

Justice Committee

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

Wednesday 24 March 2021

Ordered by the House of Commons to be published on 24 March 2021.

[Watch the meeting](#)

Members present: Sir Robert Neill (Chair); Rob Butler; Janet Daby; James Daly, Miss Sarah Dines; Maria Eagle; Dr Kieran Mullan; Andy Slaughter.

Questions 443 - 540

Witnesses

I: Lord Wolfson of Tredegar QC, Parliamentary Under-Secretary of State for Justice; Kevin Sadler, Acting Chief Executive, HMCTS; Jane Harbottle, Chief Executive, Legal Aid Agency; and Jelena Lentzos, Deputy Director, Legal Aid Policy, Ministry of Justice.



Examination of witnesses

Witnesses: Lord Wolfson, Kevin Sadler, Jane Harbottle and Jelena Lentzos.

Q443 **Chair:** Good morning. Welcome to this session of the Justice Committee of the House of Commons. This is the concluding evidence session in our two inquiries into court capacity and legal aid. As those who follow us will know, we are running the evidence sessions together but we will be publishing separate reports, I anticipate after the Easter recess.

Welcome to our four witnesses today. I will come to them in a moment, if I may. In particular, I welcome Lord Wolfson of Tredegar. This is the first time, Minister, that you have appeared in front of this Committee or perhaps any other.

Lord Wolfson: Yes, it is. It is a very good Committee to start my appearances in front of. I am looking forward to our discussions.

Chair: I am delighted to see you. Many congratulations on your appointment. We look forward to a very constructive relationship with you, as we had with your predecessors.

The first thing is for Members to make their declarations of interest, as we do at the beginning of every session of the Committee. I am a non-practising barrister and a bencher of the Middle Temple. I have known Lord Wolfson for a number of years as a fellow member of the executive of the Society of Conservative Lawyers, which I chair.

Maria Eagle: I am a non-practising solicitor.

Rob Butler: Good morning. Prior to my election, I was a non-executive director of HM Prison and Probation Service and a magistrate member of the Sentencing Council.

James Daly: I am a practising solicitor and a partner in a firm of solicitors.

Andy Slaughter: I am a non-practising barrister.

Q444 **Chair:** When she joins us, Sarah Dines is a barrister, who has not practised since her election. That is for the record.

Can I now come to our witnesses? Lord Wolfson of Tredegar QC is Parliamentary Under-Secretary of State at the Ministry of Justice. I will not read out all the list of responsibilities, Lord Wolfson, because that might take up a chunk of the meeting, but it is a wide-ranging brief. I will have some questions for you in a moment.

Good morning, Mr Sadler. Would you introduce yourself?

Kevin Sadler: I am the acting chief executive of HMCTS.

Chair: It is good to see you again. We saw you yesterday.

Jane Harbottle: Good morning. I am Jane Harbottle, the chief executive of the Legal Aid Agency.



HOUSE OF COMMONS

Jelena Lentzos: Good morning. My name is Jelena Lentzos. I am the deputy director for legal aid policy at the Ministry of Justice.

Q445 **Chair:** Thank you all very much for joining us this morning. Can I start with court capacity? Lord Wolfson, I am sure you have seen some of the evidence that we have already received from other witnesses in relation to the inquiry. A while back, we had some evidence from the chief inspectors of the criminal justice agencies—Mr McGinty, chief inspector of the Crown Prosecution Service, and Sir Tom Winsor, chief inspector of constabulary.

The phrase that Mr McGinty used to us was that, with the mixture of the pandemic and a history of underfunding, the criminal justice system is now “in a far more parlous state than it was in 2015”. He is right, isn’t he? What is the Government’s plan to deal with it?

Lord Wolfson: Perhaps I could deal with that question in three parts, if I may. Let me take 30 seconds to explain my background and my legal experience.

Chair: By all means, yes.

Lord Wolfson: I think that is important for the Committee because I am appearing today with three officials, who know the granular detail at a level that I don’t. The reason for that is, as you already said, Sir Bob, that my responsibilities in the Department changed significantly literally two and a half weeks ago when Lucy Frazer went back to be Solicitor General because the Attorney General has gone on maternity leave. That meant we had a revision of responsibilities in the Department. The matters we are talking about today, as to both courts and legal aid, came within my purview two and a half weeks ago. That is by way of background, not by way of excuse, but it is important that the Committee is aware of it. That is one reason why it is important to have the officials on the call as well.

Turning to the substantive points you made, we have to remember that we have been through, and in fact are still in, a pandemic. The first point I want to make is to remind everybody that the Courts and Tribunal Service did not stop during the pandemic. Justice is a key service. The rule of law is central to our civilisation, to our society and, frankly, speaking personally, it is central to everything I do in the Department. The need to keep the courts going has been at the forefront of everybody’s mind. Indeed, we should pay tribute to the fact that we were the first jurisdiction to restart jury trials. In recent months, we have been operating at levels close to if not above the levels we were at pre-pandemic. That is the second main point.

The third main point is about “parlous”. Of course there are issues, but one has to look at the pre-pandemic position in context. I suspect we are going to use the word “backlog” later in our discussion, although I hope I will have an opportunity to explain why I do not think it is a very helpful or useful word. I will use the word now: the backlog of cases just before



the pandemic was, from memory, 39,000 in the criminal context—I will be corrected if I am wrong. That was broadly in line with the number that it had been in the preceding years, so it is not fair to say that before the pandemic the system was breaking or broken and the pandemic has exacerbated that. A more accurate assessment would be that, of course, there were issues before the pandemic. The pandemic has certainly exacerbated those issues. The real question is what we do now looking forward. How do we build back to ensure that we put in place a criminal justice system that is suitable for our country and our society? That was rather a long answer to a short question. Forgive me.

Q446 **Chair:** I understand. I take your point about your inheritance of the brief from Mr Chalk fairly recently.

There is a broader point, isn't there? You say that the situation has been dealt with well in some respects, and our Committee would recognise that in the work that has been done. Sir Tom Winsor, the chief inspector of constabulary, used this phrase, touching exactly on what you said, Lord Wolfson, about the position before the pandemic: "before the pandemic, the criminal justice system was in a severely distressed condition." He accepts your point that it is not just the pandemic, but that there was underfunding and pressure before that. The Criminal Bar Association suggested, again taking your words: "The backlog is not the problem. It is the capacity to deal with the backlog." They pointed out the reduction in sitting days. Do the Government accept that as a real issue, and what are the proposals to deal with it?

Lord Wolfson: There are, if I may say so, two issues. What Sir Tom Winsor is focusing on is the criminal justice system. What the Bar Council was focusing on, as I heard your quote, was sitting days and capacity.

Q447 **Chair:** That was in the context, if I might interrupt, of the criminal Bar.

Lord Wolfson: I appreciate that.

Chair: I take your point.

Lord Wolfson: The criminal justice system is more than just the courts, to make the obvious point.

Chair: Indeed.

Lord Wolfson: When you have an offence, you have the police investigation, CPS and then it comes to the court. When we are talking about the criminal justice system, we are talking about that from beginning to end. When we are talking about the court part of that, when we are talking about capacity, case load and sitting days, that is a subset of the criminal justice system.

As regards capacity, we now have more jury trial rooms available than we had before the pandemic. We have over 600 courtrooms for civil and family cases. I appreciate that at the moment we are talking about



criminal. We have ensured that we have more jury trial rooms available with social distancing. We have almost 60 new Nightingale courtrooms.

To go back to the point I made before, the outstanding case load in the Crown court before the pandemic was 39,000. The range over the decade before that was 33,000 to 55,000. Indeed, in 2018-19 it was 33,000. I am not saying any of this to minimise the problems; I certainly am not. I recognise the problems and there is a lot of work to do, but we have to put things into context in two ways: first of all, the context of what it was like before the pandemic; and, secondly, what we have done during the pandemic and the effects of the pandemic. Those are two very important points of context.

Q448 Chair: Accepting the context, in 2015-16 in the Crown court there were 110,000 sitting days. In 2019-20, there were 82,000 sitting days. That is before the full impact of the pandemic hit us. Even pre-pandemic, there had been a significant reduction of sitting days in the Crown court. Given the extra capacity, which, as you rightly say, has now been made available, is it the intention that sitting days should return at least to the 2015-16 level of 110,000-plus?

Lord Wolfson: The short answer is that the intention is that we have as many sitting days as possible. We are certainly aiming for a six-figure sitting day target. Kevin has the latest data on precisely what that number is. Our overriding ambition is that we will not be limited by sitting days. We are going to have as many sitting days as we physically can. The reason why I slightly hesitated about the number is, to a certain extent, that it depends on what the social distancing rules are. That has a big effect, particularly on jury trials.

May I make one other point, Sir Bob? One of the issues with courtrooms is that sometimes in some buildings you cannot use all the courtrooms at the same time, not because the courtrooms are not available, but because the common parts of the building are not sufficiently large to accommodate the social distancing rules. When one is talking about courtrooms, sitting days and buildings, they are separate concepts but they are all interlinked.

Q449 Chair: Mr Sadler, could you pick up on some of the specifics that the Minister referred to in terms of the numbers and what the agency's plan is in relation to dealing with the Covid issues that the Minister referred to?

Kevin Sadler: Yes, Chair, I am very happy to do that. As far as the next financial year is concerned and the number of sitting days, the concordat discussions between the Lord Chancellor and the Lord Chief Justice have not yet completed so I do not have a firm number. My marching orders, I firmly expect, will be to sit as many Crown court sitting days as we possibly can, taking account of social distancing and so on. I firmly expect that to be six figures and above, provided that social distancing



HOUSE OF COMMONS

enables it. I think we will be running the hottest we have ever done in the Crown court.

It is worth noting a couple of points on the reduction in sitting days. As you said, it was over 109,000 in 2015 and dropped to 82,000 in 2019-20. That was driven by our receipts. As the Committee knows, the number of Crown court receipts dropped significantly. In 2019-20, the waiting time overall in the Crown court was lower than it was in 2015. That was for both guilty pleas and not guilty pleas. We were performing very well in 2019-20. We had seen an increase in receipts over the course of that year. The Lord Chancellor responded to that by giving us extra sitting days. Were it not for the pandemic, I would be expecting to sit before the Committee explaining a good performance position in the Crown court because of the additional sitting days coming in from the additional receipts. I firmly expect to be running at the maximum possible capacity in the Crown courts for the next financial year and probably beyond, but that is another spending review.

Q450 Chair: The Institute for Government gave us evidence that suggested, on its analysis—as you know, it is a reputable organisation with a good analytical record—that you would have to run at that 100,000-plus, that six-figure-plus, number of sitting days for about two and a half to three years to sustainably eliminate “backlog” and current pressures. Does that ring true to you?

Kevin Sadler: I would not be at all surprised if that was the case. Much depends on the impact of the 20,000 police officers, and whether their work is more on preventing crime or more on detecting and investigating crime. I would not be in the least bit surprised if, over the course of the next spending review period, we were in six figures right through that period. It is a difficult thing to forecast.

Q451 Chair: We will come back to that in more detail. The institute suggested, on their modelling, that the 20,000 police officers could potentially generate 15,000 more cases into the system. Does that seem unreasonable?

Kevin Sadler: It is certainly possible. At various times in my career I have heard the role of police officers described as prevention, therefore stopping crime coming through, and, in other areas, investigation. Of course, it depends on the individual priorities of each force as to how that comes through. At the moment, we are seeing an increase in receipts in the Crown court in London, in particular. In places like Wales and the south-west, we are not at pre-pandemic levels of receipts in the Crown court, which is making a difference regionally.

Q452 Chair: Are you going to be able to cope with the increase that is anticipated in serious multi-handed trials, most of which are custody cases, organised crime and the like? From the Lord Chief Justice’s evidence, many cases might be coming through.



Kevin Sadler: Indeed. That is a challenge. We are more than midway through the process of fitting out 70 courtrooms to allow multi-handed trials. We expect to complete that around the end of March. That will increase our capacity to deal with those trials without taking out multiple courtrooms. I was in Cambridge in the late summer, and the Crown court was going to be entirely occupied with one trial because of the need to space everybody out. Making those adjustments, extending docks and making other arrangements will help us deal with that. We have announced a super-court in Manchester, which will enable us to deal with significant numbers of defendants in multi-handed cases.

