



Justice Committee

Oral evidence: [The work of the Secretary of State](#), HC 312

Wednesday 9 July 2014

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Written evidence from witnesses:

- Rt Hon Chris Grayling MP, Secretary of State for Justice and Lord Chancellor, Ministry of Justice

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Members present: **Sir Alan Beith (Chair)**; **Steve Brine**; **Mr Robert Buckland**; **Jeremy Corbyn**; **Christopher Chope**; **Nick de Bois**; **Mr Elfyn Llwyd**; **Andy McDonald**; and **John McDonnell**

Questions 1-61

Witness: **Rt Hon Chris Grayling MP**, Secretary of State for Justice and Lord Chancellor, Ministry of Justice, gave evidence.

Q1 Chair: Good morning and welcome back, Lord Chancellor.

Chris Grayling: Good morning. Thank you very much.

Chair: I have to invite members to declare any interests that might be relevant to today's session.

Mr Buckland: I am a practising barrister, though I have not taken any legal aid cases since 2010, and I am a recorder of the Crown court.

Mr Llwyd: I am a member of the Bar. When I cut myself free from this place, hopefully I shall be back at the Bar earning an honest living.

Andy McDonald: I am a former legal aid practitioner, hoping never to return.

Q2 Chair: If we could start with the prison situation, you have had to make provision for recruiting staff, bringing back retired personnel, because you are anticipating a possible increase in the prison population during the summer. What has contributed to that perceived need and unpredicted increase?

Chris Grayling: There are a number of factors. Probably the most visible and obvious change over the last year or so—we have about 1,600 more people in prison than a year ago—is the quite big increase in the number of sex offenders coming into our prisons.

Many of them are historic sex abuse cases; something like 700 new people in our prisons are in that category, and I will happily supply the detailed figures to the Committee. That has had an impact on the population. We have seen a slight change in the crime mix in the Crown court, and an increase in the remand population.

It has not caused significant pressures as yet. The most recent figures, which go up to April, show a reduction in the level of overcrowding in prisons, but with the more buoyant labour market in some places we have seen staff shortages appear. In some places, we need to take care to make sure we do not get localised pressures within the estate, so we have brought on stream some reserve capacity, and looked to create a prison reserve of former staff, who can be brought in for short periods of time, just to make sure we do not run into any problems. I am running the estate fairly tightly at the moment in terms of volume because of cost pressures, though we are opening about 2,000 new adult male places between now and next spring. This is very much a short-term issue while we wait for the new house blocks to start opening this autumn, and the re-roling of Downview and Warren Hill to take place in the latter part of this year.

Q3 Chair: I was interested that you used the word “reserve” in the House when you were explaining what was happening. Is that the formal concept of a reserve, almost like military reserves, or is it just a figure of speech?

Chris Grayling: I intend to make it a genuine facility. It seems to me that at the moment most other areas of the public sector can call upon agency staff in some shape or form if they have short-term problems—a spate of resignations or whatever—and the Prison Service does not really have that. It seemed sensible to look not simply at the short term but to say to staff who had taken early retirement, for example: “Do you want to join a prison reserve, which means that, from time to time, if we’ve got a need we might ask whether you want to come back and do a short-term contract for us?” That was a sensible resource for the Prison Service to have access to.

Q4 Chair: Will people be signed up as members of that, or will they be offered zero-hours contracts, or what?

Chris Grayling: I am not sure we would offer zero-hours contracts. It is an arrangement whereby they express an interest. We have had a significant number of responses from people we can call upon.

Q5 Chair: When the chief inspector of prisons spoke to us in a private discussion, which I will not quote, we explored with him the nature of the prison overcrowding problem that might arise. In public statements since then he has said quite a lot about it. One of the things that emerged from what he said was that the bigger problem—overcrowding can be a physical problem—was having more prisoners than you have staff to look after and rehabilitate them. When you answered the question just now you talked in terms of more physical space becoming available, but if you do not have the staff numbers, all your rehabilitation ambitions will not be satisfied.

Chris Grayling: There are two parts to that. First, we are of course introducing the new benchmarking structure across the prison estate. That has led to reduced staffing levels in many prisons. Alongside that, you simply have the routine ebbs and flows of managing a very large work force. People come and go. It takes about six months to train a prison officer. The point about having a prison reserve is that, if you have a shorter-term need, you have a pool of people you can draw upon to come in and do short-term work. We are recruiting all the time for that regular ebb and flow of prison staff to make sure that, as people decide to move on to something else, others join the Prison Service, but that is no different from the way any normal large employer would work.

Q6 Chair: But do you recognise that, if prison numbers exceed anticipated numbers, you do not have merely a physical problem of where to put them—you have the problem that you do not have the number of staff you previously decided you needed in order to have both security and a constructive regime that makes people less likely to reoffend?

