



HOUSE OF COMMONS

Justice Committee

Oral evidence: Work of the Law Officers, HC 577

Wednesday 15 January 2025

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Members present: Andy Slaughter (Chair); Josh Babarinde; Mr Alex Barros-Curtis; Pam Cox; Linsey Farnsworth; Sir Ashley Fox; Warinder Juss; Mrs Sarah Russell; Dr Neil Shastri-Hurst.

Questions 1 - 55

Witnesses

I: The Rt Hon. Lord Hermer KC, Attorney General, Attorney General's Office; and Lucy Rigby MP, Solicitor General, Attorney General's Office.



Examination of witnesses

Witnesses: Lord Hermer and Lucy Rigby.

Chair: Welcome to this evidence session of the Justice Committee, meeting, for once, on a Wednesday morning, to hear evidence from the Attorney General and Solicitor General. We are very pleased to have Lord Hermer and Lucy Rigby MP before us. Thank you very much for attending. We will, as we always do at the beginning of the Committee, briefly give declarations of interest.

Josh Babarinde: I am Josh Babarinde, Lib Dem MP for Eastbourne, the sunniest town in the UK. I have no other interests to declare, outside of what is in the register.

Dr Shastri-Hurst: I am Neil Shastri-Hurst. I am a practising barrister. I am registered with the Bar Council and BSB, and am an associate tenant at No5 chambers.

Chair: I am Andy Slaughter. I am the Chair of the Committee. I am a non-practising barrister, and a patron of two justice-related charities, Hammersmith law centre and the Upper Room, for ex-offenders. I am a member of the GMB and Unite trade unions.

Mr Barros-Curtis: Good morning. I am Alex Barros-Curtis. I hold a practising certificate from the SRA, and am a member of Unite and GMB, and an ordinary member of the APPG on whistleblowing.

Mrs Russell: I am Sarah Russell. I am a solicitor holding a practising certificate, although not currently doing any work—apart from the much work that we all do as MPs. I am a member of Community and USDAW trade unions and am on the executive of the Fabians.

Linsey Farnsworth: I am Linsey Farnsworth, the Member of Parliament for Amber Valley. My interests are as per the register. Of relevance to today's hearing, I am a non-practising solicitor, formerly with the Crown Prosecution Service, a member of various unions, including the FDA, and a national mission delivery champion for the safer streets mission.

Pam Cox: I am Pam Cox, and my interests are as declared on the register.

Warinder Juss: Hello. I am Warinder Juss, MP for Wolverhampton West. I am a solicitor with a practising certificate, but not practising. I am an executive council member of the GMB trade union and a member of various APPGs.

Chair: Thank you very much. Do the witnesses want to introduce themselves?

Lord Hermer: I am Richard Hermer. I am the Attorney General for England and Wales, and the Advocate General for Northern Ireland.

Lucy Rigby: I am Lucy Rigby MP. I am the Solicitor General.



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Q1 Chair: Thank you very much, and again welcome. We will start with a few general questions. In some cases it will be obvious to whom we are putting them, but I leave it entirely up to you whether either or both of you choose to answer.

The first question is really for you, Lord Hermer. We note from research—not mine, but research done for us—that you are the first Attorney General for over a century who does not have previous parliamentary or political experience. I do not know whether you think that is an advantage or a disadvantage, or irrelevant, but how do you see your role, given that the Law Officers are often in a difficult position between being legal advisers and having a political role?

Lord Hermer: I think there may be some disadvantages, but I think they are outweighed by the advantages. I see my primary role as providing independent legal advice to Government. I think that coming unburdened by party politics at the retail end assists in providing clear and independent advice. I come with a knowledge of politics, and a deep interest in politics. I come with a deep interest in Parliament and how it works, and an understanding of how it works. I do not have a lived experience of day-to-day parliamentary life, but I do not think that gets in the way of my job.

Q2 Chair: But you are now a party politician. You take a party Whip in that way, and that is not something that you were used to doing before; but I suppose that is no different from any previous Attorney General. How do you manage that? Your whole life experience is as a lawyer and in speaking up for your clients, and taking a position that is dictated by your brief. Now you have to balance that with a slavish loyalty to party.

Lord Hermer: Well, there are different aspects to the role of Attorney General and Solicitor General. As I said, a core part of that role is providing legal advice. There is an enormous divide between my role as a politician, when I am voting in the House of Lords, and my role as Attorney General, when I am advising on matters of law. When I am advising on matters of law, I am not taking a party line. I am not following instructions. I am not being party political. I am acting purely as a lawyer to identify what the law is, and how it needs to apply.

Q3 Chair: The other thing that is said about you, perhaps unfairly, is that you are very much a personal appointment by the Prime Minister—obviously on merit, but also because he is someone you have known for a long time, and he knows about you. Does that in any way influence the way you work?

Lord Hermer: It has no bearing at all on how I work. As you say, it has a bearing on why I was appointed, but, at all levels, when it comes to legal advice, whether I am advising the Prime Minister or other members of Government, my personal relations with individuals have no bearing on the legal advice that I give; nor should they.

Q4 Chair: Perhaps I could ask you, as you are relatively new to your role, how you are finding it, and how you are adjusting to that dichotomy.



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Perhaps you have slightly more experience of party politics than the Attorney General has, but how do you see that role, which is perhaps a difficult one to perform?

Lucy Rigby: The first thing, Chair, is that it is an incredible privilege to serve this country in the role of Solicitor General. You are right; I have some experience of parliamentary politics, but, as the Attorney General says, the most important thing is the quality of our legal advice, which is delivered to Ministers in a robust and accurate way, without fear or favour. It has a political context, but the key point is that high-quality advice, and it is without party politics.

Q5 Chair: Lord Hermer, you have spoken up very clearly. I attended your lecture, hosted by the Bingham Centre for the Rule of Law, earlier, and you have put the rule of law at the centre of what you say you should do. That is exactly right, in that way. We may perhaps find it frustrating that you may state these things as a matter of principle—and we may all agree—but, when it comes to the practicality of implementing it, you would, I am sure, say that your advice is confidential. Indeed, whether you have given advice is confidential. How are we supposed to join up the dots between the principles that you follow and the practical effects of that on Government? If we ask you, you will say, “It’s not something I can discuss,” and if we ask Ministers about it, whom you may or may not be advising, they will say, “That’s a matter for the Law Officers.”

Lord Hermer: It is a really good question. Can I first describe why I, and Lucy, cannot talk about advice that we may or may not have given? You all know that there is something called the Law Officers’ convention, which is incorporated into the ministerial code. It means that nobody can say whether or not a Law Officer has advised, let alone what that advice might be. That effectively provides the same legal privilege protection to an Attorney General and the Government as any lay person would have with their lawyer. It is a form of legal professional privilege. That is an important principle to apply, because we as Law Officers must feel that we are able to impart confidential advice to our clients. It is essential for the good running of government, and for the discharge of our duties.

I understand that there is some frustration, not least from the perspective of the Select Committee, about not being able to look under the bonnet and assess whether we are doing our job. Are we providing accurate advice to Government?

That can be tested in a number of ways—not least when we look at what the Government’s policies are, and whether those abide by the rule of law and constitutional principles. You can look at it when courts examine Government policies and legislation. There are yardsticks and means of assessing and inferring whether we are discharging our functions, but our functions as both Attorney General and Solicitor General, in respect of the rule of law, are not limited to the confidential advice that we give to Government. We play a role across Government that is broader than that. For example, we are deeply involved in the PBL and the standards of legislation. One of the concerns that we have had, coming into



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government, is to raise standards in how we legislate—not least in respect of secondary legislation. That is a rule of law issue. Also, together with the Lord Chancellor domestically and the Foreign Secretary internationally, we have a role getting out there and talking about the rule of law and its importance.

So you are right; the room for scrutiny of the legal advice that we give is limited. I think that that is justified; but there are plenty of other areas of our work from which you will be able to assess whether or not our deeds match our rhetoric.

Q6 **Chair:** We might come on to some worked examples later, perhaps. So that is, if you like, the norm for when advice is given and perhaps accepted. What happens if advice is not accepted? Where does that leave you? If you have given advice to Ministers and they have not followed it, what happens then?