We will be working with the judiciary. There will need to be more flexibility than usual in managing the work across the country to make sure that we maximise the space. We are hearing between 35 and 40 multi-handed trials every week at the moment. We are making good progress on that, but we need to continue to do more.

Q453 **Chair:** We are getting to the stage where the Government are announcing a road map out of restriction, so one hopes that during the coming year there will be some reduction in social distancing. What are the preparations being made by the court system in the various jurisdictions to deal with that?

Kevin Sadler: We are working very closely, as part of Government, on the preparations for that. Much depends on exactly what non-pharmaceutical interventions, as they are called, will exist after June, whether it is a complete removal of social distancing or partial changes, and the extent of those changes. We are preparing on a range of potential scenarios. Wales has indicated already that they might keep 2 metres distancing. That would be a challenge for us and make it harder to maximise our capacity.

It is very much a moving picture, and we will continue to work with Government. What we have already decided to do, even if social distancing requirements were completely removed, is to maintain the plexiglass and physical arrangements that we have made, so that were there to be a resurgence in the winter, or something like that, we can immediately spring back into social distancing arrangements and so on. It is absolutely the case that the removal of social distancing will enable us to maximise our capacity and move forward, but we are prepared for something that is less than complete removal of social distancing, as we did when we responded to the introduction of 1 metre-plus in summer last year.

Q454 **Chair:** In summer, is there more scope for ventilation, for example, in some of the courts?

Kevin Sadler: It is easier to open the windows, certainly. There is a sweet spot for courts in the spring and autumn, because in the summer our air-conditioning units start getting overburdened. As a result of the public health advice, we have stopped recirculating air. Thanks to the



HOUSE OF COMMONS

Treasury investment, we have been introducing airline-style filters on all our air-conditioning systems so that we do not strain them quite so much. It is one of the challenges we have in the maintenance of the court estate.

I am very pleased that in the spending review we have £105 million for capital maintenance, which will enable us to replace some of our life-expired ventilation and heating systems, and will mean that we are in a less challenging position. Too many times, we lose courtrooms at the moment due to heating failures or air-conditioning failures. It is important that we make that investment and get into a better position, because every single courtroom is incredibly valuable to us at the moment.

Q455 **Chair:** It is also important that there is a decent working back office for the staff and that the facilities in robing rooms, jury rooms and so on are satisfactory.

Kevin Sadler: Indeed. Absolutely.

Q456 **Chair:** In my experience, sometimes that got a bit forgotten, and the courtroom was the one salubrious part of the building.

Kevin Sadler: We are very keen that the staff and legal professionals are kept warm and well ventilated as well. Right across our court estate, we are desperately keen to improve the standard of maintenance.

Lord Wolfson: In addition to staff and legal professionals, can I add, as you say, Chair, the members of the jury? One of my jobs is to deal with MPs' correspondence. I have been writing a lot of letters about juries, and it has been fantastic to see how many people during the pandemic have stepped up to do their jury service. Both during the pandemic and afterwards, we have to recognise that juries are the pillar of our criminal justice system. We have to make sure that the facilities available for them are not just adequate but good.

Chair: Absolutely. I am glad to hear that. We are going to come back to some jury-related issues in a moment. I am sure we all agree with that.

Q457 **Maria Eagle:** I welcome our witnesses, particularly Lord Wolfson. We are quite used to seeing Mr Sadler, but this is Lord Wolfson's first appearance before us. Lord Wolfson, how many Crown court trials need to be disposed of each week in order to get the number of outstanding cases to a sustainable level?

Lord Wolfson: There is no answer to that for two reasons. First of all, the danger with having an answer would be that we would seek to chase a target of a particular number of Crown court trials at the expense of the judiciary properly listing the trials that ought to be heard first and the trials that ought to be heard second.

The second reason why I cannot give a direct answer to your question is that, when you talk about a sustainable level, we might be saying the



HOUSE OF COMMONS

same thing, but to be clear that we are, what I understand by a sustainable level is this. There are a number of cases waiting to be heard, and the time those cases take through the system is an appropriate period of time. That is why earlier I cavilled slightly at the use of the word “backlog”. To me, the most important thing is not how many cases are waiting to be heard but the speed with which we dispose of those cases through the system.

When we come to the question of what is an appropriate time for a case to be disposed of, that really is a “how long is a piece of string” question. Forgive me for not giving a direct answer to your question, but I hope I am answering it by explaining why I cannot put a number on it. It is not something you can put a number on.

Q458 **Maria Eagle:** You seem to be saying that you cannot put a number on anything though, to be honest, and that is a slight problem as far as I am concerned. What is the length of time now, on average, in the Crown court between offence to completion of trial?

Lord Wolfson: Between offence to completion?

Maria Eagle: Yes.

Lord Wolfson: I am afraid that that depends dramatically, because if you are taking—

Q459 **Maria Eagle:** What is the average time, Minister?

Lord Wolfson: The average time in what context? For all offences?

Q460 **Maria Eagle:** From offence to completion in the Crown court.

Lord Wolfson: I can give you that figure. It is in my papers, and I will find it. Let me explain one of the problems with that.

Q461 **Maria Eagle:** We have had evidence to say that it is 511 days. Do you think that is an appropriate length of time for all those involved in Crown court trials to have to wait, from the defendant to the witnesses? Is that an appropriate length of time for them to have to wait?

Lord Wolfson: If I was a victim of crime, I would find 511 days a long time to wait. No doubt about it. But can I just—

Q462 **Maria Eagle:** Would it not be appropriate, therefore, for you to have some kind of target? I admit that there are always problems with targets. There are always downsides with picking a target. However, they have the useful propensity to focus minds on some things that are important. Saying to the Committee, “We can’t say what is an appropriate number of cases that ought to be disposed of every week, and we can’t say what the appropriate length of time is that a Crown court trial should take” is a counsel of despair. What you are saying to us is, “We are not going to focus on anything with a view to bringing down the backlog”—the word that you don’t like. But it is important to the victims, witnesses and defendants in the criminal justice system. Don’t you think that some sort



of target, admittedly with any downsides it might have, is valuable?

Lord Wolfson: If you would, let me try to answer your question. Let us consider historical sex abuse cases. If you take the time there from offence to trial, it is going to skew the figures dramatically. Secondly, let us take cases where trial A has to wait, because the judiciary consider that is the right legal approach, for the conclusion of trial B and trial C. That would also affect the figures. Let us take a case where some defendants plead guilty and some don't. That will also affect the figures.

What I am not enamoured of, if I may say respectfully, is a number plucked out of the air, when listing is a judicial function. It is quite right that listing is a judicial function. It would be quite improper for the Government to be in charge of listing.

Having said all that, the position is this. I am looking at the position when the cases come into the court system. I am not responsible, I am afraid, for the police or the CPS, so I cannot start from offence. That is the way our criminal justice system is set up. When the cases come into the criminal justice court system, a high majority of bail cases that had their first hearing last month, February 2021, and there was a not guilty plea, have been listed for trial prior to March 2022—within a year. The majority of the cases where the defendant is in custody have been listed for trial prior to September this year.

If you want to talk about averages, the overall average in all offences is 275 days, which is the period from offence to completion. For sex offence cases, the period is longer. It is too long at the moment. I fully accept that. I understand that it is about 620 days. One of the issues we have to deal with is that, in the modern context, a lot more social media and other evidence has to be obtained and provided to the defence to ensure a fair trial. Again, that is not something that the MOJ or HMCTS is responsible for. It is the responsibility of the CPS and of the police.

None of this is said by way of excuse. I have been very clear that we have to make sure that after the pandemic we build a criminal justice system that is suitable for victims, witnesses and defendants, but we have to put these things in context. Chasing arbitrary targets, with respect, is not something I am enamoured with.

Q463 **Maria Eagle:** I was not suggesting chasing arbitrary targets. I was suggesting chasing some kind of target, with an understanding of what the pros and cons of doing that are. In 2010, the average length of time from offence to completion was 391 days. It is now 511 days. Do you think it ought to be brought down or do you think that 511 days is acceptable?

Lord Wolfson: I would like it to be shorter than 511 days, provided we can make it shorter without infringing a proper, just system. In other words, I do not want the number to be brought down if that involves non-disclosure of evidence to the defence, or if it involves not taking the



HOUSE OF COMMONS

victim's story suitably and doing a proper investigation of his or her complaint.

Maria Eagle: Nobody would.

Lord Wolfson: Absolutely. With those caveats, of course, I agree that we should process cases through the system as quickly as we reasonably can. There is nothing between us on that.

Q464 **Maria Eagle:** Do you accept that such extended periods of time to deal with a trial—511 days—are a long time to wait if you are a defendant or a witness? These are very stressful situations that people are in, whether they are defendants, witnesses or involved in some way in the case. Do you not think that there comes a point when witnesses, in particular, just walk away and say, "I can't cope with hanging around waiting for this trial and the stress of it any more. I am not going to give evidence"? Do you not think that that should have some impact on the criminal justice system—I accept that it is not just the court system—in terms of trying to bring down the length of time that defendants, witnesses and all those involved in trials are having to wait to get to the conclusion of a trial?

Lord Wolfson: Of course. Absolutely. There is simply no question about that. We would not want any trial not to take place because a witness has walked away because it is just taking too long or, even worse, the victim has walked away, so to speak, because it has taken too long. You focus, if I may say, rightly, on witnesses, but we also need to focus, perhaps even more so, on victims. Absolutely. That is not something that just should be part of our thinking; it is part of our thinking.

In this financial year, we are going to be providing just under £151 million for victim and witness support services. That is an extra £40 million to increase support for rape victims. I am not suggesting that providing support is such a good alternative to having a speedy trial that we should be relaxed about it. I am not saying that. What I am saying is that we recognise that the period to trial is longer at the moment than we would like because, in particular, of the pandemic. We are doing what we can to support victims and witnesses during that period.

Q465 **Maria Eagle:** That period was extending before the pandemic. Let's be clear about that. It was extending because the system took the view that allowing a longer time between offence and completion was acceptable if it led to the kinds of savings that were being sought from the Department. That was a political judgment that was made, admittedly not by you personally, Lord Wolfson, but by some of your predecessors. What I understand from you is that you would like to see that length of time come down, although you don't want to put any target on how much you would like it to come down. Is that fair?

Lord Wolfson: It is almost fair.

Q466 **Maria Eagle:** I am doing my best, Lord Wolfson.



HOUSE OF COMMONS

Lord Wolfson: So am I. If I could, respectfully, I would change your “won’t” to a “can’t”. Ultimately, I, meaning the MOJ or HMCTS, do not control listing. That is an important point. Let’s say you and I were to agree a figure and a target. When I said arbitrary, I did not mean that you would just pluck a figure out of the air. Of course it would be a target that would be thought about, but you could end up with a situation where if you listed case A you would hit the target, but if you listed case B you would not hit the target. What is critical is that listing remains a judicial function. That is why I would change the “won’t” to a “can’t”; there are some things that I, quite properly, can’t control, and listing is one of them.

Q467 **Maria Eagle:** I am sure that most judges would like to see some of the same improvements that we are discussing, like the length of time between the offence and completion of a trial coming down. I am sure they would take that into account in their listing decisions, but I accept your point.

Lord Wolfson: Yes.

Q468 **Maria Eagle:** Have you made any assessment yet of the impact of the Police, Crime, Sentencing and Courts Bill on court capacity if it is passed in its current form?

Lord Wolfson: The Bill, as you know, is at the moment going through the House of Commons and it will get to the House of Lords, I suspect, in early summer. I will answer the question on the assumption that the Bill stays in the same shape as it is now, but of course we all know that Bills can change. It does a number of things. First of all, some of the changes we made in the Coronavirus Act, which enable remote hearings to take place, are codified in that Bill, so that will assist, because it has hardwired changes that we have already made.

The second thing it does is to enable criminal courts to use video and audio technology in a more flexible way than they do now. At the moment, about 20,000 hearings per week—per week—take place across all jurisdictions with at least one remote participant. In so far as the PCSC Bill hardwires that, it will also improve capacity.

