

Justice Committee

Oral evidence: [The work of the Law Officers](#), HC 962

Tuesday 25 January 2022

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Members present: Sir Robert Neill (Chair); Ms Diane Abbott; Rob Butler; Maria Eagle; Laura Farris; Kate Hollern; Paul Maynard; Dr Kieran Mullan.

Questions 1 - 72

Witness

[I](#): Rt Hon Suella Braverman QC MP, Attorney General for England and Wales and Advocate General for Northern Ireland.

Examination of witness

Witness: Suella Braverman.

Chair: Good afternoon. Welcome to this session of the Justice Committee. Welcome, Attorney General. We are very grateful to you for coming to give evidence to us. It is good to see you.

Before we start, we make the usual declarations of interest. I am a non-practising barrister and formerly a consultant to a law firm.

Maria Eagle: I am a non-practising solicitor.

Laura Farris: I am a non-practising barrister.

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

Q1 **Chair:** Attorney General, you gave evidence to us a while ago, not long after your appointment. I will start with the same issues we were talking about then. The nature of your office, as you explained to us last time, is unique, in the sense that you take a separate oath as the Attorney which goes above and beyond that for other Cabinet Ministers but is different again from that of the Lord Chancellor. You are in a different position. You attend Cabinet. Although theoretically you are not a member of the Cabinet, I think you attend all its meetings. Is that right?

Suella Braverman: That is correct. Yes.

Q2 **Chair:** You sit on a number of Cabinet Committees.

Suella Braverman: Yes, I do.

Q3 **Chair:** Does the Solicitor General, when deputising for you, attend any of the Cabinet Committees on your behalf?

Suella Braverman: Not Cabinet meetings.

Q4 **Chair:** Not full Cabinet meetings?

Suella Braverman: Not Cabinet meetings chaired by the Prime Minister. There is a series of Sub-Committees and on occasions the Solicitor will attend in my stead.

Q5 **Chair:** Much as with any junior Minister. That is understood. You will remember that last time we discussed the question of the Attorney sitting at the junction of law and politics, and you said that ultimately you swore the oath that the rule of law had to come first. That was your evidence to us.

Suella Braverman: That is correct.

Q6 **Chair:** Looking at where we stand now, with that intersection and reflecting on it, have you developed your thinking at all as to what you see as the constitutional boundaries that constrain you in your work as



Attorney General?

Suella Braverman: That is a great question because it is a unique role and, as you know, an ancient role. The tension between the legal, the political and the constitutional has been present for as long as the role has existed, and different occupants have approached it in different ways over the years. Our tagline at the AGO is "Making law and politics work together." That is how I see it; I am at the interplay between law and politics. There are very clear areas where I act as the guardian of the public interest and consider matters wholly from a legal perspective, as many of you on this Committee will be familiar with: looking at the facts of an unduly lenient sentence referral, looking at the legal framework, merging the two and reaching an analysis based on the law and switching off that political antenna we all possess.

There are other occasions on which I bring the political side of the role more to the fore—for example, when I am answering for the CPS at the Dispatch Box. I am acutely aware of the strategic objectives of the organisation that I superintend, and the political objectives of the Government when it comes to increasing convictions for RASSO.

Recently, I was reading the seminal work on the role of the Attorney General by John Edwards. He chronicles the debate over time. There have been different schools of thought. One philosophy is that previous Attorneys have said that there should be an independent aloofness of the Attorney and they should not muddy themselves with the grubby world of politics but apply a wholly legalistic approach to their work. Other occupants of the role have suggested that it is vital for the Attorney to be intimately aware and involved with their ministerial colleagues' political objectives, so that as the lawyers to the client they are well placed to provide advice on what is lawful and proper to assist the client, their ministerial colleagues, in achieving their policy objectives.

Q7 **Chair:** When you and I were in practice as lawyers if, say, we had been advising a company in relation to some matter, would we expect, having given the legal advice, to be involved in the board's decision, or would we step away and say, "Having given our advice, it is now for the board to consider it"?

Suella Braverman: That is an interesting question. There are loads of different models. General counsel with a senior position in an organisation are also part of that organisation. There will also be instances where you go out for an independent opinion in the traditional model of going out to counsel. The way I see it is that I am a member of the Cabinet and I subscribe to collective responsibility. I am an elected politician. For me, the political thread that runs through this role is vitally important. The alternative is that the Attorney General would be an unelected, apolitical official. We already have many of those working for the Government. I think there is virtue in having someone who is politically there.



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Q8 **Chair:** Would you say that you are a more political Attorney than some of your predecessors?

Suella Braverman: I will let others comment on that. I may have said at my previous appearance that the Attorney's role reminds me so much of my time at the Bar. I feel like I am a barrister with a very heavy paper practice and less time in court. It feels very much like being in chambers and considering papers and providing advice.

Q9 **Chair:** You made the fair point that in some respects you are acting as a departmental Minister with superintendence. In other respects, you are the Government's legal adviser. When you are acting in that legal capacity, which you distinguished for us, you have a legal secretariat to assist you on the legal advice, and you have access to Treasury counsel. You are the first Attorney General ever to have a special adviser—a Spad. What made you think that was useful to an Attorney?

Suella Braverman: There are huge advantages in the role of the special adviser. You are right: I think I am the first Attorney General to have a special adviser. The virtue of having a political adviser is that it is someone who can assist with the more political angles of the work. I cannot go into the subject matters I advise on, but some have huge political implications. I am involved in some of the big issues the Government are grappling with. They are inherently political and having an adviser who can bring the political dimension is very helpful.

Q10 **Chair:** Do they stand aside from any question that arises in your legal advice to the Government?

Suella Braverman: They do. They do not hold the pen when it comes to composing legal analyses and conclusions, but they provide very useful advice on the political context.

Q11 **Chair:** That is helpful. In October, you made a speech to the Public Law Project in which you talked about judicial restraint and perhaps concern that courts in some areas might enter the political arena. You seemed to be raising an alarm bell. What particularly prompted that?

Suella Braverman: I was honoured to be invited to give a speech at the Public Law Project conference on judicial review and trends in judicial review. I emphasised the centrality of an independent, apolitical judiciary to our separation of powers and the way in which our country is a beacon in upholding the rule of law. I was very keen to express a good faith jurisprudential disagreement with the Supreme Court.

The way I see it is that a trend has emerged over several years whereby constitutional orthodoxy has been disturbed, and the Court has expanded its remit into more political realms. To my mind, that will have profound ramifications for our judiciary. If that trend continues unabated, I am very concerned that it could be a risk to the legitimacy and reputation of our judiciary, which is inextricably linked to its political neutrality, and in turn could weaken the rule of law. Essentially, as to the position of the



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Government in the Miller cases, I was extending that discussion and reiterating the Government's position, which they adopted in that litigation among other cases.

