HOUSE OF COMMONS

Justice Committee

Oral evidence: (a) Court capacity, HC 284; (b) The future of legal aid, HC 289

Tuesday 2 March 2021

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Watch the meeting

Members present: Sir Robert Neill (Chair); Paula Barker; Rob Butler; Janet Daby; Maria Eagle; Kenny MacAskill; Dr Kieran Mullan; Andy Slaughter.

Questions 333 - 374

Witnesses

I: Dame Vera Baird, Victims' Commissioner for England and Wales; Penelope Gibbs, Director, Transform Justice; and Jodie Blackstock, Legal Director, JUSTICE.

II: Nimrod Ben-Cnaan, Head of Policy and Profile, Law Centres Network; and Jo Underwood, Head of Strategic Litigation, Shelter.

Examination of witnesses

Witnesses: Dame Vera Baird, Penelope Gibbs and Jodie Blackstock.

Chair: Good afternoon, everyone, and welcome to this session of the Justice Committee. We are continuing to take evidence on our two inquiries into court capacity and legal aid. We will hear evidence on both matters together.

Before we come to our witnesses we have to deal with declarations of interest by Members. Janet Daby, welcome back to the Committee for the second time. It is great to see you again. I do not think you have any interests to declare.

Janet Daby: No, but thank you for the lovely welcome.

Chair: I am a non-practising barrister.

Maria Eagle: I am a non-practising solicitor.

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

Q333 **Chair:** Although he is not with us yet, I know that, when he joins, Andy Slaughter will want to declare that he is a non-practising barrister.

The first panel of witnesses comprises Dame Vera Baird, Penelope Gibbs and Jodie Blackstock. Welcome to all of you and thank you very much for coming to assist us with your evidence. Perhaps you would like to introduce yourselves.

Dame Vera Baird: I am the Victims' Commissioner for England and Wales. Thank you for inviting me to come to the Committee.

Q334 **Chair:** It is good to see you again.

Penelope Gibbs: I am director of Transform Justice, a charity that advocates a fairer justice system.

Jodie Blackstock: I am legal director of JUSTICE, which is a law reform and human rights NGO.

Q335 **Chair:** Thank you all very much. We have looked at some of the written evidence that your organisations have provided. We might amplify some of that, but we can take a lot of it as read.

From your various perspectives and the work that you and your organisations have done, what is your take on the experience of court users during the pandemic?

Dame Vera Baird: My own view is that the most serious victims of crime are the main victims of the very considerable delays in the criminal justice system, especially those who have had a traumatic experience like

a very serious assault or sexual abuse. They live with it, in particular when they know that they have to go through it all over again by testifying in court. They cannot leave that behind and move on with their lives.

I fear that they are being re-victimised by extended delays, but three further things follow from how the criminal justice system is working at the moment for that same category of people. First, there is a lot of uncertainty because, from my conversations with victims hubs every couple of weeks and what Victim Support tells me, it appears that people are being told they need to come to court and, at short notice, are told they do not need to; sometimes on arriving at court they can be told that they do not need to. If you are in that traumatised category I have just referred to, you will have lost sleep before and you will lose it again afterwards.

The other things that follow are relatively poorer victim support because of the pressure on the organisation. There are much longer waiting lists for independent sexual and domestic violence advisers. Victims hubs find that people come on to their books and stay much longer, yet as other people are still coming on they can give less attention than they would like. In particular, when there has been a change of date and delay and it is brought forward again, sometimes the special measures that have been agreed are not available. Sometimes the court has to change and special measures have not followed the case.

I think that we are giving much less good service than we used to give to victims. I guess that we will lose some because they will not want to go through the coming and going again, or simply cannot take the idea of a trial date that in some areas may be as late as 2022, which is a problem in loss of confidence and perhaps people who are guilty not being convicted and those individuals not getting justice.

From my networks, victims hub contacts and what I know of other organisations on the frontline, that is what is happening to victims at the moment.

Penelope Gibbs: I observed mainly magistrates courts during the pandemic quite a lot in April and May and more recently. We are not talking about people who have been unduly delayed, but my concern is about remote justice and the extent to which people who have been forced to appear in video remand courts from police custody seem to be more disconnected from the court process.

I have also been very concerned about the extent to which they have been able properly to talk to their lawyers. I know that, within police custody, to consult your lawyer properly pre-hearing has been very difficult. With the pandemic, a lot of lawyers are working remotely, so, even if defendants are brought to court and are in, say, the court cells, it is difficult for them to consult their lawyers properly, and when the hearing happens they have a barrier to communicating confidentially with

their lawyers because they are on video in police custody and/or those lawyers are on video in their home or office. I have been concerned about defendants going through the process but not getting high-quality justice.

Jodie Blackstock: I would agree on day-to-day things. Delay is a serious concern in criminal cases, and making sure that the processes by which the justice system is administered take place as close as possible to the normal situation is really important.

JUSTICE works across the justice system, so we are monitoring experience across all court jurisdictions and tribunals as well. There is a mixed picture across those different systems because hearings take place in lots of different ways.

The fundamental starting point is that we did not have a Rolls-Royce justice system before the pandemic hit. Therefore, we still do not have one afterwards, with other complications now adding to that because of court closures and social distancing measures being put in place.

The fundamental point is that many people do not understand the process, whether it is in court or online. Many are litigants in person. We need to ensure that their user journey through that process is clear and understood so that people feel more agency over what is happening to them and about them.

Those are things where we can do a lot of work to fix them. Lots of different hearing types are taking place, whether it is in person, over a video link or by telephone, and good and bad things have been found in that regard across different jurisdictions.

It is important to acknowledge that there are some benefits to the remote process for certain people with disabilities or health conditions and those with childcare and work responsibilities. It is much easier for them to join from home or another comfortable environment. The police station is not such a place and I accept the concerns that Penelope raises, but for other people there are some benefits of that kind. We are seeing those coming through. For example, the Special Educational Needs and Disability Tribunal has cleared its backlog by having video and telephone hearings, and children are taking part much more comfortably. Of course, children are used to video calls all the time. We have a mixed picture.

It is also important to acknowledge that there is a massive barrier for some people to take part in a remote hearing. Some of that is about the technology; some of it is about the communication barrier that might exist—very last-minute notices about change of hearing type, confusion about the kind of hearing and the ability to speak to court professionals about that. All that can be ameliorated to a certain extent by better practice.

Q336 **Chair:** Jodie, we can come back to some of these matters later. I am conscious of the fact that we have to get everybody in. You raise a

number of issues that we want to explore later. You talked about existing capacity issues. Penelope, can you give your view about whether there were existing capacity problems. You told us that some of these specific issues are the result of the pandemic, but what about beforehand?

Penelope Gibbs: There were significant backlog issues, particularly for Crown court cases, before the pandemic. There was a bit of a backlog in magistrates courts and they are doing quite well.

I might have expected a massive system change in the approach in magistrates courts and a concentration on more serious cases, which I simply have not seen. I am concerned that the court backlog will be exacerbated, or not improved, because we have not changed enough of what we are doing.

Yesterday I observed a video remand court, which, unusually, had been running for about three or four years. There were still technical problems in getting people on the line three or four years down the track. All morning I saw people who had been arrested on warrants without bail and those who had breached bail conditions. I am not condoning any of those, but I know that warrants without bail are a considerable problem at the moment because they are the result of people not getting postal requisitions to go to court. My understanding is that police custody is full of people who have breached their bail conditions and are there on warrants without bail.

If we are to get the backlog sorted out, we need to slim down what is happening in the magistrates courts so that we can free up staff to work on Crown court trials. My awareness is that one of the key problems with Crown court trials is the lack of staff. If we could reduce some of the cases that are going through the magistrates courts, which in a pandemic maybe we could deal with in another way, we could free up staff to deal with Crown court trials.

Q337 **Chair:** Dame Vera, you said we were not able to give as good a service to victims in some respects for the reasons that you set out. Do you have any views on previous capacity pressures and how they were being coped with?

Dame Vera Baird: There was a 39,000 backlog when we started. We started from a really bad position, quite frankly. My fantastic researchers unearthed for me the fact that in 2015 there was apparently a backlog as big as this one, which is about 55,000 to 56,000, and it was cut by 22,000 by 2018 before it rose again. Obviously, they can cut backlogs, but it seems to take quite a long time. It may be quite optimistic to think that the current one will go away particularly quickly.

