HOUSE OF LORDS

Constitution Committee

Corrected oral evidence: Annual evidence session with the Lord Chancellor

Wednesday 9 June 2021

10.15 am

Watch the meeting

Members present: Baroness Taylor of Bolton (The Chair); Baroness Corston; Baroness Doocey; Baroness Drake; Lord Dunlop; Lord Faulks; Baroness Fookes; Lord Hennessy of Nympsfield; Lord Hope of Craighead; Lord Howarth of Newport; Lord Howell of Guildford; Lord Sherbourne of Didsbury; Baroness Suttie

Evidence Session No. 1 Virtual Proceeding Questions 1 - 29

Witness

I: Rt Hon Robert Buckland QC MP, Lord Chancellor

USE OF THE TRANSCRIPT

Examination of witness

Rt Hon Robert Buckland QC MP.

Q1 **The Chair:** This is the House of Lords Select Committee on the Constitution. This morning we are holding our annual evidence session with the Lord Chancellor. Welcome, Lord Chancellor, or should I say welcome back, as you do come every year? Yours is a very busy department and it has been a very busy year but you do have responsibilities for constitutional matters within Cabinet. Can we start with a very general question asking you to describe your contribution on constitutional matters over the last year?

Robert Buckland MP: In a nutshell, it has been a very active year, and the committee will have seen that in a number of areas work is being done on what can be generically described as constitutional questions.

Underpinning this is my firm belief in the importance of maintaining that careful balance of the different parts of our constitution. In the manifesto in the 2019 election, we committed to looking at those broader aspects and that is the process that has happened, most notably the work of the Independent Review on Administrative Law, now published, and the consultation process that is ongoing ahead of any potential legislation. The work of the independent review into the Human Rights Act continues, is to report later this year, and may well then engender further consultation and potential legislation.

The ongoing work of a Lord Chancellor is making sure that the delicate balance is maintained. Where we have tensions, and inevitably in a lively parliamentary democracy like ours tensions will arise, I am able to step in and make appropriate comments. I have been doing that on a number of occasions. I can think back to my speech to the opening of the legal year in October at Temple Church where I made remarks about lawyers and tweets that I have issued—most notably in December—making important points that the committee will be familiar with. In most recent times, I publicly condemned and commented upon the matter relating to the Chinese authorities and their decision to include some UK lawyers in a sanctions list.

Those are some examples of a busy year in the life of the Lord Chancellor.

Q2 **The Chair:** We will come on to some of those points a little later. You mentioned tensions between different branches under our constitution. Do you think those tensions are increasing?

Robert Buckland MP: To deny that they exist would be a mistake. One should readily acknowledge that tension is part of a healthy system. The question is how we respond to those tensions. I think back to the last time I was before your committee where we were discussing the United Kingdom Internal Market Bill; that was a classic case of some very strong tensions. To be frank and rather blunt, some of the arguments were political arguments that were dressed up in ways that were put in a

constitutional way. There were respectable arguments on both sides—I am not denying that—but I think that the resilience of the system won out. It did show that in our imperfect constitutional system—which it is; let us again acknowledge and embrace that—we demonstrated that we can sometimes have quite violent disagreement but the overall system is still maintained.

The Chair: Lord Dunlop may want to follow up on that.

Q3 **Lord Dunlop:** Good morning, Lord Chancellor. The Lord Chancellor's role has changed significantly as a result of the Constitutional Reform Act and you have indicated that you are considering reforming the role. Can you expand on your current thinking? What are the problems with the role as currently configured and how would you like to see it changed?

Robert Buckland MP: First, I should say and emphasise that these ideas and thoughts are still in their early stages. I would like to have an open and consultative approach to any potential reform to the 2005 Act. I want to take a somewhat different stance to the one that was taken then. To be honest, with respect to those involved, I felt the process was rather rushed. It was presaged by a press release about the abolition of the office of Lord Chancellor, which had to be hastily withdrawn. Those then in power realised the LC is mentioned about 500 times in different parts of statute. I want to avoid all of that. I am not going to be doing it that way. We will be doing it in a considered manner.

Elements of the Act are uncontroversial and would be worth keeping. The process of judicial appointments is one that works very well. I would not seek to turn back the clock on the Judicial Appointments Commission or the creation of the office of Chancellor of the High Court, who is now head of the Chancery Division, at the vote of the Lord Chancellor—sensible and uncontroversial changes.

But there are aspects of that Act—we are 16 years on now—that are worth mature reflection: in particular, the role and status of the Lord Chancellor; the relationship that the Lord Chancellor has with the judiciary, which is worth carefully and delicately examining; and the underlying premise of the 2005 Act, which again is no secret. I have made these points many times before, and most recently in a speech to Queen Mary University in March, based upon what I think is an incorrect premise that we live in a separation of powers constitution when clearly we do not. Asking some fundamental questions about that and achieving that balance underlies my approach to potential reform of the 2005 Act.

Q4 **Lord Dunlop:** What does that mean in practical examples of the areas where your role might change? I have a broad sense of some of the issues that you are considering, but what does that mean in practice?

Robert Buckland MP: There is a lot of discussion about titles and names, such as Supreme Court and Head of the Judiciary. That is secondary to the underlying functional issues, which are far more important to me. After nearly two years in office I have an even deeper understanding—I think anyway—of some of the functional challenges

that face the Lord Chancellor. It is an historic role. There is a danger that, if we proceed down the 2005 road, the role simply becomes decorative and ornamental. That would be a terrible mistake because, although the Lord Chancellor is no longer a member of the judiciary—I had to resign as a judge on the day of my appointment as Lord Chancellor, as opposed to my more distant predecessors who were members of all three branches—the Lord Chancellor is still that important bridge between the judiciary and the Executive and Parliament. He or she is there to defend the judiciary, to make sure that their independence and status are absolutely maintained and upheld, but he or she can only do that if they have real authority. While I think that I do enjoy that authority now, there are always ways that it can be enhanced and improved to the benefit of the judiciary and to the benefit of the Executive and Parliament. That is what I am interested in making sure happens. I believe in this office fundamentally and I want to make sure that, after my time in office here, my successors will enjoy the confidence that their powers are clear, that their relationship with all other branches of the constitution is as clear as possible, and that is why I want to do some work on this Act.

Q5 **Lord Dunlop:** One final point: do you find that there are tensions between your role as a departmental Minister and your wider constitutional role, as you have described it?

Robert Buckland MP: Inevitably yes. I have described it in the past as riding two unruly horses. You have to be quite a skilled master of both to make sure that they ride in an orderly way. There is no doubt that it is a particular challenge to be an operative Secretary of State as well. I do not blame the 2005 Act for that; that was a particular configuration that was reached as a result of changes to the machinery of government, I think in 2007, when Lord Falconer was briefly the holder of both offices before Mr Straw took on the role.

The question of machinery of government is a matter ultimately for the Prime Minister. It would not be right for me to comment in particular about the future of that. What I can say is that it is possible—putting aside the particular operational responsibilities of the Justice Secretary at the moment—for a Lord Chancellor to operate another department, but I do not think anybody should kid themselves that it is not anything other than a very difficult job. However, I am happy to say that, organisationally, we manage it extremely well and my civil servants are very mindful of the particular decision-making process that involves me as Lord Chancellor as opposed to me as Secretary of State for Justice. Those boundaries are strictly observed.

The Chairman: Lord Howell, do you want to come in here?

Q6 **Lord Howell of Guildford:** Good morning, Lord Chancellor. Thank you for your comments. What you say is very interesting because, as you have remarked, the old Lord Chancellorship was a lynchpin. Would you say that its removal has, over the years, helped to exacerbate the tensions you mentioned just now between the judiciary and the political

sphere? How far does your thinking go about restoring the previous order? Are we talking about putting the Lord Chancellor back on the Woolsack? Does it now begin to raise a whole chain of constitutional changes, which everyone is moving slowly towards although often in different ways? Could all this thinking be fed into the constitutional commission, which was promised and which we are still hoping to see formed up and begin to bring together all the different strands?

