

## Justice Committee

### Oral evidence: [Coronavirus \(Covid-19\): The impact on prison, probation and court systems](#), HC 299

Monday 4 May 2020

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Members present: Sir Robert Neill (Chair); Rob Butler; James Daly; Miss Sarah Dines; Maria Eagle; John Howell; Kenny MacAskill; Dr Kieran Mullan; Ellie Reeves; Ms Marie Rimmer.

Questions 59 - 136

#### Witnesses

[I](#): Ellie Cumbo, Head of Public Law, Law Society; and John Bache, National Chair, Magistrates Association.

[II](#): Amanda Pinto QC, Chair, Bar Council; Caroline Goodwin QC, Chair, Criminal Bar Association; Simon Davis, President, Law Society; Bill Waddington, Criminal Law Solicitors Association; and Elspeth Thomson, Co-Chair, Resolution (Family Justice Professionals Group).

[III](#): Chris Philp, Parliamentary Under-Secretary of State at the Home Office and the Ministry of Justice; Alex Chalk, Parliamentary Under-Secretary of State, Ministry of Justice; and Susan Acland-Hood, Chief Executive, HM Courts and Tribunals Service.



## Examination of witnesses

Witnesses: Ellie Cumbo and John Bache.

**Chair:** Welcome to this meeting of the Justice Select Committee. Before we go to our witnesses—apologies for the delay—we need to declare our interests. I am a non-practising barrister and a consultant to a law firm.

**Maria Eagle:** I am a non-practising solicitor.

**Andy Slaughter:** I am a non-practising barrister.

**Miss Dines:** I am a practising barrister but have not taken any cases since my election.

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

**Kenny MacAskill:** Nothing to declare.

**Rob Butler:** Until my election, I was a non-executive director of HMPPS and the magistrate member of the Sentencing Council; and, relevant for this meeting, until December I was a member of the Magistrates Association.

**John Howell:** I am an associate of the Chartered Institute of Arbitrators.

**Ms Rimmer:** I have no interests to declare, other than appearing in courts.

**Dr Mullan:** No interests to declare.

Q59 **Chair:** Thank you. Welcome to Ellie Cumbo, head of public law at the Law Society. It is good to see you, Ellie; thank you for coming.

**Ellie Cumbo:** Thank you, Chair.

**Chair:** Welcome also to John Bache, the national chair of the Magistrates Association. It is good to see you again, John.

**John Bache:** Good morning.

Q60 **Chair:** We are looking at the effect of the Covid-19 pandemic on the operation of the courts and the justice system at the moment. We have seen huge changes, at a rate of knots that probably none of us would have anticipated, in the way the courts have had to operate. What is your overall take as to how the system is coping with the scale and pace of the change? Have they managed to do it without losing the basic quality of justice and access to justice at the same time?

**John Bache:** Everybody has done amazingly well when you consider what has happened in the last eight weeks or so. There have been amazing changes to which everybody has contributed: the judiciary, HMCTS and everybody involved in the criminal justice system. Things are coming in at different rates in different areas of the country and in different jurisdictions, and it is very impressive how everybody has



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worked together and kept the justice system working as efficiently as possible in these absolutely unique circumstances.

We are introducing new technology and new methods of doing the work, which have not really been tried before, and, in general, they are being very successful indeed. Everybody deserves a huge amount of congratulation for the innovation that has happened already and is continuing to happen.

**Q61 Chair:** Ellie, what is your assessment from the Law Society's point of view?

**Ellie Cumbo:** Our members would agree with all of that and would particularly want to echo those thanks to all of the HMCTS staff, including those on the ground, who have worked so hard to keep the wheels of justice turning. It is important that the overall approach from the outset reflected an obvious determination that the rule of law should not grind to a halt because of this very unexpected situation. We welcome that. The Law Society was entirely on board with that from the start. That is not to say that there have not been challenges, and it is also not to say that there will not now be a need to slow down and appraise what may not have worked so well, as well as the things that have been a success. We hope that today is an opportunity to do that.

**Q62 Chair:** Before the latest tranche of measures was brought in, earlier on in the process, concern was being expressed to us about social distancing, for example, in the courts, in terms both of the waiting areas and in the difficulties for lawyers, especially duty solicitors, of getting safe access to take instructions when there was no PPE or when it was sometimes not possible, in cramped cell facilities, to take instructions with any appropriate level of social distancing while maintaining proper confidentiality. What is the position as far as that is concerned?

**Ellie Cumbo:** There has been a significant development in that area in the last few weeks. Again, we are very grateful to HMCTS for facilitating conversations with all the necessary agencies. There are now national standards in place. The picture on the ground is a little more variable. Of course, the technology is by no means guaranteed, particularly in some of the settings you mentioned. Prisons are an obvious one.

**Q63 Chair:** When the situation in a magistrates court or Crown court is variable, what is your advice to members? Should they ask for an adjournment or what?

**Ellie Cumbo:** Members are of course aware, and should be, that they are under no obligation to take part in work that is not safe for them. That is a judgment in which we entirely support them as their representative body.

That said, for the time being, we are aware of only a number of isolated occasions when there has been genuine concern. You mentioned social distancing, Chair; there is also the basic question of cleanliness. There



has been significant improvement, as we understand it from our members, in that area. At the beginning, there was difficulty with ensuring that hand sanitiser and soap were available in the first place. HMCTS have taken that very seriously, and their communications on it have vastly improved, so we thank them for that.

On the question of social distancing itself, of course, one of the big unknowns is what will happen as and when we come out of this situation. You probably know that there are some magistrates courts that remain open to the public. That is where most of the concerning stories are emerging. You do not know in advance who is planning to attend, and it is much more difficult to keep all the different individuals separate when you do not have that information in advance. Of course, it is also dependent on the state of the court building itself. Larger and more modern buildings will find it easier than others. No one was planning for this to be the case.

**Q64 Chair:** John, what is your assessment from the magistrates' point of view? Has the position improved?

**John Bache:** It has improved very much. One thing that has obviously happened is that the courts have been divided into three categories: those functioning more or less normally and that still have access for the public; those that are just doing administrative work; and those that are temporarily closed. That obviously means HMCTS staff can concentrate on the areas where they are most needed. That applies to cleansing staff, and other staff as well.

The other factor that has changed is that, initially, most of the work was being done by district judges, who obviously sit by themselves, so social distancing was not a problem, or at least was a lot less of a problem. Now that magistrates are beginning to sit again, particularly in the family court but in other courts as well, it has overcome the problem to a large extent.

It is very much an evolving situation, and different areas are doing it differently. The two things that matter most to the courts are, first of all, safety and, secondly, that justice is done fairly. A lot has been learned and a lot is continuing to be learned. We are progressing very satisfactorily. Obviously, nobody is going to come to court if it is not safe to do so, and everybody understands that.

**Q65 Chair:** The case prioritisation system deals with custody, urgent family cases and so on. Is that working effectively in practice, or are you finding there are delays that you would not wish to see?

**John Bache:** Again, it is evolving. We have all been given the three priorities, which are sensible. First of all, it is people who are in custody or who are in danger, so there are things like domestic violence protection orders. Category two is trials. Trials are obviously very difficult at the moment. Some are happening in the magistrates court. Some are



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conducted by district judges and others by a magistrate. That is increasing, and again it varies from area to area. The third, and lowest, category relates to things like the single justice procedures, which are happening.

Obviously, priority one takes precedence, but if for some reason you cannot do priority two, it is perfectly sensible to go on to priority three, which is the single justice procedures. Single justice procedures can be done from home, so magistrates and legal advisers can be at home. They can get through a considerable volume of work, and that is working very satisfactorily.

**Q66 Chair:** There was a bit of concern about the single justice procedures and how you square that with open justice. That was the case before, when you had the magistrate sitting in the room in the courthouse with a legal adviser. When you are doing it at home, how can you possibly do it in an open fashion?

**John Bache:** That is a concern. You are seeing Susan Acland-Hood later, and I think she will be able to comment on that. It is a concern. Lists are available, I believe, so that people can see what is coming to court. I understand that it is possible, theoretically at least, to get the result of those lists so that you can find out what sentence has been passed. It is a problem. Justice should be performed in public, and that is an obvious problem.

**Q67 Chair:** That is helpful. What sort of trials are you having? You said that some cases, not many, are being tried.

**John Bache:** In preparation for today, I consulted colleagues throughout England and Wales. It is very sporadic at the moment. It is only the simplest trials at the moment; there are no trials in the Crown court because of jury problems. In the magistrates courts it is just road traffic things and very simple things. I guarantee that by the end of the week we will almost certainly be on to slightly more complex trials.

**Q68 Chair:** Do you have anything to add, Ellie?

**Ellie Cumbo:** No, thank you. I agree with John.

**Q69 Maria Eagle:** I have a question for Ellie Cumbo. Many courts—about 192—are not open to the public or are fully closed, and there is an impact from that on the amount of work that can be done, although it is good to hear that some work is going ahead.

From a Law Society point of view, what effect are the restrictions caused by this crisis having on workloads in different areas of law? I used to practise in civil, in tribunals and things like that. They are not often thought of in circumstances like this. What are the restrictions doing to workloads across the different jurisdictions?

**Ellie Cumbo:** The main area of concern for us at the moment is obviously legal aid firms. That is not exclusive to criminal practitioners; it



is all forms of legal aid. We anticipate there being some very serious cash-flow problems in the near future, which comes back to this point. We and others have asked for some time for court-assessed bills to be one of the areas of work that is prioritised, so that there is a movement of cash through the system. Not to put too fine a point on it, it is to ensure that solicitors' firms are able to survive the current situation and be there, not least if there is a sudden influx of cases after the restrictions are relaxed, which is what we would expect.

**Q70 Maria Eagle:** I gather from what you said that workloads must have plummeted significantly. Do you have any figures?

**Ellie Cumbo:** We do not have figures, no. It is very difficult to gather that data. We would expect to see particular areas of difficulty in legal aid firms. In addition to the question of work simply not being there, the question of delays is significant not only for practitioners but for the quality of justice. The longer a trial is delayed, the more impact that has on a witness's ability to give reliable evidence and feel confident in doing so. It is, of course, in everyone's interest that work is able to resume as soon as it is safe for that to happen.