My researchers tell me that outstanding cases are made up disproportionately of outstanding trials. That is not a great surprise because they completely stopped for a couple of months, but apparently the increase in trials is 52%, whereas for things like sentence cases it is

only about a 22% increase. That looks like an increase, but it is a year-by-year one, which suggests it was happening anyway and it will impact on the people I have been talking about especially.

Apparently, the proportionate increase in the backlog for sex offence trials is even bigger, which rebounds very badly, but long waits are not new. We did a survey of rape survivors in the summer of 2020. Of the 53 survivors who went to court, of the 490-odd who responded, more than half said that it had taken seven to eight months from the decision to prosecute to get to court at all, and one quarter said that it took between a year and two years to get to court. Therefore, there were long delays.

I am afraid that the evidence about falling confidence does not just date from Covid; it had already started and no doubt there are delays, but there are also repeated breaches of the victims code that will only get worse because people are now very overworked. I have already spoken about victim services being overworked, but police witness care units have seen about a 40% increase in what they have to do because of all the chopping and changing I have referred to. Therefore, they are also quite badly placed to deliver good service to the people they want to.

Q338 **Rob Butler:** Dame Vera, you mentioned in your opening remarks some concerns about special measures, which you also referred to in your written evidence. Can I focus on your concerns about remote evidence centres and achieving best evidence interviews? What do you think is the state of play, and what would you like to see in their use?

Dame Vera Baird: If I can speak about special measures generally for a minute, they are not being that well tailored now, and the coming and going that I have described at least twice will be part of it. It seems to me that the court culture in some places is that it is a live link or a screen in the court. That is your option. When I talk about ABEs and remote links, which I will in two minutes' time, the point about a live link is that it is often the case that on the preliminary visit to the court, which is now sometimes being done virtually, the person will be visible to the defendant in court and visible to the public gallery, whereas they thought they would be in a separate room on a TV screen. They really want the parity of anonymity and separation from the defendant that you get with a screen in court; they do not want to be in court. That continues to be a very serious problem.

I am very pleased to say that the courts service has now started to appreciate this. It looks counterintuitive to say, "What do you mean? She's coming across a live link on a screen. You want to screen the screens?" It does not sound as if it makes a lot of sense, but you can see the point of it. I guess you will understand that in particular victims of historical sex abuse do not want the person whom they say did it to know what they look like now, nor do they want to see the face of the person who did that all that time ago.

Just having the choice of one or the other is not very good. Quite often you find that a person who has chosen to have a live link ends up coming into court to give their evidence once they appreciate that that is the way to block themselves off from the defendant, and that is not what they want to do.

Remote evidence centres are very important. I want to emphasise that all these things have to be offered as options. No one wants to compel people in remote evidence centres, but there is considerable fear among people about actually going to court. First, they are worried about Covid. Secondly, they are worried about meeting the defendant, or the defendant's family, on the steps, or on the way there, or having to share a waiting room, which even now we cannot guarantee will not happen. We do not have separate waiting rooms universally, wherever it is. There is all the anxiety of seeing lots of police officers about the premises and barristers dressed, as I used to be, like 16th century squires. This is all very intimidating for people. If they could go somewhere else and sit in a sort of sitting room and talk as you and I are talking now, that would be a very good thing. It is an option that needs to be offered far more often than it is now and needs to be explained.

There are about 30 remote evidence centres and about 15 or so are Covid-safe and okay, but they are underused. I am delighted to say that the CPS has appointed a person, who sounds as if she really has a mission about it, to look for more and introduce greater use of remote evidence centres.

You can do really good things. When I was a PCC in Northumbria, there was one case in which a very young woman had alleged sexual abuse by a member of her family. Her family did not agree and fell out with her, so she had to move out. She felt very isolated; she was on her own and was definitely unable to go to court. She did not think she could even give evidence remotely. The police, very smartly, noted that her best friend was a dog whose name was Barker. She brought Barker with her to the remote evidence centre and was able to give evidence. That was somebody who could never have given evidence at all. She was not at the Crown court. I have never tried to take a dog to Newcastle Crown court—it is probably tricky—but that person was facilitated a lot by the use of a remote evidence centre.

My big drive in how to try to cope with the backlog—I am guessing we will come back to this—is a serious extension of the use of section 28, which allows the person's evidence to be video-recorded in chief and sent to the defence so that it can prepare its cross-examination in plenty of time. That cross-examination is then done via a live link, perhaps from a remote evidence centre. That is videoed, too. Those videos go into a box and the complainant is finished with the trial. Therefore, those who can have pre-trial therapy, or can move on with their lives, are not blocked from recovery in the way a long trial date is likely to do to people.

That was rolled out really well by HMCTS once it got the message. I do not say it was from me, but it did decide to roll it out. There are 83 such courts since November. It is not being used as much as it should; it is described as patchy. The areas that had it before are using it well, but others are taking time to mount up.

For my money, that needs to be accelerated with an absolute change of gear. It also needs to be made available for intimidated witnesses. The other category in the special measures section is people who are intimidated, not by a gang or gun—you would use special measures in that case—but by the position they are in when giving evidence. Special measures are automatically available to victims in sexual assault cases, so let us roll out that special measure of section 28 for intimidated witnesses, too.

I suggest that you could remove several thousand people over a year from that backlog, and you can encourage people to stay. If you say, "Your trial date will actually be 2022, but in six months' time you might be able to do it this way", you will probably hold on to people far better if that becomes an option.

Q339 **Rob Butler:** Do you think that those should be permanent changes, or are they dealing with just the Covid backlog?

Dame Vera Baird: I think they should be permanent changes. That offer has not been made to sufficient numbers of people. There is some evidence that, although about 7% of victims are assessed as requiring special measures, if you apply a simple psychological pro forma it would be more than 50%, so that needs improving, but there are all sorts of problems about delay. Police officers who have retired could video their evidence. It does not have to be restricted to the vulnerable, and certainly not now.

Rob Butler: That is very helpful indeed.

Q340 **Maria Eagle:** I put this question to Dame Vera and anybody who wants to answer it. We have previously heard a little about your thoughts on the problems caused by the pandemic and existing backlogs. Do you have any thoughts on the HMCTS recovery plan and how those proposals might affect criminal and civil court users?

Dame Vera Baird: I have to say that the Government are now investing in court sitting days and so on to try to recover what the backlog was before and to fill the courts with sitting days. I think that the Nightingale courts are very important. If I were to put something right behind my section 28 point—just made, I fear, laboriously by me—it would be more Nightingale courts. We need more judges' time, more courts to sit in and good working hours.

They are very important things, but I would sound a note of caution about Nightingales, which are a key part of the recovery plan. The Witness Service has told me that it has had new Nightingale courts

switched on on a Friday for them to staff on Monday, which they cannot do. There has to be an ability to have both victim support services and court-based witness services available so that the quality of looking after victims is not different in Nightingale courts. Some of them also do not have separate entrances or waiting rooms. Therefore, while I am very much in favour of them, they need to be carefully tailored, so it is not a question of getting on with the show without ensuring that victims and witnesses can be taken proper care of.

I am very iffy about Covid operating hours, as they are called. If they are to be used as part of a blend, I do not think that they should ever be used in cases where vulnerable victims are giving evidence. For one thing, a lot of victims of sexual and domestic abuse are women, and very early starts or late finishes are not great for child care.

The other really important thing arises where a vulnerable person is giving evidence. There are two shifts in the courts. If you are there from the 9 o'clock to 1 o'clock shift, it is a hard stop. The court has to stop and empty for the second shift to come on. If you are halfway through your evidence about a sexual assault, you have to go home and spend the afternoon and night—no doubt sleeplessly—and come back the next day, whereas I am sure that Sir Bob will remember from his trials that, if somebody was giving evidence, most judges would sit a bit longer to get it done. You simply cannot do that, so I am pretty well opposed to that. Otherwise, I think that Nightingale courts with all due preparation are very helpful.

Penelope Gibbs: Some of the elements work. Nightingale courts are good, but reading the evidence you have received as the Committee, particularly from police and crime commissioners, it sounds like there is a bit of a problem with too much centralised decision making. Many of your PCC respondents have suggested that, if they could delegate more of the decision making about what could be used as a Nightingale court in local areas to those local areas, including HMCTS in those local areas, they could get going much faster and find some very good venues.