Robert Buckland MP: Lord Howell, thank you very much for your question. Can I deal with the last point first? It has been already publicly said that we have moved on from the initial concept of a bells and whistles constitutional commission. We are taking an incremental approach. The independent review of judicial review is the first element of what would have been the overall commission work. The Human Rights Act review is the second element. The third element will be what I have described as the careful review and consultation on the 2005 Act. We will continue to do the work that the commission would have done, serving it up in courses rather than as one dish.

Turning to your other point, the idea of the Lord Chancellor sitting on the Woolsack has some ceremonial attraction, but I am mindful of the fact that a return to the status quo ante is not necessarily going to be not so much feasible as necessarily the right place to end up in. What I do think is very powerful is the point that you made, and I made myself in my Queen Mary speech, about the previous role of the Lord Chancellor being the lynchpin, understanding all the different arms of the constitution as a member of all three branches—a delightful reproach and a contradiction to the separation of powers myth that permeates far too much in debates on our constitution.

That is not to say that the independence of the judiciary is not the central tenet of our system and the independence of decision-making of that nature has to be absolutely defended, and that there are other parts of our system that have to remain independent of each other. It is not a question of my opinion; it is simply a fact that our system is not predicated upon the principle of absolute separation of powers. Rather, it is based upon the checks and balances principle. Increasingly, that has become enshrined in statute, but it is still very much also a matter of convention and the other non-statutory mechanisms with which we will all be familiar.

How then to get that essential lynchpin element back into the role of Lord Chancellor? That is a question that is absolutely legitimate for us to consider: first is the status of the Lord Chancellor and whether there should be a qualification for that role; secondly, the particular responsibilities the Lord Chancellor might have vis-à-vis the judiciary; thirdly, the relationship of the Lord Chancellor and Parliament and the important axis of accountability that means that I am responsible and answerable to the Parliament. This afternoon, for example, I will be in the House of Commons for the operation of the courts and, indeed, at the moment the prison system as well, wearing my Secretary of State for Justice hat.

Why is it important? Because the worlds of politics and the law have increasingly diverged, rather than either kept abreast of each other or come together. I do not think that is a healthy thing. My worry is that, as those worlds diverge, they become ignorant of each other. That is just as important for Parliament as it is for the judiciary. If anything, it is more important, because Parliament has a duty to pass and scrutinise legislation that is clear, understandable and in accordance with the rule of law. It also has an absolute duty to respect the role of the judiciary and, vice versa, the judiciary, using that principle of comity, which I have talked about over the years and with which you will be familiar, will accord respect to the supremacy of Parliament and understand the way in which Parliament operates, and also the Executive.

I think it is important to challenge the underlying assumption that the Executive is always on the take, always on the make, always wants to grab more powers, and it is a behemoth that we have to constrain at every opportunity. Lord Howell, there are many on this call who have served in Government. We all know that the opposite is the truth. The Government are reluctant gatherers of power. It means responsibility. It means cost. It means capacity, frankly, for our officials. This is why any Minister worth his or her salt will always ask the question, "Why are we doing this and can the Government actually do what we are being asked to do?" I think the Government are much more Prometheus bound than unbound, and I worry that sometimes is not reflected or understood by other parts of our constitution.

The Chair: Lord Chancellor, I think that could lead to a very interesting and very long discussion among the committee, especially in terms of some of the legislation that we have commented on in the past. I think we should move on and just develop certain aspects of that. Lord Faulks?

Q7 **Lord Faulks:** Good morning, Lord Chancellor. I want to ask you principally about the role of the law officers, but before I do, I would like to follow up something you have just said. You discussed the unruly horses that you have to ride. You also said just now that at the moment that includes responsibility for prisons. You will no doubt be aware of the observation of the inspector of prisons, who took the view that prisons ought to be returned to the Home Office. Do you have any views on that?

Robert Buckland MP: I noted what the former inspector said, but I am also mindful of what some previous Home Secretaries, including the noble Lord, Lord Reid, had to say about that. The Home Office, like all departments, has to carry responsibility and risk, but the decision was made back then, in 2007, that the risk it was carrying was simply too great, and a respectable decision was made to look at the point of charge as the time when ministerial responsibility could move from the Home Office to the new Ministry of Justice. That pre-charge element to the criminal justice system still sits with the Home Office—policing and the like—and then post-charge you get to the courts and the rest of the system, with the prosecutorial system being superintended by the law

officers. It is not perfect, but it certainly is preferable to some of the alternatives.

I will resist opining as to what I think could be an alternative set of arrangements. I do not think that is for me to go into today, but I would caution against the sort of easy solution that Mr Clarke has come up with, with respect to him. I am not sure that would solve any problems. Is it just moving chairs around again? Frankly, at the moment I think the attention of the Government has to be on the recovery of the system from Covid-19, and then the investment I am making into prison building, prison maintenance and the prison regime, which will be far more productive than worrying unduly about machinery of government changes.

Q8 **Lord Faulks:** Thank you. I will go on to the law officers. You were a law officer, and the historic role of the law officers is very well explained in Lord Rawlinson's autobiography when he was first given a lecture by Macmillan on taking office. It is a role that has recently been criticised, and the Labour Front Bench announced in the House of Lords through their shadow Attorney-General that they were going to look again at this whole question of the role of the law officers.

What do you think about the hybrid role, as it is often described, of the law officers? With your particular role, as a guardian of the rule of law, can you help the committee with what might happen, for example, if you took a particular view of a fundamental legal issue, and it was a view that was not shared by the law officers? That might help you explain to us what you think the role of the law officers should be, and what it is.

Robert Buckland MP: Yes. I would be very interested to know what the noble Lord, Lord Falconer, meant by a review. I am sure you can ask him and grill him about what it is that he means. Of course, he was a former law officer too. I start on the premise that the hybrid role of the law officers actually works. It works well. It is vitally important that in our system the law officers are Members of Parliament, of either House. I personally think that the Commons is the preferable place for the law officers to be. I think that level of accountability is important, but also it means greater influence.

I think it would be a regrettable state of affairs if we hived off the law officers based upon their legal-advice function, which meant that they were no longer Ministers and no longer politicians. That would be a huge mistake. The influence they would lose would be immeasurable. Perception is everything. The danger is that we relegate the role of the law and legal advice to some sort of technical issue rather than the meat and drink of the political process. Although some people think the current position may seem inelegant, having served for nearly five years as a law officer I think it does, in all its glory, reflect the British constitution and the sometimes idiosyncratic way that it works.

The differing roles that the officers have—for example, the superintendence of the Crown Prosecution Service—do not conflict with their duty to impart independent and untrammelled legal advice to the

Government, as any lawyer would do for any client. That is very much the oath that is taken by the law officers, and part of the explanation that is given by the Prime Minister to the law officers on appointment. I have continuing confidence that they can do that.

You asked a question about a scenario where I might disagree with the advice that was given. First, it is important to remember that the role of the Lord Chancellor is not that of a law officer. He or she is not enjoined to give legal advice to the Government. That would be wholly wrong. I well remember reading accounts—I think it is now in the public domain—about Suez and the particular process that took place in Cabinet during the Suez crisis. Lord Kilmuir ventured an opinion about the legality or otherwise of aspects of that particular enterprise, and I remember reading it and thinking to myself that that did not seem right to me. It is the function of the law officers to give advice and we now know that they did give advice, which is the basis upon which the Government should operate. It would not be right for me to start freelancing and giving my own legal opinion when we have very clear procedures and processes in place for the law officers to do that.

More generally, the oath that I take—the particularly important oath to uphold the rule of law—inevitably means that the spotlight will fall on me more than other Ministers when it comes to the big issues of the day. I mentioned UKIM already. The reality is that every Minister is bound by the rule of law, and it applies to all of us equally, frankly. I suppose my role as the guardian of the judiciary is sometimes conflated with that of the law officers, but the roles are entirely different, and we must respect that, and respect the fact that the Attorney-General's Office is an entirely separate department of government, and must remain so.

