

Justice Committee

Oral evidence: [Work of the Law Commission](#),
HC 1072

Tuesday 18 November 2025

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Members present: Andy Slaughter (Chair); Pam Cox; Linsey Farnsworth; Sir Ashley Fox; Warinder Juss; Tessa Munt; Mrs Sarah Russell; Vikki Slade.

Questions 1 - 43

Witnesses

I: Sir Peter Fraser, Chair, Law Commission; and Professor Penney Lewis, Commissioner for Criminal Law, Law Commission.

Examination of witnesses

Witnesses: Sir Peter Fraser and Professor Lewis.

Chair: Welcome to this afternoon's sitting of the Justice Committee. We are talking today about the Law Commission and are very pleased to have as witnesses Sir Peter Fraser, chair of the Law Commission, and Professor Penney Lewis, law commissioner for criminal law. We have a lot to get through and limited time. We will go straight into questions after members of the Committee have made their usual declarations of interest, starting with Warinder Juss.

Warinder Juss: Hello. I am Warinder Juss, Member of Parliament for Wolverhampton West. I am a solicitor but not practising. I am a member of the GMB trade union executive council, and also a member of various APPGs.

Linsey Farnsworth: Good afternoon. I am Linsey Farnsworth, Member of Parliament for Amber Valley. My interests are as declared on the register, but one of note is that I was a Crown prosecutor for many years before entering Parliament.

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

Tessa Munt: Good afternoon. My name is Tessa Munt. I am the Member of Parliament for Wells and Mendip Hills in Somerset. My interests are as declared on the register, but I would just point out that I am vice-chair and director of WhistleblowersUK, which is a not-for-profit organisation.

Vikki Slade: I am Vikki Slade, Member of Parliament for Mid Dorset and North Poole. My interests are as declared on the register. I have no specific interests related to this and am not involved in the law.

Mrs Russell: My name is Sarah Russell. I am the MP for Congleton. I am a solicitor; I specialised in employment law prior to my election. I am a member of various trade unions. My interests are broadly as declared on the register.

Pam Cox: Good afternoon. I am Pam Cox, MP for Colchester, previously an academic criminologist. My interests are as declared on the register. I am also chair of the penal affairs APPG.

Q1 **Chair:** Sir Peter and Professor Lewis, thank you very much for attending today. I think this is the first time that you have given evidence before this Committee. I will give you the opportunity to say anything you want to say in general terms about the Law Commission's present work, but first we have a series of detailed questions. We noted that when your



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predecessor, Sir Nicholas Green, was in front of the previous Committee, he described the commission as being in “robust good health”. Would you say that that is still the state of the commission?

Sir Peter Fraser: I certainly would. Can I first say, both on my own behalf and on Professor Lewis’s, how grateful we are that you have invited us to come and see you this afternoon and give evidence to the Committee? We at the Law Commission see our role very much as serving the whole of society. As you will know, our reports and recommendations are presented to Parliament. The Government will ordinarily respond to those recommendations, but we very much see ourselves as here to answer any questions that you have. We do not have an opening statement to make to you.

I would describe the Law Commission as being in better than robust good health. The word “robust” can have very many different meanings to different people, and it is one that I avoid, but we are continuing—or we like to think that we are continuing—the excellent work that has been done over the 60 years since we were created in 1965. We are working on a wide range of projects. I know that you have specific questions on certain criminal law projects in structured terms later in the session, and that is why Professor Lewis is here as well, but we are very grateful to you for asking us to be here.

Chair: We are very appreciative of the work that the commission does and its thoroughness. You will forgive us if we concentrate on any areas that are of concern.

Sir Peter Fraser: Please do.

Q2 **Chair:** The first is around the timeliness of reports. The 14th programme was published in September of this year. You may want to tell us a bit about the approval process for that, but we understand that there was a delay. It may be nothing to do with the commission itself, but consultation on the programme took place in 2021, yet it was not agreed until 2025, and the resulting projects will not be published for some time. Does this protracted process risk compromising the timeliness of the Law Commission’s work and render its recommendations outdated in any way?

Sir Peter Fraser: There are two ways in which we obtain our work, partly through the structured programme—as you have explained, the 14th programme was recently approved—and through ad hoc references.

I think the 13th programme was in 2018—it might have been 2017—so there was a very long delay of almost eight years between the 13th programme being agreed and the 14th programme being approved. However, during that time, the vast bulk of which obviously predates my time as chair, the Law Commission was working on a wide range of projects, including those representing the other way we get our work, which is what we call either ministerial or ad hoc references. A separate subsection of the 1965 Act enables us to take our work that way.



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When I started as chair, I was acutely conscious that the Law Commission's work and our recommendations and reports were always seen as extremely high in quality, but they were not always seen as having been produced in a timely way. One thing that we have done in recent years is try to improve our organisational delivery of those reports to speed them up, but we have limited resources, with a finite number of people working on each of these different projects.

For example, one of the projects that we did earlier this year, on the slightly historic, archaic area of chancel repair, could not be seen as particularly topical or necessarily something that could be done within 12 to 18 months, because it involved quite a lot of historical research going back to feudal times. That is at one end of the scale. At the other end, our contempt of court report was published in the past couple of days. I think it was presented today.

Professor Lewis: It was published today.

Sir Peter Fraser: We expedited that and split it into two parts, and did part 1. The decision to expedite was taken only last autumn, so not all our projects are done on the basis of lack of timeliness.

You asked me specifically about the 14th programme, Chair. After the consultation process, a conscious decision was taken in February 2023 not to advance the 14th programme approval process, which has to be done with the Lord Chancellor of the day, because there was political instability in terms of a pending election; there was a process with different Departments whereby, under the protocol, projects that we had been discussing with Departments would go into our draft programme, assuming that they have what we call internally protocol support, which means that there is what could be described as a soft decision internally in a Department that they would seek implementation of our recommendations. So we decided to park seeking finalisation and approval of the 14th programme, and after the election last year we recommenced the process.

It would, however, be fair to say that we submitted it for approval in April and it took nearly six months to get approval. In an ideal world, that delay would not have occurred. The immediately previous Lord Chancellor, who is now Home Secretary, approved it, purely coincidentally, on her last day of the job before she was moved to the Home Office in September.

You are right: our projects in an ideal world would be done more quickly, but, certainly speaking for my time as chair, at the moment we are doing them pretty much as quickly as is feasible, because we have such a small number of people working on any project at any one time.

Q3 **Tessa Munt:** Your latest annual report says that 27 projects are waiting for a response from Government and that 20 have been accepted in whole or in part and are awaiting implementation. Your predecessor



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discussed the backlog of projects waiting on a Government decision with our predecessor Committee. Has any work been done with the current Government to address the backlog, which is huge?

Sir Peter Fraser: Yes. It has to be remembered that not all our projects will be implemented, but work is being done. We often find ourselves waiting for a formal response to our recommendations for longer than one would like, but effectively, once we have produced a report with or without a draft Bill attached, whether they are implemented is really up to the Government and, by extension, Parliament.

I have specific examples of a very valuable project that we did on weddings, to which we are still awaiting a response from the Government. From the debate that took place in the House of Lords a few weeks ago, it looks as if certain aspects of a whole range of different projects where we have made recommendations—financial remedies on divorce, cohabitation, weddings and all those subject matters, which in a way are all different sides of the same multifaceted coin—will be taken forward, but they will not necessarily simply be rubber-stamping our recommendations.