The third thing it does is to give what we are calling prison, escort and custody service officers new powers to have custody over prisoners in police stations. That also helps court capacity by facilitating video remand hearings without requiring a police officer to facilitate the hearing. Those are three instances in which the PCSC Bill will assist in the work we are doing.

Q469 **Maria Eagle:** You think, on balance, that the passage of the legislation will enable you to make improvements overall to court capacity.

Lord Wolfson: The three instances that I identified certainly will, yes.

Q470 **Maria Eagle:** Do you have an assessment of, perhaps, the countervailing



forces, the balance between the two, which might make it more difficult as a consequence of the Bill?

Lord Wolfson: I would not say it was a consequence of the Bill. I am focused on the fact that we are going to have 20,000 more police officers. One would expect that 20,000 police officers will result in an increase in work coming into the criminal courts.

Q471 **Maria Eagle:** Yes. The Chair referred to the Institute for Government assessments of those in his questions earlier. No doubt you will have your own assessments, which may or may not agree with the Institute for Government, but you think on balance, perhaps, that the Bill will increase the capacity of the courts rather than the opposite.

Lord Wolfson: It will increase the ability of the courts to get through their work more quickly. It does not directly increase capacity in a physical sense. If, for example, you can schedule a trial, because you have three witnesses remotely, in two weeks, whereas if you had to find a courtroom where they could all turn up physically, or arrange it for their availability, you would have to wait two months, that speeds things up, doesn't it?

Forgive me for pivoting for a second. In the civil courts, it is already extremely common to do a lot of work remotely, on video. Ultimately, this is always a matter for the judiciary. I stress that—there is a proper constitutional divide between Government and judiciary. I expect that in the criminal courts as well there will increasingly be work that is today done physically that in the future will be done remotely.

Q472 **Maria Eagle:** Will additional funding be needed by HM Courts and Tribunals Service to deliver the measures contained in the Bill?

Lord Wolfson: In the PCSC Bill?

Maria Eagle: Yes.

Lord Wolfson: I do not know whether there will be specific funding arising out of the PCSC Bill. I am focused on making sure that HMCTS has a sufficient financial settlement to enable it to deliver the service it is required to deliver without, so to speak, grinding that down into where the needs of that service come from. At that point, we probably get into Kevin's territory and not mine.

Maria Eagle: Fine. That is all from me. Thank you.

Q473 **Chair:** Is there any observation, Mr Sadler, from your point of view?

Kevin Sadler: On the specific point, I have no concerns about being funded for the implications of the PCSC Bill. All our conversations with the Ministry have been very positive about funding for the criminal courts over the next financial year. As we discussed yesterday, reform is an important part of that as well, to enable us to work more efficiently.



HOUSE OF COMMONS

On timeliness, it is worth noting that over the period from 2015 court timeliness was getting better in terms of overall offence to completion. We were not contributing to increasing lengths of time. It is also worth noting that the 511 mean offence-to-completion days is lower than it was in 2016, when it was 579 days. Over the period from 2015, it was always over 500 days. I am not saying that victims and witnesses would regard that as a good thing, but there was not a significant deterioration over that period.

Q474 **Chair:** But what you had seen was a deterioration from 2010 when it was around 391 days.

Kevin Sadler: Indeed. It peaked in 2016 at 579 days.

Q475 **Andy Slaughter:** Good morning to you all. I have a couple of follow-ups to Maria's questions. According to the impact assessment, there are costs to HMCTS and the Legal Aid Agency of about £40 million from the Bill and another £15 million from the changes in relation to prisoner escort and custody services, due to the video remand hearings. I do not know how significant you regard £50 million a year as in that context. Are you confident that, as it is a Government Bill, that money will be provided by the Government to ensure that any additional costs are covered? I was surprised to hear you say that there might be a saving, given that those costs are set out in your own impact assessment and, of course, there are new offences in the Bill, which, presumably, will have to be processed.

Lord Wolfson: When I said a saving, I hope I was being clear that I was talking about a saving in time, speeding things up. I was not talking about a saving in money. As far as adequate finance is concerned, I repeat what I said to your colleague. The way I look at it is that we need to make sure that HMCTS has sufficient funds to provide the service. Wherever those costs come from, they are part of the costs that need to be funded to provide the service they need to provide.

Q476 **Andy Slaughter:** To be clear, you think that is in a separate basket from other negotiations on your funding going beyond this financial year, do you?

Lord Wolfson: I would imagine it will be part of the overall funding discussions. I understand that you had a long conversation yesterday with the permanent secretary about funding. On precise funding questions, at this stage, given my involvement for the last two and a half weeks, I am afraid you are going to have to ask Kevin.

I do not look at this, frankly, as a separate box. I don't think it is helpful to look at it as a separate box. We need to make sure that we are providing a criminal justice court service that is adequate, suitable and as good as we reasonably can make it. The Bill is part of that overall objective.

Q477 **Andy Slaughter:** Going back to the backlog, the buck stops with you



and the ministerial team, does it not? I have been trying to follow your argument thus far. You don't like the term "backlog". It is more to do with how the process is managed, which, obviously, includes the length of time that takes. Dealing with the 511 level, or whatever the figure happens to be at any one time of the number of days it takes to get through the system, is not entirely within your control because it is a matter for judicial decision and listing.

There may be some merit in that, but at the end of the day do you accept that things are unsatisfactory at the moment—maybe through nobody's fault other than the virus—and that you are in a difficult position for getting out of that?

Lord Wolfson: I do not want to sit here quibbling about adjectives. I do not think we would be significantly disagreeing if I was to say that the system faces challenges. We have to work out how we put in place a system that is suitable. What I mean by suitable is that it disposes of cases as quickly as is reasonably possible. This is not buck-passing but being absolutely realistic about what the criminal justice system is. I emphasise that the criminal justice system is not just court buildings and judges. The criminal justice system is police, CPS, court service and judiciary. It comprises four agencies. One of the things we need to do is to make sure that the links and the tie-ins between the various agencies are as close as they can reasonably be, while at the same time properly preserving the distances that are put in place institutionally.

If we go back 50 or 60 years—you will know more about this than I do, I suspect—we separated the police from the CPS for a reason. The Government are separated from the judiciary for a reason. When it comes to the criminal justice system, there are four big agencies, four big parts, which have to play together. At the same time, we have to recognise that they all have their separate responsibilities, and some fences cannot be crossed. We can be good neighbours but we have to stay in our own garden, if I can put it that way.

Q478 **Andy Slaughter:** I think we would all agree that you are acting in good faith. We have heard this morning that we will have as many sitting days as we can, and that you are aiming to use your best endeavours. The majority of the evidence we have heard on the backlog is very alarming. You mentioned that we were above 50,000 in the outstanding case load in the Crown court previously. The last time we were at that level, which was the end of last quarter 2015, there were 338 effective trials and 245 cracked trials a week. For the last quarter that we have figures, which is the third quarter of last year, it was 72 and 33. Again, the figure is above 50,000.

It is getting better because you are getting more throughput, but it is a really substantial problem that you are not yet addressing. I do not seem to hear the urgency or the personal responsibility in the Department ministerial team that says we will clear that, whereas we have practitioners and others telling us on a weekly basis about terrible waits



and listing problems.

Lord Wolfson: I am sorry that you are not hearing the urgency or the personal responsibility, because the urgency is certainly there. I am the Minister with this portfolio. If you are not hearing urgency or personal responsibility, perhaps I am not shouting loud enough. I can assure you that both are there.

When it comes to clearing backlog, I repeat what I said earlier. I do not think that focusing on “backlog” is a sensible thing to do. We have to focus on the throughput in the system. Let us say, for example, that the backlog was 20,000. Would that it were. The backlog is 20,000. We get 40,000 cases in. We dispose of 39,000 in six months. That would be a fantastic achievement, but the backlog would have gone up. Let’s not focus on backlog. Backlog, when it gets very high, of course is a symptom of a system that is not working as well as it should. Let’s work on throughput.

The figures on throughput are this. Jury trials resumed in the Crown court in May last year. This year, between 4 January and 21 February, we listed an average of 309 jury trials a week. That compares to 432 pre-Covid. It is not as good as it was pre-Covid, but it is still pretty good. When you compare it with other jury jurisdictions around the world, it is very good. Of those, an average of about 78% a week were effective or cracked. By effective, I mean reached a verdict, and by cracked, that the prosecution withdrew or there was a guilty plea. The corresponding percentage pre-Covid was 81%. That is basically the same. Although fewer trials at the moment are being completed than pre-Covid, the effective and cracked rates are roughly similar, which is encouraging.

One of the things we have to bear in mind though, and I am very up front about this, is that, because of the limitations we have had during Covid, some of the trials that we have not been able to list—when I say we, I mean that the judiciary because of the buildings we made available have not been able to list—are multi-handed cases, or cases that present special complexity because they have been harder to list during the pandemic. I recognise that in the mix of outstanding cases there is a greater weight of what you might call difficult or complex cases. I am very sorry if you are not hearing urgency or personal responsibility, because I assure you that there is urgency, and this is something I am absolutely focused on. I know that Kevin is as well, and I know the Lord Chancellor is as well.

Chair: Thank you very much. I don’t think, in fairness to Mr Slaughter, that he or I were called 60 years ago, although we go back quite far; we go back to pre-CPS days. We can say that.

Q479 **Rob Butler:** I would like to raise some of the issues that have been brought to our attention during the inquiry. They are about data, technology and staffing. Perhaps I could start with data. One of our witnesses, Natalie Byrom, who worked for a while in your service, Mr



Sadler, told the Committee, “the courts service has chosen not to collect the data that would enable us to understand the impact on access to justice” amid concerns about data policies more generally. First of all, would you like to address that quite specific suggestion?

Kevin Sadler: In terms of Natalie Byrom’s report, which was really helpful, and which we accepted in full, basically, and have been moving towards delivering, we are working hard to collect data across the system, and we have already started collecting data on protected characteristics in our reformed system. We are working with the Ministry on its overall evaluation of reform because HMCTS’s responsibilities relate to the administration of justice. The Ministry has much wider responsibilities in relation to overall access to justice and managing that.

As regards the proposals that she made, we have already created a new senior governance data panel that includes the judiciary, the Ministry, HMCTS and external academics, including her, which is providing advice on issues, and it is operating in shadow mode already. We have created a new secretariat, in partnership with external funders, which has already recruited and is making our data decision-making processes more transparent and streamlined. We are constantly moving forward in developing our new systems through reform to enable us to collect these issues.

I am looking forward, as was mentioned yesterday, to the publication of the overall research proposals for an evaluation framework for reform; it is with Ministers at the moment and we expect it to be out shortly. That will set out the way forward overall on measuring access to justice as a whole. Academics and researchers always want more data and always want more information, and we need to use our data governance panel and our new arrangements to test that against the costs that it creates. We are very committed to increasing the amount of data. It is important that reform enables us to do that. That is a key benefit that we see from reform.

Q480 **Rob Butler:** Lord Wolfson, as a new Minister, when you were given the additional responsibilities, did you have immediately to hand all of the numbers, all of the data, that you wished to have to begin taking on these new responsibilities?

Lord Wolfson: Immediately to hand in the sense of the following five minutes, obviously not. I have spent a considerable amount of time reading into these briefs. I have had meetings with the three officials who are appearing with me today, and a lot of other officials as well. My experience has been that, whenever I ask for data, it is provided. I am interested in ensuring that we have as good data capture as we possibly can.

I am afraid if I start talking about data, I will not shut up, because I firmly believe that you cannot run systems like HMCTS without proper data, and that is both backward-looking data and forward-looking data. If



I come to a position where I ask officials for data that I think is relevant and they cannot provide it, I want to know why. Is it because it is not available? Is it because it is not being captured? That is something that I will certainly be focused on. So far, I have not had that problem, but I am still in the process of asking questions.

Q481 Rob Butler: I suspect we will all find that reassuring because this Committee at times has asked for data that has not been available, not because it is being hidden, but because it is not being captured. I was in the same position as a non-executive director of HMPPS. Within the Ministry, there were definitely shortfalls in data, so it is reassuring to know that you would push for it. Are there any particular areas of data that you think it will be crucial to make sure you have got right to be able to determine the success of the recovery programme?