The other thing that I am slightly perplexed about is why there has not been greater use made of lateral flow tests for courts. The Government are pushing them out to every single school and all families, and the courts service is using them for a couple of pilots in a couple of courts. I have had one myself. You can get results in seconds, and it seems to me that it would unleash a lot more places and allay a great deal of the nervousness out there about the Covid security of courts.

Jodie Blackstock: There are good things about Nightingale courts in terms of court capacity and addressing the backlog to a certain extent. Where those courts are placed is important because requiring people to travel long distances to get to them causes them more anxiety in getting across their local area or the country. If we can place them in community areas where it is easy for people to get to them, that is more helpful.

The fundamental problem perhaps with them is their ability to deal with secure cases and people remanded in custody. Not many of these courts are able to cover that. We keep hearing announcements about new courts coming on track, but they are not necessarily secure courts. Therefore, in terms of their ability to deal with the backlog they are not necessarily a panacea.

What is not perhaps present at the moment in the criminal context is innovative technology around remote hearings, particularly in the Crown court setting. That is an area where JUSTICE would like to see more creativity to get those cases going.

As for extended operating hours, I take the point that Vera makes about how it is currently operating. There are some positive aspects where people are working during the day. Giving them the option to give their evidence outside working hours is a potential positive. It is the way these cases are rolled out that needs more careful thought.

The overall takeaway from the experience of the past year is that we need to ensure that there are choices for how people give their evidence in court proceedings, and that the way the interests of justice are determined by courts in the manner of giving evidence or attending court meets the needs of each of those court users. As Vera has just said, it is entirely possible to extend witness evidence to be given remotely and recorded so that they are not awaiting ahead of the hearing. I absolutely agree that that should be rolled out much more broadly to other categories of people. In principle, it could be an option available to any witness giving evidence in a court process.

Looking at the actual needs of the individual and the best way of serving their ability to take part in court proceedings to the best of their ability and effectively to participate is what we should be considering going forward.

Q341 **Maria Eagle:** Jodie Blackstock, what have you learned from the jury trial pilots that you have been doing? Do you think that they could be of use in England and Wales? Perhaps everybody who wants to might say something about what approach we should take to make sure that we get jury trials done and the backlogs do not go into the far future, which some appear to be at the moment.

Jodie Blackstock: As we know, the Crown court backlog is one of the most concerning ones that we have. It existed pre-Covid but it is increasing significantly. A report came out in January from an organisation called Crest, which evaluated where backlog issues might continue to arise. Its recommendation was that we double Crown court capacity to avoid a significant backlog emerging as we leave lockdown. The reason we undertook to explore whether trials could be done remotely was that we were really concerned about the problems of delayed justice, with people sitting in cells waiting many months, possibly years, for trial or on bail with their jobs, homes and families at risk;

likewise, victims and witnesses being under immense pressure waiting for resolution of these cases, knowing that they have to give evidence. All of that brings with it the potential failure of memory.

What we know about Crown court trials is that there are too many people having to go to those court venues because juries have to be present. Our pilot showed that having fully remote hearings, to a certain extent, are a real equaliser. Everyone can be seen and heard clearly, whatever their role, and that is quite different from the current set-up in courts where it can be impossible to see those you need to see. In particular, in Nightingale courts in larger venues, as an advocate it can be quite difficult to see all the jurors, and likewise for jurors to see everybody they need to. Therefore, it equalises roles, and the defendant at the back of the room in the dock is quite a distinct difference.

We also found that, in the process of hearing those trials, witness evidence can be examined and evaluated over the video link as well as it can be in court. We have been doing this for years through special measures and it is a method that works.

Getting right the fundamentals in the platform design is really important. We were able to develop a bespoke platform for our jury trials through the organisation AVMI, which is now joined with Kinly. That provides the Cloud video platform in court. The people who designed our platform are working on the roll-out of video hearings.

What they are able to design is a system where everyone has a static position on the screen. It is really frustrating at the moment in live cases when people pop around the screen. It is important that everyone appears in the right place; that they are labelled so that we know who is who; that there is private break-out space for the defendant and advocate to go to so they can give and take instructions; and that there is a chat function for the jury and judge.

The most important part of the approach—we spent a lot of time working on it—was the journey into that hearing. How are people joining in, especially if they are coming from a home environment? How do we create the seriousness and solemnity of that process? That is very much about the joining instructions, a pre-court video to illustrate what the process will look like, and explaining that process as a serious and important duty that people are taking on board when they participate.

The academic evaluation conducted independently of us concluded that with those things in place that process can work fairly. We concluded that it was possible for single-issue, straightforward cases with one or two defendants to be dealt with in a fully remote environment. That is about 40% of Crown court work; it is a significant number.

However, whatever is done, be it remote or in person, we need to make sure there are sufficient staff to cover these cases. We do not have enough judges or court staff to double capacity, which is what is really

needed to address the backlog. Therefore, we need a speedy recruitment drive. We need judges very quickly to be recruited from diverse backgrounds and non-traditional pools, and it is a really good opportunity to make sure that they reflect the society that they are trying.

Our view overall is that that sort of innovation should now be looked at carefully by HMCTS and parts of it used where they can be.

Q342 **Maria Eagle:** Perhaps Penelope and then Dame Vera would come in. If people bear it in mind that we are short of time, that would be excellent.

Penelope Gibbs: I am all for doing more research on all video jury trials, but it is risky and we need more research before we go for them, which would take a while anyway. I think we should stick with jury trials but look at the system and try to improve efficient use of the time we have. Fifty per cent. of trials are ineffective, so 50% of them do not happen on the day they are supposed to. That messes around defendants, victims, lawyers and court staff, and simply wastes a lot of time. If we could get that down, we could use a lot more of the time to have effective trials.

One other issue is remand. We have talked about the need for cells for some Crown court trials. A quarter of those who are custodially remanded in the Crown court are released by the court. They are either acquitted or get a non-custodial sentence, so thousands of people who were remanded are then released. I am not saying that some of them did not need to be remanded, but can we have more remand reviews so that the people who are likely to get a non-custodial sentence are not languishing on remand for months and using very scarce court resources, cells and so on?

I make one further point about the recovery programme. From the point of view of magistrates courts, from my evidence, remote working does not contribute to reducing the backlog. Remote working is a Covid measure, but all my observations and conversations with people involved show that in the magistrates courts, if you put people on remote, it slows down everything, because it takes a long time to get people on remote links, there are technical problems, and you cannot be flexible in the same way as you can be in a physical court.

To improve the court backlog when Covid security is better through, say, lateral flow tests, we should return to physical court processes, not rely on remote links.

Dame Vera Baird: I do not agree that you should return to physical proximity if you are talking about vulnerable victims in particular.

Penelope Gibbs: I am not. I am happy for vulnerable victims to give evidence remotely for those reasons. I am referring to defendants and lawyers. Most people plead guilty. Most cases are not trials; they are guilty pleas. I am talking about most cases here.

Dame Vera Baird: Yes.

Q343 **Maria Eagle:** Let us direct it through the Chair.

Dame Vera Baird: I apologise for that. Otherwise, I agree with both of my fellow witnesses. I think that at the moment what will block jury trials from happening is delay. Delay is its own worst enemy because victims do not come. That might be a key person who will not attend.

You have to congratulate HMCTS. Once they got the Plexiglass point, they rolled it out very quickly. There are now about 290 trials a week going on, so it is obviously working well. I think that a challenge it is now meeting is overcrowding in corridors, waiting rooms and as people come in and go out of the court. My latest understanding is that they are restricting the number of trials now because they are confronting the fact that some buildings are simply not capable of having that level of moving traffic, even though it is okay once you get into the jury room and the court.

I guess that we need bigger and more Nightingale courts to accommodate social distancing while it is still essential. We could look at what the Scots are doing. They have juries, who are the mass of footfall, sitting quite separately in a different place. Scotland has a contract with Odeon Cinemas. Jurors sit and watch the whole thing via a video link with the court, which means that the footfall is kept down.