It is important to realise that Law Commission work, in terms of our positive recommendations in any particular area, will not automatically result in a Bill that accepts all our recommendations at once. In some technical fields, such as the Arbitration Act, which was passed earlier, and the Property (Digital Assets etc) Bill, which might pass today or tomorrow, we will make recommendations and produce a draft Bill. It goes through Parliament using the special procedure, which means that it starts at the House of Lords Committee stage and then goes to the Commons for voting only after that. Those sorts of technical legal areas, which are politically uncontroversial, can go through very quickly. For some of our other reports—contempt of court is a very good example—the recommendations, although we see them as completely sound, well-considered and coherent, will not necessarily all go through on the nod, so we do not expect everything to be implemented.

Our rate of implementation over the life of the commission is about 70%, which I think is pretty good, but it is not as high as a Law Commission idealist might think it ought to be, if one can use that phrase, and realistically it is probably as high as could be expected over that long passage of time.

Q4 **Tessa Munt:** So since its inception, 70% are implemented.

Sir Peter Fraser: Yes, since inception 70% are implemented.

Q5 **Tessa Munt:** Do you get to the point where someone says, “We’re not doing that”? Do you get a no to some things?

Sir Peter Fraser: Yes. We definitely do over a period of time. Sometimes the formal Government response will be, “No, we don’t propose to do it.” In that case, I suppose if one is then to consider what happens to that



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report and those recommendations, there are two real strands to it and they might be separate. One is that the report in the public domain informs academic debate of the subject going forward and is a persuasive authority to be cited, for example in the Supreme Court, if there is a case that deals with that subject matter. I remember that when I was a student, some Law Commission recommendations in certain fields were incredibly useful things to have read and to be aware of, because as you will all know, the law in this country is not a fixed code; it is a moving, breathing thing, so our recommendations help influence thinking in that field generally.

The other area in which it could be seen as still having life is when future Administrations, which might have come to their own separate conclusions that our recommendations are sound and ought to be enacted, use it as a blueprint if they come into power following a general election.

Q6 Tessa Munt: What is the average length of time between your agreeing that a piece of work will be done and the issuance of the final report?

Sir Peter Fraser: At the moment, it is probably approximately two years. For some reports that started before my time as chair, it might well be longer than that. To be completely up front with you, some of them have been longer than that. I would like to get it to an average of 18 months, but, as Commissioner Lewis looks at me slightly askance, that might be unrealistically quick.

A few moments ago, I spoke about the small number of people who are working on these projects. Let me just give you a little background on the organisation. Apart from the chair, who is always a serving judge whose time is split between being chair and sitting in the Court of Appeal, we have four commissioners and each has a separate area. Professor Lewis is the criminal commissioner; we have a public law and law in Wales commissioner; we have property, family and trusts; and the fourth area is commercial and common law. Although they oversee three, four or five projects in their field, the personnel working on a specific project might be as few as a single lawyer supported by a single research assistant, or maybe two research assistants. On the bigger projects, it might be two lawyers and two or three others. We do not have very many people working on a project at any one time.

Chair: It must be frustrating to you. You mentioned a period of 18 months to two years for completing a report. The weddings report was completed in July 2022.

Sir Peter Fraser: Yes.

Q7 Chair: The Government responded in October 2025, which was last month. Why would there be a three-year delay?

Sir Peter Fraser: I am not defending that length of time at all, but part of it was probably because of the election. Other than that, a ministerial



response to one of our reports is possibly not given the same level of priority as I would give it personally. Weddings is a very good example. I would not have thought that a lot of the points we made in our report would be thought particularly controversial in the 21st century—for example, that it should be not the building that is authorised but the person conducting the ceremony, and that for certain other religious weddings that are not Christian the participants may perfectly sensibly believe that they are becoming married under the law of England and Wales but are not. There is also a benefit of reforms in the sphere of weddings: not only a benefit to people's wellbeing and society's general fairness, which I suggest is probably obvious, but an economic benefit. If people want to get married on a beach at the moment, they have to go overseas to do it; they cannot do it in England, which to me does not seem very easy to justify.

That is a perfect example that you have given about why it should take so long. I don't really know. In fact, one of the takeaway improvements we could all possibly have from this afternoon is an awareness that formal responses to our reports ought to be produced a lot more quickly. Apart from anything else, if you think of separation of powers, that means that the legislature—Parliament and all of you—would know what the Government's formal position is for an independent recommendation by the Law Commission.

Q8 **Chair:** In your lecture "The Future of Law Reform", you talked about the Law Commission's commitment to improving the rule of law. Could you explain how you think the commission's work supports the rule of law?

Sir Peter Fraser: I am sure that everyone physically in this room, not just people round the horseshoe table, will agree how important the rule of law is. By making carefully considered and intelligently researched recommendations for law reform, the Law Commission helps to ensure that the law of our jurisdiction is as up to date, simple to understand, modern and suitable for a changing society as possible. I think that this jurisdiction is now a world leader in that field and should strive to be one going forward. The advantage is that you can look at any one of our reports and you do not need to look at which Government was in office at the date that that report started or was produced. We do our work completely politically independently. If the rule of law is to remain at the forefront of everything we do, the law has to be improved and modernised in an independent way. I see us as fairly central in independent law reform recommendations, but also underpinning the rule of law.

Warinder Juss: You have mentioned having political independence, but can I ask you some questions about funding?

Sir Peter Fraser: Please do.

Q9 **Warinder Juss:** The current funding model was intended to maintain political independence and end reliance on you getting income from



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Departments other than the Ministry of Justice, but you have had a shortfall between your running costs and the money you get from the MOJ. What are the current funding arrangements? Do you think they are having an impact on your independence? Have they had a negative operational impact?

Sir Peter Fraser: I do not think that the current funding arrangements have impacted our independence. I would fight tooth and nail against anything impacting our independence. It is one of my major bugbears, as anyone who works with me at the Law Commission will tell you. But you are entirely right: the current funding model came about in 2020 as a result of something called the tailored report, which had done some investigation and had heard from many stakeholders that our then funding model was at risk of compromising our independence.

The model under which we currently work involves a lot of our projects being Ministry of Justice projects, which we call core-funded projects, so we do not get paid any more for those and our budget comes from the Ministry of Justice. Within that budget, we are expected to perform, and are quite happy to perform, our MOJ projects. If we take a ministerial or ad hoc reference from a different Department, we will enter into a memorandum of understanding with that Department whereby it will defray the cost to us of performing that work. We reformed the amount that we effectively charged to them about two years ago when I took over, because the figures had not really been changed even for inflation and the amounts were relatively negligible. They are still not particularly big, but it will usually be a modest six-figure sum to defray the cost to us.

Under the current 2020 model, the intention is that at the end of each year the money that we had effectively collected from those other Departments that was surplus to our budget would be channelled back to the MOJ, thus defraying the cost to the MOJ, as our sponsor Department, of supporting the Law Commission. However, costs have risen. In particular, one of our biggest heads of cost, if not the biggest, is our staff cost.

With costs having risen both by inflation and staff rises, we are now finding that the money that we obtain from ministerial references is necessary to meet our core operational costs, so we are in danger of slipping back to the position that we were in pre-2020, which is that we need the ministerial reference funding in order to meet our operational costs. That does have the risk of at least presenting the perception of an impact on one's independence. I do not think that we have reached that yet, but my professional view is that our funding model needs updating and overhauling. That is one of my priorities. I have one more year as chair; one of my priorities is to reform and agree a new funding model.