Q12 Chair: Do you think that potentially cuts across the position of the Law Officer, as opposed to another Government Minister saying it?

Suella Braverman: No. It is a fair question, but I do not think it cuts across. It is perfectly proper for a Law Officer to expand on and discuss a position that the Government have held in litigation, even after the conclusion of a case. While we did not win those cases, it is no secret that we disagree with the outcome. I think that engaging in and enabling a discussion on the jurisprudence, the rationale and the implications can only be healthy.

I was also very interested to read the Policy Exchange note published recently, with a foreword by our esteemed colleague Sir Robert Buckland QC, former Lord Chancellor and SG, on this very point, asking this very question. Was it outside my remit to engage in this? I was very encouraged by its conclusions, which were that it was entirely proper and useful.

Q13 Laura Farris: I would like to pick up some of those remarks. In your speech, you identified about half a dozen cases that you said had strained the principle of parliamentary sovereignty and introduced uncertainty into the constitutional balance between Parliament and the Government and the courts. I think it is right to say that all of those cases went against the Government, but in previous Governments—the Blair and Brown Governments—there were some very significant Supreme Court decisions against them: Guantanamo Bay, control orders and asset freezing. I imagine they were all unwelcome at the time they were handed down. Given that the Supreme Court, therefore, does from time to time interfere in cases of ultimate public importance where the Government are involved, why do you think that the examples you chose are different from the kinds of decisions they were reaching a decade or so ago, which had just as serious ramifications?

Suella Braverman: As we have seen in the selection of cases I highlighted, very eminent and reasonable experts have disagreed on this. It is a legitimate debate and I am glad you are raising it. It is one in which I am very interested. The line of cases I referred to—Adams, the Miller cases, Evans and Unison and Privacy International, to name a few—has strained the principle of parliamentary sovereignty. I think there has been much more comment from other experts to this effect. Some of the submissions to the independent review of administrative law very much emphasised that point.

I refer you to the submissions of Sir Stephen Laws and Professor Richard Ekins, and a recent paper by Professor Varuhas, which talks about the mission creep of our courts, and says that over time judicial review has moved beyond supervisory jurisdiction and has extended into a



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conception of review whereby courts are exercising a primary and determinative judgment on the justifiability of Government action. It has moved beyond a supervisory jurisdiction and that puts its legitimacy into doubt. I am quoting a little bit from Professor Varuhas's submission.

- Q14 **Laura Farris:** How do you say that the Unison case, for example, strained the principle of parliamentary sovereignty? Parliament had not had any say on that issue. It was about tribunal fees, and the fees order was a statutory instrument introduced by Chris Grayling. Parliament did not vote on it at all, so I do not understand how it minimised parliamentary sovereignty when Parliament had not been asked to consider it.

Suella Braverman: All of those are fair questions. I think that in some of these cases there are clear instances where the boundary has been transgressed. In Miller 2, the court held that a decision to prorogue Parliament would be unlawful if the prorogation had the effect of frustrating or preventing, without reasonable justification, the ability of Parliament to carry out its constitutional functions as a legislature. I believe the reasoning there was unusual, and it was an unprecedented decision when it came to the justiciability of what had formerly and traditionally been considered a prerogative power.

In the Privacy International case, the principle of parliamentary sovereignty as traditionally and conventionally understood is that it is not for the courts to question primary legislation properly enacted by Parliament, in that case an ouster clause, or interfere more broadly in parliamentary proceedings, but in that case the court decided to do that. The Adams case was an example where, to my mind, the court turned upside down the principle of Carltona, whereby Ministers have traditionally been able to delegate decision making, and the decision in that case by the Supreme Court, to my mind, introduced significant uncertainty into a matter that had been previously a settled question.

- Q15 **Chair:** Ms Farris was asking about Unison. As she points out, Unison was an Executive act. Are you saying that the Supreme Court should not review Executive actions?

Suella Braverman: In that case, to my mind, there was an extension of where the courts should be supervising the acts of Government. I think they went beyond the mere analysis that is traditional, assessing whether the act or decision was lawful and whether the process adopted was the right one. I think it strayed into a more policy kind of assessment and looked more behind the decision rather than limiting itself to a more supervisory jurisdiction.

- Q16 **Chair:** Wasn't Unison decided on straight judicial review principles?

Suella Braverman: It is my view that in that case the court strayed beyond the proper boundaries of where judicial review should lie. This is why it is important to have a debate about the boundaries of judicial review being properly drawn and why we are introducing a new Bill to try



to ensure that that boundary is properly honoured by the courts and there is greater legitimacy to these decisions. If this trend continues and, as Lord Sumption would put it, we see the empire of law assume greater and greater territory from the legitimately elected lawmakers—Parliament and the legislature—it will have profound ramifications for our separation of powers.

Q17 Laura Farris: We did a Committee visit to the Supreme Court last week. Lord Reed addressed the issue of parliamentary sovereignty. I ask you to comment on what he said. He talked about Miller 2 and said that the case, in the minds of the Supreme Court justices, was about upholding the principle of parliamentary sovereignty. I revisited the case before this session. Paragraph 41 of the Supreme Court judgment said: "Two fundamental principles of our constitution are relevant to the present case. The first and most important is the principle of Parliamentary sovereignty." In the following paragraph it said: "An unlimited power of prorogation would be incompatible with the legal principle of Parliamentary sovereignty." In other words, it would prevent Parliament from sitting and voting. Do you disagree with that analysis and, if so, why?

Suella Braverman: My view of Miller 2 is that the court intervened in territory that has traditionally been for the Executive and was non-justiciable as a prerogative power. To my mind, the reasoning and logic that got the court there was unusual.

I was interested in Lord Reed's dissenting judgment in Miller 1 where he emphasised the risks of proceeding along that track. At paragraph 240, he said: "For a court to proceed on the basis that if a prerogative power is capable of being exercised arbitrarily or perversely, it must necessarily be subject to judicial control, is to base legal doctrine on an assumption which is foreign to our constitutional traditions. It is important for courts to understand that the legislation of political issues is not always constitutionally appropriate, and may be fraught with risk, not least for the judiciary."

I concur with the warning he issued in that decision. There will obviously always be issues with which people disagree vehemently. I worry about the trend we have seen where people who have campaigned energetically outside the courts lose those campaigns and then pursue them through our legal process. I do not think that is what our courts are designed for. The Lord Chief Justice has noted that. Again, Lord Reed in the recent case of SC was more forceful in his comments, saying that "challenges to legislation on the ground of discrimination have become increasingly common in the United Kingdom. They are usually brought by campaigning organisations which lobbied unsuccessfully against the measure when it was being considered in Parliament, and then act as solicitors for persons affected by the legislation, or otherwise support legal challenges brought in their names, as a means of continuing their



campaign.” That is the issue I have. I agree with Lord Reed on that, and his warnings are very wise.