Q9 **Lord Faulks:** I will ask one short supplementary question arising out of that. Years ago, the law officers had their offices in the Royal Courts of Justice. They did not attend Cabinet as of right, but only by invitation. What are the advantages of that sort of arrangement? Would it emphasise the separateness of the law officers' role, as opposed to being part of the Cabinet and part of the Executive? In terms of getting the respect for the law officers' advice, do you not think that has some sort of attraction?

Robert Buckland MP: First of all, Lord Faulks, the Attorney-General is not a Member of the Cabinet. He or she attends Cabinet by invitation. That is made very clear in the listing of Cabinet. Like some other people who attend Cabinet, he or she is not a Cabinet Minister in that broad sense. We all know why that was, and it was not always the case, and some of us know the history and one episode in particular that helped bring down the Labour Government of 1924. That is a very good example of why it is important that that distinction is drawn.

The siting of the office is in many ways a symbolic one. For Members of the Commons, siting it in the Royal Court of Justice was not always the most convenient place. Having visited the Royal Courts many times, both appearing as an advocate when I was Solicitor-General, and now as Lord Chancellor, I am not sure they would necessarily welcome the law

officers back with open arms, on logistical grounds. I would not seek to put it on any higher basis. I do take your point about appearance. I reassure the committee that the law officers' departments have just recently come into Petty France. That was brought to my attention. I asked some serious questions about that, because I immediately took the point that you made about perception, but I think it is important in the wider context of government efficiency that government departments are sited in places that are best value to the taxpayer, and I am assured that the law officers' departments, which are far below me somewhere in this vast building, have their own passes, their own locks, and, therefore, a Lord Chancellor could not just swan in to see a law officer and bang the table and demand that they did something that the law officers did not like. The absolute independence, the hermetically sealed nature of the department, has been maintained, even though physically it is now in the building somewhere below me.

Q10 **Lord Hope of Craighead:** Good morning, Lord Chancellor. As you know, the Government's consultation on judicial review proposed additional reforms to those recommended by the Independent Review of Administrative Law. The Queen's Speech included a judicial review Bill, which is required to deal with the recommendations by the IRAL. The Bill made no mention of these additional reforms, and that raises a question of whether the Government are still considering going further than the recommendations made by the review.

Robert Buckland MP: Lord Hope, thank you very much indeed for introducing this important topic. The consultation process is currently the subject of analysis by my officials here. That will take a little bit of time, and I want to make sure that we look carefully at all the responses we have received. That may include some of the reforms on which I consulted, which I accept go further than the recommendations of the panel. I do not think it would be right for me to say today what the conclusions might be. I can assure the committee that any conclusions will then be the subject of the fullest legislative scrutiny, because legislation would be necessary. At this stage, bearing in mind the debate that it has engendered, and the quite passionate debate that it has engendered, I am confident that any measures that might be introduced will enjoy the fullest of scrutiny before they ever became law.

Q11 **Lord Hope of Craighead:** There are two particular issues of concern, and I do not think that they will be a surprise to you if I mention them. The first is the question of ouster clauses. Some of us would recognise that there may be exceptional circumstances—national emergency or something of that kind—where an ouster clause would be a sensible thing. A great deal depends on the way in which the circumstances in which that particular course could be followed would be defined. Are you and your advisers alive to that and to the extent to which people in this House would be looking very closely at any legislation to see that the barrier was put at a high level?

I say this because I served in the House of Lords, as you may remember, when Lord Steyn was there. There was a spell in the early years of Tony

Blair's Government when Lord Steyn in particular was very worried that the Labour Government were going to oust judicial review altogether. That led him to take some quite extreme positions on the sovereignty of Parliament and so on. I do not think that we would like to go back down that road and I would like some reassurance that the breadth of ouster which was being discussed in the 1990s is not in your mind at this time. That is the ouster clause question, and I will come back to another one after you have answered that one.

Robert Buckland MP: Indeed, Lord Hope, and I can reassure you. I well remember the 2004 asylum Bill, where a very wide ouster clause was being proposed, which caused a lot of anxious and correct scrutiny, and rightly so.

I have said, and I will repeat it today, that this is a two-way street. It is all very well for Parliament and politicians to criticise the courts for not applying ouster clauses, but if the rationale for the clause is not clear, if the way the clause is drafted is not clear, then I do not think that the judges should be blamed for trying to do their job, to achieve clarity, which of course the rule of law demands. Therefore, it is incumbent upon the legislators to get it right and to define clauses in a way that, even if there is some scrutiny of them, they can be held up and be seen to be appropriate and watertight. I am very mindful of all that, and the observations in the review were very clear about the context within which we should all operate. I am extremely mindful of that.

I do think that it is important that government should not be unduly timid in this area. A timorous Government who say, "It is all too difficult: the courts will do this; the courts will do that" abrogate their responsibility. It does nobody any service for that approach to be taken. While I cannot and will not rule out potential use of clauses that could be described in that way, what I do undertake to do is to work very hard to make sure that they are operable in a way that all branches of the constitution would find appropriate and in accordance with the law. Our minds are very much focused on the points that you make, Lord Hope.

Lord Hope of Craighead: Thank you very much for that. Of course, you do understand, I am sure, that this could be seen by some as the thin end of the wedge, carefully defined by you but opening the door for a later Government perhaps to push the door just a little bit further forward. I hope you will bear that carefully in mind in deciding how far to go with that particular proposal.

Robert Buckland MP: Yes, very much so.

Q12 **Lord Hope of Craighead:** My other question is about the prospective-only remedies. I speak as somebody who was quite attracted to that in the context of the common law, which does not allow for that. There were cases in the House of Lords and the Supreme Court where we felt it would be helpful if we could create such a system as part of the common law. There is a system there, or I should say a solution there, to some cases, which might be useful. Are you still considering that particular proposal and, if so, what precautions are you taking to ensure that it is

not abused?

Robert Buckland MP: The short answer is, yes, we are indeed considering that proposal. It is very important to understand my underlying approach to this. What I want to try to do is to give judges as many options as possible when it comes to remedy. Sometimes the judge is left with either the declaration after the horse has bolted from the stable, or the complete sledgehammer of the quashing, which can have quite a significant effect on the operation of government. I see no mischief at all in trying to find different tools to give the courts. The scalpel sometimes is a very useful tool, for example, to carry on the metaphor. That is what I am seeking to do.

The question is then how the judiciary uses that. What will be the extent of the discretion? Those are proper points for discussion. I am looking carefully at ways in which that can be applied, but again I want to reassure the committee that, far from this being an attempt to fetter the discretion of the courts, it is an attempt to try to open it up in a more imaginative way. I think that could have long-term benefits for the role of judicial review, and outcomes that might have been within the contemplation of the applicant can be more easily achieved. Sometimes we think that the applicant is trying to make a point of high principle. Very often, the applicant is somebody who has been put perhaps to material disadvantage or worse by a decision and is simply seeking some form of redress through the judicial review procedure to make sure that the decision can be made in an appropriate way. Sometimes remembering and putting ourselves in the position of the actual applicant, the real-life person or organisation making the application, is a good thing to do.

Q13 **Lord Hennessy of Nympsfield:** Lord Chancellor, I have every sympathy with you in your role as Minister for the delicate balance within our imperfect constitution, as I think you called it rather candidly in your opening remarks. You are one of the great oil cans of state lubricating this peculiar constitution and the workings of the state, and I in no way underestimate the difficulty of that. I say that by way of preface to what you might think is a faintly hostile question.

One of the ways of looking at a proposed piece of legislation is to listen to the background noise and the real motivations of bringing these proposals forward. When I listen to the judicial review proposals, I hear the sound of ministerial stamping feet. I hear the tattoo of those stamping feet get even louder when my learned friend and colleague Lord Faulks did not produce perhaps the groundswell of prejudices that might have irrigated some of your colleagues' existing prejudices still further. My thought is that this is not exactly a desirable frame of mind in which to bring forward deeply constitutional and deeply fundamental legislation, is it?