Apart from anything else, at the moment quite a lot of management time on the Law Commission side and a concomitant amount of time at these different Departments is spent on discussing and agreeing terms of



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reference for a project, a memorandum of understanding and a funding element, which takes that time away from other tasks. It also ought not to be the case that senior officials at the Law Commission are involved in a financial negotiation about how much money would come with a ministerial reference. I do not appear before you this afternoon with an oven-ready solution to the funding issue, but I think our funding model needs updating.

Q10 Warinder Juss: Do I take it from your answer, Sir Peter, that you do not think the current funding model is exactly fit for purpose?

Sir Peter Fraser: It is certainly not exactly the model that will take us forward for the next five years. I would describe it as creaking round the edges rather than not being fit for purpose, but that might be just a semantic difference.

Q11 Warinder Juss: Are you able to confirm today any changes that you might like?

Sir Peter Fraser: I am 100% realistic, because I know that there is enormous pressure on the public finances. I am sure that every Government-funded body would like more money. I am not for a moment suggesting that we can just wave a magic wand and create more money for the Law Commission, but the idea that extra funding from extra projects, which by their very nature are ad hoc, is necessary for core operational costs is a difficult model to see as having a medium to long-term future. Apart from anything else, it makes planning very difficult.

Warinder Juss: And also because you then go into the realms of not appearing to be completely independent.

Sir Peter Fraser: Or potentially, depending on how it is done.

Q12 Warinder Juss: We understand that the Government Internal Audit Agency has been commissioned to carry out an advisory audit of the funding model. Can you give any update on that?

Sir Peter Fraser: That was our invitation to them—we instituted that. That was one of the things that we decided at the Law Commission was an important component in opening a proper, transparent discussion. Rather than simply deciding that we ought to start lobbying for more money, or something of that nature, which obviously would not be suitable, we decided to institute the GIAA examination or investigation process, and hopefully this side of Christmas, or just after, there will be a considered report from them following their investigation. We will then have a sound platform on which to start a proper discussion about it, depending on what they have found in their exercise.

Warinder Juss: Early next year?

Sir Peter Fraser: Hopefully. There is one thing that I am determined to do; I will not necessarily achieve it, but I will certainly do my very best. When I stand down at the end of next year, I do not want the funding



model to be sitting there as some horror problem for my successor to have to start grappling with. I might not necessarily have succeeded in finalising whatever the solution is, but I will be as close as humanly possible, having spent quite a lot of time and effort over the next 12 months making sure that that is done.

Q13 Pam Cox: In that vein, is there anything in your terms of reference that would preclude you from collaborating with, say, UK Research and Innovation? That is where academic and practising lawyers sit under the Economic and Social Research Council and the Arts and Humanities Research Council. There are plenty of high-quality law projects funded through those routes, and plenty of researchers who are looking for opportunities.

Sir Peter Fraser: Do you mean in terms of collaborating with the academic side of things so that it doesn't cost us any money, or in terms of obtaining funding from external sources?

Pam Cox: Is there a conversation to be had, because you have a body of academic and practising lawyers who work on the kinds of projects you are describing?

Sir Peter Fraser: We certainly use academic resource in that way. We have recently had a family law expert from Australia working with us, for example, as part of her sabbatical. She did not cost the Law Commission anything; she had worked at the commission many years ago as an RA. We also have academics in other fields whom we have taken on, on a short-term secondment, or who help us.

As for external funding or obtaining funding from elsewhere, I would have to do quite a detailed analysis—it would not be the 1965 Act; it would be the Law Commission Act 2009, because that is the one that enshrines something called the protocol, which I have mentioned before—in order to satisfy myself that that would be something we would be entitled to do. My understanding of current legislation is that we would probably need legislation to permit us to do it, but certainly the academic resource is something that we do our best to make the most of. Having said that, there is a limit to how much that will defray our operational costs, but it is certainly something we already do. I am sure that when Professor Lewis comes to answer your questions, she will know of some specific criminal law examples.

Q14 Pam Cox: Your current business plan has an ambition to engage in more public engagement. How is that going?

Sir Peter Fraser: We are moving our process of public engagement yet further into the modern world. Consultation with stakeholders is something that we take quite seriously and has been seen for many years as one of the things the Law Commission does best. There are now many more avenues of engagement with the public in particular rather than specialist stakeholders like the Law Society or Bar Council, by using social media and improved website facilities. We publish our consultation papers



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in a variety of forms now. We do not get as many consultation responses as one would necessarily like in all areas, but we are increasing the number of responses that we do get.

In some areas, we get an extremely large number; it all depends on the subject matter of the project. For example, the Insurance Act 2015 changed the strict nature of breach of warranties. There were some pretty important stakeholders involved in that project. One would not really have expected to get very many responses from consumers on the Insurance Act. For some of the more recent topical consultations we have done—for example, on weddings or contempt of court—we had a high number of consultation responses. For things that are more immediately at the forefront of the minds of members of the public, I think we get a much better level of engagement.

From time to time, I give lectures to students here, there and everywhere. I always say to them, “Go on our website. You do not have to be a specialist in the area to respond to one of our consultations.” I would say this to all members of the Committee. Whenever we open a consultation period, we are interested in everyone’s views. You do not have to be a lawyer or be involved in the field; you are a member of society, and you should just tell us what you think. Maybe social media is one area in which we need to increase how we do it.

Q15 Pam Cox: You say that you have had a high level of consultation responses. What does “high” look like?

Sir Peter Fraser: Let me ask Professor Lewis. What is the biggest number we have ever had?

Professor Lewis: I do not know the biggest number we have ever had, although I do know that in one project there was a very high involvement of people licensed to drive taxis. I think there were a lot of standardised responses in that project. I think that was slightly more than the biggest response we have ever had from a project that I have led, which was hate crime, where we had approximately 2,500 responses, the vast bulk of which were from members of the public.

Q16 Pam Cox: Is 2,000 at the upper end?

Professor Lewis: That is towards the upper end.

Pam Cox: By social science standards, that is quite a low number.

Sir Peter Fraser: Yes, it is.

Professor Lewis: Absolutely. Even responding to one of our summaries of a consultation paper requires quite a lot of work. You have to read a document and answer some detailed questions. It is not like filling in a public opinion survey.

Q17 Pam Cox: Is there a way of varying the mode in which you invite people to engage, in that case?



Professor Lewis: We do that. Recently, we have done so in relation to prisoners. We have had a lot of engagement with prisoners on the criminal appeals project. We had almost 100 responses from prisoners to our issues paper. As a result, we realised that it is quite difficult for prisoners to access documents and respond to them. We sent the issues paper, summary and easy-read version of the summary to every prison and YOI in England and Wales. As a result of the responses we received, we produced for the consultation paper a hard copy form that they could fill in, which we also sent out to every prison and YOI. Most people respond online, and obviously that is not really viable for most prisoners, unless they are in a very open prison. We were conscious that people had to produce their own paper in order to write to us, so we started sending out hard copy forms to anyone who requested them, as well as personal copies of the consultation paper or summary, or easy-read or whatever people would like. So we have bespoke engagement with difficult-to-reach groups, as well as having a more generalised ability to respond.

I suppose summaries are another example of how we have tried to make it easier for people to respond. You can read the whole consultation paper, which is often hundreds of pages long, and answer lots of very detailed questions, or you can read a much shorter summary. These are summaries of the last two reports that we published, but the consultation paper summaries are of similar length, and you can answer a much shorter set of questions without having to engage with a much longer document.

Pam Cox: It is an important part of engagement with the rule of law in this kind of process.