Another way of cutting a backlog as it rises is being proposed—I will not make any comment on it—by the magistracy, which wants to extend its sentencing capacity to 12 months. That would mean that a lot of cases that currently have to go to the Crown court would not, but I have very serious reservations about that. As Penelope has already said, more or less, cases that get sent for sentence to the Crown court from magistrates courts often result in sentences that are less than magistrates courts would deliver, which may mean that magistrates have a harsher approach to sentencing than the Crown court. Therefore, it is a very iffy proposition from lots of points of view. None the less, it would undoubtedly stop the backlog growing as fast as it is now.

Q344 **Dr Mullan:** Picking up on what has been talked about earlier, I want to think again more broadly than just the jury trial pilots about the use of technology. I have heard about some of the concerns that you have. Can you talk about ways in which technology can be used to improve access to justice and speed things up?

Jodie Blackstock: It is helpful to look across the different jurisdictions in England and Wales, perhaps UK-wide, for the answer. It is really important to know what we are talking about with the technology. We use a bespoke platform designed for us. It was designed very quickly, but it is not available in courts at the moment.

The gold standard is a video hearing system that is being piloted in the tax chamber. It has all sorts of bells and whistles to make it work properly, but that is not yet rolled out.

The Cloud video platform is being used. That is the basic standard of the video hearing system. That is the platform being used across tribunals and most civil and family cases, but it has not quite got to the criminal jurisdiction yet. As I understand it, the criminal jurisdiction will be the last one to get the enhanced Cloud video platform.

We still have lots of cases with Skype, Teams and different older technology being used, and we need to work towards ensuring that the technology is robust and enables a fair process to take place. We need to look at where the good practice is and invest as quickly as possible in rolling that out across all jurisdictions.

It is also important to say that in many jurisdictions with litigants in person, particularly family courts and a number of tribunals, it is telephone hearings that are clearing the backlog, not video hearings. We need to look carefully to ensure that those individuals have access to the software that they need to be able to join a video hearing where it is necessary, although it is important to recognise that the social security and child support tribunal is finding it perfectly easy to deliver its caseload by phone. The judges do not have concerns about dealing with cases in that way because many of the hearings are not contested.

Q345 **Dr Mullan:** Could you foresee a situation where we continue those approaches because overall people think that they are more convenient, helpful and a better use of their time, even if there is no longer a need for them from a Covid point of view?

Jodie Blackstock: Absolutely. We should be looking at the needs of the users of the court system and what delivers the interests of justice and fair hearings. If hearings can be delivered fairly through a remote mechanism, that should be available as an option if it is appropriate for the needs of those joining those hearings. It is not possible for some people to join remote hearings because they do not have the technology. There are some people for whom it is inappropriate due to their neurodiverse needs; conversely, for some people it is better to join remotely than having to navigate and get to and from the court building. We need to look at individual needs and have a toolkit of different measures available.

To return to the point about efficiency, our study with the jury trials taking place remotely found that the cases take place much more quickly if the technology works, because you are not waiting for witnesses or juries to join. That requires walking a long way along corridors, getting people together and getting them in. If there is a legal point, the jury needs to go out. All those things take time.

There are lots of ways where it can be more efficient. Some of the evidence from the Scottish example, which as I understand it is now back at capacity because of the cinema option for remote juries—all their courts are operating at normal capacity—shows that jurors found it much quicker, because the link is turned off if there is a reason they have to

leave. They do not have to go anywhere. I think that we can find efficiencies by using these measures.

There is another important point.

Q346 **Chair:** We have to try to keep the answers a bit shorter.

Jodie Blackstock: I think there is a question coming up about listing.

Q347 **Dr Mullan:** I will come to that. Ms Gibbs, you gave quite a contrasting view on the role of technology. Why do you think your experiences might differ so much from what we have just heard about their success?

Penelope Gibbs: I think we are talking about different kinds of hearings in court cases. I am talking about those first appearances in magistrates courts. Remote links are undoubtedly often more convenient, but, in the end, if we want a justice system that has access to justice, effective participation and fair processes, we have to see what the outcomes are of having people on video. For those first appearances in magistrates courts there are indications from research—so it is not me—that they lead to an increase in prison sentences, fewer people having a legal representative to give them advice and are slower.

Even with section 28, which I think is fantastic for witnesses, we still do not know about outcomes. I know prosecution barristers who say, "I'm a bit worried about my witness being remote because I think it will affect the outcome in a way that is not beneficial to the witness." I am not saying we should not use section 28, but we need to know the outcomes of these different processes in the justice system to ensure the fairness of a conviction, acquittal or sentence, even if we use a video hearing.

As for improving technology, can I go back to postal requisitions? I do not know whether you are aware, but a huge number of clients are receiving their charges via snail mail. They are not getting them and responding to them. The same goes for the single justice procedure, which is most of criminal prosecution.

Can we not take that system and revolutionise it through technology and have people get emails, texts and messages as well as letters via snail mail, because the snail mail system is not working and is causing chaos and wasted time in the courts?

Q348 **Dr Mullan:** Dame Vera, do you want to add anything?

Dame Vera Baird: One thing that I think has emerged from Covid is that the technology of courts is pounds better than it was before. They have a digital officer at each court to ensure that if anything goes wrong it is dealt with quickly. That must be something that we will be able to rely on for a better service for all kinds of evidence as we go forward.

As far as section 28 is concerned, would you know what the outcomes are? When it was piloted for vulnerable people in Leeds, Liverpool and Kingston, a very careful count was kept. What was important was that

there were no more convictions because that might have made it in some way unfair to defendants, but what did happen was that all practitioners felt that the stress levels of victims and witnesses had been significantly reduced; that cross-examination was shorter and crisper, perhaps as a consequence of appreciating that the person was vulnerable or because there is often a grounds rules hearing that fixes what can be asked as well.

A very telling point was that there was a significant increase in guilty pleas once the defence had had served upon it the cross-examination. That seemed to make some people think, "There isn't much more we can do."

From lots of points of view it has been proven. I entirely acknowledge what Penelope said. We still get people saying to us, "I'm not too sure about this remote evidence. It's like watching the telly and people don't take it seriously enough." However, look at us. We do it all the time now; it is not just relatives at Christmas; it happens day in, day out, so I think we can take each other seriously across remote links these days.

Q349 **Dr Mullan:** My next question is about listing and case management. We have heard evidence about the challenges that already exist around listing, perhaps pressurised by Covid, and in implementing what the justice system has been asked to implement in terms of whom it prioritises. To begin with you, Ms Blackstock, I would be interested to hear your views on how we could make better use of listing to help the backlog and make things more timely.

Jodie Blackstock: The point I was going to make in my previous answer was more about time slots for cases. That is much improved, certainly in remote hearings, because people are given a fixed time slot to attend. With in-person hearings, there are lists of cases and everyone is told to come at 10 o'clock in the morning and not informed that they might not get on until some time in the afternoon, so all sorts of distress and anxiety build up over that and confusion about why they are still there waiting. That has been minimised by having specific time slots and it is making much more efficient use of everybody's time coming to court.

The other aspect of it is the preparatory stage of a court or case hearing. Particularly in the tribunal system, there is a huge number of adjournments because of cases not being ready. It certainly happens in the criminal jurisdiction as well. Online case management systems and application forms for the immigration and asylum chamber in particular, which have been developed over some time now, prompt to make sure that things are filled out accurately. Tribunal caseworkers are now looking and checking that all the issues have been considered before listing a case, whereas, before cases were getting to court, a judge would look at the papers at the time of the hearing and adjourn because it was not ready. That is exactly the situation in the social security and child support chamber, where most benefit cases are heard. There is a huge number of adjournments for that exact problem.

Q350 **Dr Mullan:** That is an improvement that will stay with us regardless.

Jodie Blackstock: Absolutely, and that is not Covid-related but reform programme-related, although remote hearings listing is. Making the best use of court staff, using online technology to iron out errors, making the best use of judicial staff, where we need them, and using court officers where we can to ensure that cases are ready is really important.

Efficient case management processes involve checklists. We have just produced a report on racial disparity in the youth justice system. One of the recommendations relates to remanding children to secure accommodation, which should absolutely not be happening, certainly not to prison accommodation unless it is essential, and making sure they are checking the right things. We can do much more in prompting decision makers. Have they spoken to the local authority about what accommodation is available? Have they asked themselves the right questions? None of that really requires us to reflect on the pandemic; it is about where we should be looking to find efficiencies in the system in the first place.