Lord Hermer: It is quite hard to answer that question in the abstract. It depends on the terms of the advice. Advice could be, “You have a range of options. My recommendation would be A,” but the Minister might decide to do B. It is perfectly appropriate for a Minister to make those decisions. It may be a matter of little legal significance, where law is of only peripheral relevance, in which a Minister may take a different view from that of a Law Officer.

There have been, over history, of course, some huge constitutional issues about legality, in which Law Officers have had to make some very difficult decisions and give some very difficult advice. I anticipate that any Government who seek to abide by the rule of law will, when it comes to an issue of enormous constitutional importance, where the law is clear, follow legal advice.

Q7 **Chair:** The difficulty with examples is that you will probably say, “I can’t really talk about that.” I do not want to pre-empt questions that are coming up, but one recent example would be, say, over arms export licences to Israel during the current conflicts—arising from that—and its being thought that you had taken a legal position on how it should be dealt with, effectively telling the Department for Business and Trade or the Foreign Office, “This is the way you need to deal with this.” Do you see that as how you can direct the way the Government behave, and what do you do if they do not behave in the way you expect?

Lord Hermer: I cannot, obviously, give any answer that reflects whether on a particular given issue I have given advice, let alone what it is, for the reasons I just explained. I accept that that can be frustrating, sometimes, but it is an important principle. It is also important to stress that it is not a question of Law Officers directing Ministers to take route A or route B. It is a question of Law Officers, and lawyers throughout Government, explaining to our colleagues what the law is, and what the legal risks are. There may be some scenarios in which the issue is pretty clear: route A is lawful and route B is unlawful. It is about providing that



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advice so that Ministers can comply with their obligations under the ministerial code, and comply with the law.

Q8 Chair: The other area where deviation from the norm might happen is with the general rule that you would not publish advice or, indeed, indicate whether you had given advice on a particular subject. In some cases, advice has been published—on the Iraq war, Brexit and so forth. Is there any guidance as to when you might publish, or is it simply on a case-by-case basis?

Lord Hermer: Thus far it has been on a case-by-case basis. From recollection, on Brexit it was at the will of the House. In 2003 there were other considerations in play. It is obviously exceptional for that to happen. Those are certainly the only two instances I can recall in modern times. Doubtless there would have been hundreds, if not thousands, of Law Officers' advices during that period.

Q9 Chair: Do you see an element of, "We don't do that—except when we do"?

Lord Hermer: No. I think the guiding principle is the one that adheres to legal professional privilege—that there are compelling reasons why it is in the public interest that Law Officers' advice remains confidential. There have been two exceptions to that in the last 25 years, so one can never say never, but I think it is an incredibly important principle to uphold.

Chair: Thank you. There are a few more questions, I think, on this subject. We will start with Pam Cox.

Q10 Pam Cox: Thank you for coming in today. How would you both define the rule of law for the general public—for our constituents?

Lord Hermer: That is an incredibly important question that we are grappling with. I have spent a large chunk of my career in lectures and seminars in wood-panelled rooms, talking about and debating the rule of law. I really enjoy that, but the challenge of the age is to get those discussions out of university halls and inns of court, and into classrooms and youth clubs, and to identify the language and the explanation that we give people as to what the rule of law is and how it works for all of us, in a completely apolitical way, so that we all have an understanding of our rule of law heritage—what it is, and what it means to all of us—and can then all work together to jealously protect it. The task of identifying how we explain it is as complex as it is important.

Together with the Lord Chancellor we are thinking deeply about it—how and where we use it, and how we deploy it, and how to do that in a way that builds consensus, so that the issue is not party political in any sense, but is talking about the rule of law and how it applies to all of us.

I can give an example. I have talked about the rule of law for years, and have for years gone into schools with organisations, as a lawyer, to talk about the rule of law and what it means. One example that I use in talking to kids is football. I explain that we have rules in football. What happens to the game if we take those rules away? Should the ref be



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neutral? What happens if the ref favours one side more than the other? What happens if we change the rules without telling anybody?

We use real life examples to explain profound principles about equality before the law and the importance of transparency in law and an independent judiciary. You can do that in a really non-patronising way that communicates core values in understandable terms. I think there is a project for all of us, across parties, to think about how we explain those principles in such a way that people realise they belong to and are important to us all.

Q11 Pam Cox: Would you support the revising of the wording of the oath that you take in this position, to make the rule of law more accessible as a term? There has been some discussion of revising the oaths that you take.

Lord Hermer: I did revise the oath, with the permission of the Lady Chief Justice and the Lord Chancellor, when I was sworn in as Attorney General, to include for the first time in about 600 years, I think, an express reference to the rule of law in the duties of the Attorney General and Solicitor General. That is a long and complicated oath. I am not sure, necessarily, that our desire to get the rule of law out there in a way that everybody understands is necessarily going to be met by changing the oath that I take in the Royal Courts of Justice; but, on the underlying point about the need to explain the rule of law and fundamental rights in language that everybody understands, we see that as part of our mission, together with the Lord Chancellor and, indeed, internationally, with the Foreign Secretary.

Q12 Pam Cox: For example, how might that manifest itself in terms of dealing with contentious issues such as immigration and terrorism? Might we see a different approach or different language around this?

Lord Hermer: Could I separate out two things that are going on there? First, there is the general outreach that we want to do as a Government on explaining what the rule of law is and why it is important, and what rights are and why they are important to all of us. I separate that from how as a Government we are going to approach all the various challenges that we face. The Prime Minister has made it clear that we are going to be a rule of law Government, and we are going to do it through a rule of law framework. We face multiple challenges. As a Government we are determined to face them. They are going to require, as the Prime Minister and lots of my colleagues have explained, some radical rethinking across vast areas of government about how we do things to meet the challenges of our generation, but we will do those things in accordance with the law.

Q13 Pam Cox: This is the last one from me: how would you suggest we as a Committee, in five years' time, assess your success in upholding and strengthening the rule of law?

Lord Hermer: I think you can apply a range of metrics, not the least of which will be the quality of the legislation that we pass, the policies we implement and the language that we use. Those will all be metrics that



you can apply in five years' time to see whether the deeds have matched the rhetoric.

Pam Cox: Thank you very much. Thank you, Chair.

Q14 **Mr Barros-Curtis:** I want to ask a slight follow-on from what you were saying earlier, in terms of the context we are now in, with a new Government. Six or so months in, the rule of law is very much stamped all over it, for the reasons you outlined. In the context of the comprehensive spending review, which is circling, and as you come into the roles you now hold, I wonder what, from your respective external experiences of private practice, your views are as to the efficiency and quality of the external legal counsel that you use, and the panels that service you and the wider Government. Do you think that they are giving the value for money and quality that you and the wider Government need; or, in the context of the rule of law, the new Government and the CSR, do you feel there is a need to review that?

Lord Hermer: The first thing to say is that in respect of external legal services, and internally, as I have come in, I have been very impressed by the standards. As with all aspects of our work, and all aspects of Government work, in the early days we are also, to coin a phrase, kicking the tyres to try to assess whether there is room for improvement or a need for change. That process is ongoing. We are looking at it across a number of metrics, in terms of value for money, standards, and equality and representation of the people we instruct across Government. It is still early days, but those are all projects and processes in motion.

Q15 **Mr Barros-Curtis:** Thank you. I want to go back and pivot to your Bingham Centre speech in October last year, when you emphasised the relationship between the rule of law and democracy, highlighting the risks and threat associated with populism. You used some practical examples, and have talked about the football example in schools, to help with visualising. I wonder—maybe it will be football, or maybe something else—in practical terms how upholding the rule of law can meet that risk to democracy, which is faced not just here but across the world, both from populism and widespread misinformation.

Lord Hermer: The question raises one of the most profound challenges of our age. I am not going to be able to give you, in the space of a two-minute answer, the full panoply of measures that Governments here, and allies across the world, are going to need to think about. To return to what I said before, it is not enough for us as a Government simply to apply the rule of law to the decisions that we make, although of course it is essential that we do so. There is an important moment for Governments to be out explaining the importance of the rule of law to everyone, in language that we all understand. Again, I really want to stress that that is not a political motivation. Governments of all colours in this country, for generations, have talked about the importance of the rule of law. Now more than ever before is the moment in which we need to explain that importance in language that people understand and recognise, and in places where sometimes people don't go to talk to



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people about the rule of law and fundamental rights. That is an enormous challenge for us as a Government.