Q18 **Mrs Russell:** I apologise if I am asking what is perhaps not a very sophisticated question, but do you email MPs when you begin a consultation?

Professor Lewis: We do if we know them to be interested in the project. We have a stakeholder management process and will often have MPs writing to us when we announce a project, or they will write to us about the project. We announced the project on homicide, and MPs wrote to us saying, "I'm interested in this. You should think about this. Here's some material you might want to look at." Anyone who writes to us about a project will be added to the stakeholder list, and for every development in the project, they will be emailed. So when we publish a consultation paper, as the deadline comes up or there is any sort of milestone in the project, they will be emailed.

Sir Peter Fraser: That is certainly something we can do, though.

Q19 **Mrs Russell:** If you could send us your work programme with a tick box of "Which ones are you likely to be interested in?", you could keep us automatically updated on the ones we would like.



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Sir Peter Fraser: Please do not apologise for the question: I thought that was an excellent point. It had not occurred to me, but yes, we can certainly do that.

Q20 **Pam Cox:** On special parliamentary procedure and the introduction of Law Commission Bills, you touched on that in a previous answer. Do you think that that procedure should be reviewed?

Sir Peter Fraser: I do not. One tweak was made to it a couple of years ago. It used to be 28 days within which the Committee had to deal with it. With the empanelled Committee dealing with the whole process from start to finish, under the parliamentary rules that was seen as far too tight. Lord Thomas, who had chaired the Committee on the Arbitration Bill, suggested to us that it needed to be increased. We suggested that that be increased and the parliamentary authorities agreed. That has been moved to 42 days. I do not think it necessarily needs any further changes or improvements, but I don't sit on one of those Committees, so if the perception among parliamentarians was that it did, you would be pushing at an open door as far as we are concerned.

Q21 **Linsey Farnsworth:** I mentioned at the start that I was a Crown prosecutor for many years. Professor Lewis, I do not think you will be very surprised that I would like to ask you some questions about the contempt of court work that you have been doing. Your report was hot off the press yesterday or was published today, so it is very exciting. Because it is so new, could you give the Committee an overview of your key recommendations?

Professor Lewis: Absolutely—I would be happy to. This is the first part of our report on contempt of court. We were asked to do a project that looked at the whole of the law of contempt of court. We published a consultation paper last year and then ran a public consultation. Some members will know that, following the murders in Southport and the resulting public disorder, we were asked by the Home Secretary, the Attorney General and the Lord Chancellor to expedite some parts of our work on contempt that related particularly to what in our recommended framework we call contempt by publication when proceedings are active, or what at the moment is often called strict liability publication contempt.

Looking at the project, we decided that it would not make sense to separate out that work from the rest of the liability framework. We decided instead to divide the project into the liability framework, which would form part 1 alongside those aspects of the Attorney General's role in relation to contempt that formed part of that framework, and we could not consider it without looking at those aspects. In part 2, which we will produce next year, we are looking at procedure, sentencing, protection and powers. This is which courts, tribunals and other bodies are protected by the law of contempt, what powers they do have and what powers they should have. That is the procedure and sanctions, and we will also look at appeals and the remaining issues in relation to the Attorney General.



That will include things like whether the Attorney General's office should have investigatory powers.

As for part 1, I could provide an overview of the liability framework we have recommended, if that would be helpful. We do have summaries available for all members of the Committee, which we will happily provide at the end of the session, but there is quite a nice infographic that explains the four forms of contempt. We have recommended four forms of contempt. As for the basic law of contempt, which is currently called common-law contempt, we have recommended retaining that and calling it general contempt. That would require a non-trivial interference in the administration of justice, or the creation of a substantial risk of such a non-trivial interference and intention to interfere with the administration of justice. The law of contempt is obviously designed to protect the public interest in the administration of justice, as well as protecting fair trial rights.

There are three scenarios, though, in which we think that some deviation from that basic test is warranted. In other words, there will be different conduct or fault elements, to use the language of criminal offences.

For contempt by breach of court orders or undertakings, where there is a court order and the person is aware of it, or they have given an undertaking, there is a strong case for making sure that those orders and undertakings are enforceable in order to protect the administration of justice.

For contempt by publication when proceedings are active, the risk to the defendant's fair trial rights in criminal proceedings, or even in other types of proceedings, justifies a lower fault threshold. But we recommend maintaining the current conduct threshold, which is the creation of a substantial risk that the course of justice in the proceedings will be seriously impeded or prejudiced. For the fault threshold, we recommend that the applicant must prove that the defendant was aware of the risk that proceedings were active, so there is a much lower fault threshold.

Finally, this is a departure from what we provisionally proposed in the consultation paper, but we had a lot of really helpful engagement with judges in particular, who were concerned about the extent to which proceedings are disrupted by poor behaviour. That is contempt by disrupting proceedings. There, we are looking at conduct that is abusive, threatening or otherwise disorderly, that results in the disruption of the proceedings, witnessed by either the judge or a court official. The person who has committed that conduct would have to be aware that legal proceedings were taking place. Those are the basic outlines of the four types of contempt that we have recommended in the part 1 report.

Q22 Linsey Farnsworth: That is very helpful—thank you. You mentioned the Southport attacks and concerns about what information can be published after an individual has been arrested. Your report looks at that and recommends changing the definition of when proceedings become active



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in comparison to the current situation. Could you please explain in a little more detail your recommendation in that sphere?

Professor Lewis: Under the current law, criminal proceedings become active when a person is arrested. Some of you will know that as a result of changes in privacy law, specifically the decision of the Supreme Court in 2022 in a case called *Bloomberg LP v. ZXC*, the police will usually not provide information about who has been arrested. We heard from journalists and media lawyers that this means that publishers and journalists who are writing things online or in newspapers and so on cannot know if proceedings are active, because even if they ask the police, "Has this person been arrested?", they will not receive an answer. The concern there is that the law of contempt is a restriction on freedom of expression. We accept that because it is there to protect the administration of justice and the fair trial rights of the defendant in the case of criminal proceedings, but it has to be a clear restriction on freedom of expression, and we think that it is not sufficiently clear if journalists and others are not able to find out whether proceedings are active because they are not able to find out whether someone has been arrested.

So we recommend change. We recommend that criminal proceedings should be considered active from the point at which a suspect is charged. That is generally publicly known. That makes the law clearer and more certain. We also recommend that proceedings cease to be active after a verdict or a guilty plea, rather than up until sentencing as is currently the case.

Q23 **Linsey Farnsworth:** Given that a lot of reporting happens through social media now, what assessment was made in relation to the interplay of that with when proceedings are deemed to be active? Obviously, now, they are not going to be treated in the same way.

Professor Lewis: We considered the fact that a lot more people are publishers now. It used to be that you needed a media organisation to be able to publish. We think that the defendant's right to a fair trial is protected in a variety of ways. One is that, with the law on privacy as it currently stands, very little information is out there at the time of the person's arrest, so that mitigates the impact of reporting. The other is the tools that judges have that they will use to avoid any prejudicial impact on the defendant's fair trial rights, such as judicial directions to the jury not to consider anything that has not been given in evidence in the proceedings. Jurors are routinely warned about not googling the defendant or indeed any aspect of the case, and they are told that there are juror misconduct offences, which were recommended by the Law Commission in a previous project.

We also have the fade factor. The longer the gap between the trial and the reporting, the more that reporting fades from individuals' minds. The period between arrest and charge is obviously the furthest away from the



trial, so that has particular resonance in terms of the possibility of any kind of prejudicial impact.