- Q18 **Ms Abbott:** I want to ask a few more questions about the relationship between politics and the law. You are a Conservative Member of Parliament and I am sure you are very assiduous in working for and speaking up for your constituents, but in the end what is more important to you—your role as a Tory politician or your role in defending and standing up for our legal system?

Suella Braverman: As Attorney General, I think both roles can co-exist and are of equal importance to me. They are both present in my role. For example, as I am sitting here now I cannot forget the fact that I am a Conservative politician and owe my position in Parliament to the good people of my constituency who chose to put me here. At the same time, I have very specific and clear duties as a Law Officer. The way I would answer the issue you are raising is that as a lawyer in private practice it becomes ingrained in you to turn off your personal perceptions, biases and instinctive reactions to your client or the particular factual scenario you are seeing. It is the professional’s duty to provide a standard of service that is not influenced by the personal or the political. That is what I call to mind when exercising my legal role and duties as AG.

- Q19 **Ms Abbott:** How you describe your role is interesting. I have been a Member of Parliament for 34 years. Most Attorney Generals, both Labour and Conservative, see themselves as standing aside from party politics, obviously offering legal advice, but standing up for and supporting the legal system as a whole. Clearly, you do not occupy the same position as previous Attorney Generals. You will appreciate that is something of a surprise, certainly to people in the legal profession.

Suella Braverman: It is interesting that you raise that. It is not a new question; it has been around as long as the role of AG has been around. There have been really good examples of different Attorneys taking different approaches.

Lord Hartley Shawcross, Attorney General in the 1945 Attlee Administration, was very much of your view that the Attorney General should take a dispassionate approach and be almost akin to an apolitical official. Peter Rawlinson, AG in the Heath Government, advocated for a non-elected, non-political public servant as AG. Contrast that, however, with previous Labour Attorney Generals who took a very different approach. Lord Elwyn-Jones, former AG and Lord Chancellor—the first Attorney General to Harold Wilson in 1964—said this: “You may think by now that the Attorney-General is some sort of detached creature who has nothing to do with politics. But that would be highly disingenuous. In fact, the Attorney-General, when he is acting in political matters, is a highly political animal entitled to engage in contentious politics. I suppose the only thing one can say is that some Attorneys-General are more contentious than others as politicians. But the basic requirement of our constitution is that however much of a political animal he may be when



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he is dealing with political matters, he must not allow political considerations to affect his actions in those matters in which he has to act in an impartial or even a quasi-judicial way.”

That is a very different approach, again maintained by another Labour Attorney General, Sam Silkin, Attorney General for Wilson and Callaghan. He took a very similar approach: the Attorney General, to be effective in his or her role as Law Officer and legal adviser to Government Ministers, really needs to be aware of their political objectives, the political stresses, the political strains, the temperaments, the characteristics of that Prime Minister and those Ministers leading their policy objectives, so that that Law Officer can be in the best possible position to provide that advice on what is lawful and what is proper to enable those Ministers to achieve their policy aims.

- Q20 **Ms Abbott:** I do not want to pursue this much further. It is interesting that you quote Labour Attorney Generals, but I could quote to you other Labour Attorney Generals who took a position much more in the classic understanding of the role of the Attorney General. You now hear increasingly barristers, judges and people in the criminal justice system expressing concern about what they see, under you, as the politicisation of the Attorney General’s role. Are you saying you would dismiss those concerns?

Suella Braverman: I am not aware of those concerns, if I am honest. The way I see my performance in this role and how I do this job is that, when it comes to the legalistic side of the role—considering the consents for prosecution, assessing whether a referral should be made to the Charity Commission, considering the referrals on unduly lenient sentencing and providing legal advice—I have been able to maintain quite a clear-eyed legal perspective. I am a trained lawyer and have practised for many years so I am able to do that. Equally, I am a politician, I am elected, and I am subject to collective responsibility, and I feel very comfortable in discharging those duties as a politician to my political team.

- Q21 **Ms Abbott:** Let us move on to what you are quoted as saying about the Colston Four case. I would not ask you to expand on your opinions because it could yet prove sub judice, but there was a sense in what you were quoted as saying that you were expressing concern about the jury’s decision, and even expressing concern about the advice that the judge gave at the beginning of the case. You may not have heard this, but some people were surprised that an Attorney General would want to query the decision of a jury. It is almost as if you support jury findings only when they come out the way you would like.

Suella Braverman: Not true. I disagree. I do not think that anything I have said has sought to undermine trial by jury. In fact, I make it very clear that it is an important foundation of our legal system. I very much respect the jury system; it is a guardian of liberty. However, I have a statutory power under section 36 of the Criminal Law Act 1972 where, if I



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seek to do so, I can refer a decision, a point of law which has arisen in a case, to the Court of Appeal to ask for their opinion on it. I do not think that my mere consideration of this matter suggests anything unduly political or improper and that what I have expressed and am doing is entirely within my remit and indeed my statutory power.

Q22 Ms Abbott: So you do not accept that your remarks, coming on the back of a torrent of critical statements by other Conservative MPs, were in any way political.

Suella Braverman: No, I do not.

Q23 Ms Abbott: I read what you said. You started off by saying you entirely supported the system of trial by jury, but then you said that you might find yourself—obviously, we have to wait for the CPS—referring this to the Court of Appeal. You are a politician and you know that context is very important. That was in a context in which it seemed as if you were seeking to echo the opinions of your Conservative colleagues more than, in practice, defending trial by jury.

Suella Braverman: That is not my intention. My intention is legitimately to identify points of law that merit further consideration by senior judges, as our system allows.

Most recently, a referral was made in 2020. That was a very helpful referral we made, and the Court of Appeal agreed with the referral on the law of sexual assault. We have exercised the power on many occasions in the past. It will not change the verdict in that case, but if I conclude that there is a question of law that merits further inquiry by senior judges I will not hesitate to refer it. Equally, if I find that, on the law, there is not such a question, I will not refer it.

It is a statutory power. It is a useful power. I am not alone in identifying questions. Many reasonable people have disagreed. There has been a lot of comment by lawyers on both sides of the debate who said there is some kind of question. The Lord Chief Justice himself, in a recent judgment, highlighted the potential for questioning that area of law. There is quite a crowded field of people who are looking at the law there and considering it.

Q24 Ms Abbott: You have spoken a little about parliamentary sovereignty and how you are worried that the power of judicial review might undermine it. I understand what you are saying, but I also understand, because I have been an MP for 34 years, that on occasion—this will be shocking to you—Parliament passes legislation that is incredibly short term in what Parliament is doing, is not necessarily based on the facts and is not fair and right. Surely, men and women, British voters, ought to be able to look to the courts in cases like that to stand up for what is fair and just. You cannot assume, and I hope you are not assuming, that everything Parliament passes on a given day is always right, fair and even based on the law in reality.