Mr Barros-Curtis: Do you want to add anything else, Solicitor General?

Lucy Rigby: I would only add to what the Attorney General says that I think the response to populism is a clear, cross-Government issue, not just for us but for Governments in other countries. I very much agree with and echo what the Attorney General says about embedding the rule of law.

To come back to Pam's question, for me the rule of law is really about the equal application of the law. As the Attorney General says, we are used to talking and hearing about this concept in the legislative and judicial sphere. The reality is that the rule of law underpins British values. It is who we are as a country. It underpins our prosperity, our security and our safety, and how we do business. It is really fundamental. As the Attorney General says, the more we can do to make sure that it is understood as such the better, and, indeed, the more resilient our democratic institutions will be.

Lord Hermer: You may have seen this, but a study was published yesterday by a communications consultancy, FGS. There were a number of findings, but I will give two, to tell you what is on our minds: 24% of the UK electorate, according to this poll, believe that voting does not make a difference, and more than one in five people under the age of 45 agree with the statement that the best system for running a country effectively is a strong leader who does not bother with elections. That is a rule of law challenge for all of us.

Q16 **Mrs Russell:** Hello. Thank you for coming. Can you, please, talk to us about the practical impact of your amendments to the Attorney General's legal risk guidance?

Lord Hermer: Yes, of course. Let me just explain because not everybody might know what the legal risk guidance is. It is a document that sets out to all Government lawyers and external lawyers how they should describe legal risk when they are advising Ministers or officials, or any other decision makers. It sets out, to ensure consistency, ways in which legal risk should be described. It has been amended a few times in the past by Attorneys General.

I came in and took the view that the version I was presented with needed to be updated for a number of reasons. First, in the early days, I wanted to give a very clear message to all those advising Government and all those who receive advice of the importance and the centrality of law, and the importance of the rule of law, to what government does. I took that as an opportunity.

I also had a concern about the version that was in force at the time, which was that, rather than trying to ensure that legal standards were maintained, it risked diluting legal standards. Let me explain why that was. It led to what I thought was an unfortunate risk of Ministers being



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advised that there was a respectable legal argument for policy A. Decision makers were not told that what a “respectable legal argument” meant was that it was highly likely to be unlawful but if you advanced it in court you would not be struck off for advancing such a poor argument.

It struck me that that could never become the default position for law in government. That is why I revised the guidelines—to make sure that we were using the framework so that Ministers were always best advised as to what the real risks were and decisions were taken with a proper legal analysis that flagged up legal risk in a way that would be clear to the decision maker. That was the motivation behind the changes.

Q17 **Mrs Russell:** Thank you. I have some concerns. When the previous Government tried to change food regulation, for instance, they received commercial litigation from Kellogg’s, which they won, but there is a chilling effect, potentially, when Government try to take on commercial interests that there is concern about the potential litigation risk and that can have an influence on what Ministers are prepared to do in the first place. I wondered what your attitude is towards that.

Also, do you feel that there is a role for differentiating between level of risk around, for instance, international law, which I personally think we should be highly compliant and very careful about, and the level of risk around upsetting commercial interests? One of the reasons I ask is that it is very clear, for instance, that the changes the Government are interested in making on leasehold, which will be very much in the best interests of many of my constituents who are having a great deal of trouble, are definitely going to have a commercial impact on companies. They are very likely to consider litigation in that context.

Lord Hermer: Yes. Obviously, forgive me if I do not comment on any particular bits of legislation. It is important to stress that decisions will not be decisions of Law Officers or lawyers. The decisions will always be those of Ministers. Our role as lawyers is to help tool up decision makers to ensure that they have all the relevant information and that the legal analysis is at the centre of that, but, ultimately, they will make the call on those decisions.

It will include, as would any good legal advice, a risk analysis: what happens if you take this litigation; what are all the risks that you would face? In the same way that I have spent 30 years advising clients outside government, you would look at a case, assess what the legal merits are and try to work out what happens if you lose, what are the downsides, what are the costs and the implications. That is what good lawyers in government do day in, day out when they are advising.

I do not think Government will be cowed in doing the right thing by fear of facing well-resourced litigants in court. If we are confident in our policies, having decided that these are policies we want to take, if we are confident in their legality or comfortable with the degree of legal risk, the mere fact it is a well-resourced defendant on the other side will not stop Government, I imagine, in moving forward.



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Q18 **Mr Barros-Curtis:** I have a quick supplementary to what you were saying to my colleague. In terms of the guidance you said that you inherited, you were concerned that, effectively, it was saying that the standard advice that should be presented was just enough to avoid getting struck off but could be unlawful none the less.

Lord Hermer: Yes.

Q19 **Mr Barros-Curtis:** To be clear, when was that guidance revised and who was the Attorney General at the time?

Lord Hermer: Forgive me. It has gone through several revisions over time. The precise point at which that phraseology entered the document is not at the tip of my fingertips. Can I come back and write to you on that?

Mr Barros-Curtis: That will be absolutely fine.

Q20 **Chair:** I will add one question to that. Are you or are you not saying that there are risks in caution as there are risks in obscuring dangers that might follow? The example of leaseholders was given and one can look at the Government's very ambitious targets on housebuilding and planning and things of that kind. If you want to be a radical and reforming Government, will your guidance on legal risk impair that in any way? You mentioned well-resourced opponents in court. We will come on to talk about the SFO later on. Many people would see that the SFO has exactly suffered from that; it has been cowed by trying to prosecute very well-resourced litigants.

Lord Hermer: The guidance will not inhibit decision makers. The guidance will ensure that decision makers are possessed with proper, full, comprehensive legal analysis on which to make their decision. I do not think my colleagues in Government, when it comes to those decisions, when they are trying to drive forward our ambitious programme of change, are likely to feel cowed at the prospects of facing deep-pocket defendants in litigation. That, I imagine, will not be a factor that bears heavy on decision makers as we drive through change.

Lucy Rigby: Chair, if I might add to that, the changes to the legal risk guidance do not, in and of themselves, obviously make a particular policy riskier. You have mentioned one and there has been mention of others. It is obviously entirely right that Ministers are properly advised on risk.

To come back to the point that the Attorney General was making earlier, our advice is solutions-focused, because there is an enabling of the reform that the country so badly needs to see. It is right that it is possible to be both an agent of the rule of law and offer robust, solutions-focused advice that helps Ministers get to where they need to be with clear policy solutions that are legally robust.

Chair: Thank you. We will change tack a little.

Q21 **Warinder Juss:** Thank you, Lord Hermer. I have listened to what you have said with a lot of interest. You mentioned that 22% of voters do not



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think voting makes a difference. I believe some of that must be due to the fact that sometimes they feel they do not get straight answers from politicians. Issues arise that constituents have a lot of concern about and they look to their MPs to give them answers. One of those issues is what is happening in Gaza at the moment. We know there is an arrest warrant out for the Israeli Prime Minister, issued by the International Criminal Court. One of the answers that my constituents would want to know is whether that arrest warrant would be enforced if the Israeli Prime Minister visited this country.

Lord Hermer: Let me start by saying I completely share your view that, when people do not feel they are getting straight answers from politicians, it does nothing to foster belief in our system; it undermines our system. I am, however, not going to give you a clear answer to your question, for two reasons, but I want to give you a clear explanation as to why I am not giving you a detailed answer.

The first reason is because of the Law Officers' convention, which I have explained before. I cannot get into details about matters.

The second is because, as we have explained, the question of the enforceability of an arrest warrant for anybody will be dealt with by a domestic statute, the International Criminal Court Act. The decision as to whether or not a warrant should be executed and given effect to, and what the relationship with any immunities might be, is a question that Parliament has decided to give to the courts. It would be inappropriate, as Attorney General, to give a public statement as to where I think the courts may go or should go. It is essential that we steer clear of the court's lane on that.

The Foreign Secretary and others have been clear about our support generally for the work and the importance of the institution of the International Criminal Court and, indeed, as part of our commitment to the international legal order generally. I am really sorry not to be able to give you a straight answer to what was a straight question, but there is a reason why I cannot, which I hope I have explained.