**Q71 Maria Eagle:** Are you seeing any difference between the different types of law—family, crime, civil, tribunals? Is there any significant difference, or is the workload plummeting everywhere? Is that what has happened?

**Ellie Cumbo:** We would expect that to depend on the case, perhaps, more than the area of law. Any case that has not yet reached the stage of coming to court will be largely unaffected, so long as all the parties have access to the technology required at least to have discussions, conferences and so on, and for advice to be given. You would expect there to be more impact on areas where trials are more common—criminal, public family law and so on.

**Q72 Maria Eagle:** This is a question to both John and Ellie. Are there any other issues arising out of the reduced court capacity that we should be aware of, beyond the obvious ones?

**Ellie Cumbo:** Yes. I will respond to that, and I know John has something to say. I mentioned the question of whether or not firms are able to survive in the longer term as a result of the current delays and reductions in workload. There is also a question about the quality of justice and the impact on the quality of justice from the move to virtual hearings.

HMCTS is not at the moment able to provide data on the quality of those hearings. There are numbers now available on how many hearings are taking place, whether by video, by telephone or, in some cases, still face to face. What they are not able to do yet is explain what types of hearing those have been; whether or not they involved witness evidence; whether or not vulnerable parties were involved; and whether or not all those involved would consider those hearings to be a success. This is all information that would be required in order to make the overall



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assessment that I mentioned at the start, as to whether or not justice has survived intact throughout this process.

Q73 **Maria Eagle:** John, do you have a point on that?

**John Bache:** Yes. As far as justice is concerned, it is obviously the role of the magistrate or the judge to ensure that justice is being done, and I am sure they will do that. They are all adapting to new situations, but we must ensure that justice is being done to all parties.

One of the major concerns at the moment, for everybody, is how we are going to get out of the present situation. It is quite obvious that there is going to be a big backlog. As far as Parliament is concerned, there are two things that can be done. First of all, the retirement age needs to be thought about very carefully. At the moment, magistrates have to retire at 70, and there is going to be a huge loss of very experienced magistrates who are able to give a lot of time to the magistracy. If they are not available, the backlog is going to be even more of a problem than it is already.

The other thing worth considering, for both the Crown court and the magistrates court, is the ability of magistrates to give 12-month sentences rather than six months. That would take a lot of work off the Crown court—the Crown court is probably going to be under even more pressure than the magistrates court—and it would obviously reduce the need for juries as well.

The two things Parliament could consider are increasing the retirement age under emergency legislation and introducing 12-month sentences under emergency legislation, even if it is only for a temporary time of about two years or so, to assess the effect of it and get us over the inevitable backlog that was there already and is going to be massively increased as a result of the present crisis. Those things are certainly worth considering.

Q74 **Chair:** I know that you have made those points before, John. For context, changing the retirement age would, as you say, require primary legislation. In relation to the sentencing powers, in its previous report on the magistracy, this Committee recommended implementing the provisions to allow magistrates to sentence up to 12 months because they are already on the statute book, aren't they?

**John Bache:** That's right.

Q75 **Chair:** In fact, they have been there for a number of years. I think they were brought in during the Blair Government but were never brought into force. It would simply require secondary legislation to commence it, as I understand it. Is that your understanding?

**John Bache:** It would be hugely beneficial for both magistrates courts and Crown courts.



**Chair:** Thank you. That is very helpful. We are going to move on to explore technology a bit more.

Q76 **Rob Butler:** John, my years in the magistrates court were fraught with great difficulties with technology, even a simple video link to a prison. Could you talk us through how well remote working has worked for lay magistrates? You explained that some are doing it from home under the single justice procedure. Could you give us a fuller picture of remote working?

**John Bache:** Again, it is evolving. We have concerns, and have had concerns for a long time, particularly about more vulnerable witnesses. There are obvious problems. Not everybody has access to video conferencing, but all of this is being worked through. In fact, just last week I had a very impressive demonstration of CVP, which stands for cloud video platform. Basically, everybody involved in the case is at home or at separate locations. There is the magistrate or the judge, the prosecution and the defence.

One particular problem that concerns us is the ability of the defendant to get confidential advice from their advocate. That is a problem. It is not insurmountable, but it is an obvious problem. The other thing that concerns us is that some people are not able to express themselves as well over video. Body language is important.

Having said that, we are now talking face to face and communicating very effectively. I am very disappointed to hear that you are no longer a member of the Magistrates Association.

Q77 **Rob Butler:** I am no longer a magistrate, John, so I decided it was the right time to leave. It was nothing personal, I assure you.

On the point about vulnerability, I was a youth magistrate for a long time, and the protocol in the youth court is that the youth should sit next to their advocate and next to a parent or guardian. Clearly, that is no longer possible. I have some real worries about justice for the under-18s. How do you feel that is being addressed, and do your members share that concern?

**John Bache:** Yes, it is definitely a concern. As far as sitting next to a parent or guardian is concerned, that should not be a problem because, of course, social distancing is not relevant there. As far as the advocate is concerned, they can still be close. As you know very well, Rob, the whole atmosphere in a youth court is far less formal than in the adult court. With a little bit of sense from every party, that can be continued. With good, experienced practitioners in all parts of the court, the informal nature and therefore the productivity of the youth court can be assured.

Q78 **Rob Butler:** To be clear, do you think that even over a video link the youth court can work effectively by virtual means?

**John Bache:** Yes, I do. I think an experienced youth magistrate would step in if that was not happening. It would be fairly obvious if it was not



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happening, as in a normal situation as well. It very much depends on experienced judiciary to ensure that everybody is getting a fair hearing. It is certainly the experience I have had. I must admit that this has not included youths because, as you know full well, we have been very careful about youths. The experience I have had with adult defendants is that it works very satisfactorily.

**Q79** **Kenny MacAskill:** I think you have covered our set questions. I presume that applies not simply to youth courts but across the board. I have a specific question, and I do not know whether John or Ellie will be able to comment on it. What percentage of HMCTS staff are working from home at the present moment?

**John Bache:** I do not have that information, I am afraid. I know that an awful lot of HMCTS staff are working from home. When I did single justice recently the legal adviser was at home, but I could not give you the percentages. I am sure Susan Acland-Hood will be able to provide them.

**Q80** **Kenny MacAskill:** Are your comments on the youth court replicated across all courts, or are there any distinct differences in what is working well and what is not?

**John Bache:** The only difference is that you have to be even more careful with youths than with adults. The same principles apply, but you have to be even more careful with youths because, by definition, they are vulnerable. The same principles apply. You can still communicate with them fairly effectively. Obviously, the ideal is to see them face to face, but in the present situation we feel that the response that is happening is perfectly proportionate and reasonable.

That is not to say that it should automatically continue once the present crisis is over. Once the crisis is over, we need to look carefully at what we have been doing and whether it is sensible to carry on doing it. I think a lot of lessons will be learned, most of which will be positive but a few of which will be negative.

**Q81** **John Howell:** Ellie, do you have a feel for the proportion of hearings that are going ahead that are being done through remote technology?

**Ellie Cumbo:** No, we do not because it is extremely variable. It differs not only by court but by individual judge. It is going to be important to have that information in the future as we assess this period.

We can broadly make generalisations by area. For example, mental health tribunals are going ahead as far as possible, but using telephone only, for the most part, because of the technological limitations. Beyond various sweeping generalisations, no, it is very difficult to arrive at a sense of that.

**Q82** **John Howell:** Without that information, though, it is very difficult to assess the overall impressions of how the technology is working, isn't it?



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**Ellie Cumbo:** Yes, it can only be done anecdotally at the moment. We have heard very good examples of the technology being used at hearings and of all the parties involved in ensuring that it works well. We have also heard the opposite.

Q83 **John Howell:** I know it is early days, but are you able to bring out the positives and negatives that have come out of the changes we have seen in this?

**Ellie Cumbo:** Specifically on virtual hearings?

**John Howell:** Yes.

**Ellie Cumbo:** Yes, we certainly agree with some of the comments that have already been made about vulnerable people, and about some people not having access to the technology at all and what that means for them.

The question of being able to take advice from your representative was raised. We have heard examples of that working very well, but it relies on a degree of judicial patience that, I think John will forgive me for saying, is not always guaranteed. There need to be regular adjournments to ensure that a representative can check their client's understanding and take further instructions. Where that is in place, it can be made to work well.

Much also depends on a good degree of organisation before the hearing, including clarity about which platform will be used so that there is an opportunity for all parties to make sure there are no issues with the tech or with the software. Again, that has not always been happening. Indeed, we hear examples of cases being cancelled the night before, which is very much less than ideal, not only for our members but for clients and witnesses and their sense of confidence that the proceedings will work for them.

Q84 **John Howell:** Let me pick up your point on witnesses. What do you think is the biggest implication for witnesses?

**Ellie Cumbo:** Broadly speaking, we would prefer it if cases involving witnesses were not going ahead. That would be our preference. That is not only because of the ability for their needs to be properly understood but because establishing their reliability is not guaranteed. For example, witnesses are not able to give their best evidence if they are not confident about the tech or with the sense of a disjointed hearing, which is far more likely with technology—if it cuts out or, indeed, if there are many adjournments. That obviously is not ideal.

**Chair:** We are a bit pushed on time. John, do you want to put the same question to Mr Bache?

Q85 **John Howell:** I have one more question for both witnesses. It is early, I know, but do you see any long-term implications for the rapid use of technology?



**John Bache:** I think there is going to be a much increased use of technology. To a large extent, it is a very sensible way of proceeding. We need to use technology, but the bottom line is that justice must trump efficiency. We must not blindly go into using technology because it is there. We need to step back and carefully assess the current situation, to see what can usefully be done via technology and what needs direct face-to-face contact.

**Ellie Cumbo:** I agree with all of that. We are very anxious about any idea that this should become the new normal. As we have mentioned, the data has not been collected. For the most part there is no open justice—*[Inaudible.]*

**Chair:** Ellie seems to have frozen. That is a risk of the technology, I am afraid. Does any other member of the Committee have any questions for our current panel of witnesses?

Q86 **Maria Eagle:** I have a question on the impact on disabled people of this big move to the use of technology. They are often forgotten with this kind of change. People with learning disabilities, autism spectrum disorders and people with severe mental ill health find it very difficult either to be witnesses or to understand what is happening when they are remote. To what extent has that been spotted by magistrates in cases, and what impact is it going to have on access to justice, whether for witnesses or defendants who are disabled? Are we thinking enough about that?