It is also important to note that reporting will not be unrestricted during the period between arrest and charge. General contempt remains in the background; it is a residual category. If something is published from which intention to interfere in the administration of justice can be inferred, the individual will be guilty of general contempt. One could easily imagine a scenario in which material is published about a suspect's previous convictions, for instance, where that intention may well be able to be inferred.

Q24 Linsey Farnsworth: It is harder to control that with the current landscape with social media, compared with previously, under the original rules. I think a lot of people will be concerned about that with these potential changes.

Professor Lewis: That is right. I do not think that contempt of court law is the solution to concerns about what is published on social media. We need a holistic approach that also includes educating the public about their responsibilities when they are commenting on cases. Although we recommend moving the start of active proceedings, we are not recommending changing the threshold. The threshold will remain "substantial risk of seriously impeding or prejudicing the course of proceedings". That means that if there is prejudicial publicity, action can be taken by the Attorney General and warnings can be given. The Attorney General's Office routinely warns people about the risk of contempt of court, and those warnings can be quite powerful.

Q25 Linsey Farnsworth: That leads on quite nicely to my next question about the Attorney General. The Attorney General has a role at the moment. Could you provide any further detail of recommendations relating to the Attorney General's role in contempt proceedings? You mentioned that some work will be done on that in part 2, but is there anything in part 1 covering that?

Professor Lewis: There is, yes. The Attorney General has, as you will know, a long-standing constitutional role as the guardian of the public interest in the administration of justice. The contempt function that the Attorney General has includes deciding whether to bring contempt proceedings where it is in the public interest. Proceedings for what is now called strict liability publication contempt can only be brought by the Attorney General or with the consent of the Attorney General. We are told by the AGO that the latter never happens. They are never asked to consent; they are always asked to bring those kinds of proceedings.

We looked at whether that function should be removed from the Attorney General. There are criticisms, because of the dual nature of the role as guardian of the public interest, but the role is also a political role. Concerns have been raised by commentators about the risk of a conflict of interest or the perception of a conflict of interest. We looked at



whether there were alternative bodies that could take on the role, and we concluded that there really were not. It would require the creation of a new, independent body. Given the volume of cases, we could not see that there was a case for creating a whole new body just to do that work.

However, we recognise the concerns about conflict of interest, even if that is just a concern about a perceived conflict of interest, given the dual role that the Attorney General has as both a Government Minister and a legal adviser. To address this, we recommend in part 1 that all contempt decisions made by the Attorney General should be subject to judicial review. That will include decisions to bring contempt proceedings, as well as decisions not to bring contempt proceedings. We think that this will provide transparency and accountability without removing an important constitutional safeguard that the Attorney General represents.

Q26 Linsey Farnsworth: Staying with the courts but pivoting to sexual offence prosecutions, if I may, the Law Commission's report on evidence in sexual offence prosecutions makes a series of recommendations in relation to evidential thresholds. Could you provide a summary of the proposed changes and explain how they strike the balance between protecting the rights of the complainant on the one hand and saving the defendant's right to a fair trial on the other?

Professor Lewis: Yes, absolutely. This is the report that we published in July. We have summaries available as well. In terms of evidential threshold, there are four types of evidence where we have made recommendations in relation to admissibility thresholds. Well, perhaps I am slightly shoehorning in personal records there. Our recommendations are actually about access to and production of personal records. On admissibility, we have made recommendations about the test for admissibility for sexual behaviour evidence, which was in our original terms of reference.

There are a couple of other issues that are good examples of where, as the Law Commission does work on a particular area, we find out about not only the problems we knew about from the outset, but those we did not know about. One of those was concerns about the way in which evidence that complainants have made a claim for criminal injuries compensation is being used against them by the defence in sexual offences trials. We make recommendations about that type of evidence. We also make recommendations about what in the report we call false allegation evidence, but we mean it more broadly than simply previous allegations that have been proven to be false. There is quite a lot of evidence that the mere fact that the complainant has previously made an allegation of sexual offending against the defendant, or indeed another person, is used against complainants in cross-examination.

The model that we recommend for sexual behaviour evidence, which we also adapt for criminal injuries compensation evidence, is a two-stage framework that ensures that the judge has sufficient discretion to make sure that the defendant's fair trial rights are always protected. For sexual



behaviour evidence, the first stage requires that the evidence has substantial probative value in relation to a matter in issue in the proceedings, which is of substantial importance in the context of the case as a whole. This is more than bare relevance; it has to have substantial probative value. Secondly, the admission of the evidence would not significantly prejudice the proper administration of justice. We recommend some factors that will help to guide this structured discretion model to produce more consistent, clear and principled decisions. This includes considering whether the admission of the evidence will introduce myths and misconceptions into the trial. It includes the complainant's legal rights, including their right to respect for their private life, and the interests of justice, including the defendant's right to a fair trial.

We state quite categorically in the report that evidence that is necessary for the defendant to receive a fair trial will always be admissible under our model, because it will have substantial probative value if it is necessary for the defendant to receive a fair trial, and by definition its admission would not significantly prejudice the proper administration of justice. In fact, it is necessary for the proper administration of justice if it is necessary for the defendant to receive a fair trial. There will be explicit consideration of the question whether the evidence is necessary, and we adapt that model for criminal injuries compensation evidence. It is slightly different for false allegation evidence, because it depends on whether the alleged false allegation is sexual behaviour evidence at its heart. If it is sexual behaviour evidence, it will be assessed under the sexual behaviour evidence framework. If it is not—if it is basically an allegation of dishonesty—it will come under the bad character provisions.

Linsey Farnsworth: They have been around for quite some time now.

Professor Lewis: Yes.

Q27 **Linsey Farnsworth:** Excellent—thank you. Can I move on to the Sir Brian Leveson review, part 1 of which has been published recently? He proposes changes to the court structure and a substantial reduction of jury trials. You said that jury trials are important for sexual offences cases. What did the evidence you receive in this regard suggest were the main benefits of trial by jury in sexual offence cases? Did you have any engagement with Sir Brian Leveson's review on that point?

Professor Lewis: Yes, absolutely. That is a really interesting question.

It is important to note at the outset that Sir Brian and the Law Commission were trying to answer two different questions. Our review is looking at what reform is necessary to prevent rape myths from influencing trials, better protect complainants' privacy rights, and ensure that complainants are treated humanely and defendants are tried fairly. It was not an efficiency review, which is the primary aim of Sir Brian's review.



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The fact that we did not recommend a move to juryless trials to achieve our objectives does not mean that that is not the right way forward to achieve Sir Brian's objectives; we are really trying to do two different things. We recognise that the right to a fair trial protected by article 6 does not require a jury trial, but there is considerable public support for jury trials, and we were concerned about a potential loss of confidence, particularly for very serious offences such as many of the offences that we were talking about. It is true that some of the offences for which Sir Brian has recommended the Crown court bench division—two magistrates and a judge—are sexual offences, but they are at the less serious end of the spectrum. He has not recommended that for rape, for instance.

We looked at the concern about rape myths permeating the trial and whether it might be better if we did not have juries. The evidence that we heard was that, in addition to concerns about juries, there are concerns about judges in relation to rape myths. Some of that may just be perception rather than reality. It is difficult to know, just as it is difficult to know with juries, because we do not do research with them on their deliberations and we do not survey judges on rape myth acceptance.

Sir Peter Fraser: We do train them, though.