Q351 **Dr Mullan:** Thank you. I am conscious of time. Do any of the other witnesses want to make a short and sharp contribution on listing and where it can be improved?

Penelope Gibbs: I looked at the most recent figures, and we still have 50% ineffective trials, so something is going pretty wrong with listings. At some point—this is a very controversial point—it might be worth looking at whether the judiciary should ultimately be responsible for listings or whether it might be better handled by some other body in government.

Q352 **Dr Mullan:** Could you give me one or two examples of the common reasons why it does not proceed? You mentioned that 50% are not successful.

Penelope Gibbs: It is often because the case is not prepared in advance. It collapses because there is a late disclosure, the CPS withdraws or those kinds of things. It is the issue of whether we can get to a point where we are better able before that day to say to everybody concerned that it will not happen.

Q353 **Dr Mullan:** Does there need to be a crunch point before the physical listing and turning up?

Penelope Gibbs: For all hearings, there are, but they do not seem to work properly.

Q354 **Dr Mullan:** Thank you. Dame Vera, do you want to add anything?

Dame Vera Baird: You need to prioritise in listing the most vulnerable victims' cases and you can deprioritise cases if you have done section 28 on them and the videos are in a box. Those are, in my view, the strongest things to do.

Penelope is absolutely right about the cracked trial level and the unworkable trial levels. It is extraordinarily difficult to get away from the impact of the door of the court, which makes everybody think about it for one time. If you try to pinpoint it a week before, everybody will let the date drift past. We will not cure that very readily.

Dr Mullan: Thank you very much.

Chair: That is very helpful.

Q355 **Kenny MacAskill:** My question is more of a catch-all, and you might feel that some of the comments have already been made. Is the Government's programme to address and ensure that there is sufficient capacity ambitious enough? What more could be done? You might feel you have already made the points but might want to emphasise something or make an additional point.

Penelope Gibbs: The biggest thing for me would be to look at what is happening in the magistrates courts. Seventy per cent. of sentences in the magistrates courts are fines. Those fines are not rehabilitative. Many people who get them find it incredibly hard to pay them, and, dare I say it, do not pay them. We are churning people through the magistrates courts on these lower-level offences without any making a real difference.

We could take a huge chunk of those offences and those people, and deal with them effectively out of court. There are now out-of-court cautions where people do programmes and pay compensation to the victim. There are restorative justice options. Victims need to be consulted about those options, but they are more effective in reducing reoffending than the court fine. I would urge the Government to take a radical look at what goes into that magistrates court process.

Jodie Blackstock: I agree that we need to look a lot more at what could be called triaging processes before the traditional court process is triggered. The use of diversion in the criminal justice system is really important for children. We believe that far too many children are being charged and prosecuted when diversion is a much better route for them. It means they can be given much more tailored solutions for whatever problematic behaviour they are finding themselves engaged in.

There are certainly ways to use diversion for other groups of people that are emerging, and the police are starting to use that more and more. In the non-criminal sectors, use of alternative dispute resolution is emerging again, but it needs to be used in the right way. It needs to be used much earlier than it is. Once a court process is triggered, it is quite difficult to consider that because we are into a legal process. Alternative dispute resolution with early legal advice is really important to strip out cases that simply do not need to be in the courts structure.

In addition, in looking at what is happening in the Crown court in the most serious criminal cases, looking at the Scottish system of using

remote juries is important. I have talked about our fully virtual model. That system is working well. To have Scottish jury trials back at capacity when we are far below that is something that our Government should be taking seriously at Westminster.

We need to look at giving much more weight to the impact of delay on parties than preserving our traditional method of administering justice. The fundamental question about that is: is it fair, and how do we ensure it is fair in an alternative process?

Dame Vera Baird: I agree completely with both of my fellow witnesses on all of this—perhaps surprisingly. We need to really roll out section 28 very much more than it is now. That is nothing like as ambitious as it should be. We need more, bigger Nightingale courts. I agree completely that they need local consultation. PCCs can tell you where the right places are in their areas. We need more of those.

Out-of-court disposals can give satisfaction to victims, too. Conditional cautions or community resolutions, which police use quite often, could well be done in a much more organised way as long as victims are always consulted and can always play a role in it.

I must say, if we do not do more out-of-court disposals in that bilateral way, we risk prosecuting people who may be defendants but are also quite often victims of exploitation, domestic abuse or modern slavery. We really need to look more closely at who comes through our courts in the first place. We must make sure that victims are always consulted in any of these decisions.

Q356 **Janet Daby:** My question is about the role of other agencies. I want to thank the witnesses for your contributions so far. What can other criminal justice agencies do to help tackle the court capacity challenges? I know that Dame Vera has already mentioned the CPS being able to support victims and witnesses. Do you have any thoughts about the Prison Service's support for access to justice and to increase court capacity?

Penelope Gibbs: You have already heard it before. There is a major problem with video links from prisons for lawyers to talk to their clients at the moment. It is a really basic thing, but it is holding up trials because the lawyers cannot get a video link to the prison to do the consultation prior to the trial. You cannot have a trial without the lawyer consulting the client. They are not allowed into the prison. Can prisons do something about that?

Q357 **Janet Daby:** Thank you. Do people have any other thoughts or contributions to add?

Dame Vera Baird: On other services, as it were, and not just the courts service, the witness care units that are run by the police are really struggling and need investment. They have something like a 40% higher case load than they had before. They pass the dates on to victims and witnesses and have to do it again. They are essential go-betweens

between a victim support organisation and a victim and the court. They are hugely overburdened now. There is definitely a need for more investment in policing in that department where they are currently at high red risk.

The other agencies that need help are independent sexual violence advisers, independent domestic abuse advisers, and the victims hubs. They need serious investment because there is plenty of research—particularly ours—that shows that, for instance, if an ISVA is involved a sex case, the complainant is twice as likely to stick with the case than if there is not. The same goes for IDVAs. IDVAs play a big role in pre-trial hearings for domestic abuse victims when they can help to show what is needed as a bail condition at a pre-trial hearing and the victim is not needed to be there themselves. They too are hugely overworked and have long case lists.

As I said, the victims hubs find everything far more complex now. People are worried about their case. They are also worried about their increasing poverty, their boredom and isolation and so on. They have longer tails of more complex cases, and there is a huge need for investment in all of that because we will lose more cases the less good-quality victim support there is. Both those things—witness care units and victim support services—need a good look at this time.

Jodie Blackstock: I underline that, if we are to use more technology, all these agencies need to have the ability to interconnect with it. The investment in technology needs to not just be for HMCTS within the courts system but for all the agencies around the edges of it as well. We can have more police officers giving evidence remotely, but they need to have the availability of equipment to join those cases in that way. That means that they can much more efficiently deal with disclosure rather than waiting at court to come on to give evidence, for example.

All those things help to address the delays and efficiencies. That needs to be a decision that looks at the needs of all those agencies, not just the courts service itself.

Chair: Thank you very much to our witnesses. Thank you for your time. Thank you for your evidence. I am very grateful to you as ever.

Examination of witnesses

Witnesses: Nimrod Ben-Cnaan and Jo Underwood.

Q358 **Chair:** Thank you very much for coming to give evidence to us again. Will you introduce yourselves and your organisations, please?

Jo Underwood: I am a solicitor at Shelter, which is a housing and homelessness charity. I manage the strategic litigation team.

Nimrod Ben-Cnaan: I am head of policy and profile at the Law Centres Network, which is a national membership body for law centres.

Q359 **Chair:** Thank you both very much. I am interested in the particular type of work and areas that your organisations are involved in and the type of legal advice that you provide to members of the public.

Jo Underwood: Shelter, because we are a housing and homelessness charity, provides housing advice to members of the public. We have a multichannel approach to that. We have a national telephone helpline that people can call regardless of means. Alongside that, we have online advice. People can access housing advice through our website, and there is a web chat function to chat to an adviser online.

We have 14 regional offices across England where housing advisers and solicitors provide legal advice and representation to members of the public. Each office has a housing legal aid contract with the Legal Aid Agency and one public law contract. We also hold 12 housing court duty scheme contracts.

Q360 **Chair:** Will that be predominantly in the county court with a bit in tribunals as well?

Jo Underwood: It is mostly in the county court or the High Court for the public law cases.