**John Bache:** A great deal of thought is going into it, but I am afraid it is one of those problems to which there is not an easy answer. As I said before, it is important that the magistrate or the judge ensures that justice is being done. One of the factors they must take into account is whether the witness or the defendant properly understands what is going on. It is always at the front of our mind to ensure that that is happening to the best of our ability. One of the major functions of the judiciary is to ensure that justice is being done.

It is a particular problem, but unfortunately it does not have an easy answer. Some courts are remaining open, and I am sure those are the ones that have access for people with physical disabilities, but mental disabilities are particularly difficult.

**Chair:** That is a fair point. We need to keep an eye on that. Mr Bache and Ms Cumbo, thank you very much for your evidence. It is very much appreciated.

## Examination of witnesses

Witnesses: Amanda Pinto QC, Caroline Goodwin QC, Simon Davis, Bill Waddington and Elspeth Thomson.

Q87 **Chair:** We have a number of witnesses on our second panel. Would you quickly introduce yourselves?



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**Amanda Pinto:** I am Amanda Pinto QC, chair of the Bar Council of England and Wales.

**Caroline Goodwin:** I am Caroline Goodwin, chair of the Criminal Bar Association. I am in silk, as Amanda is.

**Simon Davis:** I am Simon Davis, president of the Law Society of England and Wales.

**Bill Waddington:** I am Bill Waddington, chair of the Criminal Law Solicitors Association.

**Elsbeth Thomson:** I am Elspeth Thomson. I sit on the national committee of Resolution, which is the membership body for family lawyers and other professionals. I am a family solicitor.

Q88 **Chair:** Thank you all very much for your time. Cutting to the chase, we have talked about what is happening at the moment to try to keep the system working, but clearly at greatly reduced capacity from that which we would expect or wish. We have had submissions from a number of your organisations, and others, raising concern about the long-term viability of the profession, both solicitors and barristers. To what extent is that a challenge? How real is it and how would you quantify it?

**Simon Davis:** I thank the Committee for this session. You will have received some details from us on the surveys carried out across England and Wales of many hundreds of firms. The essential point is that no part of the legal sector is going to remain unscathed by this. The essential reason for that is human activity. Lawyers do not exist in a vacuum. They depend on human activity for their success or failure, and the falling off of human activity has seen the most dramatic falls.

Following one of the earlier questions, I have some statistics to help you, based on research carried out by a number of our committees. It comes down again to where human activity is decreasing or becoming more difficult. For conveyancing there are falls in work of up to 60%. For immigration, it is up to 65%, sometimes higher. With housing, no possession cases of any kind are taking place so there is a very serious impact. Crime is at 75%. Family is more mixed. I highlight those because it is those particular areas on which the high street firms regularly depend, and it shows why we have such a major concern in that area.

Q89 **Chair:** Your submissions raise particular concerns about cash flow and reduced fee incomes for high street firms. Is that right?

**Simon Davis:** Indeed. It is a combination. You will hear later from Bill Waddington, but, to focus on crime as one example, the situation before this crisis was such that there was reduced work coming through, with very few charges taking place and individuals being released under investigation. The levels of work were already low. The levels of pay were already parlous. Now, as we come to the crisis, the fall-off of such work



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in such volumes, combined with the fact that to the extent that there is work it is not profitable, means that the sector is in serious trouble.

**Q90 Chair:** We are going to move into a bit more detail about that and talk particularly about crime and family work. I notice that your survey also talks about some of the large firms, the ones people may think are very prosperous. They are also significant contributors to the economy and the economic infrastructure. What is the assessment there? I saw that some 47% of the 50 largest firms are talking of needing to make redundancies or cancel future hiring plans.

**Simon Davis:** Indeed. The Committee will be well aware from previous evidence sessions of how much we depend on that sector in relation to what is going to be happening post-Brexit, and more generally in keeping the City open for business.

The best evidence of the trouble you are seeing will be the large number of firms that have announced the suspension of pay, or the cut of any kind of pay, to partners, and the freezing of salaries. What is happening with those firms is that they are seeing work start to decline. It has not immediately had the same devastating impact as on the high street, but the real worry is that the pipeline of work, particularly global transactions, may not be there as global work in itself dries up. You will have seen partner departures and redundancies in 2008. What those firms will be focusing on right now is conserving cash for the future and being employed in the future.

**Q91 Chair:** That is helpful. I will quickly go through all the other witnesses and then bring in the other members of the Committee.

**Amanda Pinto:** As you know, we have done two barrister-wide surveys. One was for heads of chambers about a month or so ago, and there was a more recent one on individuals.

The results are frankly shocking: 56% of all barristers cannot survive six months in practice, which takes us from the date of the survey to October this year; 69% of publicly funded barristers cannot survive six months, and almost 75% of young barristers—those in practice for less than seven years—will not survive six months. That is not just about the profession now; it is about the profession for the future.

If one extrapolates further, the diversity and expertise of the judiciary, in particular the senior judiciary of the future, will all be drastically affected if we do not somehow get some movement and support for the profession.

**Caroline Goodwin:** The cessation of criminal trials has simply exacerbated a justice sector that has, for the last 10 years, sustained enormous cuts. We have been pared down to the bone. Now we are adding to that the additional problem of Covid-19 and the halting of trials. The junior Bar is finding it very difficult. Of course, those at the bottom of the chain are only doing very small hearings, which, financially,



are not as impactful as trials. It is worrying when you can see, within the first month, a 50% reduction of work for individuals, and the remaining types of hearings are very limited in their capacity.

**Bill Waddington:** I thank the Chair and the Committee for this opportunity. As has already been indicated, on the criminal legal aid side we entered the Covid period in a perilous state. There had been a huge drop in the number of providers anyway. Some 36% were lost between 2010 and 2018. There was some 29% reduction in the number of duty solicitors available from 2016 to 2019. There was a drop in prosecutions of 45% from 2010 to 2018, and a drop in criminal legal aid spend between 2011 and 2019 of some 35%. That is how we entered this lockdown period.

Since then, the situation has got dramatically worse. As Simon has already indicated, there has been a massive drop-off in work. The figure I have is from the DSCC, the duty solicitor call centre, which receives calls from the police when somebody is arrested and asks either for the duty solicitor or for their own solicitor. Early indications are that their volume is down by something like 40%. That was in the very early stages of this. It is probably down substantially more since then.

There is very little coming through at the arrest stage. Of the arrests that are taking place, very few are going on to the magistrates court and the Crown court. Once it gets to those two stages, it is coming to a halt anyway unless it is something that is going to be dealt with there and then.

That has dramatic implications for the finances of legal aid firms and, post-lockdown, it is not as if the floodgates are going to open. There was already, pre-lockdown, a huge backlog of cases, both in the magistrates court and in the Crown court; I think there were some 37,000 cases outstanding in the Crown court pre-lockdown. It is going to take goodness knows how long before that backlog is cleared. Of course, people are not paid until the backlog is cleared, so this is a long-term, ongoing, dramatic and perilous situation for the high street criminal legal aid practitioner.

Q92 **Chair:** A point raised earlier was the suggestion from John Bache about implementing the legal provisions to enable magistrates courts to pass sentences of up to 12 months. It was suggested that that would keep a lot of cases down in the magistrates rather than adding to the Crown court backlog. Does the CLSA have a view about that?

**Bill Waddington:** Interestingly, you mentioned which Government it was.

**Chair:** It was certainly a Labour Government—the Blair Government.

**Bill Waddington:** In 2002 or 2003, Lord Irvine was the Lord Chancellor. I remember it well because he came to open a new magistrates court in Beverley in East Yorkshire, and he told the magistrates that within a few



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weeks they were going to have the power to sentence people to 12 months in custody. As you heard, they are still waiting for it. There is no disrespect at all to John or the Magistrates Association, but I suspect one of the reasons this has never been brought in is because there was an inherent fear that the prison population might explode if they were given that extra power.

**Q93 Chair:** Do you think that is a justified fear on the evidence, or should we look at it again?

**Bill Waddington:** It probably needs to be looked at again, yes.

**Q94 Chair:** Elspeth?

**Elspeth Thomson:** In family law, it is harder to predict where the cash-flow issues are going to hit. The work dropped significantly after 23 March. Resolution does not have figures, so I am speaking anecdotally. I manage a mixed practice firm in Newcastle.

What Simon said about the implications of human activity hitting different areas of law is very true. In family law, there have been behavioural changes in that local authorities initially were not issuing as many care proceedings, but, as the weeks have moved on, that has increased. There has been an increase around the country of applications in connection with domestic abuse, but a lot of private family matters have not been progressing as much, as people have not been able to seek advice. It is a mixed pattern for family law.

We are very conscious that any cash-flow problems are not hitting now because of the nature of solicitors' work. Work is in the pipeline and takes a while to get through the pipeline. People I have been talking to around the country anticipate that the cash-flow problems are likely to hit towards the end of the year when it kicks in from March, rather than us having immediate cash-flow problems now.

**Q95 Andy Slaughter:** As you have all said, this is a crisis on top of a profession that was already in extremis, certainly since LASPO nearly 10 years ago. This is a specific question, and I apologise for asking for a detailed answer.

We have had a package of support announced, perhaps in dribs and drabs, by the Government. What parts of that are working and what is missing from it? You will be aware that we are talking to the relevant Minister later this morning. What message would you like to send to him about what needs to be done to help not just individual barristers and private firms but also the not-for-profit sector?

**Caroline Goodwin:** One of the important things that we need to understand is the distinction between an individual barrister and the chambers model through which they work. All the individual loans to which some people may or may not be able to have access are entirely different from how we support the chambers model. That is run on the



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basis of the income generated by a barrister, working through those chambers. The senior earners—those doing the big trials, which have ceased—are not earning and, therefore, they have no contributions to make to the running and the upkeep of those operations.

You have commitments such as business rates, ongoing staff costs—we have all tried to furlough staff—IT and insurance. All of those need addressing. If you take business rates out of that, you still have massive ongoing costs with staff because of the nature of the staff we employ. May I give you a broad example? We have furloughed, in my chambers, up to seven staff, but we still have senior staff with bills of over £700,000. That is with a very trimmed down operational status.

