Can I come on to that in one second? I just want to make this narrow point because it is important. In the agony of Covid, we received pretty credible advice saying, "This airborne virus, which flourishes in confined premises, is going to rip through the estate and kill thousands of people. We therefore suggest that you should release a minimum of 16,000 people". Incidentally, before anyone thinks that this was somehow unusual advice, it was followed in many other countries.

I went to America recently and asked, "Do you have prison population pressures?" They said, "Yes, we do, but they're not as bad as they would have been because we let out tens of thousands of people". The state of California alone let out 11,000 people. France let out 13,000 people. We let out fewer than 200 and, although every death is a tragedy, fewer than 200 people lost their lives in prisons in England and Wales. That was because of the brilliant work of HMPPS officers, who managed an extremely difficult situation and came in even when members of their family were no doubt saying, "For goodness' sake, don't go into work and put yourself at risk".

The point that I make is this: yes, there is an acute pressure, but those who advert to it and seek to make capital out of it need to answer the question of what they would have done in terms of releasing those 16,000 people. Would they have got rid of jury trials? If you take the view, "No, we wouldn't have released them and we were right to keep jury trials", this is a pressure that was always going to come. We are dealing with it in a mature and sensible way that prioritises the safety of the British people.

To the other point, I have always said, "For goodness' sake, let's follow the evidence, not emotion". Remember what Mr Jaggers said in *Great Expectations*: "Take nothing on its looks; take everything on evidence. There's no better rule". The evidence shows that, if you take a very short sentence—say, under 12 months—the chance of someone reoffending after those 12 months, if it is an immediate custodial sentence, is 55%. But suppose they spend that with a sword of Damocles hanging over them and with a tough suspended sentence order that goes a bit like this: "You need to do your unpaid work because you've got to pay your debt to society. You need to attend that anger management course because, frankly, you can't be kicking off in a pub queue in Cheltenham in the way that you did. You need to address your alcohol problem. You need to observe a curfew because, frankly, society doesn't want you on the streets on a Saturday evening". If people comply with that, their chance of reoffending, rather than 55%, is under 25%.

I want to ensure that prison cells are available for those of whom we as a society are most scared. That is why we make no apology for the fact that we repealed Section 244 of the Criminal Justice Act 2003, which said that, come what may, all those on a standard determinate sentence had to get out at the halfway mark; that included, by the way, between 95% and 97% of rapists. People who had done glassings and other dreadful crimes had to come out automatically at the halfway point. We changed that and were right to do so.

Equally, follow the evidence in respect of those where it is a short custodial sentence and where banging them up means that you have trashed their reputation. They do not have a job. They will have no ability to get back in the workplace. It is about reputation, conviction, punishment, disgrace and so on. We just have to be smart about the way we do sentencing.

The final thing I want to say is about the data and tech that are available to us now, compared to 10 years ago. It is night and day. These alcohol tags can not only monitor whether you have drunk—they will, by the way, flag it up with probation within a matter of 20 minutes—but tell whether you are in an alcoholic environment, in other words a pub. They can tell whether you have put yourself in a risky situation but have not drunk. They are so sensitive. Guess what? The compliance rate is over 97%. That gives judges and magistrates the option to provide really powerful and restraining sentences.

The Chair: Can you take one more question? I am conscious of your time.

Alex Chalk: Yes.

The Chair: We have three more questions; perhaps I will just write to you with the others and invite a reply. Data collection is another big issue for this committee. We have always looked at data from two perspectives: that of promoting operational efficiency and workflow management; and that of better decision-making, because you get greater insight. Those are the two dimensions.

Q15 **Baroness Goldie:** I will be brief. With reference to the MoJ's digital strategy for 2022-25, what progress is being made on ensuring universal access by professional public court users, for example solicitors, to data? Specifically, are all the IT systems now speaking to each other?

Alex Chalk: Thank you very much for that important question. Significant progress is being made on digitising court services. By the way, we have to do this if we are going to compete and keep pace with other jurisdictions. As I say, we are the second largest legal centre in the world; digitisation is important for ensuring that we keep our competitive advantage.

By March 2025, we will have digitised 14 court and tribunal services. It is worth reflecting on some of the quite striking data. Those services have received 2.4 million digitally submitted cases and over 1 million online pleas in criminal cases. Common Platform, which I absolutely accept had some teething problems, has increased automation through better data flows. As you know, it provides a single reference number as cases move from the magistrates' court through to the Crown Court and potentially beyond. It automatically and instantaneously shares court results to all parties, whether that is DVLA or others.

That is quite important and welcome but, as with any IT system, as I say, there were difficulties early on. In December, we published 34 workarounds and when staff can expect them to be removed by the programme, 29 of which will be in the next 12 months, so we are in a better place with Common Platform. There is still work to do but, as I say, particularly over the past few months, we have been seeing real and marked improvements.

Q16 **The Chair:** Can I just ask a question on data? We have not really

mentioned the family courts. It overlaps with both backlog and data collection. In the family justice arena, statutory guidance is clear that exploring family and friends as a potential source of support for children is an alternative care option. We still have this balance of risk staying with local authorities and are now seeing significant increases in newborn babies being subject to care proceedings in England and Wales; I see that figures have just come out on that. Is data being collected from the family courts on where and when family group conferences have been used and where they have impacted court decisions?

Alex Chalk: Can I thank you for raising family? All too often, crime dominates everything and people do not talk about family. We recognise its importance, first of all in its own right but also because of the downstream, knock-on impacts. If you do not address these issues early, guess what? The burden and repercussive effect are so significant. That is why, in a point that I hope will be welcomed by this committee, it was really encouraging to hear that more than £50 million is being provided for early legal advice in family. This is something I campaigned for, as did Lord Bellamy. It is dramatic and hugely welcome; I think you will see it pay for itself in spades. Forgive me for putting that on the record but it is an important point.

On the specific issue you raised—family and friends as a potential source of support—we completely get that. It is about supporting wider families to find solutions that work for them.

On holding data, do not forget that, if that works—in other words, if the family and friends support network works and litigation is therefore not necessary—we will not keep a record of that. We keep a record only when it comes into the courts, so it would not really be for us. The Department for Education may hold that data on the use of those family group conferences by local authorities. We certainly welcome it. As I say, we would not hold the pen on data storage.

The Chair: Would not the courts sometimes take the initiative to call those family group meetings if they saw an opportunity for that?

Alex Chalk: I do not think so. Let me reflect on that; I will write to you, if I may. My instinct is that that probably is not something the court itself would order. I do not have the closest feel for that, so let me think about and reflect on that and write to you.

The Chair: What about leaving the balance of risk in local authorities because of the backlog in family courts? How is that progressing? Oh, do you have to go?

Alex Chalk: I do. I am so sorry.

The Chair: That is fine. I will write to you on the outstanding question on that.

Alex Chalk: I would be happy to seek to respond in writing.

The Chair: Thank you very much indeed for engaging with all the questions.

Alex Chalk: I appreciate having the opportunity to speak to this panel.