Robert Buckland MP: Lord Hennessy, first with regard to our imperfect constitution, rather than it being an admission or acknowledgement of failure I rejoice in it. I think that imperfection is exactly where we will

always be, and if we cannot rejoice in it we should at least acknowledge it.

Coming to your main point, I think that some of the characterisation of the noise, as you put it, has been overplayed, frankly, by those who clearly think that no change at all or change in a different direction would be the way to go. It is important that the firm but calm voice is heard, and that is what I am seeking to do here. I have a very clear view, and it is not a hidden view, about the constitution and its operation. I have, I think, a clearly enunciated outlook as to how we can refine that further. It might not be an outlook that everybody agrees with. In fact, I know that it is not an outlook that everybody agrees with, but that is where Parliament comes in. That is where members of this committee and others in your Lordships' House and my House come in, to make sure that legislation is passed not to the sound of stamping hooves or a drum beat but to the sound of careful and calm debate.

I know that is what will happen and I am absolutely confident that any product of this work will be the result of that rather than, frankly, some of the noise from the other side, which is equally as loud and stentorian, accusing me and others of some sort of smash and grab to enhance the powers of the Executive. Nothing could be further from the case.

Q14 **Lord Sherbourne of Didsbury:** Good morning, Lord Chancellor. I want to move to a completely different subject. One of the terrible consequences of Covid-19 has been the great backlog in the courts, which means that thousands and thousands of people are currently being denied access to justice. I have two very simple questions. First of all, how worried are you about this as Lord Chancellor? Secondly, how confident are you that you will be able to clear the backlog?

Robert Buckland MP: Thank you, Lord Sherbourne. From the outset of the pandemic I have been worried or concerned about the impact on our court system. I can remember having to make some very early decisions about the scaling up of technology to make sure that telephones, Skype and other types of remote hearing facility were available. There was quite a lot of work done at the beginning, first of all by the judiciary themselves, to establish what would be the best way to operate. As a result of that early work, what we call the cloud video platform has been used in more and more courts right across all our jurisdictions, in crime, family and civil. Back in March 2020, about 500 cases every week were being dealt with remotely or by telephone. When I looked a couple of weeks ago, about 20,000 hearings are now being held every week by those mediums. That is about 45% to 50% of all hearings every week. Without that, I think that the system would be in a significantly worse place. Technology helped keep the lights on and keep the system running.

We also then had a plan, and the plans that we published for the criminal court recovery and civil, tribunal and family courts were published in the early autumn of last year. The plans were very simple, frankly. They boil down to Perspex and Nightingales. Thanks to the Treasury, I was able to invest £113 million in those measures and we see the results now. We

have 60 additional Nightingale courtrooms in England and Wales, 34 of which are doing criminal trials. The other courtrooms being used have helped displace room within the existing estate to allow more criminal cases and jury cases to be heard. We also spent a lot of money on safety measures to enforce social distancing and to make the courts Covid compliant in accordance with the advice from Public Health England and Wales.

We also scaled up staff. We recruited 1,600 extra staff to make sure that we were able to provide judges and members of the public with the service they needed. Those results are yielding some fruit. I am keeping a very close eye, for example, on the magistrates' courts. The pre-Covid level of cases was just over 400,000. I am watching numbers coming down steadily and Her Majesty's Courts & Tribunals Service has publicly declared that it is its aim to see magistrates' courts levels reduced to pre-Covid rates by the end of the year. I am confident that it can do that.

The Crown Court is more complex. The judges are working their way valiantly, with the help of staff, counsel and solicitors, through as many cases as possible, which are being dealt with and guilty pleas are being entered and sentences being passed, particularly those on remand, in custody. The issue comes with those jury trials that are longer, more complex, involve more defendants and often have a defendant on bail, which have to take their place in the queue behind custody cases. That is where you see the proportion of cases taking longer than six months to trial having increased substantially.

However, there is again growing evidence that we are moving forward. I am seeing progressively now that the number of cases being dealt with exceeding the number of cases being received into the Crown Court. If we can maintain that and through the summer and autumn get working on the caseload—and remember, I have not put an upper limit on the number of sitting days in the Crown Court—I think progress can be maintained. But, like all of us, I am subject to the rules about social distancing and the next stage in the road map. I think that will very much determine and affect the rate at which and the way in which we can deal with cases.

I will very briefly mention the other jurisdictions. I think the evidence is positive about the caseload for civil cases being progressively dealt with. On tribunals, employment tribunals are a challenge but the work rate has returned to pre-Covid rates and technology, in particular in the mental health and special needs tribunals, has improved the service, in my view. In family cases we are running about 10% above where we were at Covid. Judges and courts are not the issue; it is making sure that all the agencies involved are ready for the listing of their cases. That can be quite a challenge, bearing in mind the overall effects of Covid on the system. I hope that is a comprehensive answer.

Lord Sherbourne of Didsbury: That is very helpful. I have one very quick supplementary. Do I take it from the last thing you said before you came on to the other jurisdictions that when the Government get rid of

all the restrictions, which may happen on 21 June or a few weeks later, that would make a material change to your prospect of being able to clear the backlog?

Robert Buckland MP: Most definitely. We are dependent upon the advice that we get from Public Health England and Wales. If that advice is in accordance with progress, clearly that will make a big difference to the way that our courts operate and would save time as well as space when we have to, as we do in the House at the moment, stop proceedings to allow everybody to leave. It would be far more seamless and we can manage things better. I think that technology is here to stay and it is still going to be a vital part of this recovery.

Q15 **Baroness Drake:** Good morning, Lord Chancellor. Staying with the point of Covid impact on the courts, our report expressed concern that insufficient and inadequate data is being collected on the impact of remote hearings on vulnerable users, the impact on case outcomes and then identifying barriers to accessing justice. The Government were a little loose in their response to these concerns, referring to future updates and plans, and unfortunately the last 12 months was a lost opportunity to capture important data if that had been possible. Can you share with the committee more detail on how you will achieve improvements in data collection and analysis, the timelines on that achievement and the resources to be allocated to securing that achievement?

Robert Buckland MP: Thank you very much, Lady Drake. First, I want to thank the work of Dr Natalie Byrom and the Legal Education Foundation. I have worked with Dr Byrom in a number of roles over the years and I am particularly grateful for her 2019 report about digital justice. A lot of work has been done but we need to do more here, to put it in a nutshell. My officials know that I place particular emphasis on the importance of the quality of data and then the speed and efficiency of the way in which we collect it. I do not think it is a secret, but sometimes in our system that can be quite difficult because, while we have automated mechanisms, there is still quite a lot of manual collection and that can mean that the data can be slow to gather. It takes a couple of weeks for the data to settle down before I can be sure that I am looking at figures that tell me what is going on—hence the need to make sure that we publish in an authoritative way rather than rushing out figures that are not necessarily the fullest reflection of what is going on.

The data that we collect on remote hearings and the outcome of cases already form part of the ongoing analysis that we are carrying out. The Courts & Tribunals Service is already using that data to evaluate the use of these proceedings during Covid. We are interviewing user groups and conducting surveys. I think a wider programme evaluation will of course, and needs to, specifically consider the analysis of the impact of remote hearings, including on case outcomes. I think some important and growing evidence is emerging—it is not quite anecdotal; it is now becoming less anecdotal and more authoritative—about how remote hearings will benefit, which might be of interest to the committee.

I mentioned SEN hearings earlier. There is clear emerging evidence that families find remote hearings much more convenient. Bearing in mind the caring responsibilities in many families of children with SEN, sometimes travelling distances to a tribunal was quite difficult and logistically daunting. From all the discussions with the SEN tribunal judges and the dedicated staff at Darlington, we hear that families are finding it even more user-friendly in the main. I am not going to say that it applies in every case but that is an interesting emerging piece of evidence. The same can be said about mental health tribunals, bearing in mind the vulnerabilities and challenges that many people with those conditions face.

I think that, along with the good, we need to assess the less good and the potentially harmful or negative impacts, but certainly from my assessment and experience, thus far remote technology is being used sensitively and in the interests of justice. Of course, judges are making these fine judgments every day about the interests of justice in the context of the use of remote hearings. The HMCTS reform programme is helping to improve general data collection. The court service will publish plans to enhance the collection, analysis and publication of courts and tribunals data in the autumn of this year. That will include appropriate access to data relating to the vulnerability of court users.