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Suella Braverman: Judicial review is an important mechanism; it is a vital check and balance in the system. Whether it is Government bodies, local councils or anyone with any formal degree of Executive power that needs to be held to account in some form, judicial review provides that mechanism, so it is a vital mechanism. However, I think parliamentary supremacy is the foundational cornerstone of our democracy; it is the mechanism through which the British people are empowered. They send all of us here through a legitimate mandate and they can kick us out if they so wish. We express their views as faithfully as we can through the work of the legislature and Acts of Parliament. Government largely initiates legislation and, if Parliament does not like it, Parliament can reject it or amend it, but the final project has gone through a very rigorous process.

Q25 **Ms Abbott:** You obviously have not sat in Parliament for many years if you think it is always like that.

Chair: We might be in danger of getting into comment rather than evidence.

Ms Abbott: Sorry, Chair.

Suella Braverman: The hours of debate that we spend in both Chambers, the level of scrutiny in Committee and the opportunity for amendments and votes is a pretty rigorous process, and it is the best we have in terms of reflecting a democratic mandate. Given the survival of our parliamentary democracy, I think it is pretty good. It is emulated around the world. It is not working too badly.

We have to honour the doctrine of parliamentary supremacy. There is a real opportunity for parliamentarians to be more empowered in how the legislature is marshalled for our constituents. To me, that is what democracy is all about.

Q26 **Dr Mullan:** Building on the questioning that has arisen around the section 36 power, you mention that it has been used on a number of occasions. If you do not know the figures off the top of your head, would you supply us with the exact numbers, perhaps over the last five to 10 years, so that we have some sense of it?

Suella Braverman: Yes.

Q27 **Dr Mullan:** Framing the question another way, today we have talked a lot about the importance of the separation of your political and legal functions. If your legal function, as such, felt there was a point of law that needed to be contested, and you allowed political considerations about how it might look and about the debate to stop you making a referral, do you agree that, in another direction, that is just as concerning?



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Suella Braverman: Yes. It is absolutely vital that the legal considerations are left to take their course in as sterile a way as possible without the influence of politics either way.

Q28 **Dr Mullan:** My colleague mentioned the visit to the Supreme Court and some of the discussion we had. It would also be fair in reflecting on that to say that we talked about MPs commenting on judicial proceedings. I think it is fair to say that a number of the justices said it was perfectly legitimate for MPs to pass comment on cases and rulings, and that is also part of the checks and balances; it is not about the judiciary existing in isolation from society, politicians and wider public opinion. Do you agree that is an important role for politicians?

Suella Braverman: I think it is difficult for an Attorney to comment on ongoing legal proceedings, but as a legislator and an MP I think it is completely proper for MPs to have an opinion and voice it.

Q29 **Dr Mullan:** To be a bit more specific, while party politics is not necessarily in play when it comes to decisions of the court, when it comes to things like weighing up competing rights, those are inherently political decisions, with a small “p”, about what priority you might give the right to protest over any other rights. Those are by their very nature political. Even if they are built on case law decisions, at their root they are political, with a small “p”.

Suella Braverman: I would definitely agree with that. I think that constituents of MPs who are not Ministers of the Government would find it quite odd if their elected representatives were silent on contentious issues that are very political by nature. I think they would be wondering what their politicians were doing if they were not having a view at least, if not expressing it.

Since 2000, there have been 20 referrals under section 36.

Dr Mullan: Thank you.

Q30 **Maria Eagle:** I want to ask a little bit about your priorities and the spending review. Through the spending review 2021, you had an extra £183 million for agencies over which you have superintendence, including the Serious Fraud Office. It was said in the Treasury documentation that the increase would be about 2.2% per year. How much of that will go to the Serious Fraud Office? The allocations used to be seared into my mind when I was a departmental Minister. Maybe you have not quite got there yet in the decision on the allocation.

Suella Braverman: I am there—it’s all right. There were uplifts in the 2021 spending review. The SFO has a core resource budget of around £55 million per year over the next three years. Its resource funding for 2022-23 is £55 million.

Q31 **Maria Eagle:** That does not sound like an increase at all.



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Suella Braverman: I am sorry. When it comes to resource and capital funding, it is a proportion for 2022-23 of £3.1 million for the capital budget and £55 million on the resource budget.

Q32 **Maria Eagle:** From what you have said, am I right that there is not a planned increase in the resource budget for the SFO?

Suella Braverman: This is supplemented by funding from the Treasury reserve. The Treasury reserve funding enables the SFO to obtain additional money for cases where costs exceed more than 4% of its budget during the financial year.

Q33 **Maria Eagle:** On a case-by-case basis, you might get some more money for the SFO if they are doing a big prosecution.

Suella Braverman: Yes.

Q34 **Maria Eagle:** There has been a decline of 35% since 2016 in prosecutions of major fraud and money laundering, hasn't there? For example, there has been an average of five cases a year in the last five years. There were four last year, which is down from 13 in 2016-17, so you do not expect to call on that extra potential money from the Treasury by the sound of it. Presumably, that is why it is not in the core allocation. Am I right or am I being a bit cynical?

Suella Braverman: I would not want to prejudge the work of the SFO. It is important to remember that the SFO is both an investigator and a prosecutor. It can only ever progress to a prosecution when the available evidence is strong enough to support it. Bringing a weak case is simply not an option, nor is it in the public interest. Therefore, there will be some investigations that close, either because the investigation has not shown there is a case to answer or because there is insufficient evidence, and that is the same for any public investigative agency.

The ambition of the SFO is very clear. If cases can be resolved by DPAs, that is a good, efficient and cost-effective way of proceeding, but if it needs to go to trial that reflects the facts of the case and the level of co-operation by a company. We need to focus on the best outcomes from the point of view of the interests of justice and the public interest.

Q35 **Maria Eagle:** Do you accept that economic crime costs the UK hundreds of billions of pounds? The National Crime Agency says that money laundering costs the UK £100 billion; loss to fraud is £190 billion. These are enormous sums. We all have constituents who have been subjected to appalling fraud. Sometimes it involves their entire life savings and most of them never have a cat's chance in hell of getting their money back or seeing any justice against the people who perpetrated it. There is a lot out there for the Serious Fraud Office and National Crime Agency to do. That is right, isn't it?

Suella Braverman: I do not want to diminish the seriousness of economic crime and fraud. It is very worrying. There is a lot of action and



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commitment by the Government to try to deal with it. We have the economic crime plan, launched in 2019, which represents a step change in our response to economic crime. We want to work to ensure that the environment for economic crime in the private sector is disrupted; we want to ensure that we have measurable progress against our economic crime plan. There is investment, and we need to empower the agencies. The National Economic Crime Centre was established to co-ordinate activity to tackle economic crime.