Chris Grayling: Indeed. If the prison population rises and you have more prisoners than expected, you have a higher cost than you expected. Much of that cost is staffing because the buildings are there anyway, but in terms of planning for the house blocks as they come on stream, there is staff planning to go with those as well, as there would be with any new facility.

Q7 Chair: Cost pressures have led you to make significant economies in the public sector prisons, but because contracts have already been made you cannot do that in the private sector prisons, unless you renegotiate contracts. Is that happening?

Chris Grayling: The private sector prisons are already operating at a much lower cost level than comparable public sector prisons. What we have been looking to do is benchmark across the estate to bring down costs to the lowest best practice levels, often getting costs down to levels equivalent to those available through the private sector. We will continue to look for ways of generating savings. The biggest challenge initially, and the reason I accepted the benchmarking proposals from the Prison Governors Association and the unions when I first took office, was that it seemed to me to make sense to look across the whole prison estate to bring down costs to the best levels attainable so that we could get best value for the taxpayer.

Q8 Chair: One of the other problems that has been emerging in the statistics we have seen is the rise in violence and the rise in self-inflicted deaths.

Chris Grayling: To start with self-inflicted death, this is clearly something that requires careful attention. Any death in custody is a death too many. Sadly, there have always been deaths in custody. They were historically much higher than they are now. We are living in a society where the suicide rate is rising; indeed, in the community the suicide rate is rising, so it is a broader social challenge and something we take very seriously.

My colleague Jeremy Wright, the Prisons Minister, is doing work now. He has established a review into deaths in custody among young people. If we can identify a way of making it less likely to happen, we will certainly do so. We have had expressions of concern from

the inspectorate over this, though the inspectorate has not been able to operate a tangible strategy to deal with it. We all recognise it is a concern, and we are looking very carefully at how to reduce it.

In terms of violent incidents, overall the number of assaults within the estate has fallen. What is a matter of concern is that the number of assaults on staff has risen, though it has only returned to the level it was a couple of years ago, so an improvement has disappeared. I want a real focus on trying to make sure we tackle that again. I do not believe that the issue of assaults on our staff has been treated seriously enough by the prosecuting authorities in the past. Jeremy Wright is in discussions with the DPP about this. My personal view, and indeed the view we are trying to encourage, is that if a prison officer is assaulted there should be a charge. I want to see us move to a situation where that means a much longer prison sentence.

Q9 John McDonnell: Secretary of State, the independent monitoring boards, the Prison Officers Association, prison governors and the prisons inspector all warned you that reductions in staff numbers to cut costs would make prisons unsafe and less orderly. As a result of the cutbacks in staff and of overall mismanagement, you now have a situation where 77 out of 119 prisons are classified as overcrowded; the ratio of prisoners to prison officers, according to our briefing note, has gone up from 3:7 to 4:8, which is 30%; self-inflicted deaths have gone from 60 a year in 2008-12 to 91 a year, which is a significant increase; self-harm and recorded assaults among adult prisoners were falling but there is now an increase of 1,500; self-harm among young adults has risen as well; assaults on staff in 2013 were 3,148, whereas the year before there were 2,987; and serious assaults have gone up from 260 to 365. You were warned, but it is only now that you are rushing round with all these emergency measures to re-recruit the very staff you laid off only 12 to 15 months ago. Isn't that mismanagement?

Chris Grayling: Mr McDonnell, when I took office in September 2012 I inherited a tendering process for our prisons, which envisaged privatising nine prisons and also a continuing programme of privatising our prisons. I also found on my desk a proposal from our staff, from the governors and the unions, recommending instead that I adopt a public sector benchmarking approach which would enable the changes that needed to happen to take place within the public sector. I gave this much consideration and came to the view that we would indeed accept their recommendations as to the way forward and apply them across the prison estate. That is what I have been doing. I have been implementing a programme to deliver change through the public sector that was recommended to me when I took office by the staff who work for the Prison Service. The unions sat in my office when I gave them that decision, and described it as a victory for the staff, so I am afraid that there is something of a contradiction when you say that I am acting against the wishes and recommendations of the unions and the staff. It is simply not the case.

In terms of the numbers you raise, the reality is that the most recent prison overcrowding figures, which were published about two weeks ago and refer to the period up to April, show that overcrowding is falling, but it is worth remembering what prison overcrowding actually means. It means prisoners sharing a cell. It remains my view that, if prisoners have to share a cell in order to make sure they can go to prison, this is not a great problem.

I am acutely aware, as I said, of the increase in the number of deaths in custody. That is something to be regretted, and we are looking at it very carefully. I can say that there is no clear linkage between the nature of the prison and the likelihood of self-harm. The patterns are broadly similar in public, private, benchmarked and non-benchmarked prisons, but it is something we take very seriously and we will continue to do so. That is why we are looking particularly at deaths in custody among 18 to 24-year-olds.