Warinder Juss: Thank you. I have a couple of further questions.

Lord Hermer: Of course.

Warinder Juss: I probably can anticipate the answer that you will give, but I will ask the questions anyway.

Lord Hermer: Of course, of course.

Q22 **Warinder Juss:** Because of the seriousness of the issue, I imagine that you have had some discussions with the Government about the legalities of executing such a warrant.

Lord Hermer: Again, I am sorry, but I really hope I have explained the rationale as to why the Law Officers' convention is in place. It is a really good rationale, but it can be frustrating when people are asking perfectly



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reasonable questions. I hope there is a perfectly reasonable answer as to why I cannot indicate whether I have been asked to advise or not.

Warinder Juss: I suppose your answer to the question of whether we have had any discussions with other countries would be the same. It is frustrating; I have to say that. When constituents ask us these questions, and they realise that their MP is on the Justice Committee, they will be looking to me to get answers for them.

Lord Hermer: Of course, of course.

Q23 **Warinder Juss:** It is something that is a lot of concern to constituents. As a lawyer, I do appreciate the need to have confidentiality and I do appreciate the Law Officers' convention. But, sometimes, as MPs, we bang our heads against a wall because we cannot get the answers that we need to give to constituents, which are really very reasonable questions that constituents ask of us.

Lord Hermer: They are perfectly reasonable questions, of course, on an issue that people feel passionately about. There are, of course, lots of other avenues, not least my colleagues in the FCDO, who answer before Parliament and seek to explain the position. In respect of the ICC, obviously it is a bit more sensitive because of the judicial nature of the process. It would be a bit like if you were advising somebody back in the day, and a local newspaper—I am not seeking to compare this Committee to a local newspaper; this is just an example—had asked you, "Has your client approached you to talk about this issue? If so, what did you say to your client about it?" You would say, "I can't comment."

For us to be able to do our jobs effectively as Law Officers, the convention exists. I can say from personal experience, working under the umbrella of that convention, it does assist in the work that we are able to do. It would harm it were it not for that convention. So I am sorry I cannot answer your question, but I cannot.

Q24 **Chair:** As the editor of the local paper, let me try. It is frustrating, but we understand where you are coming from. Maybe I can ask about legal process rather than legal advice. We had, for example, an urgent question earlier in the Chamber this week from the former Deputy Foreign Secretary about the situation in Sudan, based on the US having determined the downside of what was happening there. It really is a process question. There would be an expectation, if our closest ally and a country which frankly does not often trespass into international law thinks that that is something that should be called out in that way, to be informed about where we are in that process and how we could get to such a determination.

Lord Hermer: Again—and I am sorry if it is going to cause some frustration—those are questions for the FCDO to answer, certainly in the first instance.

Q25 **Chair:** The problem there is the one I alluded to earlier. That was asked by a number of members to the FCDO Ministers in the Chamber.



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Although there were very laudable answers in relation to humanitarian aid and to condemning what was happening, there was very little to address those specific questions on the determination of genocide.

Lord Hermer: Can I answer that question in a more abstract way? It should not be taken as relating to any advice that is going on in respect of any particular country. Obviously, compliance with international law also requires calling out any country where we think there have been breaches of international law. That is essential as part of our understanding and the role we play within the international legal order.

Some breaches of some conventions have very profound legal significance. They require third party states to take certain steps. They place obligations on third party states. You would expect, in respect of those conventions, very serious thought to be given by lawyers, among others. We are blessed in this country with an absolutely first-class legal team, within the FCDO, of brilliant international lawyers. Some of the finest international lawyers internationally sit within the FCDO. You would expect detailed consideration to be given to those legal standards, applying what we know about the situation in country A, B, C or D. Then detailed thought would be given by policymakers, looking at that legal advice, as to whether or not there has been a breach of a given convention, and, if so, what the appropriate response of the United Kingdom would be.

As a matter of generality, these things are taken incredibly seriously by Government. As to a particular country or a particular conflict at a given moment, I do not think I can say any more than that.

Q26 **Chair:** On another process matter, we had the advisory opinion from the ICJ last July. The Government responded immediately by saying they would give serious consideration and would respond. Are we any nearer to getting that response?

Lord Hermer: I can tell you, as you would expect, when the apex court in the international legal order gives an advisory opinion, that is something the Government are obliged to consider in detail. The particular advisory opinion here is of potentially wide-reaching impact because it requires, on its face, Governments to look at all different aspects of governmental life. You would not expect that to be done in an over-hurried way. As I understand it, steps are being taken to consider it in detail. I cannot give you, I am afraid, a date when that process will be completed.

Chair: Months, years? Do we have any indication?

Lord Hermer: I very much doubt it will be measured in years.

Chair: We will move on from there because I know some Members have other engagements.

Q27 **Josh Babarinde:** My question is about violence against women and girls. The Government have announced a very powerful aspiration to halve it over the next decade. My question is about the measurement of that. I



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have put in a written question to the MOJ on this. I asked, relatedly, “How many domestic abusers are in prison at the moment? What is their reoffending rate?” I did not ask things like, “What is the conviction rate and so on?”, but I could have done. The response started with this, “It’s not possible to robustly calculate the number of domestic abusers in prison or their reoffending rate. This is because these crimes are recorded under the specific offences for which they are prosecuted, such as intentional strangulation or suffocation.”

This seems to me to be really problematic. How can we possibly track an aspiration to halve violence against women and girls if we are not able to track how many domestic abusers there are, what their reoffending rate is, and, I assume, what their conviction rate and so on is.

I have sought to put forward a proposal to try to address that gap. I have spoken to the Solicitor General about creating a specific offence of domestic abuse in the law so that we can better record these crimes, better track them and many other things. I will be interested to understand what your reflections are on what clearly seems like a gap there. If the Government are not going to pursue something like I am suggesting, how will they better track this critical element of reducing violence against women and girls?

Lord Hermer: Thank you, Josh. Lucy and I have slightly divided up topics.

Lucy Rigby: I am happy to answer this one, Josh. Obviously, as you say, it is an issue I know you are doing an awful lot of campaigning on. I know you have a background and experience in all of these issues that you have brought to Parliament, which is absolutely fantastic. As you said, you are speaking out on these.

You are clearly right that domestic abuse covers a whole range of offences. Those specific offences in law, as you say, are a gamut of things. There is stalking and harassment and RASSO offences, but then also things like forced marriage and FGM. As you know, when it covers a range of offences like that, domestic abuse is an aggravating factor when it comes to the sentencing.

I take the point you are making on tracking. You are right to refer to the mission to halve violence against women and girls in a decade. That is an integral part of our safer streets mission. Another part of that, as you know, is to restore confidence in the criminal justice system. The Attorney General and I superintend the CPS. The CPS has a really integral role to play in that safer streets mission. It is doing a range of things to help tackle domestic abuse, particularly RASSO offences, as indeed are the Government. The CPS has metrics wherein it can track what it is doing, its work, to help us understand where it is vis-à-vis our priorities—which, as you rightly say, is to halve it within a decade—and the CPS’s priorities, which match those.

Q28 **Josh Babarinde:** Is the infrastructure of offences, as it currently stands, and the recording infrastructure sufficient to help with that measurement



process?

Lucy Rigby: To enable a better understanding of how the CPS works, one of the issues—in fact, the DPP made reference to this himself when he was giving evidence to your Committee—is that we need better data when it comes to the criminal justice system across the board, not just the CPS. Also, the CPS needs better technology. That is one of the things that I know the DPP is very concerned to push forward within the CPS. As you know with datasets, it is really important that they talk to one another and they do not just exist in silos, and, fundamentally, that they can lead to better policymaking. That is the point, from the CPS's point of view—to be able better to track what is happening.

Josh Babarinde: I will leave it there. I have to run, but I really appreciate your time and thank you for giving me a chance to ask the questions.

Lucy Rigby: Thank you for your questions.

Chair: We are always willing and happy to indulge. I will come back to this in a second. Neil, you are next. Thank you for bearing with us.