What we need is a package to assist chambers and help us through this short period so that we can develop the talent we want—the juniors at the bottom. We need something that is bespoke and driven towards chambers.

**Amanda Pinto:** The answer to your question, “Are the Government measures helping and are they sufficient?”, is that, certainly in terms of the attitude of the Legal Aid Agency in respect of criminal work, they are trying their best to help with the hardship that people are facing right now. But the fact is that it is simply not going to address the problem for criminal legal aid practitioners. The measures the Government have put in place already are not sufficient, generally speaking.

Let me explain our position. First of all, the very significant cliff-edge threshold of taxable profits of a business of £50,000 means that those who are self-employed and earning £50,001 are ineligible for any help whatsoever. We say that simply cannot be right. There are many women who have to take childcare costs into account, and that will not be part of the equation for them. In a sense, they will have an expense in doing their business, and in using their expertise for the public good, that will not be taken into account. We were asking for a tapered approach.

Q96 **Chair:** Because the childcare will not come off the taxable profit. Is that what it comes down to?

**Amanda Pinto:** Exactly. Secondly, very junior barristers and those returning from parental leave, for example, will not have the relevant evidence that is required to get the self-employed scheme. I thank Andy Slaughter for sending me the concerns that junior practitioners had, which I already knew about and which we were addressing with Government.

I hope the Government understand that these young practitioners who are earning under the threshold, and who can evidence their earnings in a different way to the relevant tax returns in a sensible and checkable way, will not be able to take advantage of the scheme at the moment. We are asking for an opening up of the evidence that is required in order to be eligible for the self-employed scheme.



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Q97 **Chair:** What evidence would you want opened up if you cannot do the tax returns? Do you have a suggestion for Government?

**Amanda Pinto:** Yes, absolutely. Part of it could be done through the Bar Council, because we can identify practitioners by number, name and where they are in chambers. For example, there could be a declaration from the head of chambers as to what has come through the chambers' management accounts and the software that explains who has earned what. It is that sort of thing; it is very reliable.

There are three other issues. As you know, business rates exemption has been sort of devolved to local authorities very recently. We say that that cannot be right; it cannot be appropriate just to depend on whether your local authority thinks you are important, particularly when barristers provide, according to the Government, an essential service for the public good. We suggest that barristers, as businesses, should be involved in the exemption.

The last two issues relate specifically to legal aid. Criminal legal aid practitioners who, at the moment, do not fall within the scheme because their profit is over £50,000, as I was saying, and who work for the most vulnerable where liberty is at stake, should be helped out. As Caroline said, the work has fallen off a cliff. There is literally no mechanism at the moment for them to earn anything like what they were earning only a few months ago. They will not have aged debt.

I am happy to say that the CPS and the Legal Aid Agency have done sterling work in reducing the backlog in paying their fees. Whereas we are sometimes told, "You must have some money that you are owed," that simply is not the case for criminal legal aid practitioners. As Caroline said, we are asking for absolutely crucial support for chambers to ensure that, going forward, the profession is as diverse as possible for the benefit of the society it serves.

**Simon Davis:** If I can go slightly broader in terms of the numbers and nature of practice than Caroline and Amanda, but with very similar themes, the Government package is certainly most welcome. Of the two areas most used and most useful, the first is furloughing. A large number of firms are using furloughing, especially in conveyancing—about 30% of conveyancers are currently on furlough.

As you know, Chair, furloughing is a blunt tool in the sense that the firm might wish somebody to work part time but that cannot take place. Many solicitors participate in pro bono schemes and are challenged there if they are on furlough.

Deferral of tax, VAT and income are most welcome. One of the more problematic areas of the package is in relation to loans. Our research shows a low take-up of loans, particularly in the kinds of sectors that Andy Slaughter was referencing. We are talking about firms that are in very serious financial straits and already have heavy borrowing. These



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are loans that will have to be repaid by people who have no idea whether they are going to be there to repay them or whether the work is going to be there to finance it.

A bit more broadly, we work with our sister societies in Northern Ireland and in Scotland. Requests were therefore made to the Chancellor by the three societies in combination. The requests were similar to the points made by the Bar in relation to business rates relief, in circumstances where there are solicitors whose offices are shut but who are still having to pay large bills in relation to the kinds of services they have to supply. We say there is no proper reason for those to be excluded, as they presently are, from the business rates relief.

We have about 4,000 solicitors operating in small companies providing a very valuable service in their community. Those who are working for companies are excluded from the scheme, and we have asked for them to be brought in.

As the other speakers have fulminated, legal aid is a sector whose sustainability was being looked at prior to this crisis. We now need to make sure that those firms survive long enough for the sustainability review to take place. In relation to that, we have put forward very workable measures. Most particularly in relation to the monthly payments that are paid, and to the extent that work falls off have to be repaid, we are saying, "Whoa, slow down and make sure that, if those payments need to be repaid, they are repaid at a time when the firms can afford it."

**Elspeth Thomson:** The Legal Aid Agency has been working extremely well with the profession during this time. There have been some very constructive talks, perhaps the most constructive I have seen in my time being involved with them. I would like to make that point.

The Legal Aid Agency is looking at talking to all providers at the moment to understand their financial position. It is not a one size fits all with providers. That work needs to progress so that the agency can understand what the individual providers need. While there has been a lot of work done at speed to make sure the rules are adapted to fit remote working, it is important for the profession that we have confidence that, when it actually comes to those bills being paid several months down the line, they will be, and we are not going to run into difficulties with procedures not having been followed when we were in the lockdown situation.

**Bill Waddington:** Following on from that, on the legal aid proposals for interim and hardship payments, of course it helps, but it means we are just being paid now but getting nothing later. It is simply moving the crunch point. As I said earlier, this is going to go on and on, even post-lockdown. We have the same problem with deferred VAT. It helps, of course, but it is just building up a debt that will have to be repaid later.



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I have a couple of points about something Simon said. He mentioned opening the door on the way in which criminal firms are paid for police station work and magistrates court work. They receive payments in one of two ways. It is either an SMP, which is a standard monthly payment, or a VMP, which is a variable monthly payment. In April, those payments were all reviewed by the Legal Aid Agency, because it was the budget year, and what have you. In some cases, they decreased the SMP and sought to recoup money that had been overpaid in the previous 12 months.

We suggest that this is not the time to start recouping money. Instead, we should look at firms' average VMP over the last 12 months and continue to pay that. Clearly, VMP means that people are getting paid for what they do—an "eat what you kill" method of payment, if you like. Obviously, they are not doing very much at the moment, so under a VMP they are not going to get paid very much. We are saying, keep them as they are. The same goes for SMPs as well.

**Andy Slaughter:** That was very comprehensive. Thank you very much.

Q98 **Miss Dines:** This is a question for Ms Pinto and Ms Goodwin. I should mention, as a former barrister myself, that I have done a lot of my own investigations and discussions with people. I have also read your very detailed survey.

I am extremely worried that we are, effectively, going to have young barristers totally falling off a cliff, and there will be no attraction to enter the system. That has a massive effect on the quality of our justice system and the sort of judges we will be able to recruit later on. What can be done now, rather than by a long-term consultation, by way of effective measures to alleviate that problem so that junior barristers under seven years' call and new practitioners can get some help right now?

**Amanda Pinto:** The first thing, which seems to me a very small measure, is opening up the evidence that is required to allow those very young practitioners, who are the future of the profession, to get Government help through the self-employed support scheme. That is a very direct and immediate way of helping.

Secondly, it seems to me that the chambers model is extremely important in supporting and sustaining the future of the profession. Over the last few years, we have done a huge amount to diversify and make the profession more accessible to people from all sorts of different backgrounds, which frankly must be in the public interest. We are very concerned about losing that progress in the current environment.

We are asking the Government to acknowledge, first of all, as Bill Waddington and Caroline Goodwin said, the very low level from which we were starting. When you are looking at progress and sustainability, the 2019 base level was not the right place to start; we should be starting at a level before that because, frankly, it was so decimated in any event, as the Government accepted for—



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Q99 **Chair:** I understand that, Amanda, but I am very anxious that we focus on the Covid impacts at the moment. It is a legitimate point to make later. I would specifically like to concentrate on the detail about what we are doing in this immediate emergency.

**Amanda Pinto:** The other side of it is to ensure that we have chambers there to nurture those young practitioners. If I may say so, I think there is a real danger of the Government thinking they are going to save some money now but ending up paying more later because there will not be those practitioners coming through at different levels and stages of practice and expertise available for the public in due course. People will not come back to the profession.

Q100 **Chair:** Would you say it is about the infrastructure of the profession?

**Amanda Pinto:** Exactly.

Q101 **Chair:** Do you have anything to add from your angle, Simon?

**Simon Davis:** We have dealt with it quite thoroughly in the context of crime, but we must not overlook the areas of housing and community care. You will be fully aware of the heat maps or, more appropriately, desert maps, which we have provided, showing that in swathes of the country there are no solicitors available to provide the kind of advice people need in relation to housing and community care. That is going to be exacerbated by the present position.

What we need in the present position is to ensure that something is done right now that enables legal aid practitioners across the piece to hang in there, in the hope that there will be further work in the future, and in the fond hope that the sustainability review that is taking place is accelerated and concrete measures are taken fast within that to ensure long-term sustainability.

Q102 **Miss Dines:** I would like to hear from Ms Goodwin, if we have time. I would like a specific list of what we can do now to ensure that junior lawyers will come through the system. Do you have anything to add, Ms Goodwin?

**Caroline Goodwin:** I have. I would like to see an extension of the nature of the evidence that is provided by junior practitioners in the 2018-19 position. I would like to see the investment in chambers collectively that we were speaking about. It is important to remember that, three years post qualification, a junior barrister—a baby barrister—has effectively to be assigned to a set of chambers through which they can develop themselves educationally and go through to their own practice. It is absolutely fundamental that the infrastructure of chambers is maintained. You cannot look at one without the other. Invest, invest, invest in chambers.

Q103 **Chair:** Bill, do you want to come in on that?



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**Bill Waddington:** Sarah, I know you did not specifically ask this question because you were talking about the Bar, but I can speak only about criminal legal aid lawyers. Simon made reference to a heat map. There was a heat map conducted in 2018 that showed the average age of duty solicitors in this country was 47. I am happy that I probably bring down that average. It is only getting worse. The fact is that nobody is going into that line of work. It is the same argument with the Bar. It is unattractive, and what it spells for the future is just a dying profession.