Professor Lewis: Yes, that is a very good point—in fact, that is my next point. The advantage in relation to judges is the very specific training that judges get, which I was really privileged to be able to attend, before they can preside over serious sexual offences. I have seen that in action, and it is of great benefit to them. It is very difficult to think about how one could replicate that for jurors. In relation to judges, consultees raised their concerns with us that it is possible that judges may become case-hardened if they are sitting on a steady diet of serious sexual offences. We also heard concerns about increased media pressure and scrutiny of judges.

Another concern that consultees raised relates to something that was raised throughout the project, which is about exceptionality for sexual offences. We already have exceptionality for sexual offences. We have rules about sexual history. We have special ticketing for judges, as I have just talked about. We have anonymity for complainants. We have automatic eligibility for special measures for complainants. There is a lot of exceptionality already, and the reason for that is that we have already recognised as a society that these offences are very difficult to prosecute and they risk causing trauma to complainants. We take that in light of the fact that we know that there is exceptionality. This would be a further step. Removing the right to jury trial just for sexual offences would be another form of exceptionality that we think is different in quality from the kinds of rules that we are looking at in relation to evidence. Sir Brian is not singling out sexual offences, so it does not have that risk in relation to exceptionality.



We also looked at some comparative research that had been done in this context in jurisdictions without jury trials. There was some concern in some of the research from New Zealand that judges were less interventionist without a jury, although, again, Peter is right that it is possible that training could address that if the Government were minded to implement Sir Brian's recommendations.

We also considered the possibility of reasoned judgments that we would get from judges, which Sir Brian has also featured as an advantage of the Crown court bench division. We think that that would be an advantage, but we are not sure that it would protect against myths permeating rulings, because we think it is unlikely that if there were subconscious bias it would be articulated in reasoned judgments. There were a lot of reasons why we did not think that removing the right to jury trial would achieve our objectives; I would reiterate that those objectives were not Sir Brian's objectives.

Sir Peter Fraser: The specific point that you have raised was something that we as the commissioners considered exceptionally carefully. We consider everything carefully, but sexual offences prosecutions are on the very knife edge of fair trial rights, on the one hand, which are incredibly important, and on the other, as Penney said, of risking causing further trauma to the victims. It is a very difficult area.

I note for the Committee, for historical purposes only, that in the 1980s, when the Roskill report on serious fraud trials came out and recommended that serious fraud prosecutions be done not by jury, there was an automatic reaction against that, because we in this jurisdiction have grown up with jury trials, and probably most of us have the point of view that that is the only fair way of doing it. There are lots of highly developed societies across the world that conduct trials perfectly fairly without juries. To your particular question on that point, we weighed it up extremely carefully. None of the victims' groups whom we consulted as part of the process of the project was in favour of it, which was something else that we took into account.

Professor Lewis: Yes, that is a good point.

Q28 **Linsey Farnsworth:** You mentioned exceptionalism for sexual offences cases. You did not mention that your report recommends the introduction of specialist courts for serious sexual offences. I do not think that Sir Brian Leveson's recommendations include such a court. Could you explain why you recommended that, and what that court would look like? I am presuming that it would include a jury, from what you have said already. How would it differ, and what would its characteristics be?

Professor Lewis: I am very happy to. We recommend the introduction of specialist sexual offences courts. The model that we recommend would involve dedicated courtrooms within existing court buildings; we have not recommended the creation of whole new buildings in the present, straitened economic circumstances. The courtrooms would have features



such as appropriate equipment for effective use of measures to assist with giving evidence—what are currently called special measures; specialist training for judges, which we have already, but also for court staff; and some form of prioritised listing. We looked at a number of other options, and consultees favoured the option where you would have specialised courtrooms within existing buildings.

The aim is greater training and specialisation in trauma-informed practice for everyone who is working in the court, not just the lawyers and the judge, and also effective listing and resolution of cases, which would hopefully help to reduce delays. That would be beneficial not only for complainants, but for defendants.

Q29 Linsey Farnsworth: How would the prioritised case listing work in practice?

Professor Lewis: That is a very good question. Listing is a judicial function, so we would not tell the judiciary how cases should be listed, and we did not. The judiciary has already decided to do some prioritisation of sexual offences, so this was building on that decision. The very fine, detailed work that one would need to do before rolling this out is not really for the Law Commission. We are trying to make recommendations about how the legal framework should be adapted. We recognise that to move forward with specialist courts there would have to be a bit more detailed thinking. Having said that, a pilot scheme of enhanced specialist sexual violence support is already being trialled at three major courts. The Government are well placed to draw from that pilot scheme, look at what consultees told us and what we decided was the right way forward, and then hopefully move forward with some form of specialist courts, with the judiciary doing the specialised listing.

Q30 Linsey Farnsworth: So you would still like the Government to consider specialist serious sexual offences courts notwithstanding that it is not currently in the Leveson report.

Professor Lewis: A lot of serious sexual offences are not covered by the new division that Sir Brian recommends, so I do not think it is inconsistent with the part 1 Leveson report, nor do I think the question whether there would need to be specialist sexual violence courts was his focus. We are asking different questions. We await the Government's response to the whole of the report. To be fair, they have six months for an interim response, and it was only July, so they are not actually late.

Sir Peter Fraser: I will add, as a pedant—because I am, I am afraid, a well-known pedant—that the results of the three pilot schemes that are going on, rather than being considered by the Government, as Penney said, would probably be HMCTS in conjunction with the Lady Chief Justice.

Q31 Linsey Farnsworth: Good. A last question from me, if I may; there are two parts to it. You mentioned special measures available at present. You



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are recommending a model of entitlement to standard measures to assist victims and witnesses in sexual prosecutions. Could you explain what you think the main benefits of that switch would be? Are there any unintended consequences that you have identified that might result from a move from entitlement to standard measures in sexual offences prosecutions?

Professor Lewis: We recommend that complainants in these cases should be entitled to use what we call standard measures to assist with giving evidence. Standard measures would be screens; live links; pre-recorded evidence; and exclusion of the public, although subject to a reformed exemption for individuals who are directly involved, bona fide representatives of the press, academic researchers who have ethical approval, and a supporter for the complainant. The additional standard measures would be the removal of wigs and gowns, the presence of a supporter such as an independent sexual violence adviser, and separate and accessible entrances and waiting rooms.

I do not think that we have identified disadvantages. The advantages that we identified are that complainants would know in advance that they can have the measures that they decide would best work for them, with the benefit of independent legal advice, which we also recommend they should be able to access on this particular issue, rather than the prosecution having to make an application, explain how the measure that the complainant wishes to use will help them to give their best evidence, and then wait to see whether that application is granted. As you will know, it almost always is, so it seems an unnecessary cause of stress.

Sir Peter Fraser: And uncertainty.

Professor Lewis: Yes, and uncertainty—thank you—for the complainant to have to go through that process. Having said that, sometimes some measures will not be available, which will limit whether the complainant can exercise their entitlement to that particular measure in that court.

We also note that, in circumstances in which the defendant would not be able to participate properly in their trial because of the measure that the complainant has chosen, the trial judge would have the ability to say, “I’m sorry, but you can’t have this particular measure.” The example that we gave in the consultation paper, and that we repeat in the report, is a complainant who wishes to testify from behind a screen and the defendant who is deaf and reads lips. In those circumstances, the defendant would need to be able to see the complainant. That example gives you an idea of the narrow circumstances in which we think that such a measure might not be compatible with the defendant’s right to a fair trial, but there would be a mechanism for the trial judge to make sure that the defendant was able to appropriately participate in their defence.