Q29 **Dr Shastri-Hurst:** Thank you very much, Chair, and good morning to you both. Can we turn to the issue of the accountability of war crimes in Ukraine, specifically starting with the crime of aggression in Ukraine, over which the International Criminal Court does not have jurisdiction because neither Russia nor Ukraine are parties to their own statute? However, a number of politicians and experts in the field have signed a combined statement and declaration, calling for a special tribunal to deal with the specific international law crime. The Ukrainian people are in support of having a special tribunal. President Zelensky has indicated his support and called for it. Critically, in the absence of it, the deaths of young Ukrainian soldiers cannot be prosecuted effectively.

In light of this, are you able to set out what the delay has been in setting up such a tribunal?

Lord Hermer: Thank you for the question. Obviously, it is an incredibly important issue. The United Kingdom has been integral to discussions. A core group operates working towards the creation of a tribunal for the crime of aggression. We have played a leading role in that. Regular meetings are trying to forge consensus as to what the scope of the tribunal should be and the details about the tribunal.

It is never easy trying to negotiate on a multilateral basis for a court. There are a range of issues on which countries will come with different perspectives. It requires detailed discussions and detailed negotiations. There is progress. People understand the importance of moving as quickly as possible. We understand this cannot take as long, for example, as the Rome process did for the creation of the International Criminal Court. We need to move quickly to secure accountability. We are playing our full part in trying to reach that consensus.



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That, it should be said, is not the only thing that the United Kingdom is doing. We are playing an active role in training judges within Ukraine, because obviously their own war crimes process is going on domestically within Ukraine. We are seeking to support that. I have a special envoy, a former judge of the International Criminal Court, Judge Morrison, who is working hard in Ukraine to help build up a capacity to secure accountability.

At this point, I also pay tribute to my predecessor as Attorney General, Victoria Prentis, who did—and continues to do—an enormous amount of work on this. I share her commitment to ensuring that this country plays its full role in securing accountability for Russian aggression and Russian war crimes in this conflict.

Q30 Dr Shastri-Hurst: Thank you. The action that has been taking place domestically in Ukraine in dealing with this issue is commendable. You touched on the core group, which met in Riga in November of last year.

Lord Hermer: Yes.

Dr Shastri-Hurst: At that stage, a road map was set out. Could you, perhaps, give some more granular detail about that road map and where we are on the progress of it, and potentially even a timeline for delivering it?

Lord Hermer: With regard to a timeline, I am afraid I cannot give you details. Obviously, these are detailed discussions, not all of which are in a public-facing process. All I can say at the moment is that there is a real understanding of the need to move and conclude as quickly as we can. All sorts of issues, both of law and practicality, are being ironed out. Beyond that, I am not sure there is really much more I can tell you.

Dr Shastri-Hurst: At the danger of pushing—

Lord Hermer: No, please.

Dr Shastri-Hurst: I will adopt the Chair's approach. Are we talking months or years? Where are we, perhaps if I put it in those terms, in the sense of a timeline?

Lord Hermer: Again, if we are talking in terms of years for the project—it is hard to see, with a process that the parties want to result in an international tribunal that secures meaningful accountability, how that aim will be achieved if we are talking in years before something is finalised.

Q31 Dr Shastri-Hurst: One issue you will be grappling with is around Troika immunity. What steps, if any, or what approach is being taken to that issue?

Lord Hermer: That is obviously the subject of detailed discussion within the core group, as you would expect. It is one on which different parties have different views and it is an active subject of discussion.

Dr Shastri-Hurst: Are you able to go into further detail about your



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position or your view on that?

Lord Hermer: I am afraid, again, frustratingly for those asking the questions, I am not able to answer that.

Dr Shastri-Hurst: It was worth a try, though, wasn't it?

Lord Hermer: You can try, Neil.

Chair: Perhaps you should have some cards to hold up.

Q32 **Dr Shastri-Hurst:** If we could just change tack slightly, there has been significant investment through the ERA loan scheme—\$50 billion—in supporting the Ukrainian people, but that falls a long way short of the cost of reconstruction. I think it was last estimated at \$468 billion. What considerations have been made—and any detail you are able to provide would be helpful—on using Russian frozen assets held in this country as a counter-measure for the reparation of the damages that have been inflicted on the Ukrainian people?

Lord Hermer: I recognise the importance of the issue that you raise and I recognise the moment in time in which you raise those issues, but I am afraid I cannot give you an answer to that question for the reasons that I have already explained.

Dr Shastri-Hurst: I am grateful. Thank you, Chair.

Chair: Thank you very much. I am sorry to be cutting across issues and going back to them, but we have further questions on violence against women and girls.

Q33 **Linsey Farnsworth:** Can I bring it back to an area that is particularly important to me as the mission delivery champion for safer streets but, more importantly, to my constituents in Amber Valley? That is the mission to make our streets safer and the ambitious target—we have already talked about ambitious Government policy—to halve violence against women and girls. I understand that one of the Attorney General's new ministerial responsibilities is to work with the Justice Secretary and the Home Secretary on this mission. I would be interested to hear what work you have been doing from your perspective—we have heard from other parts of Government what they have been doing—and what more we will see from you in relation to this particular mission.

Lucy Rigby: I am happy to address that, Linsey. I want to acknowledge your background in the CPS, where no doubt you came into contact with all these types of issues, so I understand your expertise in all these areas.

You are absolutely right; you are deeply familiar with the safer streets mission, and the Attorney General and I support the delivery of the Government's missions. The VAWG mission, as you rightly say, is within that safer streets mission—to halve violence against women and girls within a decade.



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Another part of it, as I mentioned earlier, is restoring confidence in the criminal justice system, and the Government are doing a number of things that you will be very familiar with to halve violence against women and girls, specifically—we could go through a list of them but I heavily suspect that we do not need to—including things like DAPOs.

You asked about the Attorney General's office specifically. As we have spoken to, the key thing we do is to advise Ministers on policy. Also, again, as I made reference to earlier, we superintend the Crown Prosecution Service, as you know, and the CPS has a huge role to play in the safer streets mission. Just to give you some examples, the CPS is working more closely with the police on the domestic abuse joint justice plan and working through the victim transformation programme. The CPS is developing its strategy on violence against women and girls, as you know, paying particular attention to where we are on RASSO prosecutions. All CPS areas now are offering pre-trial meetings with victims of RASSO offences. The CPS has recently recruited 40 victim liaison officers into RASSO teams. This is really a priority for the CPS, as it is for the Government.

Q34 Linsey Farnsworth: Thank you. I met the FDA and the Crown Prosecution Service in a joint meeting last week. The FDA has recently produced a report about the CPS's role in RASSO work and halving violence against women and girls. I would welcome the opportunity to come and see you to discuss it in more detail, because there is quite a lot of really useful information from within on that. If you would be interested in meeting with me for that purpose, that would certainly be useful for the work that I am doing as well.

Lucy Rigby: Of course.

Linsey Farnsworth: Thank you. Warinder is going to ask you some more questions.

Q35 Warinder Juss: Staying on the issue of RASSO cases, we have previously had discussions about the lack of prosecuting and defence counsel in RASSO cases. A reason given is that, because of their very nature, these are very distressing cases. One of the main reasons given for lawyers not wanting to deal with such cases is insufficient remuneration; that was following a survey done last February by the Criminal Bar Association. Have you had any discussions with the Justice Secretary about the legal aid rates paid to counsel? If you have not, is there any plan for you to have those discussions with the Justice Secretary?

Lucy Rigby: I am happy to take this one, Warinder. You are absolutely right to highlight this as a problem across the criminal justice system. On the third day after I was appointed, I went to the Old Bailey to meet with some of the counsel prosecuting some of the most serious types of RASSO offences to talk to them about a range of issues across their briefs, and this was something that came up and was raised.



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I know also, if I might say so, from discussions with organisations in my constituency that support victims of rape and serious sexual offences that the shortage of counsel who do RASSO work is a real problem. It leads, as I am sure you know, to cases being adjourned and delayed. It contributes to victim attrition and the slow pace of justice, which I am sure we would all agree at least to some extent is unacceptable.