Q16 **Baroness Drake:** Our own evidence shows that there were circumstances when remote hearings could benefit particular categories of users, but there was equally pretty hard evidence on undermining engagement, the difficulties of users being able to participate—a range of things. The concern is that people have confidence in the justice system and it is producing outcomes that are fair. Without that analysis, nobody really knows. People are just giving their view based on their own experience. When do you think you will be in a position to begin to publish some of this analysis in a way that publicly people can understand what it means for access and quality of justice?

Robert Buckland MP: I think we will have a clearer idea of the timelines involved when HMCTS publishes the plan in the autumn. All of us know that the data challenge is a huge one. Nothing would be worse than us presenting data that later turns out not to have been right. I want to avoid that scenario, but at the same time I do not think we should be shying away from the bad as well as the good. That is a matter that I will keep pursuing with HMCTS. It knows that I have a particular bee in my bonnet about data, so I can assure the committee that I will continue to bear down upon that, particularly on timelines. I am sure I can report back to you about progress being made.

The Chair: We will move on to funding for the justice system.

Q17 **Baroness Fookes:** Lord Chancellor, in answer to an earlier question you spoke about the additional money being put into the courts as a result of the Covid crisis, but the fact is that over the last decade funding has fallen in real terms by 21% in the justice system as a whole and a massive virtual 40% in legal aid. What impact do you think this has had?

How can you be sure that there will be sufficient funding coming in future?

Robert Buckland MP: Thank you, Lady Fookes. I think the committee knows that, since my appointment as Lord Chancellor and Secretary of State, I have worked extremely hard to obtain funding settlements for both the spending years for which I was responsible, which has started to see the important increase in the funding we need here in the MoJ. In the previous financial year we had a rise of about 5% in our revenue spend and a similar rise in this current financial year, plus significant capital investment, particularly for the building of modern prisons. With regard to courts, I mentioned the Covid recovery money. There were, of course, importantly, announcements I made last year about, for example, the biggest increase in court maintenance spending in about 20 years—that was a £142 million package—plus other investment that we are making for sitting days and the expansion of court capacity to meet demand.

All that has been spurred on by Covid, no doubt, and I do not pretend to the committee that Covid was the source of all the challenges—far from it. Having been in the justice system myself at the coalface for many years, I have watched over decades how things have evolved and not in a way that I think is satisfactory by any means. That is why I have devoted my time in office to make sure that that balance can start to be redressed.

On legal aid, it is important not to forget that we still spend about £1.7 billion annually on legal aid in England and Wales. That is a reflection of the importance that we give to access to justice. First, dealing with criminal legal aid, the work that I did last year on the accelerated areas of the criminal legal aid review has already allowed us to inject up to £51 million extra per year into criminal legal aid. The second phase, the review by Sir Christopher Bellamy, is well under way and will report later this year. It will be looking, fundamentally, at the way in which legal aid spend is allocated to solicitors and barristers and in particular ways in which we can reward the work that is actually done. That is the message that I have clearly conveyed. I am sure that the committee, together with a panel of experts, will come up with sensible proposals for me to consider actively and as expeditiously as possible. Very importantly, a means test review is happening at the moment and that particularly applies not just to criminal legal eligibility but civil legal aid eligibility as well. That work will continue through the year. It clearly has significant potential consequences for widening the availability of legal aid to more people, and that work will be done as expeditiously as possible.

But it is not just about legal aid in the classic sense of the word. It is about the help that we can give for what I call early intervention. I think that the additional investment of over £5 million to not-for-profit organisations such as law centres and other organisations providing specialist legal advice is an important indication of our intention. The new £3.1 million grant that we launched to help litigants in person, working in partnership with the Access to Justice Foundation, is another example of the approach that I wish to take to try to nip some of these problems in

the bud rather than to let them flow through to full litigation and the consequences of time and cost that that can cause, not just for the participants themselves but for the system too. A lot of work is being done but I accept that there is more to do in this area.

Baroness Fookes: That is very encouraging, Lord Chancellor. I am not sure, however, that you dealt very fully with my concern about the difficulties caused by the reduction in funding in the past.

Robert Buckland MP: There is not a lot I can do about what has happened over the last 20 years. What I can do in my time here is seek to try to redress the balance. I think we have seen a change in approach in the announcements that we have made over the last couple of years—and the Prime Minister in particular places a great emphasis on the importance of this—that I believe makes this department and its work much more central to the mission of government than perhaps it has appeared to be in the past. I have always said to my colleagues in government that I cannot do this on my own. I need the help of every department—education, health, housing, just to name a few—to solve what far too often become problems for which the criminal justice system is expected to pick up the bill. That will not do any more; it is not good enough. Every department needs to be a justice department if we are really going to crack this conundrum.

Q18 **Baroness Fookes:** Can we now look at something where I am sure you can have a good influence? I refer to evidence given to us by the Lord Chief Justice about the concern that they were losing court staff due to low pay. I think you mentioned that you were taking on more staff, but if they are coming in at one end and going out at the other, that is not altogether helpful. Can you give any encouragement on that?

Robert Buckland MP: Yes, I can, Lady Fookes. This is an example of what I call the 20 to 25-year problem about the way in which HMCTS staff pay has not kept pace with other parts of government and that has led to a rise in attrition rates. After very careful scrutiny, the case that we have made here in the MoJ for a pay deal has been approved by the Treasury and that includes HMCTS staff. The pay deal is for a three-year arrangement, which goes beyond the standard approach to setting of Civil Service pay for this current pay year and indeed the next one. It will allow the department more freedom to resolve structural pay issues right across the department. I believe that will support the retention of people like legal advisers in the magistrates' court and the attraction of new talent either back into the department or into the department for the first time. It is not the final agreement. The approval means that we can start formal negotiations with the trade unions to agree any detail that underpins the deal, but it is a very important plank of the approach I am taking on court staff in particular.

Additionally, we have the HMCTS people and culture strategy. That is all about supporting existing staff and making them a valued part of our team. We have other learning and development initiatives in place, which are designed about succession planning as, inevitably, people retire or move on to other walks of life. There is very much a rounded approach

to the way in which we want to attract and retain staff, underpinned by the important announcement that I have just made about the proposed pay deal.

Baroness Fookes: Thank you, Lord Chancellor. I shall look forward to seeing how successful these new initiatives are.

Q19 **Baroness Doocey:** Good morning. The Bar Council's response to the review of criminal legal aid talks about the need for urgent increases in funding at every level, the average age of duty solicitors increasing and so on. I want to ask you two things, the first of which is in regard to this. Do you think that the amount of money that you have talked about going into the system will make such a difference that it will resolve these problems, which as you say have been going on for many years?

Robert Buckland MP: I believe that what I have already done on the criminal legal aid review part 1, and what I think the signal of intention has been for the review of the system, gives a very clear indication to the professions that this is a Lord Chancellor who wants to do something about it. I did not spend nearly 20 years at the criminal legal aid bar for nothing. I have lived the experience and I do not think I ever remember a year where I felt that I absolutely knew that the outlook was a sunny one, in fact on the contrary. Therefore, having lived the experience, I perhaps am better placed than many people to understand the challenges faced not just by young barristers but by criminal legal aid solicitors in high street practices.

I said earlier, and again I am not going to judge what Sir Christopher and his panel might say, that the system needs to reward the work actually done. What I meant by that is that I think I have inherited a legal aid system, a fee system, that frankly is rather old. The original iteration of the graduated fee system for advocates started 25 years ago, and the litigators' fee system, which in the main solicitors are remunerated from, is a similar age. That will tell you something about the need for the system to keep up with the pace and to understand that, like all other walks of life, the process has evolved.

In particular, the huge and invaluable work that solicitors and their teams do in police stations, giving early advice and support to suspects, either in interview or at the custody desk, is vital to the system. It can often lead to cases being dropped there and then or, indeed, to proper advice being given that might engender an early guilty plea or clearly identify the issues in the case that need to be aired by way of trial.