Lord Wolfson: To a certain extent, it may go back to some of the questions, or short statements, that Ms Eagle put to me earlier. If we are looking prospectively, what do we anticipate the length of a particular type of case to be? I would want us to have an idea of what that is likely to be in order that we can plan appropriately for the number of courtrooms and the number of sitting days we will have. To a certain extent, when it comes to sitting days, as has already been said, we will be running hot anyway. In other words, our approach to sitting days for the next year and—the Chair may well be right—for the year after that will be, frankly, as many as we can. What I would like to know is the effect we anticipate that is going to have on our throughput—note that I did not say backlog; I said “on our throughput”. I do not know how many cases will come into the system. I do not think anybody knows, if I may say, how many cases will result, for example, from 20,000 more police officers. We can take a view, but we do not know.

Q482 Rob Butler: Thank you. Let me move to the second of the areas that I mentioned, which is technology, not specifically on access to justice at this stage, which one of my colleagues will pick up a bit later, but more about the use of technology by HMCTS staff. Some concerns were raised with us about, for example, the practicalities of some HMCTS staff being able to work from home. We were told they felt they could not because the technology was unreliable and always failed. Mr Sadler, do you have anything to say about that?

Kevin Sadler: Yes, I read that evidence. While we have had occasional outages of systems, it is not at all the case that it is always failing. Our availability of systems is very strong, well into high 90% figures. One of the great benefits from reform has been that it has enabled us to operate the probate and divorce systems remotely. People have been processing probate cases and divorce cases and answering calls in relation to those from home, which is really helpful. The paper probate cases that we still get have been much harder to process. It has helped our resilience through the system.



HOUSE OF COMMONS

It is one of the reasons why we see reform as enabling recovery more effectively and building resilience into the system. It is also true that the pandemic meant that we had to put out new systems faster than we would normally expect to do, and we have relied on the ingenuity and sheer hard work of court staff to make those work as effectively as possible. The cloud video platform was implemented at a significant rate of knots. It would not be the normal way we introduced change into HMCTS, but everybody has embraced it and worked well with it. We have increased, and are still increasing, the amount of training and support we provide to staff to enable them to do that.

In relation to the evidence that you have received on this, our data does not suggest that level of lack of availability of systems. People who can work from home on our reformed systems are doing so, and doing so effectively. It is where we have paper-based systems such as in the civil courts that we have particular problems. Technology has saved us through this period.

Q483 Rob Butler: Have you learnt anything about the use of technology and about how long it takes to implement? As you said, the cloud video platform has been done much faster than would have historically been the case. Have you, as part of that, learnt that, in fact, before, there were more delays than there needed to be and that things can be done a little bit more expeditiously?

Kevin Sadler: Indeed, we have. Certainly, in terms of the video, having a willing audience who were, in the face of a national emergency, prepared to change practices has really helped. As the Lord Chief Justice said, there will be no going back to the old world. For case management hearings, and in a lot of activity in a number of jurisdictions, we expect to be using video in a very significant proportion of cases. I mentioned yesterday that our early adopters of the common platform system were rolling out. We have learnt from that that we can be more effective in the way we roll out our systems. The traditional approach was to do it in one site, to send people out to floor-walk and support people and so on.

In Derby, when we introduced the common platform, the programme team were supporting people in that court on video. They were accessible at any time. When somebody got a question or something like that, they could go on to the cloud video platform and ask a question. That has enabled us to rethink our roll-out plans for the common platform, and for us to do more of the country at any one stage than we would have otherwise been able to do. There have been some positive lessons coming out from this as well.

Q484 Rob Butler: No system can survive just on machines without people.

Kevin Sadler: Indeed.

Q485 Rob Butler: This is an appropriate moment to pay tribute to all of your staff who have continued to work throughout the pandemic. Are you



HOUSE OF COMMONS

confident that there are sufficient staff working for HMCTS to implement the recovery plan? We have heard, as you know, witnesses suggesting that that is not the case. Sir Tom Winsor told us that the criminal justice system, which I respect is not just HMCTS, is completely understaffed, for example.

Kevin Sadler: The Treasury provided additional funding for 1,600 extra staff as part of its Covid funding, and we have put them to very good use. Some of those staff are marshalling to make sure that we maintain social distancing. A lot of them are supporting the cloud video platform and making sure that those hearings run as effectively as possible. It has been pleasing to see new members of staff starting in HMCTS, something we have not been familiar with for a few years. That has been really positive. I am comfortable with—

Q486 **Rob Butler:** Sorry to interrupt you there. I am aware of timing. You mentioned funding. Does that translate into you being able to recruit enough people of the right calibre? Sometimes there can be difficulties in that particular arena in other parts of the justice system.

Kevin Sadler: At the moment, the Ministry of Justice has a pay case sitting with central Departments, and I am very keen that we successfully bring it to a conclusion. The attrition rates in HMCTS are higher than I would like. The January attrition rates were 10.59%, which is slightly lower than in February.

My staff would not forgive me if I did not say that HMCTS staff are among the lowest paid in the civil service, and we need to address that. Their commitment to their work keeps them at work and has kept them at work through the pandemic, and I pay testament to everything they have done during that period. We have a challenge on low pay, and I would like to be able to address that and I am keen that we do so with the Ministry.

Q487 **Rob Butler:** On pay specifically, the union representative who spoke to us last week suggested that, essentially, like for like in different Departments, your staff are being paid about £3,000 a year less. I was going to ask if that seems the right figure; I am not suggesting that it is appropriate, but does it seem a correct analysis?

Kevin Sadler: That is one of the relatively few bits of that evidence that I would not disagree with.

Q488 **Rob Butler:** Point made. What about judicial recruitment? Are you satisfied that the potentially unlimited number of sitting days can be filled by the judiciary?

Kevin Sadler: Judiciary recruitment is not a responsibility of HMCTS, but we work very closely with the Ministry and the Judicial Appointments Commission. The Judicial Appointments Commission is running its biggest recruitment programme for many years. We are very supportive of that. We have particular challenges with district judges to support civil and



HOUSE OF COMMONS

family work. In past years, we have been constrained by the number of judges we have rather than the amount of funding available. There are exercises running on a regular basis now, and I am very keen to see the judges come out of that so that we can deploy them in the system. We are working very closely, and I am looking forward to those judges coming in.

Q489 **Rob Butler:** Minister, is there anything that you would like to say on either the access to technology for staff or staffing issues more widely?

Lord Wolfson: The main thing is to echo the tributes paid to the work the staff have done. It came to me, if I may say so, as no surprise because, until December, I was a practising barrister as opposed to an unregistered barrister. Even though I was sitting on the other side of the court, so to speak, it was obvious to everybody doing cases throughout the pandemic that there was simply no way that the system could operate without staff going beyond the call of duty. I admit my practice was in commercial work, not criminal work, but I have no doubt that the same holds true across the jurisdictions. I would certainly say that, and I mean it, from personal experience.

On judicial recruitment, it may be slightly off topic for today's session, but let me take 30 seconds, if I may, to make two points. First of all, the Committee will have seen the increase in the retirement age, which is important in this regard. It has been widely welcomed not only among the judiciary but among the profession generally, and I hope that it has a very positive effect. Secondly, one of the debates in Parliament that I participated in fairly recently was on judicial pensions. As you know, there have been a number of cases about judicial pensions, and that is something that is being looked at. I have no doubt that the pension part of the remuneration package for the judiciary will be an element in ensuring that we attract the best people to become judges. The quality of the judiciary is absolutely central to everything we do. I had better stop talking about this because, if I start talking about it, I will never stop. One of my responsibilities is Global Britain and, in that context, one of the reasons people come from around the world to litigate and arbitrate here is the quality of our judiciary.

Q490 **Chair:** Thank you very much. You are right about the dedication of the staff. In all the years I practised in crime, as you know, Lord Wolfson, that was always apparent. It is worth saying, and may be something that you want to take on board, that the low pay rate of many court staff in particular may go back almost before times when we had a unified court service, and these things were done by magistrates court committees, for example, or others. We have never caught up with the reality of it being part of the civil service mainstream in the same way.

Kevin Sadler: Some of the magistrates court staff were paid more than the civil service.

Q491 **Chair:** They were better off because they had a better rate—basic pay.



Kevin Sadler: It varied by grade. We have had a particular challenge, in that a number of Departments have done multi-year deals with their staff and they have overtaken us. We have been constrained to central Government remits, and people have gradually fallen behind. It is a particular concern that we are becoming a feeder Department for other civil service organisations, and people are leaving for HMRC or DWP. DWP is expanding at the moment, so that is a particular concern for us. It is important that we do that catching-up across the civil service.

Q492 **Chair:** Is that partly a consequence of being an unprotected Department?

Kevin Sadler: That is difficult to say. DWP are unprotected as well and yet we are losing staff to them.

Chair: They managed to get their pay rates up. That is something for the Minister to take away.

Q493 **Dr Mullan:** Thanks to the witnesses for coming today. We have covered discussions about the backlog and court capacity and court staff. We have heard evidence about the difficulties of staffing and case load in other parts of the criminal justice system—the CPS and CAFCASS, for example. Her Majesty’s CPS inspectorate raised concerns about case loads. CAFCASS, which we heard from recently, talked about case loads being higher than they have ever been before, and they are for the first time seeking to discuss prioritisation of cases, which is not something they would ordinarily do. What is being done, from your perspective as the accountable Ministry, to address those issues of high case loads?

Lord Wolfson: The starting point is that we want to run the system hot. In your question, you focus on criminal and on family. They are jurisdictions with different ingredients, but the point that is common to everything is that we want to have as many courtrooms operating as we possibly can. That is the first thing. So far as family courts in particular are concerned, we have, at the moment, record levels of sitting days, and disposal rates have returned to those seen before the pandemic. That is in the context of an increase in work and an increase in the responsiveness of the court to important societal problems.

For example, if one looks at domestic violence, which is on my mind because we have the Third Reading of the Domestic Abuse Bill in the House of Lords this afternoon, in the period July to September 2020, nearly 20% more domestic violence orders were made than in the same period in 2019. I think it was actually 18%. The family courts are working hard, but I recognise, as I said earlier about criminal courts, that we face a challenge, and we have to make sure that we build back better. That is not just an arid slogan. It is to ensure that we focus on running the system as hot as we possibly can. That will mean the involvement of everybody in the system—the family courts, HMCTS, the judges, CAFCASS and so on

Q494 **Dr Mullan:** I am hesitant to repeat your discussions with Ms Eagle



HOUSE OF COMMONS

earlier. You have talked about the courts. If we look at things like case loads, would you expect to be monitoring the case loads of key organisations like that? Will you be looking at and monitoring on a rolling basis the case loads for the key organisations, and would you expect to be driving towards a particular level that you are comfortable with or that you think is sufficient?

Lord Wolfson: I cannot control how many cases go to CAFCASS, so to speak. The number of cases that CAFCASS has, in so far as it is an indicator of the amount of work the court system has to deal with, is a relevant number. Is that what you are driving at?

Q495 **Dr Mullan:** No, I am talking about how useful you find case loads. There is a difference between a backlog, the time it might take to do something, and the case loads for the individuals we task with doing that. I think you will agree that, in a system where there is pressure and we want to reduce the backlog, the obvious risk is that you end up piling cases on people without being able to deliver effective support, for example, in the case of CAFCASS. We have heard, for example, CPS concerns about the ability of their staff to give the attention and time they need to complex and difficult cases. There is a lot of discussion at the moment in relation to violence and rape, but it would apply to all sorts of different cases. How do you ensure that pressure from the top to do things quickly does not have adverse side effects? I would suggest that ensuring that case loads are looked at with equal attention is important to that.