What barristers are paid by way of legal aid is a matter for the Ministry of Justice more properly, but I know that the Government are committed to ensuring the long-term sustainability of the legal aid sector, as I hope you would expect. I know that Ministers in the Ministry of Justice have spoken previously about working with the leadership at the Bar to look at the longer-term reform of criminal aid so that we can get to where we need to be. As I am sure you are aware, there have been increases recently to the rates that solicitors in criminal legal aid cases are paid.

I want to make one more point in relation to this because I think it is important. It is critical that we have a level of parity between what defence barristers and prosecution barristers are being paid, because we need to ensure that we have the very best prosecution counsel, not just very good defence counsel. There needs to be that parity; it is important.

Q36 Chair: Is that a spending commitment? I assume you mean that it will be levelled up rather than levelled down.

Lucy Rigby: As I said, these are more properly matters for the Legal Aid Agency and the Ministry of Justice. On the broader point that you raise, Warinder, I would agree, and I have heard directly, that the shortage of counsel in RASSO cases is a problem and its impacts ripple through the criminal justice system.

Q37 Warinder Juss: As you say, ultimately, it is a matter for the Justice Secretary, but is that something that you would be having discussions with her about?

Lucy Rigby: I have not as yet, but, as I said, I am speaking to people in organisations in my own constituency, and I am sure that these issues will continue to come up, because, as I said, the Government are committed to ensuring the sustainability of the legal aid sector.

Lord Hermer: Can I come in as well, because it ties back to a question the Chair asked me at the beginning about coming from outside politics? I came with a broad awareness of some of the problems in the criminal justice system, but it is only once you get into the job that you get briefings, and some of those briefings have been haunting. I have to say the briefing that I got in the early days about RASSO and the reality on the ground for victims is one of the things that continues to haunt me, and in particular repeated stories about victims who now wait years for a trial. On a rape trial, they are waiting years for a trial; it can be three years. We can all imagine what the build-up to coming to that trial is like if you are a complainant. They arrive at court, no doubt after weeks, if not months, of worry and sleepless nights, and go past a few buckets that are picking up the rain from a leaking roof to be told, "I'm really



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sorry, we don't have prosecuting counsel. Your case isn't going to happen today."

I am also really concerned about some of the knock-on effects of that beyond the most obvious and appalling, which is that we notice an increase in not guilty pleas. People think they can game the system because there is victim attrition. That is all an appalling inheritance. This is of enormous concern to Lucy and me as Law Officers, politicians and citizens. We have a role to play as superintendents of the CPS to ensure that we are playing our part. We have roles in terms of being heads of the Bar to ensure that the voices of those who are instructed both in prosecution and defence are heard in these cases. I know this is an issue that the Lord Chancellor is determined to ensure is tackled.

Q38 Warinder Juss: Thank you for those comments, Lord Hermer, because, as you say, it is a major concern. Can I ask you a question on giving pre-recorded evidence under section 28 of the Youth Justice and Criminal Evidence Act? Obviously, it has lots of benefits because complainants can give evidence outside the courtroom at a time and date that suits them, and they can give their evidence early, taking into the account the delays that you have mentioned. We received evidence from Professor Cheryl Thomas that said that the conviction rates following trial by jury where pre-recorded evidence was given were 10% lower than other cases. Do you know how the Government are responding to these findings? Is some action being taken in relation to dealing with this?

Lucy Rigby: The statistic that you have highlighted is concerning. This is an issue more properly for the MOJ, but section 28 is used with judicial discretion. The CPS would say that there are clear and good reasons why it can be advantageous in particular circumstances to record evidence more contemporaneously. That is all the more so when we have levels of victim attrition where they are, as the Attorney General made reference to, in some of these RASSO cases going on for a tremendously long time. The ability to capture that evidence more contemporaneously is certainly an advantage in certain cases and, I would imagine, would lead to lower rates of victim attrition were it to be used. As I said, I come back to the judicial discretion built into section 28. It has to be used at the judge's discretion.

Q39 Warinder Juss: Are we doing anything about the fact that the conviction rates are 10% lower with pre-recorded evidence? Are there any plans to refine the system?

Lucy Rigby: That is more properly a matter for the Ministry of Justice as to how it wants to take account of that statistic.

Q40 Pam Cox: We are moving to assisted dying—a change of tack. The House recently debated the assisted dying Bill. A question that arose in and around that debate concerned the matter of legal assistance available to MPs who sponsor private Members' Bills. Do you think that we need a process to make legal advice more readily available in such circumstances?



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Lucy Rigby: As the Attorney General made reference to previously, our client in our role of Law Officers is the Government and Ministers, not Kim Leadbeater in the context of this Bill or, indeed, any other private Member's Bill. I know from experience that some of those involved in the drafting of private Members' Bills and those who are supportive of them receive legal advice and input sometimes from barristers outside Parliament. I know from my own experience that the drafting can be fed in, in that context.

In relation to assisted dying specifically, the Government have a responsibility—and this would apply to any private Member's Bill—to make sure that legislation that passes through Parliament is effective and enforceable. The assisted dying Bill, as you know, has passed through Second Reading, and so the Government will be looking at that Bill and working with Kim Leadbeater to look at any necessary amendments. Beyond that, we would go to the Law Officers' convention as to whether anything from us may or may not be required.

Pam Cox: You are saying you think there is no change needed to the current arrangements.

Lucy Rigby: It is important that, in our role as Law Officers, our client is the Government and our Ministers rather than individual Members of Parliament who may or may not bring forward private Members' Bills. I do not know specifically in relation to this Bill whether there was legal input in the drafting. There may well have been. As I said, I know from experience that there has been on others.

Lord Hermer: I would have also thought more generally that the question as to whether there is additional legal support for MPs is more a matter for Parliament than Government.

Q41 **Mr Barros-Curtis:** I have a very quick follow-on, and I just refer to the fact that I am on the Modernisation Committee, which is looking at a whole variety of things.

The call for evidence concluded just before Christmas. In terms of equanimity among parliamentarians and good, solid law coming forward, all predicated under the rule of law for all the reasons that we have talked about in these sessions, while fully respecting that it may not be a remit that sits within your area for the reasons you have referred to, is there some value in whether it is that Committee and whether you may contribute some written evidence on how you think it may work, or whether it is Parliament or some other kind of Department or non-governmental department within government that can support parliamentarians in putting forward good-quality private Members' Bills? There will be a difference, depending on the issue—if it is a particularly controversial one or a hotly contested one.

I totally agree with what you have said, Solicitor General; there probably will be inputs. In particular, if parliamentarians have good contacts, depending on what they did before they came into this place, they may be able to call on different connections and networks to support them in



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scrutiny, preparation and drafting, but others may not, or they may not know how to access that. Do you think there is any merit in Parliament—and where that would sit, TBC—looking at something like that? Ultimately, that goes to what your job is to ensure that the rule of law and good governance comes from Government.

Lord Hermer: Rather than commenting on any particular proposals, just answering as a matter of generality, unsurprisingly, legal input on things is a very good idea, and as a titular head of the Bar I can particularly recommend that you do so.

There is quite a profoundly important point about this. This Parliament is in the business of law, and parliamentarians from any party will want to ensure that the law passed here is of the highest standards. It is a matter for Parliament as to whether or not the resources available to it are sufficient, but as a matter of principle parliamentarians need to have the tools necessary to discharge their obligations to ensure that the law is of the highest standards and that they are able to scrutinise laws from a legal perspective, not least delegated legislation, through a legal lens as well as a political lens.

There is also an important role, if I may say so, for legal education for us all who enter Parliament to have an understanding of the rule of law, what the roles of the courts are and what the role of Parliament is vis-à-vis other parts of our written constitution. Again, those are matters for Parliament, and certainly not for the Law Officers.

Sir Ashley Fox: Good morning, Lord Hermer.

Lord Hermer: Good morning.

Q42 **Sir Ashley Fox:** Could you explain to me the Government's rationale behind the repeal of section 46 and section 47 of the Northern Ireland Troubles (Legacy and Reconciliation) Act and whether you advised on that?

Lord Hermer: Sir Ashley, I am afraid I am going to have to give the answer to your straightforward question the same answer that I have given to other questions in respect of the Law Officers' convention. For the reasons that I gave at the outset—

Sir Ashley Fox: I am not looking for legal advice—

Lord Hermer: No, no.