It is all vital work that I believe needs to be properly remunerated. It would be idle of me to speculate on the pounds, shillings and pence of what that precisely means. The review will help to set the parameters of all that. I think it would be wrong to say, and I do not think anybody listening would expect me to say, "Do not worry. Unalloyed riches will follow", but I do want a system that a reasonable observer can understand matches the work with remuneration. I know that sounds a little facile, but anybody who has a close acquaintance with the system knows that there are important aspects of it that do not seem to do that

at the moment. I am sure that the review will examine those and other issues very carefully.

Baroness Doocey: Thank you. I am still not clear. I understand that of course you are not going to speculate as to what will come out of it, but do you believe that what comes out of it in the end will actually remunerate people for the work they are doing? Just a yes or no would be helpful.

Robert Buckland MP: I think so. Whether that will be adequate remuneration of course will be a matter for debate, and I am sure there will be plenty of people who will say that it will not be. But I think that that principle is a very important one that I would like to see adhered to as much as possible.

Q20 **Baroness Doocey:** Thank you. My second question is about recruitment. The Bar Council's response also talked about the CPS recruiting staff from the ranks of the defence sector, making already very serious problems with recruiting staff even worse. What steps are you taking to stop this happening?

Robert Buckland MP: Direct intervention is not an approach that I could or should take. The important point is to create the conditions by which particularly younger members of the professions feel that they are able, first, to be remunerated adequately and then to make progress and gain the experience that they need to become the senior barristers and the judges of tomorrow.

That is why I think there are a couple of things that line up here. The first is the importance of getting work through the system. When I talk about court recovery and court reform, I primarily think of witnesses, complainants and victims. They are the people who are going through the actual trauma of the system and who need to get their evidence given and their cases resolved. But I also think about those who work within the system, and there is no doubt that in getting the experience and getting that momentum going, having a decent throughput and volume of work is very important to the young practitioner. That is why I am very keen to make sure that the courts operate at full throttle, as I think I have described it, as soon as possible to provide those opportunities for younger barristers in particular. Through increased volume comes increased confidence.

First, the existing work with CLA part 1 gives a sense of real progress when it comes to the remuneration of junior rates of some younger barristers doing some of the less serious or lengthy cases. But, secondly, I hope that CLA 2 will deliver some form of confidence to them that they feel that they are not only valued in a vague sense but concretely valued in individual remuneration for cases done and the volume of work that they can do. I think that twin approach will lead to an increase in confidence. I have to keep working on that basis to create the right conditions for careers to thrive.

Baroness Doocey: Thank you. I apologise, it is obviously my lack of knowledge. I thought as Lord Chancellor you could and should intervene,

so I am sorry about that.

Robert Buckland MP: It is not so much that. I suppose I took your word "intervention" on the basis that I have some sort of mechanism by which I could allocate work, and I do not, but I can create the conditions and I readily accept the challenge.

Q21 **Lord Howarth of Newport:** As Lord Chancellor, you have the melancholy responsibility of dealing on behalf of the justice system with the Treasury. Do you impress upon the Treasury, and do they understand, that access to justice is a fundamental principle of our constitution and that therefore the wholesale reductions in funding for access to justice that have occurred over the last 10 years and more are really a violation of the constitution?

Can I ask you more specifically about civil legal aid? I was very pleased to hear what you said about funding for early intervention and the holistic approach that you are taking with other departments to try to prevent cases developing to a point at which they become material for the tribunals and the courts. But it would appear that the very continuing existence of the civil legal aid system is precarious. What are your plans to retrieve civil legal aid?

Robert Buckland MP: Thank you, Lord Howarth. I think a couple of themes emerge from that question. First, you describe dealing with Treasury as a melancholy task. I think I would describe it as a challenge. It is a proper challenge, because questions are being asked on behalf of the taxpaying public about the efficacy or value for money that the proposals that emanate from my department offer.

Fundamentally, I think there is a deep understanding and respect for the principles of the rule of law and the underlying constitutional tenets that you describe. I have no doubt, when I speak to Treasury colleagues, that that is fully understood. I do not expect a red carpet to be rolled out for me every time I go and ask for something. Challenge is a good thing. It makes me question the rigour of the approach that we are taking in the department, and I think that makes for better decision-making and better project management.

The court reform programme is a classic example—£1 billion invested in the modernisation of our courts. Why are we doing that? It is all about making access to justice that much easier for members of the public, whether it is people making a civil claim for money debt online, or whether it is people who will by this time next year be able to conduct their divorce proceedings online in a way that I think will lessen conflict, or whether it is somebody dealing with the criminal courts who perhaps is accused of a very minor matter and is spared the hassle of having to go to court through the single justice procedure. All these particular reforms have a higher purpose in mind as well as old fashioned pounds, shillings and pence.

I do not need to remind you about the long, slow retreat from the wide provision of civil legal aid that dates back to the very late 1990s. I am not going to pretend that somehow this Lord Chancellor will roll it all

back to where we were, when you could get legal aid for boundary disputes and all sorts of civil claims that I think most people would raise an eyebrow at.

I think two things are important. One is the ability of the system to really help people where it matters. What I mean by that is to give assistance at the earliest possible stage so that the particular issue that that person has brought to the attention of the authorities or the advice agencies does not escalate in a way that would be unnecessary and harmful to them and the wider system. That is why early support and intervention is a priority of mine.

Secondly, within that, where disputes need to be resolved we need to really ramp up the approach we take to dispute resolution. In my recent speech on this, I talked about abandoning the term "alternative dispute resolution". I want to make mediation, conciliation and arbitration mechanisms part of the warp and woof of the justice system so that people do not always associate justice with "having their day in court". That, frankly, for example in a family scenario, can be quite harmful, not just for the adults in the room but very often for a child who might be the subject of a particular application.

True access to justice for me is as much about the quality and the timing of the intervention as it is about perhaps some of the well-worn arguments that we have had about it over the years. It extends not just to individuals but to small businesses. Far too often I hear very small businesses tell me, "There's no point in going to court to reclaim my debt. It takes too long and I can't afford it".

That needs to change if we are going to put meaning into access to justice. Therefore I want to place a different emphasis on the debate, not because it is somehow convenient for me to do that, but because I genuinely believe that that is what access to justice should mean. I am putting myself in the shoes of the applicant, the individual. That is what they want it to mean, too.

Q22 **Baroness Suttie:** Good morning, Lord Chancellor. I would like to return to the issue of upholding the rule of law and judicial independence. Do the recent criticisms of judges and lawyers by some senior members of the Government concern you?

Robert Buckland MP: I said in the beginning of my remarks at some point that we live in a very lively parliamentary democracy. I think that means that all of us, certainly I and all parts of the constitution, will at times come under scrutiny and sometimes attack, frankly, and quite lively attack, too.

There is an important point to be made about the judiciary in particular, which is this: they cannot answer back. Their judgments are their public pronouncements. They are not like you or me in that we can come back with a response or quote. They are not like people in public life generally, who can perhaps come back with a response or a quote. The serving judiciary cannot do that.

That is where I come in. If I think that a line has been crossed or a particular tenet has been ignored, I will not hesitate to intervene. Where, in my judgment, the independence and quality of the judiciary are being challenged in an unacceptable way, I will act. I was not Lord Chancellor at the time of the "enemies of the people" comments, but I was at the time of Prorogation. I hope the committee noted that I acted very quickly—and unprompted too, without any worry about what other parts of government might or might not say—to defend the judiciary. I have done so on numerous occasions since.

I mentioned in my remarks to the first question the speech I made at the opening of the legal year, and indeed other interventions that I have made since. None of us, as I have said, is above criticism, but abuse is unacceptable and corrosive. It undermines confidence, and frankly it undermines not just the judiciary but the rule of law itself. Why is that important? It is simple, but it needs reiterating sometimes that judges must be free to make judicial decisions without interference by Parliament or the Executive, and personal attacks on judges are entirely unacceptable. Those are the rules that I apply, and I will carry on doing that and making sure that, respecting the confidentiality of Cabinet, appropriate observations about the need to adhere to the rule of law will continue to be made by me whenever I judge them appropriate.