Lord Wolfson: I do not disagree that case load is important to that. It will not be an answer, whether we are talking about criminal justice or family justice or, frankly, any part of the court system, if one simply moves a bulge, if I can put it that way, from one area to another. We need to make sure that everybody involved in that part of the system—it will be different entities in different jurisdictions—is working together to make sure that cases are heard as quickly as they reasonably can be. You do not get rid of a problem by making it somebody else's problem. The problem is still there. We all have to work together. We have recruited, in that context, a lot of new staff. About 1,200 new staff have been recruited to help deal in particular with the effects of the pandemic. I totally accept the point that you are making. We have to keep an eye on CAFCASS case loads.

Q496 **Dr Mullan:** Yes, and CPS and everybody. I take some comfort from the idea that it will be monitored closely. I understand you will not be directly tackling that for those organisations, but you are in terms of resources made available to them and support for them. That is important.

Could I move on to talk about Nightingale courts? There is, to some extent, a lack of understanding of the process that was undergone in determining where they are and who is prioritised for having one. Could you take us through how decisions are made about where Nightingale courts are located at the moment?



HOUSE OF COMMONS

Lord Wolfson: The importance of Nightingale courts is that they provide extra capacity. We have opened 60 rooms in Nightingale courts that cover every HMCTS region. Whether we need more or fewer is something Kevin keeps under constant review. We have rolled out Nightingale courts as quickly as we reasonably could. You cannot just go to a building and slap the sign "Court" on it. You have to make sure that it is a suitable building. As regards where they go, we assess where needs are greatest, and we assess what buildings are available in that area. We look at capacity, accessibility, health and safety, security, whether any building works need to be done, and the cost.

One of the things that Nightingale courts do is to take work out of what we might call jury courtrooms so that the jury courtrooms can be used for jury trials. There can be a bit of a misconception about that. Sometimes people think that we are holding jury trials in the Nightingale courts. Generally, we are not. We are using them to free up capacity. Whether 60 is the right number is something we keep under review. Where they go is led by demand and availability and the other factors I mentioned.

Q497 **Dr Mullan:** Perhaps I could give you an example. There has been reporting of Nottingham not having a Nightingale court when I understand that it has one of the highest numbers of live cases in the region, versus Liverpool, which does have one. It is more about the process, so that people could understand why in a particular case—for example, Nottingham, which has high numbers of cases—there isn't a Nightingale court; they could scrutinise that and engage with that. At the moment, there is not a lot of transparency about where we are at in different parts of the country and why.

Lord Wolfson: I hear you on that. I cannot give you an answer. Perhaps Kevin can as to, so to speak, why yes Liverpool and why no Nottingham. I should make it clear that that decision was taken before I came to the Ministry. The fact that I am from Liverpool had nothing to do with it.

Of course, I understand your point. I suspect that, in this area as in many areas, the more transparency we can reasonably provide, the better. Otherwise, rumours go round that are simply false. I do not know whether Kevin has at his fingertips why Nottingham no and Liverpool yes. If he does, I am sure he will say. If not, I am sure we can provide a note to the Committee.

Kevin Sadler: I can help with that. Nottingham has a Nightingale court now.

Lord Wolfson: That was a short answer.

Kevin Sadler: There are two Crown courtrooms in Nottingham now. Generally, on the process for identifying Nightingales, we looked through more than 600 proposals from various bodies, particularly police and crime commissioners. I know in Nottingham there was an initial proposal



that some redundant police accommodation—a training facility, I think—could be made available. Unfortunately, quite a few of the buildings we look at are not suitable for distancing, separation of the parties, which is a big issue for the Crown courts, or general security. In some areas, we have examined barracks with cells that might have been good for the Napoleonic wars but would not pass muster these days as far as the inspectorates are concerned.

In some areas, there have been cells, but the locks have been taken away, and the re-provision of those locks would have a very long timescale. There have been all kinds of challenges. We sat down with the Association of Police and Crime Commissioners chief executives to talk about our criteria for Nightingale courts and explained all that, to help them understand what would be useful and what would not be useful. We regularly attend the Association of Police and Crime Commissioners meetings with all the national PCCs to give updates and so on. We are in engagement.

Q498 Dr Mullan: Is it right for it to remain highly centralised in terms of decisions about where courts should be, and whether venues are appropriate? We have heard some evidence that there might be a smoother process if there was some devolved decision making in relation to finding venues and opening venues. Is the balance right?

Kevin Sadler: I would not describe it as highly centralised. To a police and crime commissioner, it might appear highly centralised because they operate solely locally. We engage with our regional delivery directors, who also engage with their regional stakeholders. It is economic and effective to have a central team, to make sure we are putting the same tech in and that we are operating to the same standards. Some legal professionals would be very uncomfortable if we were operating different standards in one part of the country from another part of the country. We are trying to balance that.

We have to focus on where the biggest challenges are. The biggest challenges are particularly in London and the south-east, whereas in the south-west, for example, a significant number more courtrooms are operating than were operating pre-pandemic. It is not the priority that London is, for example.

Q499 Dr Mullan: It would be helpful for the Committee if you were to write to us and explain, “Across the country, these are the places we put things in place. These areas we haven’t, for this reason.” Then we could have a sense that there is a joined-up decision-making balance.

Kevin Sadler: I am very happy to do that.

Q500 Dr Mullan: I want to move on to the question of temporary versus permanent. Some of these cases, I understand, are being listed at those venues into 2023, but they are still resolutely described as temporary. Do you think we might have crossed the threshold whereby we could talk



HOUSE OF COMMONS

about opening permanent buildings for an amount of time and they might have a longer-term role to play in the justice system? It seems that there is a real focus on making it clear they are just temporary. What are your thoughts on that?

Kevin Sadler: This is quite a tricky one. Many of the venues that we have at the moment are available because of the pandemic; for example, the Lowry theatre is unlikely to want to devote its very impressive facilities to Crown courtrooms in the long term. We all look forward to productions returning there. In other areas, there are hotels where there is reduced traffic and so on. Some of those venues will return to previous existences. Others are courts that had been closed and have been reopened, and things are much more flexible there.

A lot depends on how social distancing pans out and what happens over the winter. We are actively looking at all the sites, and all other sites, to see what could be continued and what might not be needed. Generally, until the pandemic came along, we were not short of courtrooms. The challenge was the number of judges and the work to do, particularly in Crown, where receipts have gone down significantly since 2015. It will be a matter of a very regional focus and seeing where there are capacity constraints and meeting them. Things like the super-court in Manchester are permanent additions to our estate. We will continue to keep that under review.

Dr Mullan: That is very helpful. Thank you.

Chair: I am conscious that we have a good deal to get through yet. Are there any other questions from Members on criminal courts capacity? I do not know whether Mr Slaughter or Mr Butler have any questions they want to return to on this topic. We dealt with listing and some issues that were on our list.

Rob Butler: Sir Bob, there was a little bit about access to justice as a result of technology that we have not yet covered.

Chair: Mr Slaughter, do you have a question you want to come back on? I will let you go first because I know you are on a time constraint.

Q501 **Andy Slaughter:** That is kind. Thank you very much.

We are all, thanks to the virus, entering the virtual world in ways we did not know, including the justice system. In the police Bill, there is provision for virtual, remote juries. I understand why they needed to put it in, because it requires a law change. Reservations have been expressed already by the professions and others about it. Could you explain a little bit more about what your plans are, how they would work, when you expect to introduce them and how widespread they would be?

Lord Wolfson: I can take that in two stages. First of all, you are right to focus on the PCSC Bill, and you are right, if I may say respectfully, to point out that the current legislation in England and Wales precludes the



use of remote juries. It is different in Scotland. I am quite a fan of Scots law in all sorts of areas. This is one area where we may be able to learn from them.

What have we done in the PCSC Bill? We have put in an enabling provision. That is the second point. What we have not done in the PCSC Bill is to say that we are going to do it, and this is how we are going to do it. It is an enabling provision. That means that we—by which I mean MOJ/Government—need to sit down with the judiciary to take very careful consideration of whether, and if so, how, it is right to use it.

So far as I am concerned, there will be two main issues with whether we bring in remote juries. The first and frankly the most important issue is access to justice—precisely the point you made. You are absolutely right. There are issues around access to justice with remote juries. I do not think they are insoluble—see Scotland—but they are something we have to think about carefully. We will think about them carefully with the judiciary before we ever use them, if we do.

Second is cost. There is obviously cost involved, and we would have to look at that as well. I agree with a lot of what you said, but let's remember that it is an enabling provision. Work would have to be done thereafter to consider whether, and if so, how, to bring them into effect.

Q502 Andy Slaughter: I do not want to put words into your mouth. Are you saying that if it is taken forward—sometimes things come on to the statute book and sit there forever, never activated—it will be done on the basis of testing it out and being very careful about it?

There are serious concerns. There is a big difference between using virtual technology to help out, maybe in case management, in preliminary hearings, or even with certain witnesses where things like demeanour are not the most crucial aspect—expert witnesses perhaps. The jury is at the heart of the criminal justice system, and if you suddenly take it into a remote location—we have had the Scottish example quoted to us many times, using cinemas and things of that kind—it is seen as an emergency measure to deal with the virus. At least, that is how it has been put to us. This seems quite a big leap. What we are looking at is whether there is caution.

Lord Wolfson: There will certainly be very careful consideration. I am not sure I would use the word "caution" because I am not sure I need to. It would certainly have to be considered very carefully both by Government and by the judiciary. The only slight quibble I would have, if I may say respectfully, is that I would not always say that the jury is at the heart of the criminal justice system. That is rather unfair to all the magistrates who work extremely hard and do the vast bulk of the work, but I know exactly what you mean. I am not picking a fight. Let's remember that the magistrates play a very important role.



HOUSE OF COMMONS

In the context of the discussions we have been having, one of the benefits of the relaxation of social distancing is that it is easier to have benches of three magistrates sitting in the same room. That is another factor. On the point you are making, I agree there are access to justice considerations, and there will be careful consideration. If we went for it, and whether we would do a pilot or not, is some way down the road, but there will be very careful consideration as to how we do it.

Chair: That is for another day by the sound of it.

Q503 **Andy Slaughter:** The other issue in relation to using virtual technology is that there appears to be provision in the Bill for making what is currently a temporary use permanent. It seems to envisage a much greater use of it in the future. You may be aware, Lord Wolfson, that alarm has been raised again by, for example, the EHRC about whether this could disadvantage certain groups, such as people with disabilities or people who may need assistance and appropriate adults. They have raised this as a concern. It is not new. It has been a concern over, for example, legal advice being given under LASPO. For people who are already struggling with the difficulties of a system they are not used to, it adds an additional barrier. What steps have you made to address those concerns?

Lord Wolfson: The starting and finishing point as far as I am concerned is that hearings have to be fair, and that means fair for everybody participating in and affected by the hearing. Remote hearings are a very useful tool, but—it is a critical “but”—participants are asked to inform the court of any circumstances that could affect or impair their ability effectively to participate in the hearing if it takes place by audio or video. That will include their ability to access digital services.

It is then for the judge to consider whether, looking at the matters in the round, the case should be proceeded with wholly or partly on audio or video. We published last year a vulnerability action plan as part of our response to coronavirus. One of the things we looked at there, and we will continue to track, is the impact of remote processes on vulnerable users or groups of users who might be disproportionately adversely affected by their use.

Q504 **Andy Slaughter:** There does not seem to be much reflection in your impact assessment, which is pretty vague when it looks at what the implications are of dealing with virtual technology. There is a role in proceedings for the judge and so on, but that may not be sufficient. Are you going to do any study or analysis of the effect of using it during the Covid crisis, because we have had experience of that, unlike the juries, before it suddenly becomes a permanent fixture in the system?

Lord Wolfson: Short answer: yes. We are already conducting an evaluation of the use of remote hearings. During the first part of this year, we will be conducting surveys and interviews with a range of user groups. We expect to complete that, I hope by summer this year, and we



HOUSE OF COMMONS

would publish a research report after a normal peer review process. This is absolutely something that we are focused on, and we want to talk to people who have experience of remote hearings.

Andy Slaughter: Thank you very much.

Chair: That enables us to move on to a new topic, which is legal aid in criminal cases.