Sir Ashley Fox: I am looking for the political justification for it.

Lord Hermer: No, I understand that. The Law Officers' convention, which is enshrined in the ministerial code, precludes any Minister from saying whether the Law Officers have been asked to advise on any given issue, let alone what we have advised. I understand that the issue that you raised, if I can talk about it as a matter of generality, was the subject of a Policy Exchange paper that came out this morning. There is a parliamentary consultation process in place at the moment in respect of the proposed remedial order. I anticipate that those who published that



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paper will feed those views into that consultation process and they will all be considered before the affirmative process that needs to go before both Houses of Parliament. Sorry—that is, for reasons I have given, not a direct answer to your question.

Sir Ashley Fox: Well, it is not an answer, is it?

Lord Hermer: Sorry, Sir Ashley, it is an answer, and it is an answer that explains—

Sir Ashley Fox: You could provide a justification for the policy reasons without commenting one way or the other on whether you had advised.

Lord Hermer: I think you asked me whether or not I had advised, and I cannot answer that for the reasons that I have given. The policy reasons behind that would be best explained by the Northern Ireland Office, not by the Law Officers.

Q43 **Sir Ashley Fox:** I see. You have acted for Gerry Adams in the past. Could you tell the Committee whether you acted for him on any form of conditional fee agreement?

Lord Hermer: I am afraid I cannot recall, and even if I could recall I am not sure I would feel inclined to answer a question as to the basis on which I was paid by any given client.

Sir Ashley Fox: Okay. Thank you, Chair.

Lord Hermer: If I may on that, there is a really important of principle, Sir Ashley, and I am glad you raised it. One of the concerns that I have had over the past few years about the rule of law in this country—and I have had many—has been the attacks on lawyers for doing their job and representing one client or representing another client. I have had a concern about that from a rule of law perspective, because one of the key parts of our rule of law framework in this country for generations has been that a legal system works best where advocates are able to take on cases without fear or favour and represent clients irrespective of their own views as to what their client did, whether it was morally right or morally wrong. That is how our system works: the rule of law. You are right; I did represent Gerry Adams on something unconnected to the legacy. As it happens, as a reflection of our legal system, at the same time I was representing the family of a young British soldier murdered by the IRA in the 1970s. Both clients understood the importance of being able to represent everybody. That is what a legal system is all about.

My concern about attacks on lawyers for doing particular cases is that it undermines faith in the legal system. I do not want to over-egg that, but it has a particular resonance, I must say, for me because I have been involved for many years in organisations seeking to protect lawyers working in fragile environments. I have seen how lawyers themselves become targets, including assassinations of many people known to organisations that I have worked with and supported. I have seen in the bloodiest terms what happens when you undermine, consistently, faith in integral parts of rule of law systems, and let me make plain, Sir Ashley, I



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am not accusing you of that. The idea that we have a legal system in which you have independent-minded representatives who represent people without fear or favour irrespective of their views is one of the great strengths of our constitutional set-up.

Q44 Sir Ashley Fox: Chair, if I may, as Lord Hermer has given a very lengthy reply to that, what I think undermines faith in politicians and the rule of law is that, whenever I want to ask a question about why the Government want to reopen the door to a wave of meritless litigation in relation to events over 50 years ago that will result in those suspected of terrorism, like Gerry Adams, being paid compensation purely because a piece of paper was signed by Minister A and not Minister B, and yet victims of the troubles are not compensated, you come here and hide behind and refuse to answer questions on the merits of the case and then speak about the importance of the rule of law. I think that is unacceptable.

Lord Hermer: Look, I think the Law Officers' convention is an aspect of the rule of law. The idea of legal professional privilege and that people can receive advice without that advice being made public is an important principle. It is not as if, Sir Ashley, there are not beyond the Law Officers other Ministers to whom those questions can properly be addressed. It is not as if within the parliamentary system there are no other means for you to raise that. It is quite important for Law Officers to keep within their lane. I understand your frustration, but it is misdirected at Law Officers. It is misdirected at Law Officers questioned at this Select Committee—I say with the greatest of respect—in circumstances in which those concerns can be properly raised and ventilated with many other individuals and office holders and in many other forums.

Q45 Chair: The answer to that is probably that those avenues will also be tested and tried. We said that this session would last about 90 minutes. We are almost up to that. We have a few more questions on the CPS and the SFO. Are you able to stay a little bit longer to answer those?

Lord Hermer: I will just check. Yes, I am.

Chair: Very good. We will try to be efficient in our use of time as always. Let us go to the CPS and Linsey Farnsworth.

Q46 Linsey Farnsworth: You will not be surprised to learn that I am going to take you through some questions relating to the Crown Prosecution Service and your superintendence of that. The first thing I want to ask about is the framework agreement between the Law Officers and the Director of Public Prosecutions. My understanding is that that should be reviewed and revised every three years but also following a change of Attorney General and a change of the director. Stephen Parkinson, the director, who gave evidence to us already, took up post in November 2023. The last time the framework was updated was 2020. There have been four different Attorneys General since then as well. Do you think the framework requires revision now? If so, how would you amend it as it stands at present?



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Lord Hermer: Thanks, and it is no surprise you are asking the questions about the CPS. The framework agreement is a very important public-facing document because it explains several—but two in particular—key dynamics. The first is the operational independence of the Crown Prosecution Service, which is a democratic principle that they are able to conduct their work without interference from politicians. The second is that politicians have a role in respect of strategy and policy in so far as that does not impact operational decision making. It is entirely appropriate that there is an outward-facing framework agreement that codifies that in the loosest sense of codification, and also is public and explains that, because there is an educational role as well as a binding role between the CPS and the Law Officers.

It is also important that we get it right. I did not want to revise that in the early days in office because I wanted to get a real-time understanding of the work of the CPS. I wanted to get a real understanding of the interactions between the Law Officers' Department and the CPS. It is something we are going to need to conclude, but I am also mindful that Lucy has only been in post in recent times. It is really important that as Law Officers together we pool our shared experience and work that into our analysis of the existing framework agreement to the extent to which it needs to be changed and, if it is changed, what those changes are.

Q47 **Linsey Farnsworth:** Do you have a timescale in mind for when you would like that framework to be available to the public?

Lord Hermer: Yes; I would hope within the next few months.

Q48 **Linsey Farnsworth:** That is useful, thank you. Moving on to one of our favourite topics on this Committee, which is the backlog of cases in the courts, particularly in the Crown court, I can attest to the fact that the Crown Prosecution Service would collapse if it was not for the good will and commitment of its staff. That has been the case for many years now, but never so keenly felt by the staff than at the present time with the current state of the backlog in the Crown court. The director gave evidence to say that he expected the number of new cases to increase by 10% next year, which I can tell you the staff will be very concerned about in terms of capacity within the service. Yes, the budget was increased in the October Budget. Do you think that the Crown Prosecution Service has the budget that it needs given the background that I have outlined?

Lucy Rigby: I am happy to take at least a portion of that, Linsey. You are obviously right to refer to the vital role that the CPS has to play in the criminal justice system as a whole and indeed in the safer streets mission. We were successful in securing a robust settlement in the first round of the spending review of an additional £49 million. Clearly, it is up to the CPS how exactly it spends it.

We talked earlier about some of the priorities for the CPS. We would expect that it would be—and the DPP may have made reference to this in his evidence to the Committee—hiring additional prosecutors, putting



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particular emphasis on RASSO work in particular. I know that he referred to the support that the CPS gives to victims. It is really important alongside that—indeed, this is something that the DPP talked about as well—that there is a real drive within the CPS for efficiency. I know that the CPS is paying particular attention to that. One area within that, which I know the DPP thinks is particularly important, is the use of technology. The Attorney General and I will clearly be working really closely with colleagues as part of the second round of the spending review to ensure that we can secure the best possible settlement for the CPS to enable it to play the best possible role that it can, which, as we have said, goes to restoring confidence in the criminal justice system as a whole.