Baroness Suttie: Do you think some of these criticisms demonstrate a misunderstanding by some of your colleagues of the role of the judiciary? Is there anything you can do to improve those misunderstandings?

Robert Buckland MP: I have in the past, I think before this committee, appropriated the language of "badger" in describing my role as advising, warning and encouraging. I know you use that in the context of the sovereign, but I do think it is a pretty neat way of describing my continuing work. I do not feel that I have to go around government every day like the proverbial caretaker cleaning up the mess, because I genuinely think that, like previous Governments, this Government are just as cognisant and observant of those important rules.

Where we are now, we have so many more platforms for debate than we did even 10 or so years ago. Social media has created myriad platforms, which come to the attention of very many of us. Of course that means that it can be quite a complex field to negotiate, but, as I have said, I am absolutely confident that in being very secure in my approach to all this I will continue to, if you like, police the situation and make sure that those tenets are observed.

Baroness Suttie: How do you engage with the President of the Supreme Court, the Lord Chief Justice, and the judiciary more widely to make sure that you are aware of the issues and challenges that they are currently facing?

Robert Buckland MP: I am happy to say that I have an excellent working relationship with the senior judiciary. I meet the Lord Chief Justice at least monthly and I meet the President of the Supreme Court very regularly, too. I also meet other members of the senior judiciary regularly. Now, as circumstances increasingly allow it, I am able to get

back out to court and visit other members of the judiciary as well. I think those working relationships have been particularly important during Covid. They have meant that we have been able to communicate clearly and effectively with each other in order to ensure the continued delivery of court services.

I am hugely grateful for the way in which the judiciary have worked tirelessly to help deliver that operational performance. At all times we have absolutely respected our respective constitutional roles, but that important trust and confidence between us I think has yielded some positive results.

Q23 **Lord Hennessy of Nympsfield:** Lord Chancellor, can I ask a kind of historian's footnote question? Do you keep a Lord Chancellor's oath book in which you record the times you have to intervene, some of which is confidential, as you have just said to us? On the 20-year rule, it would be very useful for historians to know when you had to intervene and to show us that you did fight the good fight. Indeed, I know you fight the good fight, but if you do not keep a Lord Chancellor's black book, could you perhaps start?

Robert Buckland MP: Lord Hennessy, I will say this to the committee: I have the means by which I keep my memory assisted, so without going into it in morbid detail, first of all I think that the tweets that I have issued are there on the public record already and a mere trawl back over the last few months will see them. The speeches I have made about it are on the public record already, but fear not—if I ever get around to writing anything, my memory will be very clear.

Lord Hennessy of Nympsfield: Tell me first.

The Chair: I think it is "watch this space".

Q24 **Baroness Corston:** Good morning. It has been rumoured that the Government are considering reforming the structure and composition of the Supreme Court, including renaming the court and increasing the number of judges. Is there any truth in these rumours? If so, what form will any changes take?

Robert Buckland MP: Thank you, Lady Corston. Earlier on our discussion about the 2005 Act, I might have made passing reference to the issue of names not being that important. I think it is right to say now that of course part of the 2005 Act did involve the creation of what is now the UK Supreme Court and therefore, by implication, a review of that Act would involve perhaps another look at the structure and indeed the form of the court. But I have not made any proposals about it. I would not do so without first talking to the President of the Supreme Court. Both the President and I agree that it is vital that there is that absolute understanding, as I mentioned earlier, between the judiciary and the legislators.

That was very much at the heart of the speech that I gave to Queen Mary University in March, but again, in the spirit of that, it is entirely legitimate for legislators and the Executive to look again at the wider

context of constitutional reform to see whether any part of the apparatus can be maintained or improved or updated. There will be plenty of opportunities for us to discuss this more widely. As I speak to you now, I have no concrete proposals to discuss, but I am sure that we can have a lively and important debate about this in the months ahead.

Q25 **Lord Hope of Craighead:** I am encouraged, Lord Chancellor, by what you have just been saying. Of course, to change its name would be a major dent in the reputation of the court, and Lord Reed has expressed his view on that very strongly. I hope you realise that there are all sorts of implications of changing the name, quite apart from the loss of reputation that would go with it, and the fact that various things are set up, such as the domain name, the method by which cases are referred to and all the rest of it is built into the system, which has been part of our law and practice for 10 years or more. It is a very major issue for the court and I hope very much that you move very, very cautiously along any line of that kind.

Robert Buckland MP: Lord Hope, I understand. What is very important to me about that body is its United Kingdom status, how it brings together the brightest and the best of the three jurisdictions and how it is the court of final appeal for the United Kingdom, and of course in its Judicial Committee incarnation, the court of final appeal relating to other territories. It has, as you rightly allude to, not just a national reputation but an international reputation as well as being a centre of excellence, to coin a phrase. There is nothing about what I want to do that would seek to interfere with any of that.

What I do think has been very welcome—indeed, it has returned very often to past practice—is the use of other senior judges from the various jurisdictions to help with the court's deliberations and to be part of various panels constituted for different cases. I think that porosity, to use a rather inelegant word, that porous element, is a very good thing, an important thing. At the same time, having a fixed number of members of the court is important too, so that there is an absolute sense of an institution that is clearly defined, understood and established.

Having said that, within that there are lots of legitimate questions that we can ask, and the name might be one of them. I take your point about some of the important considerations to be borne in mind, but we must not forget that prior to its existence the Judicial Committee had another name altogether.

I suppose the point I was making is that if we focus unduly on nomenclature, we are perhaps losing focus on some of the other parts of the debate that we might want to look at. At the risk of sounding a little vague or high level—I think that is the Civil Service term for it—it is important that we have a full consideration of this matter ahead of any potential proposals that might or might not emerge.

Q26 **Lord Howell of Guildford:** Lord Chancellor, if not a reform of structure, could you at least consider encouraging some revision of procedures? I have in mind a particular example, which I do not expect you to

comment on.

Very briefly, I helped to pass a law in 1972 with all-party parliamentary agreement, which said that Ministers other than the Secretary of State for Northern Ireland could sign interim custody orders in the atmosphere of extreme violence that we were operating in. The court flatly disagreed and simply said, "It's not so", even though it was not an amendment but right at the heart of the order. That disagreement seemed to be reached without any deep evidence or witnesses at all. Could we at least ensure that in the future these momentous cases are reached on the basis of solid and full evidence? I do not expect you to comment, but could you at least keep that in mind?

Robert Buckland MP: Lord Howell, you are right; I am obviously not going to comment on the basis of the Supreme Court's decision, but I am very familiar with it. Important issues are raised there about what I think many on the call will know is the Carltona principle of delegation, and about the way in which particular phrases and statutory terminology are interpreted.

But I will come to the point. I think it is as much for Parliament to get it right as it is for the courts. Without going into the depths of that case, there may well be an argument for us, frankly, as legislators and parliamentarians, to look carefully at ourselves to make sure that we are getting it right when it comes to the drafting of legislation and that the interpretation provisions are as clear as possible, bearing in mind the important consequences which the signing of that particular document had for the individuals involved.

Again, as you say rightly, and not going into that particular case, these issues are live, and just because they might not happen every day in our courts and might be fairly rare does not mean that they are not important, because they not only help to inform the reputation of the institutions that we are here to defend, propagate and support, but they affect the culture. Therefore, simply to say, "Oh, don't worry. There are only a few cases where this happens", with respect, is not good enough. That is why it is incumbent upon me to do something. Doing nothing would only exacerbate the foot-stamping that Lord Hennessy talked about earlier.

Q27 **Baroness Drake:** Lord Chancellor, you shared with us in some detail this morning what you are working on and what you want to achieve across quite a substantial agenda. Can I ask you to focus on your key priorities as Lord Chancellor during this parliamentary Session?