Q505 **Janet Daby:** Bill Waddington, from Williamsons Solicitors, and the Criminal Law Solicitors Association spoke at an APPG on criminal legal aid about the sustainability of the profession. He stated that 725 fewer providers were in the sector as compared to 2010, and that the sector prior to the pandemic was “already in a very unhealthy state.” In the words of the Law Society president, Simon Davis, it is “a profession which was already perilously underfunded before the pandemic.” It is clear that the sector and provider firms had been struggling. How important is criminal legal aid to the justice system, Lord Wolfson?

Lord Wolfson: It is obviously critical. Let me explain why it is critical. I do not wish to split hairs, but it is important that we focus on why sustainability is important. Don’t take this the wrong way, but the purpose of legal aid is not to sustain the legal profession. The purpose of legal aid is to enable people to vindicate their legal rights. That is true for criminal legal aid and civil legal aid. We need a sufficient number of people in the profession in order to enable people to have access to that advice. There has been a decline in recent years in the number of criminal duty solicitors, for example, who provide a critical service at the police station, in the magistrates court and thereafter.

As you know, there is an independent review, conducted by Sir Christopher Bellamy, going on at the moment into criminal legal aid, and the second part of that review will be looking at, among other things, precisely the point you mentioned, the sustainability point. I am very conscious of the work that has been done in this area, and the fact that we have fewer people doing the work, and we have an increase in the age profile of those who are doing the work. I do not mean to be ageist when I say that, but it is important that there is a continuum of people going into that area of work. Those are issues that Sir Christopher will be looking at.

Q506 **Janet Daby:** I do not think there is any question around the role of the professionals or the solicitors in acquitting the innocent and convicting the guilty. If the profession is under severe strain, there is less representation. Other colleagues will be asking more questions about the sustainability of the profession in a little while.

Jane Harbottle, what impact has Covid had on the amount spent on criminal legal aid? What effect will that have on the profession?

Jane Harbottle: I am happy to talk to that. It is unfortunate timing that our official statistics on it are due to be published tomorrow. We will



HOUSE OF COMMONS

ensure that you have them in writing as soon as they are released and published. The statistics that are in the public domain at the moment unfortunately only go to September 2020. We know from the September publication, and you know from speaking to witnesses, that the area of legal aid hardest hit by the pandemic was Crown court work, where there was a reduction of about 50% in the early days of the pandemic.

It is probably stating the obvious, but legal aid expenditure will follow what is happening in the wider justice system and court recovery. Teams on the ground very closely monitor that and try to predict what it will tell us in terms of future spend. The pandemic has created an awful lot of uncertainty in relation to legal aid spend. From an agency point of view, the best analogy or numbers I can give you at this time are what we have seen on the ground in the number of applications coming through the agency for legal aid and the number of bills that have come through the agency in respect of criminal and civil legal aid billing.

In the early months of the pandemic, back in April last year, we had an initial fall of civil applications by about 15%, and criminal applications fell by 34%, but we saw operationally at the same time that bills into the agency increased about 20%. That was as providers sought to stabilise their financial position as much as possible, and bill out their work in progress to that point. Family, as you have heard from previous witnesses, stabilised a lot quicker than the other areas of legal aid. That pretty much stabilised, and we have seen volumes in line with what we saw pre-pandemic since about July 2020 in family, albeit Crown court billing has taken much longer to recover, particularly because of capacity in the courts.

We are now seeing Crown court billing volumes coming into the agency with the number of bills back at around the same amount as they were pre-pandemic. That will not necessarily accord with the finances that we are spending, that are going out of the door, because more of the quicker cases are being billed out, as opposed to the large and multi-handed cases. The profile has adjusted somewhat, as you heard in relation to court recovery as well.

Regarding the impact on the profession, the profession has been amazing throughout this period. They have worked incredibly hard to keep the system going. I give credit to my staff, who have shown immense resilience in ensuring that bills were paid as quickly as possible to help the profession, and that applications were processed as quickly as possible. As an agency, we reacted and listened to the concerns of the profession. Personally, I held lots of meetings with providers and stakeholders, as did members of my team, certainly in the early days. We very quickly implemented about 40 contingency measures across the agency—those that were within our gift to give. Some of those included financial support. By financial support, I mean changes in the way we allowed providers to bill out some work and some changes in the way



HOUSE OF COMMONS

that they could claim hardship on particular cases. We did that as quickly as we possibly could.

The HMT schemes have also been available to the legal profession, as they have to other sectors.

Chair: We need to concentrate specifically on the legal aid issues because time presses.

Jane Harbottle: Okay. For legal aid providers, contract managers from the Legal Aid Agency have been in touch with all of them to check on what their financial health is and what other packages they are accessing. Obviously, the best position we can be in is to keep the courts moving and to keep recovery going and play our part in that as the agency.

Q507 **James Daly:** As time is tight, I will try to ask as few questions as I can. Lord Wolfson, as you are the Minister for legal aid, I have to say that I was somewhat surprised by an answer that you have just given. Are you aware of the parlous financial state of just about every criminal legal aid firm in the country?

Lord Wolfson: I am aware of the stresses that many criminal legal aid firms are under.

Q508 **James Daly:** As the Minister for legal aid, and as somebody who comes from a legal background, have you given any thought as to how that situation can be addressed?

Lord Wolfson: The best way to address it is to repeat what has just been said. If we work as hard as we can, which we are doing, to get the criminal courts back up and running and at a capacity higher than previously, and certainly as high as we possibly can, we will have more trials. That is the best way to assist firms that are doing legal aid work.

Q509 **James Daly:** Those legal aid firms would say to you, Lord Wolfson, that an increase in fees would be one of the best ways to address sustainability. For example, in 2015 there was a cut of 8.75% in legal aid funding. Would you be in favour of that funding being put back into the system?

Lord Wolfson: I am certainly in favour of all sorts of funding being reviewed, which is exactly what Sir Christopher is doing. When he publishes his review, I will consider his report and any recommendations he makes extremely carefully. Forgive me, but I do not want to prejudge the outcome of a review that is ongoing as you and I are talking today.

Q510 **James Daly:** I understand that, Lord Wolfson, but you said in answer to a question that legal aid is not here to sustain the legal profession. I would agree with that. It is a public service, but you have to create a system where people can make a reasonable living to be able to provide that advice. The average criminal legal aid solicitor is probably earning somewhere between £25,000 and £35,000 a year, without any pension



HOUSE OF COMMONS

contributions or any of the other financial incentives that other areas of the law have. That is why we are seeing a drain from criminal legal aid firms into the CPS. Do you not accept that we are in an incredibly worrying situation?

Lord Wolfson: I am not going to quibble with you about adjectives because I think we broadly agree. We agree that legal aid is a public service. We agree that you need a sustainable profession to provide it. We agree that the remuneration of people in the profession and coming into the profession is part of that. That is precisely why we have asked Sir Christopher to look at those issues. I don't think there is anything between us on that.

Q511 **James Daly:** Thank you for that. I have some questions for Jane and Jelena.

Jane, regarding your role, you very clearly set out that you had a lot of contact with firms in the profession during the pandemic. In terms of those discussions, with firms telling you where they are financially and what they need for the profession to be sustainable going forward, how have you fed those concerns in to Ministers?

Jane Harbottle: I mentioned before the regular conversations, which you mentioned too. On a formal level, we look at the capacity of the legal aid market. We look at what is happening, and regularly review the availability of legal aid in particular areas. We do that on a quarterly basis, so that we are alert and responsive to changing conditions.

We work closely with MOJ policy. Most days, we are in communication with policy colleagues about what we hear and what is happening in the state of the market. I have been working with Lord Wolfson in the last couple of weeks. Previously, I was having weekly meetings with Alex Chalk MP, where we went through what providers were telling us on the ground and how much provision we had. All of that was fed up to Ministers on a regular basis, as it was even pre-pandemic. We were highlighting it.

Q512 **James Daly:** I am very sorry to interrupt, but what are they telling you regarding sustainability? What are they saying to you? What is the profession telling you they need to make this a sustainable option for their firms going forward?

Jane Harbottle: It is all the things that Lord Wolfson mentioned and that are in the review. They would like us to look again at fees in relation to legal aid. They would like us to look again at eligibility for legal aid, and who is eligible. We have been doing that and have been working closely with the profession looking at ways to reduce our administration, and reduce, where we can in a proportionate way, our evidence requirements, to alleviate any pressures on them. All of the things that are in the review, in terms of the ageing profession, new people joining the profession, and encouraging younger people into the criminal legal aid profession, are things that we have been feeding back. In all fairness to



HOUSE OF COMMONS

Ministers and to policy, we now have the review under way looking at that.

Q513 **James Daly:** What effect do fixed fees have on the quality of services provided by criminal lawyers to their clients and the sustainability of the profession? Do you have a view on that, Jane?

Jane Harbottle: Fixed fees have a role to play. We always talk about the complexity of legal aid and how difficult it is to administer. Fixed fees take away some of that complexity and give us the ability, if we need to, to flex them and reflect changing circumstances. There is a place for fixed fees in terms of the complexity of work. As soon as you get to very complex cases and very complex work, where misunderstandings and differences of opinion come in, it is much harder to reflect those cases in a fixed fee.

Q514 **James Daly:** Therefore, is it your view that fixed fees should be subject to independent, periodic review?

Jane Harbottle: There is a role for fixed fees. It is not my role or the agency's role to set fees. The criminal legal aid review will be looking at how fees are set moving forward, and how they are reviewed.

James Daly: There are clearly many questions I could ask regarding legal aid.

Chair: We have time, James.

Q515 **James Daly:** In terms of the autonomy of criminal legal aid firms, is there a system that you might perceive as earned autonomy, where firms can cast aside a little bit of the bureaucracy that comes with working with your organisation?

Jane Harbottle: I know you know this, Mr Daly, but an important role of the agency, alongside access to commissioning services, is stewardship of the legal aid fund and taxpayers' money. So far, over the course of the last two years that I can speak to, the focus has been to improve processes and reduce bureaucracy for all our providers, and not necessarily a subset of providers. I would not necessarily be keen to introduce a two-tier legal aid system, because I am not sure that would be helpful for providers, for the agency or for clients trying to navigate the system.

That said, legal aid is complex. It is bureaucratic. We need to take additional steps to reduce that. The best way we can do that as an agency is to make sure that decisions are made correctly, and made first time. We have been doing a lot of work with the provider base to help with that, whether that is learning from errors that some of our caseworkers might make, which in fact are very low, or, equally, helping providers to get us the right information at the right time so that we can make the right decisions. We already do that. I note that providers have told you that we are very audit-heavy and we audit a lot of their work.



HOUSE OF COMMONS

Increasingly, we have adopted a more risk-based approach, and we adopt a risk-based approach now across most of our processes in the agency itself.

For a lot of firms, it will now mean perhaps one contract visit per year. It is only if, using data, we can see issues with regard to eligibility or significant claiming issues that we would endorse or commission further reviews of that particular provider. In fact, in the last year, our audit activities reduced by around 16%. In short, we want to improve the relationship and improve the experience for all of our providers, not necessarily a subset of them.

Q516 James Daly: We have heard that there has been a reduction in criminal legal aid spend in both the Crown court and the magistrates court over the pandemic period. My colleagues have asked questions based on data. Crime is still being committed. Has there been any assessment as to the reason for the drop in cases coming through the system? Is it as a result of the police not charging people, or is it simply because we only have a certain amount of court capacity and, therefore, that is the number of cases that come through?

Jane Harbottle: No, it has probably been a mix of pubs being closed and shops being closed, driving down on the front end of crime coming through. As I said, we have recovered now, on criminal applications, to around about where we were pre-pandemic. That has steadily increased. I do not have numbers on the exact case mix to answer that question, but hopefully, with the official statistics, we will be able to write to you with a bit more information. In the early days of the pandemic, it was down around 34%. That has certainly levelled off now, and the level of applications is probably more around 11% overall in the year to date.

Q517 James Daly: Jelena, we have spoken before in a different setting. I will ask you questions similar to those I asked you then. In terms of policy, if we are all in agreement that we want to find ways to make the legal aid system more sustainable, do you have any views that you can share with us regarding what we as a Committee should be recommending, or what we should be concentrating on, to make sure that that will happen going forward?