- Q36 Maria Eagle:** Do you accept that increasing the budget empowers the agencies to tackle some of this? At a national level, the agencies fighting this kind of crime get about £852 million in total, if you believe the Spotlight on Corruption report published earlier this week. It says that the UK spends under 0.1% of Government expenditure while losing the equivalent of 14.5% of GDP. Given that you can generate money, as you suggested, in settlements through deferred prosecution agreements—indeed, the SFO has done so very successfully, with £1.6 billion in settlements in the last five years, and another £100 million in fines and penalties—and given that £100 billion is lost by money laundering and £190 billion by fraud, why on earth don't you empower these national organisations, including the SFO, to tackle this properly on a much bigger scale and make it absolutely clear that the UK is a good place to do business, rather than some kind of wild west where economic crime is shooting up to huge levels and deterring people from doing business in this country? Why don't you do more?

Suella Braverman: I think our settlements in the spending review represent a serious commitment by the Government to ensure that the SFO has the right resources and tools to work effectively against fraudsters and criminals. It takes on some of the most complex and difficult cases; it has achieved certain successes. I am grateful for your acknowledgment of them. I do not think the SFO gets sufficient acknowledgment of its successes. It continues to deliver good operational results.

Taking into account judicial resolutions such as DPAs, its successful judicial outcomes rate has been 84% by case and 56% by defendant over the past four financial years. Over £7.3 million in financial orders was obtained by SFO's proceeds of crime team and over £6.9 million last year was recovered. It is making good use of the legislative tools available to it, whether it is those contained in the Bribery Act, the Crime and Courts Act 2013 or the Criminal Finances Act. It has agreed 12 DPAs since 2014 with a total value, as you say, of £1.7 billion. It has good tools. Does it need more resources? Yes. The inspectorate was very clear. It needs better digitisation.

- Q37 Maria Eagle:** You seem to have just told me that there were only new resources on a case-by-case basis for prosecutions. That was what you said at the beginning when I first raised this question with you. That does not seem to me like you giving more resources to expand the capacity to



deal with this huge level of fraud. The National Crime Agency says that the amount lost to fraud is £190 billion; money laundering accounts for £100 billion. The £1.6 billion you described sounds minuscule in comparison with those levels of fraud, yet you seem to be saying to me that your settlement has, case by case, per prosecution, capacity to give a bit more money to succeed with a particular prosecution. That seems to me doing the absolute minimum, Minister.

Suella Braverman: I disagree. We have seen some successes. I do not need to go over them. They represent the value for money that the SFO provides. The settlement we have secured in the spending review will go forward to boost its resources. There is a serious issue with the SFO when it comes to its digital capability. That is a well-known challenge for the SFO. We need to make it nimble and a competitive employer that attracts the best lawyers; we need to bolster its army of people who can deal with the very complex disclosure challenges that serious fraud poses these days, and ensure that there is sufficient grip and case progression in its case load. The SFO has a large number of difficult and complex cases currently on its books and it is working through them at pace, but this spending review settlement will go towards ensuring that it has much more money diverted to where it is needed.

Q38 Maria Eagle: What more money? I thought you told me there was a special fund that the Treasury would allow it to draw on in respect of a particular prosecution, not lots more money to sort out the digital issues that it might have in the office. It did not sound to me that you were saying there was more investment in the SFO itself. You were saying there is capacity for it to tap more money for a particularly complex prosecution, but there have been only four in the last year and that is down from 13 in 2016-17. That is not even going in the right direction. I realise there are issues with investigating such things and that it takes time. The numbers overall are going down, yet the levels of fraud—£190 billion for money laundering and £100 billion for fraud—are going up. There is lots for them to do.

Suella Braverman: Yes, and it is not just the SFO; it is also the CPS. Both prosecuting authorities have a role to play when it comes to economic crime. Both have specialist lawyers who are working on it and both need the resources to deal with the challenges. Thanks to the spending review and thanks to this Government's investment, they have a chance of ensuring that they have the right capabilities to deal with those challenges.

Q39 Maria Eagle: I am not sure I am getting anywhere. Is it right that the proposed economic crime Bill has been postponed from being in the next Queen's Speech, as has been reported, and, if so, why?

Suella Braverman: I confess that the economic crime Bill is not my responsibility.

Q40 Maria Eagle: You have superintendence over the SFO, which deals with



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economic crime. Perhaps you can drop us a line.

Suella Braverman: I can find out, but I do not know the answer.

Chair: We will stick with the SFO and the agencies.

Q41 **Paul Maynard:** To come back to the SFO—or, as it is known in the City of London, the Serious Farce Office—do you still have confidence in Lisa Osofsky?

Suella Braverman: I know what you are alluding to. There have been some high-profile failures and case collapses recently, not least the Unaoil matter.

I still have confidence in the director. Under her watch, there have been some significant and high-profile wins, which were not easily gained. We need to give credit where it is due. However, I accept that there is a very serious issue when it comes to broader performance issues but also as a direct consequence of the Unaoil case.

Q42 **Paul Maynard:** In earlier answers you mentioned disclosure issues—this applies to both the Unaoil case and the Serco case. I know that you called for a report back in December. When will that report be published?

Suella Braverman: I cannot put a date on when it will be published, but I am moving very swiftly. I have already commissioned an independent review. We are in the process of confirming the person who will carry out that review.

Q43 **Paul Maynard:** You have not even started it yet.

Suella Braverman: It has not started. It takes time to identify a person, confirm them and get them in post.

Q44 **Paul Maynard:** Forgive me for going back yet again to the budget of the SFO. You mentioned that you would be able to draw on special Treasury reserves on a case-by-case basis. Did your discussions include any potential liabilities that the SFO might face as a consequence of ongoing proceedings against it? It might exceed its annual budget. Was that part of your discussion with the Chancellor?

Suella Braverman: On a net basis, the SFO returns money to the Exchequer in the £1.3 billion it recoups from DPAs and legal decisions, so it is one of the very few departments that is sending money back to the taxpayer rather than taking it.

Q45 **Paul Maynard:** It can afford to be sued ad infinitum because there will always be a pot of money that it can make things better with.

Suella Braverman: We want the SFO to apply a very high standard of legal decision making in investigation and prosecutions. We want those decisions to lead to successful convictions, and the more successful convictions they secure, the more financial remedies there will be coming back to the Exchequer.



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Q46 **Paul Maynard:** When did you last meet Ms Osofsky?

Suella Braverman: Very recently. Following the judgment in Unaoil, I convened an urgent meeting with Ms Osofsky and I probed her on her view of what had happened and why. That was immediately after the judgment.

Chair: It would be convenient to stick with the agencies and then come back to Ms Hollern. Mr Butler will now turn to the Crown Prosecution Service, which is the other agency for which you have responsibility.