Q104 **Miss Dines:** I was a bit concerned to hear earlier that very few trials have gone ahead at the lower level of magistrates court hearings. I am a bit concerned that we have not had full trials with witnesses. I have anecdotally heard many examples from other MPs of contact orders, for example, where people are not able to get a hearing and solicitors are not able to get the telephone answered through the court system. Also, there is the vulnerability of witnesses, such as those with learning difficulties or a particular disability, who need encouragement before they can access justice.

What can we do as an immediate interim measure that will work? I am not convinced that remote hearings are going to work. Is there more scope for having trials within the present system but with social distancing, rather than what I think is the disenfranchisement of remote participation? What can we do to make it safer to have proper trials, rather than accepting something that is not as good as a proper trial?

**Elspeth Thomson:** The hearings I have done over the last few weeks have all been telephone hearings, and that includes the interim removal of a baby from the mother's care while the mother was in hospital. There have been some very difficult and challenging hearings taking place.

I commend to the Committee the blog written by Celia Kitzinger on the Transparency Project about how a remote hearing felt for a lay person. While the lawyers in that case thought that it worked very well, the perspective of the lay person involved was that it did not. She did not feel that justice was done. That is a very good read to understand it.

At the moment, cases are being dealt with on a case-by-case basis. The president determined one hearing and decided that it could not go ahead. There were two Court of Appeal decisions last week emphasising that it must be on a case-by-case basis. In both those cases, it was felt that remote hearings were not appropriate for justice. That gives us the problem that we are now kicking all these cases off into the long grass and we do not know when we are going to be able to come back.

There are a lot of issues with remote hearings, particularly for parents in care proceedings whose only device to access them is a mobile phone, sometimes a cracked mobile phone, at home. If they are trying to access court bundles, you cannot do that on a phone. We have been trying to take bundles round to clients' houses so that they can look at them in that way, but it is all very temporary.



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In my view, the way we need to move forward is to have some sort of hybrid system, but it has to focus on what the lay parties can do. Particularly for parents in care proceedings, it may be that guardians and local authorities can access courts remotely, but when we can get the courts up and running in a socially distanced way, it may be that parents can be in the court with their lawyers and the judge, and other people access it remotely in a sort of hybrid form. That is a practical solution for the medium term.

**Amanda Pinto:** Thank you very much for the question, Sarah, which I heard you ask earlier. I made a note to see if I could come back on it.

I am really grateful to Elspeth for her contribution. What we are being told in family law is that it depends on where you are. It is very patchy. Our family practitioners say that there are very reduced lists. In some areas, all children work has collapsed, save for some directions hearings. There are other areas where I know there are trials going on—some remote and some not. There is clearly an understanding that there are types of hearings that are, generally speaking, unsuited to remote hearings.

It is all a steep learning curve at the moment. There will be more courts available once they work out how social distancing can work, but of course they will be reduced.

**Simon Davis:** I do not want to repeat what has been said, so I want to focus on the county court. I was speaking to a very senior family practitioner only yesterday. She was saying that it very much depends on which court you are in and which judge. Her concern was that there is still far too much natural inclination to adjourn when things look difficult. I know that varies.

The other point is that so much new challenge has been created in the family world by people being remote. One example I heard is where there is shared custody and there is very real concern by one parent that the other parent is not being responsible in relation to social distancing measures. There is a whole new set of challenges being created for family law practitioners by the current virus.

Q105 **James Daly:** I reiterate my earlier declaration that I am a practising solicitor. I am a partner in a high street firm of solicitors and was a criminal defence solicitor for 16 years.

My first question is to Bill Waddington. What you said is an accurate reflection of my experience in the profession. You talked about the average monthly payment continuing to be paid during this period. How long do you think that should last, and are there any other measures that the Government could take to support criminal practitioners?

**Bill Waddington:** Thank you, James. If we start with business rates relief, we do not currently qualify for that. That could help straightaway. Once courts are running, that will help, but it is going to be quite some



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time before that happens. The problem, as I said, is that making payments now for work that is going to be carried out in the future simply causes a problem in the future. It looks extraordinarily bleak, I have to say.

I appreciate that this is perhaps the wrong time to start making claims for more money, but the criminal legal aid review is essentially on hold. We got as far as the consultation going out and then the response time was delayed, so that is on hold. It had some accelerated payment ideas in it. We would like to get that up and running.

You may or may not know, James—I do not know if you were a solicitor at the time—that there was an 8.75% cut taken from us some years ago in readiness for the two-tier system that never happened. The profession is clamouring for the return of that 8.75%, because it was quite iniquitous.

**Q106 James Daly:** We are talking about a huge question. One of the things about the Government schemes to support all sectors of professions, no matter what they are, is that you can put in measures to help financial sustainability at the moment, but, if there is no work at the end of the period that we are going through now, it is a major problem.

I think you would agree, Mr Waddington, that, with things like release under investigation and other things that are happening within the criminal justice system, we need to look at other things as part of the process to help firms through this, to ensure that cases are dealt with and brought to court in a quicker fashion. The backlog in respect of cases in the magistrates courts and police stations is unacceptable. Would you agree with that?

**Bill Waddington:** Yes, entirely. You know about the release under investigation system—the RUI system. I do not have the latest figures, but for 2017-18 there were something like 193,000 RUIs. It will certainly be more than that now, and during the lockdown period there has been a substantial amount of RUI-ing. It takes an absolute age for that to come out at the other end. The Government were looking at the system of RUI-ing. There was a consultation out about that as well, which is effectively on hold. It really needs looking at.

**Q107 James Daly:** I have real concerns, which have been articulated by our colleagues from the Bar, regarding the sustainability of all forms of practice within the profession and young lawyers coming in. It is a very serious issue. Many firms are simply not in a position, going forward, to hand out training contracts. As a more general legal question, Mr Davis, what can the Government do to assist and help firms through this period, and to ensure that there is a profession for young lawyers to come through?

**Simon Davis:** You are absolutely right in your assessment. Every few weeks of the year, I conduct admission ceremonies for young lawyers and solicitors coming in. They come with their families, and afterwards I



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ask each of them, “What area of law are you going into?” I hear planning, personal injury and conveyancing, but what I do not hear is crime. It is few and far between.

In order to make sure that this is a profession that people can join and know that they are going to earn a living, first of all it is for the Government to make it absolutely clear, and I am sure you will have this opportunity in the next session, that this is a sector they regard as of the utmost importance and that they want people to join it. To make it worth joining, they should make the changes we have been advocating, particularly in relation to the standard monthly payments.

In direct answer to your question, that will go into next year, so it has moved the repayments out during the course of the financial year. There should be an immediate reversal of the 8.75% cut, and they should bring forward the sustainability review to make sure that within it we do not just keep talking, talking, talking, but we have tangible results fast.

**Q108 James Daly:** Could I ask Elspeth the same question regarding legal aid family lawyers and what can be done immediately to assist them?

**Elspeth Thomson:** One idea is to bring back the training contract grants.

**Chair:** I am sorry if people wanted to come back. If there are further follow-ups from our witnesses, do not hesitate to drop us an email with any further observations. We have two more sets of witnesses to come and we have the technology only until 11.45. We have a bit of a queueing system. If we were in person in Westminster, we would be able to go on for much longer because this is very useful. I am very grateful to our panel of witnesses for their time. Do follow up. Thank you very much indeed.

### Examination of witnesses

Witnesses: Chris Philp, Susan Acland-Hood and Alex Chalk.

**Q109 Chair:** You probably heard some of the issues being raised by witnesses in the previous panel. To cut to the chase, we heard earlier of real concerns that despite the hard work being done—I pay tribute to the work that people in HMCTS are doing on this—access to justice is, none the less, not acceptable. Only 7% of respondents to the Bar Council’s recent survey said that they thought we were able to get access done properly. What is the latest position? Do we know how many court cases have been postponed? Do you have any idea how many trials have been dealt with remotely so far? Can you help us on that?

**Chris Philp:** Yes, I would be happy to. First of all, our jurisdiction has done pretty well to keep functioning at a level in very difficult circumstances by contrast with much of the rest of Europe. In many, if not most, European jurisdictions the court system has shut down completely, with no court cases being heard at all. We are operating at a



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limited level, as I will explain in a moment. We are hearing a fair number of cases, by contrast to most of Europe. We can be proud that we have kept things functioning at a level when most of Europe has shut down.

In terms of numbers, I have figures that relate to 27 April—the most recent day for which we have figures. On an average day, before coronavirus, in the jurisdiction there would have been 8,320 hearings on average across civil, family, tribunals and criminal, not just substantive trials but hearings of all kinds.

On 27 April, there were 4,066 hearings. That was 49% of the pre-coronavirus rate. Of those 4,066 hearings, 608 took place principally face to face and 3,458—85% of the hearings that happened—took place principally by audio or by video. We are operating at about half the number of hearings we did previously. It is worth flagging up that, within that, many of those hearings were procedural in nature rather than being full trials, but I think we can be pleased with that progress.

On the question of full trials and full disposals, it varies very much by court type. I will go through each in turn. In the magistrates court, I think I heard somebody refer earlier to trials and getting disposals. There was a period of about three to four weeks, running from the end of March or the beginning of April until the third or fourth week in April, when, essentially, no magistrates court trials took place at all.

We have now rebooted that. Last week, 80 trials were listed. A number of those pleaded guilty, so 27 were effective and took place. This week, commencing Monday 4 May, 197 magistrates court trials have been listed. To put that in context, the average number of magistrates court trials that were effective pre-coronavirus was at about the 800 mark. We have listed for this week about a quarter of the previous level.

In relation to Crown courts, as we know, jury trials are not currently taking place. That was a decision taken by the Lord Chief Justice on 29 March. There is work under way, as you may be aware, to plan for how jury trials might resume in the relatively near future in a limited way. Basically, it will be perhaps using two courtrooms with a video link. That is ultimately a decision for the Lord Chief Justice, but we are working hard to facilitate it.