Jelena Lentzos: It comes down to the fact that we are probably, as the Minister said, in agreement that there is an issue, and we want to understand more about the size of the issue and what is causing it, so that we can come up with remedies that will fix it. That is why we brought in Sir Christopher as an independent person to do that, supported by an expert panel. You mentioned Bill. Bill sits on that panel, as do various other practitioners from different parts of the profession. As you know, we have collected an awful lot of qualitative information from the profession about what has been going on over the years, and that has all been given to Sir Christopher for him to consider as part of other data that we have managed to pull together.



HOUSE OF COMMONS

I think I mentioned when we last met that we are very transparent about that. We publish data on gov.uk that is shared between us, the Law Society and the Bar Council to set out the issue as we see it. We have worked hard with rep bodies and others to come up with the terms of reference for the review, to make sure that it is as far-reaching as possible and seeks to put the criminal legal aid system on a sustainable footing in the medium and long-term future.

Q518 James Daly: Lord Wolfson, Sir Christopher will report. You have not seen the report yet, and I fully accept that, but has any thought been put into time spans for potentially putting Sir Christopher's recommendations into practice?

Lord Wolfson: The time span will depend on what his recommendations are. Take it from me that as soon as he reports I will be sitting down, looking at his recommendations and going through them one by one. I cannot give a time span as to whether, and in what period, they will be implemented without seeing what they are. The fact that we will be looking at them very carefully, you can take as read because we certainly will be. A lot of work has gone into this project of having an independent report, with a proper panel getting the data. We will look at the work product of that report extremely carefully, and I know that this Committee will be holding my feet to the fire and judging me against the recommendations he makes. I am very alive to that.

James Daly: Thank you, Lord Wolfson.

Q519 Chair: Looking at the overall structure, Lord Wolfson, I appreciate that Sir Christopher will do his report in relation to criminal legal aid, but the administrative budget for the Legal Aid Agency is £88 million. That is pretty high for that size of organisation. You spent your career advising commercial clients. If you want a good-quality, low-cost organisation, the first thing you look at is to take out the administrative costs, isn't it? It does not seem to have happened in the Legal Aid Agency. Will you have a look at that?

Lord Wolfson: I am not sure I would agree that it is the first thing you would do. Certainly, I agree that administrative costs are very important. One of the aims of LASPO, to go back to LASPO, was to reduce the administration costs. I would be surprised if one of the things that Sir Christopher is looking at does not include the administration costs, because that is one of the things you have to look at. Forgive me if I do not today put a figure on what a suitable cost would be. I don't think I can do that.

Q520 Chair: That is okay. The assurance that it is on the table is important.

Lord Wolfson: It has to be.

Chair: I am glad to hear that. We would all agree with that. We are going to deal with some other legal aid issues on the civil side, and I will bring James Daly back.



Q521 **James Daly:** What is the assessment of the extent to which the current civil legal aid framework provides adequate access to justice for the public?

Lord Wolfson: As you know, the ambit of civil legal aid has been significantly curtailed over a period of time. What we have done is put in place what we called our legal support action plan. That involves us recognising that legal aid in the sense of going to a solicitor is not the only way in which people can vindicate their legal rights. We want to make sure that there are a number of different ways in which people can vindicate their legal rights.

We have invested, therefore, in legal support for litigants in person. We have provided funding for third sector and charity organisations that are also part of this. We are looking at enabling people to be signposted to other ways of vindicating their legal rights and resolving their legal difficulties. The scope of this and the ability of people to vindicate their rights is certainly something we are looking at at the moment. It may be that the officials will want to add some figures to what I have said. Perhaps they could and I will come back on a slightly different point.

Jelena Lentzos: As the Minister says, legal aid is an important part, but only one part, of a broader picture. As a strategy or a vision, we are trying to focus on all stages of a person's journey from when they have a legal problem, or indeed a life problem that they may not identify as a legal problem, up until the point that they may come into contact with the justice system. Part of that is trying to measure and pilot different types of intervention to understand what works. It includes looking at the provision of early advice, signposting and identifying problems as early as possible, so that people get the help they need. Our hypothesis is that there are wider societal and economic benefits of looking at that user journey, and, because of that, £3.1 million has been given in grants to LIPs. That was April last year. They are working with over 50 organisations. As far as I understand it, that supports a good number of people—in the region of around 50,000 individuals access pro bono advice, and around 48,000 have emotional and specific support in court.

We have also managed to secure £5 million from the Treasury for a targeted expansion of scope to test early intervention—early legal advice to try to show that it prevents problems from escalating. We are looking at an area of social welfare law and potentially housing. There is also work going on with MHCLG to design a signposting tool for people suffering housing disrepair, to see whether we can provide evidence that this will prevent problems escalating. Further work is going on to test telephone signposting, using existing MOJ support lines, for people who have problems that are not in scope of civil legal aid and not in scope of LASPO, to see whether they can be linked to people who can help them.

Other initiatives are going on around the co-location of legal support alongside other services, because we know that users have clustered problems. We are also looking at whether we can train trusted



intermediaries to help link vulnerable people with legal problems to the appropriate support. *[Interruption.]* In terms of civil legal aid specifically, we have been looking at issues in the system for a little while, and we have started to have informal discussions with stakeholders, including the Law Society and the Legal Aid Practitioners Group. *[Interruption.]* We are looking at things like remuneration rates, recruitment and retention—

Q522 **Chair:** Can I interrupt for one second? Can we get the host in the Macmillan Room to mute please because we are getting some interruptions? It is difficult to hear the witness. It is not fair on the witness. If you can mute, we would be grateful. Sorry, Jelena.

Jelena Lentzos: That is okay. I was just setting out the issues we were looking at in terms of civil legal aid sustainability. We are looking at remuneration rates, recruitment and retention. We have seen an issue in terms of the pipeline. This includes holding a roundtable with young lawyers to understand any barriers to entry to the system, be those financial or structural to start to build an understanding—*[Interruption]*.

At the moment, Ministers are considering how to approach identifying a sustainable model for civil legal aid going forward. As you know, the APPG has been doing an inquiry into legal aid, and we have been closely involved with that. A monumental amount of effort has gone into that and it has been incredibly useful for us. We are working very closely with them on the survey that they are going to launch, which I believe is around April time, and I think has been described as the legal aid census. They have been incredibly helpful; where we have identified gaps in the data that we have, they are helping us to plug those gaps through the survey they are running. That was quite a rattle through a lot of stuff.

Q523 **James Daly:** *[Interruption]*—to say the very least, Jelena. We as a Committee have heard that there are—I can't think of a better phrase—legal aid deserts in civil in certain parts of the country. Would you agree that there are parts of the country where access to justice is not easy in the physical sense of the word? What steps are being taken to address that problem in the broader context of what you have just said?

Jelena Lentzos: I will start, and Jane may come in on tendering. Housing is a particular area we are very interested in. We are looking at that within civil sustainability in terms of putting things on a medium to long-term footing. The civil legal aid helpline is available. There have been recent tendering exercises for some of the areas where there were no housing providers. Jane, do you want to give an update on where we are in that process?

Jane Harbottle: It is fair to say that over the course of the last couple of years we have undertaken increasing amounts of tender activity in the housing area in particular. I acknowledge that LASPO has fundamentally changed the legal aid landscape over time, and inevitably we have seen changes in the market as a result, and changes across our provider base and the provision of services.



HOUSE OF COMMONS

When we recently went out to tender for housing work in 14 areas out of 134 where we do not currently have face-to-face services, we asked bidders to set out how they could more flexibly operate those contracts using digital services. We wanted to test if that offer would be more commercially attractive as a contract, but also ensure that those who needed advice could still have their needs met through a blended model or face-to-face services where needed. We have received bids for 13 of those 14 areas, which is positive. Eight of those are ready to go from 1 April.

On the other five areas, we are currently working through with the organisations to verify the information they have provided us to check how the services will deliver to make sure that we are not compromising on quality to clients. Those areas are now covered, we believe.

The other area of pressure recently has been housing court duty possession schemes. There are 106 areas covered by 57 providers. In the past, we had gaps in provision, but currently all of those schemes are met with provision. That is positive too.

Q524 James Daly: Can you provide an update on the review of the civil legal aid means test?

Jelena Lentzos: The means test review is a big piece of work. It is due to consult very soon. Late spring is what we are aiming for. It is far-reaching. It is a big piece of work assessing the effectiveness with which the means test provides access to justice, particularly for the most vulnerable people. It has been bringing together a lot of data, evidence and expertise. We have been engaging the sector. In times of yore, when we were allowed to travel, I visited various roundtables to talk about it around the country. They are looking at income and capital thresholds for civil and criminal legal aid, which, as you know, have not been uprated since 2009-10, and at things like passporting provisions for people on certain types of benefits. As I say, we are hoping to publish the proposals for consultation in late spring. We are very close now. We are at the stage where Ministers are making final decisions on the individual aspects of the policy to draw it all together.

Q525 Chair: In a system at the moment where a pensioner whose only income is the state pension, or where a couple work 35 hours a week on the minimum wage, and the system says they are ineligible for legal aid, most people would say that system is well out of touch with reality, wouldn't they? Are you going to change that, Minister?

Lord Wolfson: The question as to where you draw the line is ultimately a judgment call. I fully accept that a system which means that people cannot vindicate their legal rights is a legal aid system that is not working. I emphasise again—forgive me—that we do not live in a world, and we increasingly will not live in a world, where the only way to vindicate your legal right is by going to somebody called a solicitor and ending up in a building with the word “Court” outside it. There will be



HOUSE OF COMMONS

other ways to vindicate your legal rights. Courts will operate in different ways. We have not spoken about reform of civil justice. That is part of thinking about legal aid as well.

I fully agree with you that the purpose of legal aid is to enable people to vindicate their legal rights. Of course, one has to draw the line somewhere. That is ultimately a political or a policy decision. We do not disagree on the principle. It all comes back to one thing, which is the rule of law. I was going to say that I am sorry to bang on about it, but I am not because it is absolutely fundamental to what I am about and what, as far as I am concerned, this Department is all about. It all comes back to the rule of law, simple as that.

Q526 **Chair:** It goes back to the old adage about it being like the Ritz hotel room, doesn't it? It has to be accessible to all.

Lord Wolfson: Will you allow me 30 seconds to take up that metaphor? You are right. People say that. The Ritz is available to everybody, but you have to be able to afford to go in, and not every hotel has to be the Ritz. I do not want to pick on other hotel chains, but sometimes other hotel chains are not only adequate, they are appropriate for what you want. The challenge in civil legal aid and the challenge in civil justice generally is that we need to make sure that we have a civil justice system that delivers civil justice in an appropriate way. That means that the county court dealing with a case of £30,000 is not going to reflect the way the commercial court deals with a case of £300 million. Different amounts will require different processes, and that ties into civil legal aid as well. Forgive me; it is a bit of a hobby horse of mine. I do not want to take up too much time on it, but it is important.

Chair: I understand that. In relation to capacity, so that people can access the county court and other places, I will bring in first Kieran Mullan and then Janet Daby.

Q527 **Dr Mullan:** What would you say the Government's main priorities are for enhancing capacity in the civil justice system, not just in the high-profile courts that we might discuss but for places like employment tribunals?

Lord Wolfson: The overwhelming priority is to have as many courtrooms open and as many sitting days as we possibly can. I know we are slightly short of time, so I do not want to repeat what has been said before about running hot on that. In that regard, we want to make use of the civil fee-paid judiciary, which maximises capacity as well and enables us to hear more cases. That means that we can hear more cases and get through more work. Hearing levels are now at about 80% of pre-Covid levels. Considering we are still in a pandemic, with social distancing, that is not bad. Another very important element, and part of the reform programme, is to modernise the systems. We simply cannot have, going forward, a paper-based county court system. It is still very largely paper based.



HOUSE OF COMMONS

If you will indulge me for a second, imagine a business operating in 1950. It has a claim and it goes to the county court. Imagine that same business in 2021. It has a claim and it goes to the county court. Apart from plaintiffs being called claimants, third parties being called part 20 defendants, and perhaps witness statements, not much else will have changed. What will have changed about that business? Short answer, probably everything. I am afraid it goes back to my point to Sir Bob a moment ago where I was on my hobby horse.