Q47 **Rob Butler:** Attorney General, you have a role of superintendence over the CPS, but it is the Director of Public Prosecutions who has the day-to-day managerial responsibility and, in turn, he—it is he at the moment—is responsible to you. Could you sum up what you see as your role in that superintendence function and what influence that then has on the CPS?

Suella Braverman: Superintendence is a statutory term, used to describe my role in relation to both the SFO and the CPS. Across Government, more commonly it is referred to as sponsorship. We have a framework agreement between the prosecuting authorities and the Law Officers. That was updated in December 2020 and goes into some detail about what the relationship should involve at a practical level. What it looks like is the Law Officers supporting and holding the DPP to account for the running of the CPS and the discharge of its functions. That means we do not intervene in any operational or casework decisions except in exceptional circumstances—for example, national security matters. A really important feature of superintendence is that operational independence is afforded to the CPS.

Q48 **Rob Butler:** Would your superintendence role go as far as exercising any influence about where, for example, the CPS should prioritise its resources or functions, or is that operational?

Suella Braverman: On the allocation of resources, a bid to the Treasury is made by the CPS in the first instance. I provide guidance and challenge to the CPS in the preparation of its bid. Our two departmental teams work quite closely on the preparation of that bid. I challenge the CPS on its proposals or funding allocations. I say, “We have a problem here. Surely, you should be thinking more about diverting resources there.” The final decision, however, is with the CPS; I cannot impose a view on how I think its money should be spent. It will make that final decision as it affects its operational capability. Then I will advocate for it with the Treasury on the basis of the finalised bid.

Q49 **Rob Butler:** You would not say, “I think you should prioritise more effort on rape,” or, “I think you should focus to a greater extent on economic crime,” or, “I think you need to put an increased amount of staffing on disclosure.” That would be a step too far.

Suella Braverman: I can say that. I can definitely say that to them. That is a strategic issue. It is Government funding and we are in that



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exercise together. It is very much part and parcel of my role to say, "I believe you should be thinking about diverting resources to this or that area," but the final decision will be the CPS's. I can provide challenge and probing, but ultimately it will be their decision.

Q50 Rob Butler: Can you give us an indication of where you have asked them to focus some effort and whether or not the director has agreed with you, and what happens if there is a disagreement?

Suella Braverman: For a few years, the focus has definitely been on RASSO. I do not think a meeting goes by when we do not talk about RASSO resources, allocation and planning. I have not had to push the CPS too hard. To their credit, they have been very forthcoming and forward-leaning in gripping the issue of RASSO, and wanting to ask for and divert more resources towards their specialist prosecutors and greater resources generally towards its prioritisation. They have really wanted to deal with that issue.

Q51 Rob Butler: My colleague will be asking you a couple of specific questions on RASSO, but are there any other areas where you have asked the CPS to focus or to put less effort?

Suella Braverman: There is the inevitable and ever-present challenge of dealing with the backlog, so that is a priority for the CPS and for me. The CPS director will always have the challenge that, if we divert resources from one task, they may be depleted in another. That is a decision we are always grappling with as politicians and Ministers. I raise many issues with the CPS.

Q52 Rob Butler: You mentioned that you advocate for the CPS as well as holding it to account. What is your relationship with the chief inspector of the CPS?

Suella Braverman: The chief inspector sits in a different organisation, in the inspectorate. He is relatively new in his appointment. We welcome and encourage his work. I read his reports very carefully. My relationship with the inspector is that we have a regular meeting. I can suggest or request particular subjects for inspection. He may come back and say, "Yes, that's a great idea," or, "No, we can't do that because we don't have resources." It is a dialogue and we work together, depending on current priorities and the current context. They update me intermittently on their work and findings. We always have a meeting after a report has come out so that I can probe them a little more and ask a few more questions, but their work of inspection and recommendation is wholly down to them.

Q53 Rob Butler: At the moment, are there any particular areas where you would like the inspector to carry out inspections?

Suella Braverman: There are always more questions that I would like them to answer than they are able to. Their focus is on RASSO performance and their area inspections are now coming through. I think



we had four at the end of last year and a couple more are coming later this year. They are comprehensive and give an on-the-ground picture of how police and prosecutors are working to deal with general crime, but also RASSO, disclosure, pre-charge review and post-charge review preparation—PTPH—to get a granular idea of how different areas are performing. I think their agenda of work is spot on at the moment.

Q54 Rob Butler: Do you largely push the CPS to accept the recommendations of the inspectorate to ensure that they are delivered against?

Suella Braverman: I do not have to. The CPS, for as long as I have been in this role, have not hesitated to accept all of the recommendations made by the inspectorate so far.

Q55 Laura Farris: I have some further questions on RASSO. Prior to the publication of the rape review, an action was brought by the Centre for Women's Justice against the Director of Public Prosecutions. I know it was unsuccessful, but certainly the impression was allowed to linger that the CPS was part of the problem in the low prosecution rates for rape. You will know that I went to a meeting with Max Hill some months ago. He talked about guidance that had been published by his office that went to all CPS offices around the country after the Domestic Abuse Act became law. That was about the new provisions on things like the rough sex defence. Even though it had been a common-law principle before, I think it can reasonably be inferred that he was not confident that it had been faithfully applied by prosecutors.

In the context of those two things, when you became Attorney General, and prior to the rape review, had you formed the impression that there were failings in the CPS with rape prosecutions, and are you now satisfied that changes are happening and, if so, that they will make a difference?

Suella Braverman: This is a very complex issue and it is not easy to say, "That's the cause. The CPS is to blame. The police are bad. It's about the courts." It is not as simple as that; it is so multi-dimensional. There is a general understanding, and it is definitely my view, that the whole system needs to improve, right from the moment someone plucks up the courage to walk through the doors of a police station to make a complaint to, hopefully, the stage when the defendant is sentenced. That whole life cycle needs to improve. That is reflected in the end-to-end rape review. It is a large piece of work that tries to chronicle victims' experiences, of course with a very close eye on fairness to the defendant, with broad acceptance that the whole system needs to improve.

For the CPS's part, there is a definite need to improve the numbers being charged. We are seeing some signs of improvement. I am really encouraged by the willingness and commitment of the CPS to come to grips with the issue and deal with it, to be open to suggestions and very forward-leaning in how it adopts different working practices and how it publishes its data. Data is a massive factor in the whole thing. We have been working in the dark for many years and only now are we beginning



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to see the actual numbers in an empirical format, so that will make a massive difference.

- Q56 **Laura Farris:** Speaking of numbers, one of the things that the Policing Minister said is that he thinks the compulsory publication of criminal justice scorecards will make a difference to the way different police areas perform in handling and investigating rape claims. How is the CPS working with different forces to ensure that those improvements are made, because ultimately it is the CPS that makes the charging decision?