In other parts of the system—for example, civil and tribunals—a lot more is happening. In civil our disposals, our civil orders, are running at about 80% of the pre-coronavirus baseline. We are doing quite well in civil. There are similar figures in the tribunal system. I can go into more detail on all of that. I hope that gives a general overview of where our court activity sits as compared with pre-coronavirus levels.

**Q110 Chair:** Minister, have you had any discussions with your colleagues in MHCLG about the position in planning inquiries and planning hearings? Although they make the policy, it is your Department that makes the inquiry regulations. I am told that there has been very significant delay in



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the planning sector because they have not been able to bring forward remote hearings at all so far. They are thinking of doing public inquiries in the next six months. Is that something you are sighted of?

**Chris Philp:** No, candidly, it is not. I do not think the Planning Inspectorate down in Bristol is something for which the MOJ has operational or ministerial—

Q111 **Chair:** Apparently you have to make the regulations under which they operate.

**Chris Philp:** We would be very happy to make regulations facilitating remote hearings if that is our responsibility. For example, in the tribunal area we have been working very practically with Sir Ernest Ryder, the SPT, to facilitate that. We have even made changes to legal aid to support it. If we need to make new regs, we will happily make them.

Q112 **Chair:** We can pick it up by correspondence.

Ms Acland-Hood, can you help me on a couple of specific matters that were raised? One was the position on upping the game as far as hand cleansing and social distancing are concerned in the courts that are operating.

**Susan Acland-Hood:** I am happy to help you on that. We have spent a lot of time working with our partners, and with court staff in every part of the country. Thank you for what you said about HMCTS staff. I have been hugely impressed by what people have done.

We now have hand sanitiser available in every court. We have increased the number of cleaners in court. Typically, our cleaners work overnight because in normal times that is much more convenient. In Covid times, the recommendation is that frequently touched surfaces are cleaned regularly through the day. In all of our open courts, we now have extra cleaners. Through our contractors, we have employed over 150 extra cleaners, and they are cleaning frequently touched points in courts throughout the day.

We have also completely reworked our security procedures. We have a checklist for every court manager to make sure that social distancing is observed and that signs are up. For example, every third seat in the waiting room has been taken out of use so that we encourage social distancing. We have re-planned the organisation of courtrooms. We still have significant numbers of hearings taking place, particularly in the magistrates court. Although we are not doing full trials, we are doing all the work that was set out as the most urgent, including urgent overnight hearings. We have made sure that we can arrange the courtroom so as to do those hearings observing social distancing.

We have now taken a lot of what we learned from that, as witnesses reflected in earlier testimony, thinking about how we can safely and securely increase the number of in-person hearings we are doing for



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cases where a remote hearing is judged by the judge not to be appropriate or suitable, but where it is also not in the interests of justice for the hearing to be delayed. What we seek to do is to make sure that we have arrangements in place that allow us to observe social distancing.

Q113 **Chair:** I notice that Minister Chalk is with us as well. As we have until 11.45, it may be convenient if we bring you into this session as well.

**Alex Chalk:** Certainly. As you please.

**Chair:** We can save time rather than having separate panels. As a former member of the Select Committee, Minister, welcome to the other side of the table, albeit virtually and remotely rather than in our usual way.

**Alex Chalk:** It is a pleasure to be in front of the most important Committee in Parliament.

**Chair:** Nobody is going to disagree with that, Minister. Let us press on with the questions.

Q114 **Ms Rimmer:** Mr Philp, could you advise the Committee whether there are signs of more guilty pleas, or more prosecutions being dropped than usual, because of Covid-19?

**Chris Philp:** I am not aware of any prosecutions being discontinued because of coronavirus. All the cases that would have been prosecuted before, as far as I am aware, are still being prosecuted. Clearly, Crown court trials, because the Lord Chief Justice suspended jury trials, are not going to come forward for full trial as quickly as they otherwise would, but I am certainly not aware of any criminal cases, or indeed any cases, that are being dropped for administrative convenience due to coronavirus. That would be quite wrong.

**Susan Acland-Hood:** We do not think that cases are being dropped for administrative convenience. In both the Crown and the magistrates courts, working very closely with everybody, we are trying to do even more of what we all say we want to do in normal times, which is to plan and prepare for cases as well as possible.

In the magistrates court, a process of triage has been put in place. For all of the cases that are being listed, there is a preliminary process of working through triage to make sure that the case is well understood, that the preparations have been done and that everything is ready to be heard. To some extent, through that process of triage, we are seeing that, if there is a weak prosecution case, prosecutors are going away and considering it.

Similarly, on the defence side, we are seeing people carefully considering their pleas through the triage process. We see that both in magistrates courts and in Crown courts. To some extent it is, in difficult times, an extension of practice that we have been trying to encourage in normal times anyway. We are saying, "Get your case ready beforehand and do



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not make decisions about either pleas or prosecutions at the door of the court.”

Q115 **Ms Rimmer:** Are more difficulties being experienced by people with disabilities? Are they perhaps pleading guilty rather than going through the process? As someone who is profoundly deaf, I would find it very frustrating, and I imagine that some people would think, “Let’s just get on with this. I will plead guilty and get it over with.” Is there any indication of that happening? Are people pleading guilty just to get it over with? It can be difficult.

**Susan Acland-Hood:** No, I do not think there is any indication that that is happening. What we are trying to do is to make sure that people understand that nobody for whom remote participation is difficult is required to participate remotely.

Q116 **Ms Rimmer:** It can be difficult to allow the public and the media to have access to remote hearings. I understand that the HMCTS working group met recently. Could you tell us about your experience of that? What have you learned? What have you put in place to improve things for the public and the press?

**Chris Philp:** I can answer briefly, and then I will hand over to Susan. You will be aware that, just before the coronavirus pandemic took hold, we published a new set of guidance for access to the courts by the media, which was designed to better facilitate media reporting of the courts, particularly by local media, which, as we know, have sadly been under a lot of pressure generally.

During the coronavirus situation, members of the public and journalists are able to contact the court and ask to be allowed to participate in remote hearings so that they can view what is going on. There are 159 courts out of just over 300 that are still open and operating, and members of the public can go into the public galleries in a socially distanced way in those 159 courts. There are measures to facilitate access, to enable justice and to enable justice to be seen to be done despite these very difficult circumstances.

Of course, that comes on the back of the change we announced in February, and which is to be implemented relatively soon, to allow for the filming of sentencing remarks by more senior Crown court judges in most cases. All of those measures, some of which are separate from coronavirus and some of which are happening during coronavirus—access to remote hearings, for example—are all designed to facilitate access to justice. As you say, that is extremely important for all of us. Susan may want to add further to that.

Q117 **Chair:** Susan, can you pick up one point when you come in? We had a question raised earlier about what you do in a single justice procedure, where the single justice is at home and the legal adviser is at home. How do we ensure that there is openness in terms of publication as to what is



happening there?

**Susan Acland-Hood:** I am very happy to do that. Everything the Minister said is exactly right. To add a couple of things, early in the coronavirus process we had a meeting of our media working group. A few members raised issues where they had contacted the court to try to get access to remote hearings, and had had difficulty either getting through to the court or had not had as helpful a response as they should have had.

We have issued new coronavirus guidance to all staff, but we have also set up a dedicated number that can be called if people are having difficulty getting access to the court. The feedback is that that has helped. It is something we are going to need to keep an eye on throughout this process. There needs to be particular work on access for members of the public. Although the public galleries remain open, and you are not breaking lockdown if you come to court in order to observe, we understand that lots of people will not want to do that. It will feel odd to them. We need to keep thinking about the public access part with the judiciary, who will make the decision on access to hearings.

In terms of single justice cases, we do not typically have physical public access to the room in which single justice procedure cases are decided anyway, but we do publish the court lists. As part of the work with the media working group, we have improved the system for publication of those court lists, which was one of the things that was announced, as the Minister described, in March. All of those arrangements for publication continue, even in a case where we have the magistrate and the legal adviser doing single justice remotely from home. We have absolutely made sure that we can still publish the lists.

Q118 **Rob Butler:** Both Ministers may have a comment on this. How would you satisfy yourselves that more vulnerable people, be they defendants, witnesses or victims—particularly people with disabilities—can participate effectively in the hearings that we are currently having? How would that work if they need an intermediary?

**Chris Philp:** In terms of vulnerable witnesses or participants, whatever side of the litigation they sit on, the judge will make a determination when they decide to list the case about whether special facilities need to be made available in order to make sure that all those who need them to participate—whether the defendant, a witness or any other party to a hearing—have the special arrangements needed. If they need to be put in place, they obviously will be put in place.

It is conceivable that, in some more extreme circumstances, somebody's disability or condition may be such that, during coronavirus, there is no way of facilitating a hearing fairly. In that case, the judge would obviously defer listing it, but it is essentially triaged by each judge on a case-by-case basis to make sure that everybody who needs assistance gets assistance, and nobody is put in a position where they have to



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participate in some kind of judicial or court proceeding when they are simply unable to. That would obviously offend every notion of natural justice.

**Q119 Rob Butler:** I have a follow-up on a related area, which is about the youth court. I asked John Bache from the Magistrates Association about that. The youth court is normally a very different kind of setting. The idea is that it should be more informal and there should be greater personal engagement. How do you satisfy yourselves, almost putting the procedure aside, that that is happening effectively and that the youth court is proceeding as it should?

**Susan Acland-Hood:** To some extent, it is the same answer as the Minister gave. The judiciary work very carefully and closely to think about what cases are appropriate to hear and in what way. The Minister spoke about the numbers of trials that we are restarting in the magistrates court. The focus there is on making sure that, when we have cases that involve people where a delay would be particularly damaging, we bring them to the front of the queue. We have done a small number of youth court cases as part of that growth in number, precisely for the reason that when people are vulnerable the delay can be particularly damaging to them. There has been great thought given to making sure that we can make arrangements in court that take account of the vulnerabilities of witnesses while also socially distancing.

I think a number of your witnesses spoke about hybrid hearings, where we might make sure that we have some people present at the hearing in person, who needed to be there and felt they needed that support and immediacy, and others appearing remotely. That is in fact how we have done some of the early hearings.

**Chris Philp:** On the prioritisation point that Susan Acland-Hood just touched on, it is worth mentioning that across all the different parts of the system we and the judiciary are seeking to prioritise the cases that are the most important and that urgently need to be heard. For example, domestic violence protection orders are all being heard because they are so important. Of course, all overnight custody cases are being heard. Custody time limit cases are all being heard. Anything that is of a pressing nature to the public or to the justice system is being put right at the front of the queue.