We have to reimagine, I am afraid, civil justice for the future, while maintaining a proper distinction between Government and judiciary. The new Master of the Rolls is somebody who, if I may say with great respect, gets it, and is focused on it and is determined to ensure that we have a reform process now that is perhaps as revolutionary, if not more revolutionary, than the Woolf reforms were in their day. The Woolf reforms were, effectively, pre-computer. We now have to adapt the county courts to computer, to online and to AI. These are radical changes.

Q528 Dr Mullan: That is helpful and it sets out a vision. The difficulty with it is that the track record is perhaps not one that lacks vision but lacks in delivery. From your perspective as the Minister, what will you be doing to make sure that, accepting the delays that have crept in as a result of Covid, there are not further delays and further things being put on the back burner, to make sure that we actually see sustained and rapid progress in court reform?

Lord Wolfson: I do not want you to hear me saying that there are no problems. Of course there are problems, and of course there are things that we can and must do. I would not, respectfully, accept that the history is one of non-delivery. Take the online civil money claims service. If you have a claim for a value less than £10,000, you can submit your claim online. It has dealt so far with over 200,000 claims. The user satisfaction rate is 95%. That is pretty good.

We are now launching the online injury claims service, which is funded by the insurance industry. You will know that that is part of the whiplash reform programme. I have been taking SIs through Parliament recently on that. We are now working on a digital service for damages claims, including personal injury claims. We had a trial of that, and we aim to deliver a national end-to-end digital service by the end of April 2023. Those are all successes.

Of course, there is a lot of work to be done. I do not know whether Kevin wants to come in on this, but I do not agree that the history is one of failure. The history is one of some success, but there is a lot more work to be done. I agree.

Q529 Chair: There is a bit of concern about IT failure. The reforms rely so much on IT, and generally the Government have not done well in IT.



Lord Wolfson: It is fair to say that there are a number of instances across Government where IT systems have not been put in place that are universally wonderful and accepted. Of course, I agree with that. Frankly, Sir Bob, we do not have a choice. There is simply no option to remain with a paper-based system. We have to move online. The critical thing is to get it right. I don't think we can say that because there has been a history in some parts of Government of IT problems we should not go there. We have to go there. What we need to do is get it right.

Chair: Perhaps that will mean doing it differently.

Q530 **Dr Mullan:** We have covered a lot of these issues with some of the other witnesses, so I will move on to something more specific around managing the resumption of possession proceedings. As you are aware, those have been stayed for a long time now. What assessments and projections has the Department made of the risk of a flood of cases and the ability of the system to manage that? What steps, if any, have you taken to try to support that?

Lord Wolfson: You are right to make two points. First of all, there has been a moratorium, in fact a ban, on enforcement of evictions that is now taking us up to 31 May, except in the most serious of cases. There are exceptions, as you are aware.

You are right; we expect higher volumes of possession cases as the restrictions come to an end. There is a working group of both landlords and tenant groups and the judiciary put together by the MR. That is seeking to make sure that cases are heard as safely and efficiently as possible. We have also put in place a free mediation pilot for possession cases that aims to help landlords and tenants resolve their dispute.

I am a huge fan of mediation. I suspect the lawyers on this Committee will be fans as well. When mediation, so to speak, started, I was very sceptical. I was sceptical generally as to whether people needed a mediator and whether it would work. The proof has been in the pudding. It works, not only in housing but right across the civil justice system. In family mediation, which is something the Chair has spoken about, and across civil justice, from the smallest to the largest case, we are focused on mediation, and it plays its part in housing possession hearings as well. That is why we are running that pilot, which is a free pilot.

Q531 **Dr Mullan:** What projections or estimates has the Department made? You mentioned the mediation pilot. Is there a plan for that to be more widely available by the time the ban comes to an end?

Lord Wolfson: We will have to see how successful the pilot is. I suspect it will be successful. If it is successful, we would want to roll it out. As to the precise figures of the projections, I will hand over to Kevin.

Kevin Sadler: We are expecting higher volumes of possession cases. As the Minister said, mediation may well help with that. The key thing we are doing is making sure that the civil courts are in the best possible



HOUSE OF COMMONS

place to deal with the increase. We have had some significant success in bringing down the number of cases awaiting hearing in the civil courts. The number of claims waiting to be heard fell from 36,000 in June 2020 to 12,000 by the beginning of March. Most county courts have the capacity to list civil cases in May and June, which is positive as far as the county courts are concerned. We have been repairing the roof while the sun has been shining in terms of work and taking the opportunity of those possession cases not coming through.

I pay tribute to the collective work with judicial leadership that has gone on in managing preparations for the work coming in. Possession cases were characterised pre-pandemic by everybody turning up at 10 o'clock, with a good proportion of people not turning up at all and us managing the list in that way. That is not something we can do in a socially distanced world. A lot of hard thinking has gone in by officials, judges and legal professionals to make sure that we can manage that as effectively as possible. Intake is always a little bit unpredictable. Mediation will help, but the most important thing is making sure that the decks are clear and ready for it.

Q532 Janet Daby: What is your assessment of the current situation in the family courts? What is being done by HM Courts and Tribunals Service to address the growing demands of the family justice system?

Lord Wolfson: Let me start on that with the overview points. Kevin may have the facts and figures. The family courts were, it is fair to say, quick to respond to the pandemic. As I said earlier, we have record levels of sitting days in the family court. Disposal levels have now returned to those seen before the pandemic. In the family court, we have been able to avoid significant growth in outstanding case loads. I made the point earlier about the number of domestic violence orders that were made. There is no doubt about it though—there are challenges in the family justice system as well.

We might well see that one of the effects of the pandemic is an increase of workload in the family courts. I know from taking the Domestic Abuse Bill through Parliament that, tragically, it appears that there has been an increase in domestic abuse during the pandemic, and the effects of that may well find their way into the family courts as well.

The Family Justice Board oversees the work to enable us to reduce the outstanding case load and to identify measures to get through the cases as quickly as possible. As I said earlier, we liaise with and work with CAFCASS to make sure that cases which involve vulnerable children are prioritised.

Janet Daby: Could I interrupt you, Lord Wolfson?

Lord Wolfson: Please do. I was about to finish anyway.

Q533 Janet Daby: You mentioned CAFCASS and so on. When we took evidence recently, one of the things they were saying was to do with their



increased case loads and how they are multiplying very quickly, and the struggle they are having to employ staff. Could you comment a bit more on that, please?

Lord Wolfson: We have worked with CAFCASS and OnePlusOne to develop a co-parenting hub that offers a one-stop-shop information service for families, which includes signposting them to alternative dispute resolution. In the context of the family courts as well, we need to think about ADR and mediation. I am limited today in what I can say about that, but watch this space. You will find information being released about mediation in the family space before the end of the week, if I can respectfully put it that way. Without any disrespect to this Committee, my understanding is that there are certain proprieties to be observed in the way that information is released. We are certainly focused on that. As far as the case load of CAFCASS is concerned, I have to hand over to Kevin because he is better placed than I am to talk about that.

Kevin Sadler: CAFCASS is not something that comes within the ambit of HMCTS. The challenges for CAFCASS are around the fact that, because we could not process cases as fast in the first stage of the pandemic, the amount of work sitting in CAFCASS increased. Our focus is on reducing those case loads as quickly as we can.

In public law, the case load was at 14,200 in the latter half of last year, and now it is at 13,600, so we are starting to decrease the case load in public law, not quite at the 12,300 we had pre-Covid, which we were not that happy with and were working to get down anyway, but we are heading in that direction. In private law, it peaked at 53,000 cases outstanding and is now just over 50,000 outstanding, which is up on pre-Covid levels, but we are bringing it down. The judiciary and court staff are working really hard to maximise the number of hearings and decrease the workload, which will help CAFCASS. We have introduced a new digital form for applying in private law children cases, which enables operations to work more efficiently and reduces the amount of time to get information to CAFCASS and so on.

It is worth saying that we had challenges in family law prior to the pandemic. Receipts in private law were going up significantly. There has been occasional media reporting of judicial concern about relatively minor issues taking up court time. We are keen to see the maximisation of mediation and the resolution of family issues outside the court where that is appropriate. That would help in managing our case load going forward. We expect to be sitting to the maximum next year, subject to concordat discussions, and we want to work on the amounts outstanding as quickly as we can. We are maximising judicial capacity, and we have set record levels this year.

Q534 **Janet Daby:** Although CAFCASS does not fit within your Department, it is very important to work cross-departmentally to reduce the pressures on the family court, as I am sure you will agree. How does the lack of legal aid for private family law cases affect court capacity? You mentioned



private family law cases and the case loads, but how does the lack of legal aid impact that work?

Kevin Sadler: In terms of the impact on courts, the studies we have done have suggested that non-legally aided cases take about the same amount of court time as legally aided cases. The judiciary often say that it requires more of them in engaging with litigants in person and explaining what can and cannot be considered by the court. This is where the magistrates courts are particularly helpful in dealing with private law cases. Overall, while individual cases might take longer, in the quantum the work we have done suggested that it does not take any longer for a private law family case without legal aid, or rather without representation, as it were, compared to a case with representation.

Q535 **Chair:** Do you have some recent data?

Kevin Sadler: There are probably some broader points. This is not particularly recent data. It was studies we looked at post the withdrawal of legal aid in 2014.

Q536 **Chair:** It is really ancient data. It cannot be up to date.

Kevin Sadler: Yes, but the impact was similar. We do not do this on a regular basis.

Q537 **Chair:** So you do not really know what the up-to-date position is in relation to that.

Kevin Sadler: I do not have data to hand on the up-to-date position. I would need to check.

Q538 **Chair:** Lord Wolfson, one of the concerns that was raised after LASPO was that in some areas LASPO's philosophy was, essentially, transactional, and its measures, therefore, were in terms of transactional measures rather than the quality of the service. Perhaps that exchange around unrepresented litigants in private family law cases is an example. The judiciary have given us very clear evidence that they think it adds a burden, too. It may save at one end of the system and put on at the other. As far as you are concerned, is it as important to see what the outcomes are? Is it the just outcome? Is it the right outcome at the end of the day? Surely, that has to be at the top. Is it time to recalibrate our priorities around it?

Lord Wolfson: I certainly think it is time to review the legal aid system. There was a post-implementation review of LASPO, which we published in 2019. We are reviewing, as we have heard this morning, both the criminal and the civil legal aid parts of it—*[Interruption.]* I am afraid I am going to have to apologise to the Committee. We have hit 12 o'clock, which is fire alarm time in the MOJ. Can you still hear me?

Chair: I can hear you fine at the moment.

Lord Wolfson: I hope the Lord Chancellor is not in charge of the system and I have not said something terrible and he has set off the alarm.



HOUSE OF COMMONS

Of course, we have to look at the outcomes. When we are talking about family law, we have to assess the impact of the absence of legal aid for private family law. In that context, I emphasise that we have put in place significant funding to ensure that people who are representing themselves have access to support. We have provided a grant to the legal support for litigants in person. That funding has been spread over 11 projects and covers 50 different organisations. We have invested other sums in litigants in person. I do not dissent from your general proposition, which is that we had LASPO. We now know what, so to speak, a post-LASPO world looks like. What we are now looking at is if that world is suitable and if we can improve it. Actually, I will rephrase that. Of course, we can improve it. You can improve anything. The real question is how you improve it.

Q539 **Chair:** That is helpful and very welcome. Lord Wolfson, thank you very much. Mr Sadler, Ms Harbottle, Ms Lentzos, thank you very much for your time. Good to see some of you again. Good to see you for the first time, Lord Wolfson. I suspect it will not be the last. I hope it is not the last.

Lord Wolfson: I hope it is not the last as well.

Q540 **Chair:** Absolutely. I am sure we can continue these discussions. We are grateful for your time and your evidence in what has been a very full session with a lot of important ground to cover.

Lord Wolfson: I am conscious that there are one or two points where we said that we will write to the Committee to provide some data, and we will do that as soon as we can.

Chair: I am grateful for that, and our Clerks will liaise with your office to make sure that it is done. I am grateful to you all. Thank you very much, ladies and gentlemen. The evidence session is concluded.