Linsey Farnsworth: That is very useful. Thank you for your answers.



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Tessa Munt: Professor Lewis, in the consultation on criminal appeals, you made a provisional proposal of changing the “real possibility test”.

Professor Lewis: We did.

Q32 **Tessa Munt:** What are the problems with the current test, and what are your proposals regarding its reform, please?

Professor Lewis: We provisionally proposed replacing the real possibility test—which is the test that the Criminal Cases Review Commission uses when deciding whether to refer a case back to either the Court of Appeal or the Crown court, depending on where the defendant was convicted or sentenced—with one that focuses on the CCRC’s own view of the case rather than the predictive test that it currently is. The CCRC currently has to ask whether there is a real possibility that the Court of Appeal will quash the defendant’s conviction. Rather than predicting the court’s response, we think that the CCRC should reach its own independent judgment about whether to refer the case back to the Court of Appeal or the Crown court.

We heard from consultees to the issues paper that we published before the consultation paper—as well as from people who submitted evidence to the previous Justice Committee inquiry into the CCRC and the Westminster commission on miscarriages of justice that the APPG on miscarriages of justice set up—that the predictive nature of the real possibility test is problematic, because instead of deciding whether the conviction should be reviewed by the Court of Appeal, the CCRC is assessing the possibility of the appeal court upholding the decision rather than assessing the possibility that the decision is right or wrong or safe or unsafe.

The other really useful piece of evidence was Chris Henley KC’s review of the CCRC’s handling of the applications made by Andrew Malkinson. As some of you will remember, the CCRC had evidence that it was not Mr Malkinson’s DNA on a crime-specific area of the victim’s vest top, yet did not think that there was a real possibility of the Court of Appeal overturning Mr Malkinson’s conviction, apparently because the Court of Appeal had commented on the strength of the eyewitness identification evidence.

The concern that Chris Henley expressed was that, because the CCRC staff were focused on what the court might do, they did not come to the application with an open mind, and the way in which the Court of Appeal had expressed itself in Andrew Malkinson’s unsuccessful appeal before the DNA was available shaped the investigation—or perhaps one might say the lack of an investigation—into Mr Malkinson’s applications.

The concern is not so much that at the end of the process the commissioners are not asking the right question or not being given the right question to ask; it is that the whole process is shaped by the test. If the test required an independent judgment by the CCRC, perhaps



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investigations would be more open-minded and reasonable lines of inquiry such as the one in Andrew Malkinson's case would be pursued. It is really a concern about the impact on the investigation that the CCRC carries out or could carry out but does not of the real possibility test.

We are provisionally persuaded that the test should be non-predictive. We consulted on that. We looked at some alternative tests, some of which are based on other countries, such as whether a miscarriage of justice may have occurred, whether it would be in the interests of justice to make a reference, whether there are arguable grounds of appeal, or whether the decision is or may be unsafe. We provisionally proposed "may be unsafe" as the test that we thought was the best—not asking precisely the same question as the Court of Appeal, but asking a question that will hopefully result in the sending of a wider group of convictions back to the Court of Appeal.

Q33 Tessa Munt: The Criminal Cases Review Commission thinks that this might open the door to more than 25,000 former applicants who could ask for their cases to be reconsidered. How would you answer that concern?

Professor Lewis: We said in the consultation paper that it would be open to the CCRC to come up with a process by which it could distinguish where there was a need to review a previous decision and where there was not, in the same way that it has a process for deciding whether there are exceptional cases that warrants it looking at a case even though there has not been a first appeal. Ultimately, if one of the principles of an appeal system is to avoid the conviction of the innocent, it might be necessary to look at some previous cases that the CCRC has rejected.

Q34 Tessa Munt: Regarding the accountability of the CCRC, you have suggested that it should be subject to an independent inspectorate. HMCPsi has been tasked with inspecting its casework. Is that what you envisaged, or is it something different?

Professor Lewis: I think it is, yes. This is an example of what I like to think of as early implementation. We had a very useful discussion with the chief inspector of HMCPsi, the CPS inspectorate. We could not really see the case for a new, independent inspectorate again. It is probably too small an organisation to warrant a whole new body.

There are concerns about using HMCPsi, which we accept and we set out in the consultation paper. There are concerns that a lot of the staff of HMCPsi are former prosecutors, and perhaps some of the worries that applicants or potential applicants have about the CCRC are that it is not sufficiently defendant-focused or not sufficiently alive to the possibility of miscarriages of justice.

None the less, we thought that the way that HMCPsi works by inspecting casework was probably the best fit for an independent inspectorate. We spoke to Dame Vera Baird about that when she was appointed interim



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chair, and that is something she has been able to engage HMCPsi to do as a one-off.

The question will remain. We really want to wait and see what the results of the inspection are and whether there should be a statutory amendment to HMCPsi's enabling statute, which would put the CCRC under its aegis. We will wait to see the inspection report. However, it is fair to say that an early analysis of consultation responses on that consultation question was very favourable towards the idea of an independent inspectorate.

- Q35 **Tessa Munt:** In our recent report on the leadership of the CCRC, we recommended that the terms of appointment for commissioners should be reviewed to enable them to have more of a contribution to the day-to-day running of the organisation. You are seeking views on the law governing the composition and terms of appointment of commissioners.

Professor Lewis: Yes.

- Q36 **Tessa Munt:** What concerns do you have about the current composition and the terms of appointment? You have covered some of that already, but can you be explicit about that, please?

Professor Lewis: This dates from the last review of the CCRC, does it not, which resulted in commissioners basically becoming really quite part-time? That is not to detract from the quality of the commissioners, but if you have people working full-time, they will be more integrated into the organisation than people who are working one day every two weeks.

- Q37 **Tessa Munt:** Our observation was also that they were working at distance most often.

Professor Lewis: Yes, I believe everyone is working at distance, because it has become a remote-first organisation, has it not? We received a lot of evidence about the culture of the CCRC, the way it works and so on. Most of that is not suitable for the Law Commission. Most of that does not require law reform in order to get it right. A lot of that is basically Dame Vera's job, and that is why we have engaged with her. When we are analysing the responses to our questions about the CCRC, we have undertaken to produce a summary of those so that Dame Vera and the leadership of the CCRC have an idea of the themes in relation to the culture of the CCRC that have come through into our consultation, on which we will not be able to make recommendations, but which might be useful for her and her colleagues. The reason why we specifically mentioned the appointment of commissioners is that that is in the statute, so it is something that we could make recommendations on.

Tessa Munt: Thank you very much indeed.

Chair: Thank you very much, Professor Lewis—now back to Sir Peter. We have some questions from Vikki Slade, whom we welcome to her first meeting as a member of the Select Committee.



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Q38 **Vikki Slade:** Thank you, Chair. It is fascinating to read a bit about the commissioners. I noticed that one of them is the commissioner for public law and the law in Wales. Following the last evidence session with your predecessor, the Justice Committee wrote to the Lord Chancellor suggesting the appointment of an additional commissioner, potentially someone covering digital and AI and this conversation about Wales. I am interested to know where digital and AI sits now. Does it sit within commercial and common law?

Sir Peter Fraser: Yes.

Q39 **Vikki Slade:** Have you raised a request for an additional commissioner or two with the Lord Chancellor?

Sir Peter Fraser: I have not raised the point about an additional two commissioners with the Lord Chancellor. I have raised the additional commissioner point not with the present Lord Chancellor, but with his predecessor and predecessor but one.