Nimrod Ben-Cnaan: Law centres have been around for 50 years now. They are not-for-profit law practices. They are mostly registered charities that specialise in social welfare law but take a multidisciplinary approach. Each law centre covers a variety of areas of practice, including welfare rights, housing, immigration, employment discrimination, et cetera.

Our mission is to use legal skills to address the disadvantage of the people we help—the poorest ones in the community. Essentially, that shapes our legal practice, the kind of expertise that we have developed, much of which is not commercially viable. You can see why we would be collaborating as we do quite extensively with local safety net organisations like food banks and shelters to connect with people who may not know that they have a legal problem—which is as many as five in six in the population—and to provide a more integrated and wraparound service.

We can also leverage our charitable and other sources of funding—pro bono and helping to find all sorts of things—in order to support that.

Nearly all law centres hold legal aid contracts in civil legal aid. One in three, just about, of not-for-profit civil providers is a law centre. We operate one in five duty solicitor desks in the county court. Legal aid is around 30% of our income on average across the network.

As you will have gathered from your familiarity with us but also from what I have said, we are involved in legal aid because it overlaps with our aims. It is a kind of work we would have done anyway. It allows us to take our charitable funded work further.

Another reason that we are always quite keen to work on legal aid is the legal aid indemnity that allows law centres and small organisations to take matters to court on behalf of their clients without fearing the financial risk.

Q361 **Paula Barker:** How does the current legal aid framework affect access to justice, and what evidence do you see of unmet legal need?

Jo Underwood: This Committee will be well aware by now, I am sure, of the cuts that were made to legal aid under LASPO. For housing law advice, LASPO took swathes of that out of scope. It means that fewer households can now get access to early timely legal advice for their housing problems. We have seen a real crisis-driven approach to housing law, and it means that legal aid is generally only available for your case at a point where it is unavoidable that you have to get to court. All the early advice that we could have given—for example, with rent arrears and eviction possession proceedings—on benefits to resolve those problems is now out of scope. We are unable now to help people at a much earlier stage when we could have stopped the problem going to court or saved somebody becoming homeless.

From a wider perspective, I also have to mention legal aid rates, which have really impacted on access to justice. Legal aid rates are set on fees that were based 25 years ago and, in fact, were reduced somewhat in 2011. We, like other legal aid providers such as law centres, work at a loss under our legal aid contracts. We have had to close some of our offices. We have seen other legal aid providers go out of practice, and I am sure this Committee will be aware of the advice deserts that have resulted now. The Law Society has done an excellent mapping exercise to show those advice deserts, and they are still appearing. They are getting worse. That means that many people can no longer access the legal advice and representation they need.

You asked about unmet legal need, and we see that every day. I am thinking particularly of our offices in places like Norwich and Plymouth where, if you look on that Law Society map, they are on their own. They are in the middle of an advice desert. In fact, our office in Plymouth is one of the only housing law providers down there. There is nothing west of Plymouth. There are no housing law advice legal aid providers in Cornwall. Those solicitors are having to turn away cases all the time from neighbouring counties. If they take them on, they have practical problems of needing to travel to remote courts. Our duty solicitors in Plymouth cover cases in Plymouth, Torquay, and Barnstaple—journeys of between two and four-hour round trips. On the duty scheme, we do not get paid for that travel. The Legal Aid Agency contract does not pay for travel. Our solicitors are making four-hour round trips to represent people in court at a huge loss. We see that unmet legal need every day and are constantly having to turn people away, as I know are other legal aid providers.

Nimrod Ben-Cnaan: I agree with everything that Jo said. Even within what legal aid does cover, it is not the best use of public money. It leaves many problems out of scope entirely, and only really solves the problems that are in scope. It is also unaffordable to many because of the personal contribution that they have to foot for that, and a great admin burden in proving your eligibility when you finally try to access it. It is coming up particularly short during the pandemic.

I will give you a few examples.

In employment law, in particular, you really see that because legal aid only covers the workplace discrimination element of the employment problems. It means that, largely, it leaves working people to fend for themselves. In Greater Manchester, for example, our law centre is one of only two organisations that have specialist employment advisers covering a population of 2.8 million people, and legal aid pays for hardly any of that. In welfare benefits, the fact that universal credit claims have doubled basically over the past year from 3 million to 6 million should indicate a rise in need that is really not met by legal aid at all because it only covers appeals to the upper tribunal. The framework is not conducive to access to justice, broadly speaking.

Solid research about unmet legal need was publicly commissioned. Two legal needs studies have been conducted in collaboration with the Law Society of England and Wales and the Legal Services Board. The last one came just a few months before the pandemic started.

The methodology is acknowledged—that kind of research is nothing novel. It tells us that, even before the pandemic, about one in six of the population were estimated to have unmet legal need. In England and Wales, that is just under 10 million people. The incidence of that unmet need matters because they tend to be people of working age who are more likely to have disabilities, who are more likely to be women, who are more likely to be not white, and so on and so forth. We are all in it together, but some of us are deeper in it than others in the ability to access justice.

The last financial crisis of 2008-09 led to an increase of about 30% in law centre cases. We were a larger movement then. This was also before LASPO, which meant that legal aid was actually able to help with more problems than it is now. Now, the crisis is much more profound, much more pervasive, much longer lasting, and legal aid's scope, coming back to the original question, is letting people down.

Q362 **Maria Eagle:** Jo Underwood referred to legal aid deserts—people entitled to legal aid not being able to access it. There is the broader issue, as Nimrod said, of what ought to fall within the scope, and how that has reduced over the years.

What, if anything, can be done within the existing framework to ensure that those who are entitled to legal aid are able to access effective and

timely support within the current scope of the arrangements? How can we tackle these deserts without wholesale reform? You might say wholesale reform is the only answer, but is there anything that can be done within the existing framework?

Jo Underwood: There is probably no answer that does not involve wholesale reform in order to achieve the best outcome. From a housing law perspective, we could restore legal aid for welfare benefits, debt and all disrepair. That would allow those scenarios where we can provide early advice to stop cases escalating to be brought within the legal aid scheme.

I have mentioned already that we would need to review an increase in legal aid rates.

It is important to remember that access to justice in this context is not only a question of early advice. We are absolutely committed to that and would love to do more of it, and we would love to keep more cases out of court where we can, but even good advice sometimes at those early stages is not enough to help someone who is caught up in possession proceedings or other problems or perhaps needs help with the Department for Work and Pensions in order to unravel a benefits tangle.

Those people will need much more than early legal advice. They will need representation and advocacy. We are not in an either/or situation. We need to view it as part of the whole package, but certainly bringing those early advice areas—benefits, debt and disrepair—from a housing lawyer's perspective would be hugely beneficial.

Q363 **Maria Eagle:** I used to do that kind of housing law, so it is tempting to think that, if it was only put back to how it used to be when I was doing it, it might be a lot easier to give people appropriate advice, but that could just be my age and the fact that I am nostalgic about the practice that I used to conduct. Nimrod, from a law centre perspective, is there anything you would like to add?

Nimrod Ben-Cnaan: Absolutely. This is before we get to an increase in fees, but one can wish. One important and often overlooked issue is that legal aid has become pretty much a secret service. The legal support action plan that has been in place now for three years was just getting around to piloting promoting it to its target beneficiaries before the pandemic hit. That is a very important thing because, going back to that legal needs survey that I was talking about earlier, it shows us that, generally, people start out from a position of only one in six people understanding their legal problem, when they have it, as a legal problem and, therefore, seeking out the right solution. You need to help them get there, and you need to help them get there faster, and you need to help them get there in a more targeted way. Horses would find their courses. That is an obvious low-hanging fruit that really has been overlooked.

Even before you start touching the LASPO framework, the legal support action plan could be used to foster more innovation and perhaps to bankroll some urgent changes that are needed right now during the pandemic to provide more of the early, integrated assistance that people are facing. For example, we are seeing people in the county court who are in greater and greater debt. If you are also unable to help them to resolve that debt or come out of that, you are not getting very far, and that is a burgeoning problem. We could really use some more on that.

A third point would be extending existing services by remote means. One thing that we have seen through the pandemic is that the winning formula—working remotely—seems to be what has been dubbed blended services. It is a mix of digital access or telephone access with personalised advice. We could be doing more on that and it could be integrated into mainstream provision, but we need to start somewhere.