Suella Braverman: Correct. The CPS makes a very important decision in that life cycle. However, the CPS can consider only cases that are referred to it by the police, which is a very important factor. The scorecards have shown that there is a massive drop-off between the number of complaints made to the police and the number of cases that the police actually refer to the CPS for a charging decision; it is about one in 10. The CPS receives one in 10 complaints. The latest scorecards and figures show that its charge rate on that admittedly small number is about 68% to 69%. That is the highest charging rate in several quarters, from a low of 47%. It is an encouraging sign. Can it do better? Yes, but good first steps are being taken. Your question was about what the CPS is actually doing.

- Q57 **Laura Farris:** Yes. Does it have any part to play in getting that?

Suella Braverman: Of course. Notwithstanding those early signs of progress and tentative green shoots, hopefully what will make a difference—it is not based solely on the CPS but on CPS and police collaboration—are some of the working practices being pioneered in Operation Soteria, and in Bluestone in the Avon and Somerset region. That is informed by academic expertise and specialists in the field. We are finding that, by enabling earlier, meaningful liaison between prosecutor and police officer, you may well save time, avoid duplication, pursue reasonable lines of inquiry, adopt a much more pragmatic approach and be able to reach a decision sooner. That can make a massive difference to the prospects of a complaint, and could be the difference between a complaint receiving a charge and not receiving a charge. That is something for us to watch closely, and I am looking forward to confirmed results emerging very soon.

- Q58 **Chair:** One of the areas where RASSO has been engaged, but it runs right across the piece with the CPS, is disclosure. We know that is a growing problem, as you pointed out earlier, because of the amount of digital material that has to be considered by both the police and the Crown Prosecution Service. You revised the disclosure guidelines in December 2020. Can you help us as to what impact those revisions have had and how it is being monitored by the CPS and you?

Suella Braverman: Disclosure goes hand in hand with RASSO because of the quantity and complexity of the evidential burden that both police officers and prosecutors are dealing with in 2021-22 and have dealt with



in more recent years. That has been a real sea change and an aggravating factor in their performance. Disclosure is incredibly important.

What my guidelines sought to achieve was a radical change in how, operationally, the police and prosecutors deal with disclosure. Previously, disclosure has been an annoying afterthought and a technical administrative “nice to have” that would often be remembered very late in the day, causing disasters in the court process—Liam Allan being the high watermark. My guidelines have sought to change that and make disclosure much more a running theme from day one—the thinking approach. It is very much focused on front-loading the work, with earlier disclosure and engagement between defence and prosecution. Let’s put our cards on the table sooner down the line. If a defendant can get good legal advice on the basis of a fuller evidential picture, that may well save a lot of time and effort further down the line.

We always have to bear in mind fairness and the need to ensure that there is also a focus on protecting victims. Too often, victims have felt that they are on trial and there has been an excessive level of intrusion into their private lives, with the confiscation of their phones. That is why the rape review talks about a 24-hour grab of the phone, but we really want more grip, more and earlier engagement and front-loading of the disclosure process.

Q59 Chair: How are you measuring the effectiveness of the guidelines in achieving that? Is there a mechanism to do that?

Suella Braverman: I committed to having an annual review of the disclosure guidelines and we are fast approaching that point. The review has started. I have been receiving a lot of representations and feedback about how these disclosure guidelines, accompanied by DG6 at the CPS, have bedded in at an operational level. It has been incredibly useful. I want to do what works. I have no qualms about changing the guidelines if that is what professionals request.

I am encouraged that what we are hearing so far is that, No. 1, on the whole, they are in the ballpark area; they are kind of spot on and are really welcomed. The change in ethos and focus has been welcomed by practitioners. Guidance on third-party material, No. 2, could be improved to clarify and strengthen the standard for accessing that information. As for No. 3, we are hearing of a potential need for more clarification to be given to the defence as to how and when they should engage, to narrow the issues in the case. Lastly, some of the feedback we have focuses on redaction. I do not know whether you heard this from the Policing Minister, but I have heard from professionals—my review shows this—that the burdens of redaction are excessive, onerous and disproportionate, and we need to try to recalibrate that.

Q60 Chair: That is very helpful. Sir Christopher Bellamy gave evidence to us last week. Obviously, he was dealing essentially with legal aid matters in



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his review. You have probably picked this up yourself. He referred to the evidence he had picked up suggesting a drip-feed approach to disclosure. Does that ring a bell as far as you are concerned and, if so, what is being done to tackle it?

Suella Braverman: I have been encouraged by Sir Christopher's report. There is quite a lot of focus on the front-loading of disclosure. He talked specifically about how time, money and resources could be saved if there was a "cards on the table" approach earlier in the process. That will demand more resources and therefore funding. I welcome his findings and analysis on that.

Chair: You mentioned the backlog. We turn to Ms Eagle on that and then Ms Hollern.

Q61 **Maria Eagle:** I know it is not just your responsibility, as it were, but the court backlog is going up at the moment. It is above 60,000. We are talking about the Crown court backlog. Speaking from memory, the target is to get it down to 53,000 by 2025, spending all of the money allocated under the 2021 spending review. It is still quite a large backlog; it will still be higher than before the pandemic. Do you think that is possible and doable, but also do you think it is sufficiently ambitious?

Suella Braverman: We are obviously in an unprecedented time because of the impact of Covid on the criminal justice system. We need to ensure that our justice system continues to run. I am very glad that in our jurisdiction we did not close our courts during the pandemic and we managed to keep them functioning. That was a real achievement. Funding is important to the aim of bearing down on the backlog in the Crown court. Notably, in the magistrates courts we are back to pre-pandemic levels. That is, essentially, 80% of crime, so a large chunk of disposal of criminal matters is being progressed well. You are right to focus on the Crown court backlog.

When it comes to funding, the Government are investing across the justice system; £80 million a year by 2025 has been allocated to the CPS, partially to help to tackle its backlog. For the CPS's part, there is a backlog within the organisation and that needs to be worked through. That will help overall with the backlog in the CJS.

Q62 **Maria Eagle:** Yes, but we have just been talking about serious sexual crime. Waiting for years, as a defendant, witness or victim, to get a trial on because of the backlogs—most of these are Crown court trials—has severe impacts on whether or not justice is done at the end of the day and on the mental health and wellbeing of those involved, particularly victims. A target for a backlog of 53,000 by 2025, which is still higher than pre-pandemic, after all the money has been spent under the spending review, does not sound particularly ambitious, does it?

Suella Braverman: There are lots of angles to this. Of course, we need to eliminate the backlog and get to a position where people are not waiting years for their matter to come to trial. It will be a gradual



process. We need to review it carefully. Sir Christopher Bellamy's report talks about ways in which, by using funding smartly when it comes to legal aid funding and, for example, making the disclosure process more effective earlier in the process, we can ease the backlog. If defendants are able to have better sight of their evidence sooner in the process and access a good solicitor, they may well put in a guilty plea and that will be one less case.