Just to explain the law in Wales point, obviously an increasing amount of law in Wales in devolved matters is moving in a particular direction away from the law of England. Whereas 30 years ago we talked about the law of England and Wales, in significant respects the law of Wales is now separate and different from the law in England. We engage with the Welsh Government, and we are in fact working on Wales-specific projects.

One of them at the moment is codification of the law of agriculture in Wales. The increasing amount of time that we are devoting to the law in Wales suggested to us, even under my predecessor, as you have identified, that there is a good argument for having a commissioner whose field solely is the law in Wales. That need not necessarily cost very much. The commissioners' salaries are public knowledge. They are paid approximately £150,000 a year, so there would be a budgetary increase in so far as salaries are concerned. We have Welsh-based lawyers already. We have the use of premises in Cardiff that are provided to us free of charge by the Ministry of Justice in its facility in Cardiff.

The only downside to it—it is not really a downside; it is a procedural step that would need to be taken—is that the 1965 Act would need amending, because at the moment it is a chair plus four commissioners, whereas it would have to become a chair plus five commissioners. At the moment—although you will all separately have noted that the division of our four commissioners broadly replicates the collection of books in the Justinian code—the law of Wales and public law do not necessarily sit together as natural partners, but that is the way we organise it internally. We think there is a reasonable case for a fifth commissioner, but that is not something that has been taken up with anything approaching enthusiasm. In the meantime, at the moment we are advertising for a new post of special counsel for the law in Wales, who would be somebody who sits above the normal level of lawyer but below commissioner, and



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who would have quite a lot of responsibility in terms of our projects in Wales.

I should also say—I am sure most of you will know this anyway—that all our publications are translated into Welsh. We also have first Welsh speakers on our staff, we attend a reasonable number of events in Wales, we chair something called the Wales Advisory Committee, and we often present matters and papers at that committee in Welsh. We are quite Welsh-centric, because we are fundamentally aware that we are the Law Commission of England and Wales. When I am in Wales, I am the chair of the Law Commission of Wales, as far as I am concerned.

Q40 Vikki Slade: Turning then to AI and digital, are there any specific AI projects that you would like to see the Law Commission undertake? How well equipped is the Law Commission currently to manage those and to resource them in the way that it is doing at the moment?

Sir Peter Fraser: There is probably a massive project to be done at some point on the law and AI, full stop. We published a paper in August that was a summary high-level paper about the sorts of issue that AI presents to the law generally. The parallel I sometimes use when I am debating this subject is the invention of the railways, which in the 18th and 19th century changed the whole way people lived and also changed the whole legal landscape. If you think of things like conditions of carriage, buying a ticket and public liability for crashes of locomotives, all those things simply did not exist until the railways were invented. Now that computers and AI are dominating such a fundamental part of everybody's life, it has an impact on wide ranges of law that as a society we have not really grappled with yet, so there is a very large project to be done on AI.

The responsibility for that probably falls across two or three different Government Departments, depending on which part of AI you are looking at. Penney mentioned hate crime earlier this afternoon, when we were talking about the number of consultation responses. Think of the type of online offences that can be committed now and the inability of the criminal law until recently to deal properly with things like deepfake pornographic creation. If you had come to a meeting or session like this 20 years ago, nobody would have had any concept that that would happen. So there is room for a significant major project on AI generally.

To go to the next part of your question, we are probably not resourced for that at the moment, but we could become resourced for it. Certain commissioners such as the commercial and common law commissioner, Professor Rowan, definitely have the expertise, but we would probably need to bring in some specialist legal resource. The paper that we published in the summer was done fundamentally with the input of a specialist lawyer in that field, who we engaged for a 12-month period to do it. It definitely could be obtained.



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The short answer to your question is that there is a very big project to be done; we could resource it, but we do not have the resource sitting around waiting for that project at the moment.

- Q41 **Chair:** If I might be allowed just one final question, we noted that your predecessor, predicting what your challenge would be in your term, said that it would be protecting the Law Commission's independence. I do not know whether you would agree with that. We—obviously not you—might be thinking of the Sentencing Bill and the Sentencing Council's revised powers. If not, what would you say is the challenge for you, and indeed for your successor in due course?

Sir Peter Fraser: The challenge for the Law Commission going forward?

Chair: Yes.

Sir Peter Fraser: Looking at specifics, the funding model is something that needs to be addressed, so in a sense it is a challenge. I do not see maintaining our independence as a specific challenge, but it is a characteristic or part of a mission statement that we have to remind ourselves of every single week. I do not think that it is necessarily going to be a challenge retaining that independence.

Speaking for myself, one of the things that I see as potentially a challenge or an aspiration going forward is increasing and maintaining our international engagement, which we have not really discussed at all this afternoon but which is an important part of what we do; keeping not just the reputation of the Law Commission but the law of England and Wales at a very high level globally; and continuing to produce high-quality work to an expeditious timetable. It is easy for any organisation to become complacent. We are hitting good levels of productivity now. I would like to continue that over the next year so that my successor, when they take over, whoever they are, can build on that.

- Q42 **Chair:** When we met previously, we spent quite a lot of time talking about your international work. Is there anything in particular that you are doing there now that is of interest?

Sir Peter Fraser: We now have an international strategy for the next two years, which we published very recently. We are lucky enough to obtain funding from other pockets of Ministry funding. There is a thing called the rule of law fund in the Ministry of Justice, and we also work closely with the FCDO. Not all our international work is funded by us from our internal amount of money. We have been very lucky in that both the purse-holders of those two different groups of budget have been persuaded to help us with the costs of what we do. We do both outward-facing, where we go overseas to different events and organisations, and inward-facing. We host quite a lot of international visitors, who, when they come to London, if they are in the law reform field or the legal field generally, will often want to come and speak to us and see what we do and how we do it.



Q43 **Pam Cox:** Is that mostly to do with commercial law?

Sir Peter Fraser: No, they are usually interested in all fields. In fact, building on what Penney said, I went on a visit to the United States—to Washington DC and New York—and met the Chief Justice of the Supreme Court and a number of other senior judges. The project we talked about most was contempt of court—contempt by publication. As Penney said, in the United States they simply have no concept that there could be any legal restriction on what could be published about anything to do with a criminal offence, whether the person is on trial or not. Some of them gave us consultation responses and asked to be hooked into our consultation process. It is not always commercial law, although some of them are very interested in commercial law.

I was invited to Singapore. They have a thing called Singapore Convention Week, when they have all their legal conventions in a single week. I was invited as a judge, but I also met people from their Attorney General's department that deals with law reform. The subject that they were most interested in then was electronic trade documents and the Property (Digital Assets etc) Bill. In some jurisdictions, they are fundamentally interested in commercial law, but it is not exclusive.

Professor Lewis: A delegation from Singapore came to talk to us about evidence in sexual offences prosecutions. Indeed, two other delegations from Botswana came and talked about a lot of different projects, including evidence in sexual offences prosecutions. Recently, a group of judges from Tanzania came to talk to us about that project. We do get interest from quite a wide range of jurisdictions wanting to talk to us about different parts of law reform.

Chair: Thank you very much to our witnesses.

Before we close, there is one other matter that I want to put on the record. I express my condolences, and I am sure those of the whole Committee, to the family of Baroness Newlove, who passed away last week and was the Victims' Commissioner for many years. Indeed, she was before the Committee only two months ago. She put victims at the centre of the criminal justice system, working as she always did with great expertise and great compassion. With that, I will end our proceedings for today.