The fourth point is that, even if fees were higher all of a sudden tomorrow, making legal aid a more attractive pursuit to legal professionals, recruitment is still a big issue. We just do not have the workforce at the moment to deploy, and that is one of our main concerns in law centres certainly. Frankly, it is a concern to the whole legal aid system and the access to justice milieu. You need the people to do the work. The training opportunities and promotion opportunities are really limited, but by investing in those and by showing some leadership about them—for example, reinstating the Legal Aid Agency's trainee scheme, which would mean that there would be a fixed cohort of new legal aid lawyers coming into the system every year—would make a huge difference.

There is some low-hanging fruit yet to be taken. That is before we start rebuilding LASPO.

Q364 **Maria Eagle:** You mentioned the Government's legal support action plan. To what extent has it succeeded? It sounded to me like you were saying it has the potential for success, but it has not yet succeeded. Is that fair?

Nimrod Ben-Cnaan: I guess so. When it first appeared, I was thinking it is a bit of a salad bowl of measures. It did not feel like a plan, frankly. It felt like a heading slapped on to a list of things that the MOJ wanted to do at the time. That is fair enough. They have been quite consistent about following through and running through the list and picking through all the things that they said they would do. There is a means test review coming through now. They ended the legal aid telephone gateway. There were things that were in the offing like the pilot for promoting legal aid, but it felt a bit underpowered for the scale of need created by LASPO and then by the court reform programme not grasping the nettle on the problem that LASPO created, which was a large-scale influx of litigants in person.

It can and it is being redirected into more necessary avenues at the moment, and could be a success, but horses for courses. That still does not plug the gap that we see in legal aid proper.

Q365 **Andy Slaughter:** For the record, I am a non-practising barrister.

As well as legal aid, we are looking at court capacity. Taking it as read, which perhaps we should not, that legal aid is equality of arms in achieving justice, will you address how it helps or hinders the working of the court system? What is your experience of that?

Jo Underwood: At the risk of sounding like a broken record, the early legal advice issue comes into play here once again for housing lawyers. We cannot deal with the benefits issues or debt issues that would stop a case getting to court in the first place. We are seeing lots of cases get to court for possession hearings that did not really need to because, if we had been involved earlier and able to help the clients earlier, we could have stopped those cases coming to court. As I said, LASPO operates on the basis that funding is available only when matters have reached crisis point—when a person has received notice of possession proceedings, there is serious risk to health or safety in a disrepair case, or there is an adverse decision by a local authority in someone's homelessness case and early advice could have prevented those problems from escalating into a crisis.

It is interesting that we are seeing courts having to grapple with the problem of people not being able to find legal aid advice providers. Shelter intervened in a case in the Court of Appeal last year, Al Ahmed *v* London Borough of Tower Hamlets, where the gentleman concerned had made a homelessness application to his local authority and was refused. He needed legal representation to challenge that in court, but he was unable to find a legal aid housing lawyer within the very strict 21-day time limit. This is in London, where there are more housing law legal aid providers than the rest of the country. The Court of Appeal had to grapple with the issue of whether it could be a good reason for being late in issuing an appeal that someone could not find a legal aid housing lawyer in time. It decided it was. The lack of advice is now having to be grappled with by the courts in this way.

Where people are unable to find legal representation and they are a litigant in person, their cases are usually slower because, quite rightly, the court has to take extra time to help them along as a litigant in person.

Q366 **Andy Slaughter:** Typically, if you have contentious matters that reach court, they cannot be prevented or would not have been prevented even by early legal advice. There was a recent survey showing that 42% of litigants in contentious cases are unrepresented. What difference does it make to you in court, in how proceedings go, if one side is either a litigant in person or has a McKenzie friend or unqualified assistance?

Jo Underwood: Those cases tend to progress slower because of the extra help a litigant in person would need. In housing, homelessness appeals or possession proceedings, the civil procedure rules and the

framework around them can be incredibly complicated and complex to navigate.

We have also found that courts are not enabling places. For a litigant in person, you cannot necessarily now walk through the door of your county court and find a person to speak to other than the security guard on the door. Counters are closed. You have to arrange an appointment. You have to fill out forms online. Getting through by telephone or email is variable. People are not able to get that face-to-face advice from court counters any more. That has been an issue, too.

Q367 **Andy Slaughter:** Nimrod, do you want to add anything to that?

Nimrod Ben-Cnaan: I will add a couple of things. Generally, I agree with everything that Jo said. It is a large and growing problem.

I will add something about digital access. Even with digital access, I said earlier that LASPO created a large-scale litigants-in-person problem but that the court reform programme basically was a missed opportunity to address that. Where you see that most prominently is in digital access, where you have to serve yourself a whole lot more.

The issue a lot of the time with accessibility to digital channels is not so much knowing how to work the computer but, rather, knowing what to do when you are on it. That is an issue of legal capability rather than digital capability. It has taken a pilot, as part of that court reform programme for assisted digital services, three years to get to the realisation that advice actually is key to the success of digital inclusion work in the court. Even when you let people do things alone, they need a little help, and that help is not necessarily in digital terms.

Q368 **Andy Slaughter:** I am not quite sure what you are saying. Are you saying that there is potential to make things more accessible by using digital technology, or that using digital technology rather than face-to-face communication means that people who typically are legally aided are excluded?

Nimrod Ben-Cnaan: One of the biggest problems about it is that we do not know enough about the litigant-in-person population to create a solution that would fit their needs. It is not being researched. That data is not being collected anywhere near regularly for us to be making some informed decisions about how to tweak and optimise those channels. They are there: let us face it. Court desks are unlikely to make a return all of a sudden. How do we optimise what is already there? We just do not know enough about it.

The other thing, which Jo mentioned, is the impact of a court being an unwelcoming experience to people who are unaccustomed to its ways. She mentioned the CPR. That is the least of it, frankly. The effect of stress on litigants in person, the effect of this disorientation not just on their experience of justice but on the efficacy of the court process for them and for itself is massive yet little understood. It is something that

we hope to see once HMCTS makes the move to collecting all the new data that it has committed to start collecting but has not yet. That is following the report from Natalie Byrom, from whom you have heard in previous sessions.

Q369 **Andy Slaughter:** Jo, what is your view? We were having more use of digital, anyway. That has accelerated under Covid. Do you see that potentially helping unrepresented litigants, or does it create extra problems?

Jo Underwood: Sometimes, particularly during Covid, we have seen technology enhance people's experience. For example, other witnesses have mentioned that, if people have disabilities or childcare issues, they have appreciated being able to use technology to have a court hearing or a conference over a video call.

I cannot speak to how that impacts on litigants in person because, as Nimrod said, we do not know enough. I agree that the Legal Education Foundation report is an excellent place to start, and there can be many positives to efficiency and speed and allowing people to access courts where they would not before.

I am also very concerned about those people who are likely to be left behind. Do we know enough about them? There is a huge knowledge gap that we do not know about. I agree that the Legal Education Foundation report is a good place to start.

On reflection, the final point I would make is that it is not necessarily for us about being able to access a court hearing or whatever part of the justice system you are going through online, either with or without legal representation. With the technology point, there is an important issue to be aware of concerning equality of arms. For example, in housing law, many of our opponents or litigants in person would be against a large local authority or a large landlord, who will be familiar with the tech and have access to far more than a tenant would. That is an important consideration as well in this question.

Q370 **Andy Slaughter:** Nimrod, do you want to say something before I move on?

Nimrod Ben-Cnaan: Digital is in common currency now because it has to be, and we have to make it work somehow. We must remember that, as we come out of this dire strait, digital is just one channel of access. Our focus should be on the administration of justice. Do people understand the procedure? Is the problem resolved? Do they feel fairly treated and that justice has been done? Are their outcomes still equitable? Are they still keeping in line, through digital channels, with in-person proceedings? These are the questions we need to ask ourselves rather than getting a little star-struck about digital. It is a promising prospect, but a more cautious approach is probably warranted.

Q371 **Andy Slaughter:** There has been some extra money for not-for-profits—

just over £5 million—to cope with the current situation. Has that been helpful? How has it been used? What would you like to see next—obviously more money—in supporting the sector?