**Q120 Miss Dines:** This is a question for the Ministers. What reassurance can I have that the historic right to a jury trial in front of one's peers in public is going to be kept and that there will be no erosion of that historic right? What resources will be put into allowing the backlog of Crown court trials to be dealt with at the end of this pandemic?

**Chris Philp:** Thank you for the question, Sarah. First of all, there is categorically no question at all, under any circumstances, of the right to jury trial being removed. It is a fundamental right. It goes back centuries in our history, and it will never be removed at all.



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If we have further emergency legislation on coronavirus, which is far from certain and is, indeed, probably less likely than likely, we might consider allowing a minimum jury size of seven rather than nine, as it currently is. That would require legislation. I am not sure there will be any further legislation, to be honest. That aside—the possibility of a seven minimum rather than nine—there will not be any diminution of the right to jury trial.

You asked about clearing the backlog. There are a couple of things to say there. First of all, we are working very actively with the senior judiciary, in particular the Lord Chief Justice. He has nominated a judge to look particularly at that and how we can get jury trials safely restarted in the relatively near future by spacing people around the court or possibly having two courtrooms with a video link between the two. There are those kinds of ideas to get jury trials started, even under a lockdown or semi-lockdown set of circumstances.

In addition, as Susan Acland-Hood said a few moments ago, the Crown court is actually doing a very good job of dealing with all the other things on its desk. That is partly things like dealing with sentencing when somebody has been convicted, particularly when the person is already in custody. There is a lot of sentencing from custody happening in the Crown court and in the magistrates court. Additionally, a lot of the procedural work that is preparatory to the main trial is taking place as well. We should be in a good position to proceed rapidly once jury trials can resume.

It is also worth saying that the level of receipts into the Crown court is significantly down. We are receiving far fewer cases than we were before. If I can refer to my system, receipts into the Crown court are down 77% compared with the pre-coronavirus average. The backlog, if I can put it that way, in the Crown court and elsewhere is going up a bit but not by as much as you would have intuitively expected.

**Q121 Miss Dines:** Can we ensure that members of the public will be able to view safely? That is an important part of it—not only to be tried by your peers but for it to be witnessed by members of the public. Can we have your assurance that that will carry on, albeit safely?

**Chris Philp:** Yes. In all 159 courts that are currently operating with face-to-face hearings, the public can go into the public gallery in a socially distanced way. That will certainly continue. As somebody suggested a few minutes ago, access to justice and visible justice is a critical part of our civil liberties and our history.

**Q122 Dr Mullan:** I want to follow up on the questions about the backlog, Minister. It is absolutely important that we recognise the good work being done to try to maintain court proceedings at this time, and of course there will be, to some extent, a build-up, but the backlog issue is of much longer standing than that. There are something like 37,000 outstanding Crown court cases, which in itself is a year increase of about 13%.



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Beyond the current crisis, we are going to need to increase capacity above what it was originally if we are to clear the backlog. Are there any plans in the longer term for increased sitting days or court capacity to start driving that number down rather than its current trajectory in the other direction?

**Chris Philp:** You mentioned the work that has been done during the crisis. I take this opportunity to say a huge thank you to the whole HMCTS family, and to the judiciary and the magistracy, for the work they have done in keeping our system functioning in very difficult circumstances. I would like to say a huge thank you from the bottom of my heart to all of those in our wider justice family. We have managed to do that by contrast with most of Europe, which has shut down entirely.

You asked about the outstanding caseload in the Crown court. To give you the exact figure, as of 26 April it was 35,679. One good thing about being on lockdown is that I now have all these figures available on my laptop rather than having to rifle through massive piles of paper.

It has gone up a bit in the last year or two, although it is still low by historic standards. If you go back 10 years, the outstanding caseload was a great deal higher. Clearly, we want to get it down, coronavirus or not. For that reason, the number of Crown court sitting days as a baseline in the current financial year was committed to by the Lord Chancellor as an absolute minimum of 87,000 sitting days, with a view to revising it further upwards by the concordat process. The Crown court sitting days in the last financial year, 2019-20, were increased in year, but were around the 83,000 mark. A 4,000 increase has been agreed already, with potentially more to come.

The concordat process would have taken place in March/April time but has now been postponed to September because of the current circumstances. That will be discussed between the Lord Chancellor and the Lord Chief Justice in about September. Quite a few of the Crown court sitting days that might have happened in the course of April, May and June probably will not happen, so they can be carried forward into the back half of the year. On top of that, there is a discussion about an increase beyond 87,000. I hope that gives you some sort of reassurance that the Crown court sitting day issue has been partly addressed already, and there is more discussion to come in September.

Q123 **Dr Mullan:** I assume that has financial implications. Is that something that has already been discussed with the Treasury? Is that increase in sitting days within existing budgets? Have you talked to the Treasury about increasing the number further and the financial implications of that?

**Chris Philp:** The 87,000 sitting days that were committed to before the beginning of the financial year are fully funded. I think there was some room to go further as part of the concordat process, if I can put it diplomatically. That was in place before coronavirus.



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There is a process going on across Government in all Departments, not just in the Ministry of Justice, looking at the financial implications of coronavirus and where that has created additional costs. For example, as you can imagine, our court fee income is down significantly because fewer people are filing court applications at the moment. Every Department, including us, will be talking to the Treasury in the coming weeks and months about the financial impact of coronavirus and what it means. The question you raise will obviously be part of that discussion.

**Q124 Dr Mullan:** The Magistrates Association gave evidence earlier. One of the issues they have talked about before is the raising of the retirement age. I know that is something the Lord Chancellor said he is minded to look at. Is it going to be looked at more closely in the short term as a way of tackling the backlog in cases?

**Chris Philp:** That is a good question. We have absolutely committed to consult on increasing the mandatory retirement age above 70, where it currently sits. Our intention is to bring forward a consultation on that as quickly as we can post coronavirus. Had it not been for coronavirus, I suspect that that consultation would probably have been launched about now. It has obviously been delayed by coronavirus. We are going to move quickly on that. On your question about whether we should move more quickly on it to help clear the backlog, at the moment our constraint is not judicial availability but a whole range of other factors to do with maintaining social distancing and getting the courts open again. It is an interesting question.

In the Crown courts and other courts, excluding the magistracy, there is a provision already for the Lord Chief Justice by exception, if business needs require, to allow people to sit beyond 70. That does not apply to magistrates. It is an interesting thought. If we feel that a shortage of lay magistrates is a constraint in helping us catch up, that is a thought we should consider. It would probably require primary legislation though, which obviously has a timing implication.

**Q125 Dr Mullan:** So, just to be clear, there is currently not an issue with a lack of availability of magistrates, and you do not think it would serve a purpose in the short term?

**Chris Philp:** At the moment, most of the 14,000 or so lay magistrates have not been sitting. We have been getting some of them to come back and do single justice procedure work in the last week or two, but almost all the magistrates court work being done so far during the coronavirus episode is being done by DJs sitting in the magistrates court, obviously led by Emma Arbuthnot, the chief magistrate. That situation needs to be kept under continual review.

**Q126 Maria Eagle:** We have already heard that there was a backlog, which my colleague referred to, of about 37,500 outstanding cases in the Crown court. There is now going to be a bigger backlog as a consequence of Covid-19 and the enforced lack of activity. Over what period of time,



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Minister, is the Department planning to reduce that backlog and get rid of the Covid backlog? Obviously, you had plans to try to reduce the backlog that was already there, and had been going up, but over what period of time are you planning to eliminate the Covid backlog?

**Chris Philp:** In relation to the Crown court outstanding caseload specifically, to call it a backlog is slightly the wrong term, because some of them are cases that are simply waiting for witness statements to be compiled and for other pre-trial formalities to be completed; not all of those cases are ready for trial. In the week ending 15 March, there were 37,338 outstanding cases in the Crown court. A week or so ago, the week ending 26 April, they had fractionally gone down to 35,679, because the receipts had gone right down and a lot of the disposals, like sentences, had been done.

In the interests of full disclosure, I should say that obviously we have not been doing jury trials, so the number of outstanding jury trials will have gone up. The total outstanding caseload across everything—trials, sentences and everything else—has fractionally gone down. None the less, I think we would agree that that figure of 35,679 is higher than we would like, even though it is much lower than it was 10 or 15 years ago. We obviously come back to the sitting days question that Kieran was asking about a few minutes ago, and why we increased the level of Crown court sitting days to a minimum of 87,000 this year. It will likely go higher via the concordat process.

Q127 **Maria Eagle:** Could you tell us over what period of time you expect to reduce that backlog to nil, or to the frictional impact of there being cases in the system that are not ready for trial?

**Chris Philp:** That is right; it will never be nil because there will always be a significant number of cases that are waiting for preparation, witness statements and so on and so forth. It will never be nil.

In terms of setting targets, no, I do not want to do that, because it depends on the case mix and how we get through the recovery. It depends, frankly, on how the national lockdown works. Clearly, at a UK Government level I imagine that the Government in the coming weeks and months will be announcing different levels of relaxation to the national lockdown that affects all of our national life. The pace of that relaxation will obviously affect what we can do in the courts. It is out of our control at the Ministry of Justice; it is a national decision, and we will be affected by it as much as any other parts of the public sector, or indeed businesses.

Q128 **Maria Eagle:** Could you say something about the caseloads in other courts, not just the criminal court? Justice delayed, whether it is civil or criminal, can end up being justice denied. What about backlogs in other areas of court work?

**Chris Philp:** I have the figures in front of me. If you would like to specify the jurisdiction, I can give you the figures.



Q129 **Maria Eagle:** What about civil claims? They can often be extremely important for people's financial wellbeing, and wellbeing more generally.

**Chris Philp:** On civil orders, we are running at about 80% of the level we were pre-coronavirus, which is pretty good in the circumstances. The intake has been down hugely; civil receipts are down by 88%. They have gone down enormously, which means we have not seen a huge accumulation of cases in civil.

Receipts into the immigration tribunal are down by 88%, but the disposals—the actual cases decided—are down by only 55%. As a consequence, the outstanding caseload is flat to slightly down. You get that sort of picture across all tribunals. Receipts are down hugely and disposals are down a bit, so the outstanding caseload is fairly flat.