Lord Hermer: I want to take the opportunity of your question, Linsey, to pay credit to the extraordinary work that those in the CPS do. One of the pleasures of this job is that you go out to CPS offices. Not least for me, I will always remember going to CPS Merseyside in the months following the Southport attack and the riots, and talking to the extraordinarily dedicated staff about what they need to face in their everyday working days. I know that is mirrored throughout the country. On Friday we are going to see the CPS in Cardiff. It is always a real privilege to meet people from the CPS, listen to what they are doing, and of course try to understand the difficult conditions in which they are working and do whatever we can to improve things. We are so lucky in this country to have the hard-working lawyers and support staff within the CPS.

Q49 **Linsey Farnsworth:** Moving back to fees, when the Director of Public Prosecutions gave his evidence to the Committee, he made some comments about defence barristers and the current fee structure, and how that is set up and may well lead to late guilty pleas because the fee structure is such that that is an attractive way of doing business. That has led to some concern from criminal defence barristers about the accusation or intimation that that is a deliberate ploy on their part. Do you think that there is a problem with cases and guilty pleas being delayed because of the fee structure, deliberate or otherwise? Please do comment if you think there is any deliberate delaying happening. Have you spoken to the DPP about his thoughts on that?

Lucy Rigby: Linsey, I am happy to take this. I have spoken to the DPP about it only very briefly. My understanding of where he was going with those remarks to the Committee was, as you say, to focus on the early guilty plea issue and the differential in fees. The DPP would say one of his priorities is to increase the number of early guilty pleas. To do that, it is important to get the defence to engage with the CPS file as early as possible.

I do not have all the detail. Clearly, changes to the rates, as we said earlier, is more properly a matter for the Legal Aid Agency and the Ministry of Justice. The DPP said this to your Committee, Chair. The issues in the criminal justice system are really significant both upstream and downstream of the CPS, and the DPP is very much of the mindset that we cannot just keep doing the same things over and over again and expect different outcomes. Without prejudice to this specific issue, we



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would both be supportive of the DPP thinking about potential solutions that may bring about positive changes and, indeed, the potential to explore those if they can help do things differently and solve some of the, as I said, significant issues that, unfortunately, we have inherited in the criminal justice system.

Q50 **Linsey Farnsworth:** Did you receive any complaints about the director's comments into your office?

Lucy Rigby: I have not, no.

Q51 **Chair:** I have. I take the general point you are making, but the question was a very specific one about comments there. Criminal defence barristers might well say that early pleas would be possible if the CPS was able to provide more of the case earlier so that clients could be advised on a basis of plea. On that very specific question, there may be some—obviously not all—criminal defence barristers who will game the system, for want of a better word. Is there a Government view on that?

Lord Hermer: I do not think there is a Government view on that. Can I just say this? We obviously have an important but limited role in respect of our superintendence in the running of the criminal justice system. What we—and I say "we" first as Law Officers but then part of this new Government—are absolutely determined to do in this area, as in so many other areas of government, is to try to understand problems: not deal with them in a knee-jerk way, but to lift up the bonnet, try to identify all the different parts, try to work out what is not working right and then solve it. You have examples of that in the criminal justice system. You can see what the Lord Chancellor has already done with her review headed by Sir Brian Leveson on the criminal justice system and a review headed by David Gauke on sentencing. We are determined to lean into complexity where that is necessary to understand how to change systems in this country for the better. We are not going to shy away from problems or shy away from calling out problems when there are problems, whoever has caused them, and we are determined to fix them for the long term, not for the short term. This is in some sense emblematic of that. If there is a problem, we will explore it, understand it and call it out, and, most importantly of all, we will fix it in an intelligent and systematic way. That is what we are about.

Q52 **Chair:** Finally, then, I have a couple of questions in relation to the Serious Fraud Office. There certainly has been a perception—I am not necessarily talking about under the current director, who has been in post only a year—that the SFO has lost its way in that a large number of high-profile cases collapsed or were withdrawn; some of the conduct within the SFO and, indeed, the ENRC case and what looked certainly to outside observers as the chaser being chased, as it were, on those cases, is of concern. It is a concern of performance. A lot of this seems to be related to funding and the inequality of arms between the SFO and a defendant. It is extraordinary that a Government agency should be in that position against a defendant.

Are you concerned? What appears to be happening now is that the SFO is



changing its brief, and it is now going after small and medium-sized fish, because that is what its resources allow it to do, and letting the big fish off the hook.

Lucy Rigby: I am happy to take that, Chair. The SFO obviously prosecutes the most serious cases of fraud, bribery and corruption. Since 2020, in the last four years alone, the SFO has brought over £1 billion into the Treasury from penalties. It plays an incredibly important role. It is right to refer to the cases that the SFO conducts as they are the most complex. They are very often multi-jurisdictional cases and because of the challenges that arise—I know some of this from being a commercial litigator—they are, frankly, challenging cases to run. Clearly, when the SFO is running cases about fraud, bribery, complex fraud and corruption, they inevitably are incredibly complex cases.

In some of your comments there, Chair, you alluded to the recent cases that the SFO has been involved with. We know some of the challenges that have arisen, and those have related to disclosure. That is why we have paid particular attention, and will continue to do so, to the challenges that the SFO faces in that area to ensure that it is properly resourced. When I met with the director quite recently, we talked quite a bit about the technology that the SFO is starting to use for disclosure. These are, as I said, extremely complex cases where the disclosure exercise will involve in excess of 40 million documents. The ability to use technology and particularly technology-assisted review to run an algorithm over documents and to be able to serve up what might be the most relevant documents for review first can really assist the SFO, and indeed others who use that kind of technology, in speeding up what would otherwise be extraordinarily complex disclosure exercises.

Q53 **Linsey Farnsworth:** As a former prosecutor, disclosure always triggers some feelings. You are absolutely right. I worked in the CPS in the complex casework unit and the organised crime division in my time, which have big cases where the unused material that is not part of the evidence but has to be reviewed for disclosure to the defence where the test is met can run into thousands and thousands of pages. I share the pain of the Serious Fraud Office in that regard. AI may well be a useful tool.

What protections and safeguards are there if we are going to be using technology? There are aspects of disclosure where it is a judgment call as to whether the test is met. Is it reasonably capable of undermining the prosecution case? Is it reasonably capable of assisting the defence case? That is the test, and that is quite a subjective judgment call. If AI is going to be used, has that judgment call been factored into it? Are you aware of the work to consider that?

Lucy Rigby: I am sorry for triggering those horrible disclosure-related memories. I have some myself, so I know entirely what that is like. It is obviously really important that the technology that is being trialled, and that may well be implemented and expanded elsewhere, is used in the right way. Indeed, from the SFO's point of view, it would all be done, as



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you referred to, within the disclosure guidelines. Clearly, that is incredibly important. You will know there has also been the HMCPSI report since the G4S case, which I think was in May 2023. The recommendations stemming from that report are in the process, I believe, of being implemented. We are also expecting the report from Jonathan Fisher's review in relation to disclosure.

Linsey Farnsworth: Thank you.

Q54 **Chair:** That report suggests there needs to be a long-term funding strategy for the SFO. Is that not what is lacking here? It does not have the resources. It raises a lot of money through successful cases, but that money is not necessarily put back into the prosecution of fraud, which might then not only resolve serious criminal matters but might also generate more funds of its own. Is there not a fundamental problem with the way that the SFO works at the moment?

Lucy Rigby: In relation to the report on disclosure, my understanding is that that is with the Home Secretary. Clearly, when it comes to the HO, we will review it and all the recommendations in detail. It is clearly important that we do that.

On your wider point, Chair, there is and has been in the past an inequality of arms point for the SFO vis-à-vis some of the solicitors and barristers on the other side and the well-resourced nature. The Attorney General and I would be supportive of the SFO in any discussions that it wants to have about more funding for the use of technology, and indeed that goes to disclosure. In our superintendence role, it is important that we have all of that oversight.

Q55 **Chair:** Are you actively lobbying for that now? Are you actively lobbying for, effectively, a beefed-up SFO?

Lucy Rigby: We will be having discussions with colleagues in the same way that we will about the CPS, about the funding arrangement and the funding envelope. As we have referred to, both organisations play an incredibly important role in slightly different ways.

Chair: Okay. I am not seeing any other indications, so I will bring the session to a close. I thank you very much again for your time and particularly for overstaying. I hope that it has been of some benefit to you, as it certainly has to us. On that note, if I may, I will close the meeting.