Nimrod Ben-Cnaan: More money is about right. Jokes aside, the money we got, we got because of a sudden and precipitous shortfall in our legal aid income. We could not go out and do the work. LASPO, by its ever so rigid nature—all the furniture is bolted to the floor and you cannot move it when you need to—meant that there was no way through the LASPO framework to retain providers through the initial flush of the pandemic. Law centres were losing money. We had solid evidence—in cash projections—that about half of them would hit the wall within half a year without a cash injection.

We made the case to the Ministry of Justice, to DCMS, and to the Treasury, and we were fortunate that they were able to assist. The sum of money that law centres have had—£3 million of that £5.4 million—was only meant to last half a year. It has, and we have really made a lot with that. Just knowing that it was coming was already a relief because there was a lead-in time of several months until we got all the admin in place, and that is perfectly understandable. It helped us to adapt essentially to the new circumstances to work more remotely, to introduce more tech solutions in order to enable that, in order to make adjustments to offices, support outreach services, all the kinds of things that you would expect when you really need to make a big and sudden shift. It is great that we have the liquidity to do that there and then, but Covid is not over.

Our projection is that we would probably need just under £6 million across law centres for the coming year, because we do not expect our legal aid earnings to recover nearly as fast as we hoped. It is that urgent. Between March and January, legal aid, civil and crime, is now nearly 80 providers lighter. That is just in 10 months. The peril is very much here. There are many things that we need to do in longer-term moves.

A first thing would be a sustainability review, which the Ministry of Justice has already started doing. It needs to focus on preserving the service in legal aid rather than the legal aid "market". We have a service, it is not the best, and it is withering on the vine. How do we make sure that the service, the infrastructure, is there for next year and in five years' time?

In order to do that, we need flexibility. It would be really useful to have something like the old green forms back. That would allow you to respond to the presenting problems rather than trying to fit a problem into a pre-defined list of services that you are allowed to give. There is plenty to do really.

Q372 **Andy Slaughter:** Jo, did Shelter get any additional money? What do you need? I would imagine that, as we come out of Covid, you will expect to see an increase in possession and enforcement action, and so on. What have you been doing, and what do you need going forward?

Jo Underwood: We have seen a huge drop in our legal aid income during the course of this past year. You will know that possession proceedings were stayed since March 2020, which was absolutely welcome for our clients and the people who need our help. Those cases are slowly coming back to court now, but we have had an enormous drop. The bulk of our work is possession proceedings and evictions. We have had some money to cover some of that lost work, and it has been very welcome, but it has only covered two months out of this past year.

We, like other legal aid providers, are in dire straits. Shelter is a charity. It has other sources of income that other housing law providers might not, but that is not long term. It is not sustainable. That money also has to be used to fund the other parts of our charity. We have other teams—a public affairs team, a campaigns team, a research team. We have other pulls on our income, so we are very reliant on legal aid, and we have seen a huge and worrying gap this year. Finance is really key.

I agree with Nimrod and would really welcome a longer-term strategic approach from the Legal Aid Agency to ensure the sustainability of the sector. It is hugely concerning that people are dropping out of practice so fast and everything is going in that direction. At the moment, there is no turnaround for the better. We would like to see the Legal Aid Agency acknowledge, to act and repopulate the advice deserts. As I have mentioned, we would like to see a repeal to those LASPO cuts.

In ensuring the sustainability of the sector, there are some internal things that we would love to see the Legal Aid Agency do. You heard from Simon Mullings last week about this culture of refusal that we are constantly coming up against. Not only have we seen a huge drop in income, but the Legal Aid Agency is often our first opponent in trying to start a case. Where we can get legal aid to represent someone, it is often a huge battle to get the legal aid certificate in time to get to court. Providers are having to work at risk sometimes or there are delays in getting to court. We would love to see them deal with this culture of refusal to make it easier for providers to maintain a sustainable business.

As Nimrod has mentioned, in terms of long-term sustainability, we would love to see urgent action taken for financial help and support for trainees, who will be the next generation when the full impact of this pandemic is felt. The review is ticking along so slowly. What will happen at the end of this review and in a few years' time when there are more people needing legal advice than now? Who will be there to provide it? We would absolutely want to see those questions addressed and the Legal Aid Agency taking action to attract providers back into the business.

Q373 **Andy Slaughter:** You must be a clairvoyant because I was just about to ask you about long-term sustainability and the Legal Aid Agency. You have covered that rather succinctly. Given that we sort of have a Government review into those areas—I am not quite sure I have followed the progress on it; Nimrod was not even very sure that we have one—

unlike in criminal legal aid, where you know exactly what the stages are, there was a nod, and they said that they are looking into the sustainability of the legal aid system and will consider the delivery contractual model to civil aid within this work. Do you know what is going on there? Are you aware of how you can put your views to Government?

Nimrod Ben-Cnaan: Definitely. This has been going on for most of last year. The Ministry of Justice was preparing a review not just for its own purposes but for the purposes of resourcing any kind of changes that would be required in anticipation of the comprehensive spending review of last autumn. The problem is that the spending review was meant to encapsulate three years, and there being a one-year review has put some things in abeyance, and that is fine.

Certainly, the information is still there. We have fed into that review extensively. I have had maybe nine or 10 meetings just in that work stream with various officials. They have been good at looking at the totality of legal aid. It is not just scope or just fees or just the workforce. It is also the administration of legal aid, including the Legal Aid Agency itself and its culture of refusal, and the accessibility of that system to its target beneficiaries. They are turning a lot of stones, and that is great. I just hope that they get enough budgetary leeway to pursue that.

Q374 **Maria Eagle:** You have just been talking about Government reviews. The Government are also reviewing the legal aid means test, and the consultation is supposed to be held soon. What changes would you like to see to that means test if you had your way?

Jo Underwood: We would love to see the Legal Aid Agency ensure that the financial evidence requirements required from our clients do not present barriers. You have heard this from other witnesses, too. The current means test is unnecessarily complex at the moment and can absolutely be simplified. There are complex rules spread over several different documents—they are not even all in one place—and it is hard for both providers and Legal Aid Agency staff to understand. We can often take a huge amount of time trying to work out with our client whether they have provided enough evidence and whether we will be in trouble on audit if the Legal Aid Agency do not accept it. That is usually all for the sake of a fixed fee of £157 per case, and most of that can sometimes be taken up by working out whether your client is eligible for legal aid. We do not live in a perfect means-tested world in which clients can come up with every item of documentation the Legal Aid Agency wants to see even when they are plainly eligible. We would love to see that means test simplified.

We are also concerned at the moment that financial eligibility challenges can be conducted sometimes in quite an inquisitorial way by the Legal Aid Agency, with the emphasis seemingly on trying to find why someone would not be eligible even when their case concerns the fact that they are homeless and destitute and do not have a roof over their head.

We would like to see those issues addressed and, within that review, for the agency to look at eligibility and the financial threshold. There are currently people on very low incomes who are not eligible for legal advice. We would say that the means test needs a complete overhaul and substantial uprating.

Nimrod Ben-Cnaan: I agree with most of what Jo has said about that. We have had some research published about that last summer looking at eligibility for legal aid compared to the minimum income standard of various household types. The research done by Professor Donald Hirsch found that, on average, 56% of working adults are ineligible for legal aid. It gets worse depending on whether you have children, how many you have, and what ages they are. It does get better. Some categories were basically 94% excluded, which was quite shocking to realise. We knew it was bad, but we did not know it was quite so bad.

We definitely need a system that is more affordable, which has personal contribution levels that are affordable to the people who are trying to access the system, and where the taper is much more even.

Most importantly, it needs to be a system that can be uprated regularly. One of the big problems that we have seen since LASPO in particular is that by not uprating the means test it is effectively excluding more and more people. We need to find a way to make it never fall behind inflation and the current cost of living for too long.

We need to have a system that has reasonable evidence requirements—we have talked about digital before—that makes the most of digital means for registering documentation that is not so paper-heavy and not so location-specific, and a system that reduces excessive admin for providers and risk for providers, as Jo mentioned earlier, to name but a few. I must say that I have been pleasantly surprised that the means test review panel is listening, if nothing more, at this stage, and I hope that this will show when it comes to consult on the changes in the spring.

Chair: Thank you very much. Everyone has given very clear evidence to us. Unless there is anything pressing that you additionally want to add, you have covered the ground pretty well. I am very grateful to both of you. Many thanks for your evidence.