There is a bit of an outstanding caseload build in the magistrates court. As I mentioned, we are not sitting with lay magistrates and we have not been doing trials during the month of April.

Q130 **Chair:** Minister, perhaps you would be able to write to us, to save time, with the details you have on the screen in front of you. Thank you for sharing what you have. If you can give us the whole lot in the form of a letter, we can then make it part of the evidence base.

**Chris Philp:** Yes.

**Chair:** I think the remaining questions are predominantly for Mr Chalk.

Q131 **Andy Slaughter:** Yes, we do not want you to feel neglected, Alex. We had a senior panel from the legal professions earlier. They made some quite telling points about what they thought were gaps in the Government's support package at the moment. I will try to summarise just three or four of those and ask whether you can think of ways in which they can be filled.

Not for profits in many of these areas were clearly already in financial difficulties. We have seen several law centres close recently. They have asked but not received a response from the Legal Aid Agency about continuing with average monthly payments. Is that likely to happen?

There are large areas of work, for example, in possession claims. Obviously, we support the suspension of possession actions, but it has caused a big dent in income. Is any sort of grant aid going to be made to not for profits to cover that loss of income?

In relation to new entrants to the profession, we heard that there is a continuing problem with junior barristers providing evidence of fees when they have just started earning. The Bar Council said they would be able to provide some information on that. Would you look at that?

Possibly wider than just the legal profession is the issue about part-time work. There are those whose work has dropped substantially, and they then have a choice between doing some work or trying to get on the self-employed scheme, or, indeed, those who are just above the £50,000



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trading profit level.

Finally, a lot of small solicitors' firms are struggling, so loans and early payments do not resolve matters. Is there any means of supporting those firms? They particularly made a point about business rates. At the moment, legal firms and chambers do not fall within the exemption for business rates.

I am sorry that is a bit of a mouthful, but could you respond to those points if you can?

**Alex Chalk:** Certainly. Thank you, Andy, for raising those questions. I had the advantage of listening to some of those points, all well made.

I begin by saying something that perhaps should not need to be said, but I am pleased to emphasise it. Legal aid and access to justice are absolutely essential in a fair society. I feel that very passionately. I spent 18 years of my life as a legal aid barrister, and I am absolutely committed to its future. It is essential for all the reasons that no one on this Committee needs reminding of.

In terms of the four things you referred to—the grant scheme, bringing new barristers within scope, the £50,000 and business rates, et cetera—everything is being given the most active consideration. My officials are working extremely hard and liaising very well, whether it is with the CBA, the Bar Council or the Law Society, to thrash all these out, and will continue to do so. I am grateful to them for their engagement.

However, it is really important that in those conversations we do not lose sight of what is already in place in terms of the levers to pull on. One of the nice things to emerge from the evidence was the point about how the LAA are working really hard. Yes, but what that translates to in real terms is that they have quadrupled the number of staff to handle fee claims, which is important for two reasons. First, if you have not billed your case, please get on and bill it, because there is something like over £100 million of work that has been completed but not billed, and there are now four times as many staff to get through it. That is the first point.

One of your witnesses said there is not any unbilled work, but that is not right; there is some. I mention that because, when I listened to the video provided by the CBA, with junior barristers saying, "These are the issues that we are facing," which was very powerful and very compelling, one of the things that struck me was a young woman whose parents had both been in custody, and she was now at the Bar. She was saying, "We have done the work; the problem is cash flow." There is money in the LAA ready to be downloaded. That is the first point.

The second point is the SI, which I signed, that means there is a hardship payment you can claim. If you have only billed £450—it used to be £5,000 and you had the case for six months—it means that in pounds, shillings and pence you can draw down £140 million. That could be a huge slug coming in. I mention that because only 16 applications have



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gone in under AGFS and six on LGFS. That is not intended to be a criticism at all. All I am saying is that there is a very powerful lever to pull on. To put those two in context, if you add those two figures together—£100 million and £140 million—that is £240 million. The annual total spend on legal aid is about £1.8 billion, so you can immediately see that there is a significant amount of money to be drawn in.

I am sorry for the long answer but the next ones will be shorter. The last thing is that we have not heard any mention today of the business about the bounce-back loans. Why is that important? Because if you come within the SEISS, which is what some people are saying for the junior barristers and about which I am extremely sympathetic, that is £7,500: three times £2,500. What does that mean after tax? Say, for the sake of argument, it is £5,000. If that is what means the difference between solvency and insolvency, with a bounce-back loan you would pay no interest on the first year and then in the second year 2.5%. That is £125. I only mention that for completeness.

The short answer to your question is that all the points you raise are receiving the most active consideration.

**Q132 Andy Slaughter:** You have done a very good job of summarising what the Government have done. I think that was acknowledged by the profession and is much appreciated. What they are asking about is where the gaps are.

I want to come back to you on, first, not for profits. What is going to be done to sustain the income and, indeed, the survival of not for profits? What is going to be done for those at the bottom of the profession—for example, those who cannot produce receipts at the moment? On those two areas, could you either give a response now or look at them and come back to us?

**Alex Chalk:** I can certainly say that both of those are critically important and are being given very careful consideration. On the second issue about people who are new returners from, say, maternity leave or are, indeed, young barristers who have not had a full set of accounts, and whether we could find a way of accrediting that in a separate way, that is being considered. You will appreciate, Andy, that this is an extremely difficult issue. You have to consider the knock-on implications. Of course, that is being considered. The reason I made a bit of a point about the existing levers is speed. We talk about justice delayed being justice denied. Well, income delayed is income denied at a time like this. We are talking about the most potent and immediate levers, and that is the reason why I made those other points. The short answer is, yes, both are being considered.

**Q133 James Daly:** I want to ask about criminal legal aid firms. I do not know whether you heard Bill Waddington's comment, but what Bill said is a reflection of my experience and that of other practitioners. If the average of the monthly payment could continue to be paid but, because of the



lack of work, the repayment of the money that would then be owed back to the Legal Aid Agency could be staggered over a period of time, it would be a great help to legal aid firms in getting through this period. What is your view on that?

**Alex Chalk:** It is one of the issues that is being looked at as we speak. I completely accept that. I want to make a wider point though, if I may, about criminal defence. I absolutely accept the point that is being made. It is not crying wolf. When they say, quite rightly, that people are getting older, in terms of court duty solicitors, that is absolutely correct. It is one of the reasons why we introduced the criminal legal aid review. It is important that we make sure we have a diverse, solvent, enduring and sustainable criminal defence service, so that if the Crown charges a big six-hander, you are not going to have conflicts of interest and there are enough firms to meet all those sorts of things.

In terms of precisely how that all works, one of the things I would like to see is for those solicitors to get rewarded for the critical work they are doing early in the case—when they are writing the letter of representations to the Crown to make the decision, and saying to them, “For goodness sake, do not proceed with this because there is not sufficient evidence or it is not in the public interest.” Secondly, when they are proofing witnesses, instructing experts or getting other witnesses and so on, we have to get to the point where that critical work early in the case is properly rewarded. That is what I am keen to do, and that is what I think will emerge out of the CLAR.

In terms of the short-term stuff—the here and now—as I indicated, those interim and hardship payments matter. That facility is much broader than it ever used to be. The final point I want to make about emergency stuff is that one of the key things, at the risk of stating the obvious, is the furlough scheme. I know that a lot of solicitors’ firms and barristers’ chambers making use of that. But if there are criminal defence firms that are saying, “Do you know what, under our contract we cannot furlough Joe Bloggs because he’s got to keep the office open, which is one of our terms under the contract,” the LAA are taking a flexible approach. They are saying, “Okay, well listen, I know it is in the terms of your contract, but we can relax that so that you can furlough Joe Bloggs.” That will immediately hit their bottom line. All I am saying is, yes, let’s look at the SMP, and so on, but don’t forget the levers that are available.

Q134 **James Daly:** I want to make one final point as a former member of the profession. There was an 8.75% cut to legal aid fees regarding the two-tier system. Sustainability to get through Covid is one thing but, as you know and do not need me to tell you, sustainability going forward is another issue.

The two-tier system did not come to fruition. We are obviously in a very difficult financial situation because of Covid. Could I ask that the Department looks at that as well and whether there is something that could be done?



**Alex Chalk:** Absolutely. The whole mantra is that it has to be sustainable. That means finance is a part of it. The only point I want to make is that, as part of what I think was a real statement of good faith in this regard, the Government were looking at the accelerated part of CLAR. In other words, for the urgent issues that are really causing a problem now—review of disclosed or unused material, cracks, PPE and those sorts of things—there is a sum worth between £32 million and £50 million to draw down into the profession. That comes off the back of the Government, in 2018, putting an additional £23 million into the Bar.

I am not going to bore you with all the figures now, but your average AGFS fee for a trial has gone up since 2015, so some of that was not strictly correct, particularly as £80 million went into CPS fees as well. I appreciate that that is the Bar rather than solicitors, but I absolutely take the point about the sustainability of the profession. It has to be financially sustainable as well, to ensure you get the pipeline of talent into the system.

Q135 **Chair:** Thank you very much. I am sorry that we are pushed on time. Minister, if you were able to write to us in more detail with the figures that you referred to just now it would be helpful.

**Alex Chalk:** I would be delighted to do that.

Q136 **Chair:** We can append it as part of the record of the proceedings.

What steps are being taken to make well known to firms the flexible approach being taken by the LAA to furloughing? That could make quite a big difference, as Mr Daly observed. Are they communicating that?

**Alex Chalk:** Yes, they are really working hard. One of the things that has been encouraging about all this is the interaction between the LAA and the firms. They are working well. Indeed, the Law Society are taking evidence as well. I take this opportunity to make that point. First, the LAA are being flexible. Secondly, they have the resources to get through the interim and hardship claims. Please draw on those resources. We want to assist people to get over this dire situation because we care about the sustainability of justice.

**Chair:** Ministers, thank you very much indeed. We appreciate your time. I am sorry that the technology does not permit us longer, but I am very grateful to you, to your officials and all the witnesses who have given evidence to us on what are important matters. I am grateful, too, to all my colleagues on the Committee for their co-operation in getting through an awful lot of material in a fairly tight timeframe.