Robert Buckland MP: Yes. In this Session, my key priorities are the passage of the PCSC—Police, Crime, Sentencing and Courts—Bill, which is a major piece of legislation that will enact many of the proposals I made in my White Paper of last year, and to ensure that the reference in the gracious Speech to constitutional measures will be carried out during the course of this session.

On a non-legislative basis, my key priority is to carry on working hard to make sure that the system—the courts and, indeed, the prison system—

recovers from the Covid pandemic. I also want to do more on the longer-term rebuilding of our system, whether it is managing some of the most major infrastructure projects that we have in government as a department, and to restore the role of the law and justice system to the heart not just of our Government but of our society.

I come back to the point I made about the constitutional balance that I seek to achieve. In essence, the three words are recovery, rebuilding and restoring. That is what I am going to be working on through this year: the three Rs.

The Chair: Thank you. Lord Hope has a question on Welsh legislation.

Q28 **Lord Hope of Craighead:** Lord Chancellor, I imagine this is an issue quite close to your heart. You will recall that the commission that Lord Thomas chaired had some fairly far-reaching, long-term proposals about the devolution of justice to Wales, perhaps not on exactly the same system that Scotland has, with its own very distinct different legal traditions, but nevertheless a scheme of devolution.

We had a very useful discussion with the current Lord Chief Justice two or three weeks ago in which he described the steps that are being taken to improve the handling of justice in Wales, bearing in mind the distinct nature of Welsh law as it is developing and the need for an understanding of the people of Wales that their special relationship with the United Kingdom is being fully recognised.

I wonder where you stand on that issue just now. Do you see an advantage in the long-term proposals of the commission, or are you rather more in line with the Lord Chief Justice that things can be done within the existing system about developing, for example, a greater concentration of people with knowledge of the Welsh language sitting judicially and so on and so forth?

Robert Buckland MP: Lord Hope, I was struck by your use of the term "special relationship" there, and I could not help thinking about some of the recent debate about its use in another context and how some people find that phrase the epitome of one party being very needy of the other. I do not think Wales is very needy of England at all.

From what I have seen in the last few months, and indeed in the last year, I think it has been an incredibly resilient system that has led the way on recovery from Covid. The way in which the various arms of the Welsh criminal justice system have worked together has been a shining example, frankly, of how to do it, with probation, the defence community, prosecution, the courts all coming together and communicating effectively to get work done with the result that in Wales.

The concept of a huge backload just does not exist. Yes, they have challenges, and some people would say that they have a smaller volume of cases, but they have worked hard to make sure that a crisis did not become a catastrophe. That in itself is far more eloquent testimony than anything I can say to show that the system works very well. The single jurisdiction of England and Wales is one of our world-leading

jurisdictions, along with Scotland and Northern Ireland. If it ain't broke, don't fix it.

There are aspects of Lord Thomas's lengthy report that it is absolutely important that we explore. I gave evidence to the Legislation, Justice and Constitution Committee of the Senedd back in February of this year before the elections, where I said that. For example, the recommendation of the Thomas report about the establishment of problem-solving criminal courts is something that we will take forward. It was in fact in my own White Paper last year, and I want to pilot it and roll it out more extensively.

All the work that we have done on digital enhancement and digital change has equally applied to Wales, too, without any discrimination or distinction. I am working hard, for example, to better meet the needs of women offenders in Wales. I want to open a secure accommodation centre there to allow female offenders not to have to travel unduly long distances out of Wales in order to be supervised and to receive the necessary punishment and rehabilitation. But I think that Wales as a whole, whether you are a practitioner or a member of the public, benefits hugely from being part of the jurisdiction of England and Wales.

Making a point that is directed towards the politicians rather than Lord Thomas, I think colleagues in the Senedd are best advised to concentrate upon working with me to make our streets safer and to deal with the issues that people need to hear about, rather than obsessing about moving the furniture and trying to create a separate jurisdiction, which would be costly and unproductive.

Lord Hope of Craighead: Do you think that the needs of Wales have been fully recognised at the higher levels of the judiciary? I am thinking particularly of the Court of Appeal sitting, for example, in Wales from time to time and the Supreme Court, which has sat in Cardiff, I think, and might well do so again.

Robert Buckland MP: Yes, I do. I have always warmly welcomed the sittings in Cardiff. In fact, the Supreme Court was sitting in Cardiff on the day that I was appointed Lord Chancellor, and Lady Hale was then President. I know this, because there was an event in the evening where everybody was present to hear news of my appointment, so there is a good example of how we take the mountains to Muhammad. Long may that continue, not just in the criminal division, but civil cases as well are being heard in Wales.

It is very, very important that we do not lose sight of the work that has been done by the civil liaison judge in Wales, who has done a huge amount of work to enhance the role of civil justice and indeed the presiders, who over many years—they come and go in various incarnations—have worked to enhance the importance and the role of the judicial system in Wales. I have every confidence that that will only continue. Particularly with a Welsh Lord Chancellor, it will have to continue.

Lord Hope of Craighead: Thank you very much indeed, Lord

Chancellor.

The Chair: Let us move on to Crown Dependencies, our last area for today.

Lord Faulks: Thank you very much, Chair. Thank you, Lord Chancellor. You have been very generous with your time. I want to ask you about the Crown Dependencies, but before I do, have you had the opportunity to note that Lord Reed, when he gave evidence to us, was asked questions by Lord Howell about the Carltona principle in the Gerry Adams case? He was not on the panel in that case. He expressed the view that it might be appropriate to revisit the case. I wonder if that might be a matter that you ought to take into account when deciding whether any further steps should be taken.

Robert Buckland MP: I do, and certainly do take that very much into account.

Q29 **Lord Faulks:** Thank you very much. I should declare an interest in having been the Minister with responsibility for the Crown Dependencies for a period, although I was never given an opportunity to send a battleship to the Channel Islands.

There are two things that I want to ask you about. I know there is a well-established route for the future permissive extent clauses. I would like your reassurance that the system is secured. Secondly, and perhaps particularly important post-Brexit, can you reassure this committee that the Crown Dependencies are being consulted on future free trade agreements and that their views are being fully taken into account in negotiations?

Robert Buckland MP: Lord Faulks, the short answer is absolutely, yes. I take my responsibility as the privy counsellor and Cabinet Minister with particular duties towards the Crown Dependencies very seriously indeed. I can describe the relationship as overwhelmingly positive. I think you know from your time in this department that the role of the MoJ is not just to make sure that that dialogue, those lines of communication and those formal channels are open, but also to provide guidance to other departments about their responsibilities when working with the Crown Dependencies.

On the free trade policy and the development of free trade agreements, that is precisely what we continue to do: encourage and make sure that, for example, the Department for International Trade talks to and engages properly with the Crown Dependencies ahead of any big decisions on potential trade agreements in different parts of the world.

I have given an example of how cross-governmental engagement works. With regard to permissive extent clauses, I think that raised its head recently in the Fisheries Act of 2020, and there is no doubt that that aroused significant concerns, particularly from Jersey and Guernsey with regard to their inclusion.

The rationale for our decision there was very clear. Fisheries are not just us. There were international legal obligations shared by the UK and the

Crown Dependencies with regard to fisheries regulation, so we included the permissive extent clause on the distinct basis that the UK is constitutionally responsible for international relations, and therefore a breach of any obligations by the Crown Dependencies would have quite a significant ramification for the UK. But we have given the specific assurance that the PEC would not be used other than as a last resort and, of course, only after consultation, where a Crown Dependency—or indeed the UK—would need to legislate quickly to address an international law concern.

Again, that is an example of a sensitive issue being handled carefully and very much in line with the obligations that we have as a Government to the Crown Dependencies.

The Chair: Lord Chancellor, you have been very generous with your time, but we have covered a lot of ground. I am sure we could have spent a lot more time following up in detail some of the issues that we have been raising, so maybe we need to schedule these sessions more frequently, but we will see how that goes in the future. Thank you for your answers today and thank you for your patience. We will see you again very shortly, I am sure.

Robert Buckland MP: Thank you, Lady Taylor. Thank you, my Lords.