That requires systematic change and more funding. That is why there are many pieces to the puzzle. The funding of legal aid is one piece; what the CPS does is another piece. The inspectorate looked at the CPS response to Covid and judged it to be a very good, nimble and flexible response. It implemented a series of changes with core system partners to respond to the pandemic—for example, the interim charging protocol was designed to be clear about its prioritisation. CPS areas have been working very closely with HMCTS to ensure that cases involving vulnerable victims, including domestic abuse, rape and serious sexual assault cases, are prioritised in the courts.

Maria Eagle: The point is that, even after all the money is spent and all the things you have talked about have been done, the backlog is planned to be 53,000 by March 2025, which is not that far below where it is now, although it is going up at the moment. The reality is that many victims of crime and many defendants will have to wait years to get trials heard, and whether or not that is proper delivery of justice is a moot point. I will leave it there.

Chair: That is perhaps more of a comment than a question.

Maria Eagle: I think it turned out that way.

Chair: I think it turned out to be a comment, so let's move straight to Ms Hollern, who has been waiting very patiently.

Q63 **Kate Hollern:** In our report "Covid-19 and the criminal law" we concluded that there were important lessons for the Government to learn about the creation and enforcement of criminal offences. What lessons have you learned during your time in office during the pandemic?

Suella Braverman: Covid posed very unique challenges for the Government. There was no template to follow in how to respond to Covid.

What lessons did I learn? I have been impressed by the responsiveness of Government and Government agencies—the CPS, which is relevant to my work—in replying swiftly to the complexity of the challenge. For me, from a Law Officer point of view, that is the departmental lawyers and departmental officials, led by Ministers, designing very wide-ranging and important legislation, such as the Coronavirus Act. That was a huge piece of work involving significant amounts of effort at pace. There was the aspect of thinking quickly in a crisis on how to legislate and allow the Government to take powers so that the right measures could be put in place, or looking at it from a justice system point of view, which was an



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MOJ aspect of the work. As I say, we did not close our courts; we managed to find work-arounds. Many matters were paused, but the digitisation of many areas of law to enable continuation of the administration of justice was a reflection of that nimbleness and agility.

Q64 Kate Hollern: Can you tell me what your role was in the creation of Covid-19 criminal offences?

Suella Braverman: I personally did not have any role in the creation of offences. The Coronavirus Act laid out the legal position and what would constitute a breach of the law. Those were essentially policy decisions reached by other Ministers. The Law Officers played a part at the PBL level. We scrutinise legislation in draft form and raise any legal issues if they arise at that point, but policy formulation would have been a lead for another Minister.

Q65 Kate Hollern: That is interesting because last week the Prime Minister said that he was unaware he was breaking the law. As that was a policy decision, he would have understood that. However, have you at any stage been asked to give advice to the PM or the Cabinet on the implications, should they be found to have broken the law?

Suella Braverman: Unfortunately, the Law Officers convention precludes me from answering a question about whether or not I have given advice and what it may or may not have been about.

Chair: That is not a line we can pursue.

Kate Hollern: Perhaps it can be pursued through another route.

Chair: The convention is that Law Officers cannot reveal their advice.

Kate Hollern: Is it your understanding that the Prime Minister and the Cabinet knew exactly what was included?

Chair: I do not think the Attorney General can answer that question; it is asking her to go behind the advice.

Kate Hollern: Okay. Thank you.

Chair: Are there any other questions on the Covid legislation?

Kate Hollern: Not at this stage.

Q66 Maria Eagle: Did you think it was appropriate for the single justice procedure to be used? This is something about which we have had some concern on the Committee. Some of the fines people were charged by way of penalty notices went up to £10,000. There are some concerns; certainly I have concerns about using the single justice procedure, which is an administrative procedure, to deal with a fine of that size. The only way somebody who wishes to dispute it can do so is not to pay the fine and see if they end up summoned to the magistrates court. If the single justice procedure was used, they may not even have received notification



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about the way in which it would be dealt with—we all had trouble with the post over Christmas. Do you think that is appropriate given such a high level of fine?

Suella Braverman: There were specified proceedings subject to the SJP. It is a police-led prosecution, as you say, and applies only to summary-only non-imprisonable offences where the defendant is 18 years or older when charged. It allows the suspect to plead guilty by post, and a single justice will determine the level of fine on the papers without a traditional court hearing. The CPS becomes involved in the SJP only if and when a defendant pleads not guilty, at which point the case will be passed to the CPS to prosecute. I think that was a proportionate response given the impact of Covid on resources. If we had not done that, the backlog would have been even greater. To my mind, it was a smart and proportionate way of dealing more swiftly with lower-level offences.

Q67 **Maria Eagle:** A £10,000 fine is quite a high penalty, is it not?

Suella Braverman: As to the impact, I thought it was a proportionate response. We needed to find some mechanism whereby a swathe of these offences would be kept out of the CPS case load. It would have been a very difficult scenario from a resource point of view. On the whole, looking at the quality of decision making, there have been some difficulties and there is a review mechanism, but it probably strikes the right balance.

Q68 **Chair:** In some instances, we had offences that attracted fixed penalties of £10,000, not even a fine. Were they implemented? Is there any data as to how many fines or fixed penalties at that level were imposed? Maybe your Department does not have that information. You see the issue about the fixed penalty of £10,000.

Suella Braverman: Yes.

Q69 **Chair:** One would normally think of something appropriate for a parking offence or something like that.

Suella Braverman: Yes. Errors were made; there is no denying that and that is really why you are asking the question.

Q70 **Chair:** It is really a proportionality point, isn't it?

Suella Braverman: Yes, it is. It will always be a difficult line to draw. Where do you try to take a reasoned approach and carve out a cohort of offences for the prosecuting authority without jeopardising the quality of decision making? It is difficult.

Q71 **Dr Mullan:** You have heard the discussion here today. You mentioned that there was not a template for this stuff. Do you agree that it would be sensible as part of further pre-pandemic planning that we should give consideration to how we might implement things like criminal sanctions?

Suella Braverman: From a criminal justice point of view, definitely. There are now, as we know, implications for enforcing and ensuring that



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that enforcement is proper. I think that mechanisms to monitor that would be welcome. *[Interruption.]*

Q72 **Chair:** That is very welcome. There were a couple of issues we were going to raise, but I fear that the bell has beaten us—we have a Division and there are potentially multiple votes, so I think we have to end it for today. Perhaps we can write you on the two topics around sentencing and open justice that we wished to raise.

Suella Braverman: Of course.

Chair: We are very grateful for your time and your evidence to us today. It is much appreciated. The session is concluded.