Total assaults in our prisons are down. There were 14,300 in the year ending December 2010; today it is 14,100. The number of serious assaults on staff has increased, which is something I regard as enormously important, and that is why we are in discussions with the DPP about much stronger sentences and a much higher likelihood of prosecution taking place. I am afraid I do not recognise the picture you are portraying.

Q10 John McDonnell: For the record, the POA, as we know, have refuted the idea that they said that was a victory in their discussions with you; they have written to say that.

Chris Grayling: I want to make it very clear to the Committee that one of the senior officials of the POA, in my office, described as a victory my decision to allow the internal option to be taken, rather than going down the privatisation route. I make it absolutely clear and say emphatically on the record to this Committee that that is what happened.

Q11 John McDonnell: They have refuted any suggestion that supports reductions in staff and allowing overcrowding to rise in this way. Just on the figures, in terms of Operation Tornado—

Chris Grayling: Can I challenge you? I have just said to you that the official figures that were published—

Q12 Chair: Order. We can obtain the views of the Prison Officers Association from the POA. You have been given the opportunity to respond to the point.

Chris Grayling: I just wanted to correct Mr McDonnell's saying that overcrowding is rising. The most recent figures show that overcrowding is falling.

Q13 John McDonnell: The proportion of prisoners to prison officers has increased, hasn't it?

Chris Grayling: The figures published two weeks ago show that overcrowding in our prisons has decreased. I do not manage the statistics; our statisticians do that.

Q14 John McDonnell: It is a matter of fact.

Chris Grayling: For the benefit of the Committee, overcrowding has gone down.

Q15 John McDonnell: The proportion of prisoners to prison officers has increased, hasn't it?

Chris Grayling: That is an inevitable consequence of the benchmarking process that I described.

Q16 John McDonnell: And as a result do you also accept that use of the tactical response group increased by 57% in 2013 over the previous year? In Operation Tornado, there were five calls in 2013 for serious incidents, as against two the year before.

Chris Grayling: There has been no increase in the number of serious incidents. What we have seen is an increase in the number of incidents at height, where prisoners basically climb up on to the netting in order to try to secure a transfer to a different prison. It is one of the techniques that is used by prisoners to get themselves moved to a different prison, but the number of serious incidents has not risen, and the number of call-outs by our Tornado team is half what it was seven years ago.

Q17 John McDonnell: But it has increased over the last year from two to five, and tactical response group interventions increased by 57% in one year.

Chris Grayling: There has been no rise in the number of serious incidents. What I described to you is an increased propensity for prisoners to climb on to the netting that you typically find in most cell blocks, particularly older ones, often in order to secure a transfer to another prison, but the number of serious incidents in our prisons has not changed.

Q18 John McDonnell: The use of Operation Tornado for serious incidents increased from two in 2012 to five in 2013, and the use of the tactical response group has risen by 57% from 2012 to 2013.

Chris Grayling: Mr McDonnell, there has been no rise in the number of serious incidents in our prisons. The deployment of the tactical response teams typically has been for more minor incidents involving things like incidents at height where people climb on to the nets.

John McDonnell: Do you accept any responsibility?

Chair: Mr Llwyd has a supplementary question.

Q19 Mr Llwyd: Can I pick you up on one thing you just said? One indicator of overcrowding clearly is people sharing cells. The indicator you did not refer to is that very often that means, with limited staff, 23 hours in the cell, lack of association and being unable to leave the cell to do what they might be doing in order to be rehabilitated. That's point number one. Point number two is, if you accept that sharing a cell is evidence of overcrowding, why is this Titan prison of yours in Wrexham designed with 58% sharing cells right from the very beginning, contrary to all the accepted norms?

Chris Grayling: Mr Llwyd, you are talking about the Titan prison in north Wales, which I hasten to say has the widespread support of a large part of the community in north Wales, where many people have said they want to see a prison facility, so that prisoners from

north Wales can be detained closer to home. It is a prison designed in the same way as a number of other recent new prisons. It is not one single building; it is a collection of smaller units on a campus site, and it has been designed in the way that other recent prisons have been. You and I may disagree, but I do not regard sharing a cell in a prison as a particular problem. What I have to do is balance the available public resources with the need for facilities in which we can detain people humanely and fairly.

We are also working hard to increase the amount of purposeful activity in prison. There has been a 30% increase in the number of prison hours worked; there is more industrial activity in our prisons in the youth estate; and we are doubling the amount of education that people receive. We are making a determined attempt to increase purposeful activity in prison, as well as dealing with the financial challenges we face.

Q20 John McDonnell: Can I go on to absconds from open prison conditions? There have been some high-profile cases of serious offences being committed by prisoners on day release. You recently announced changes to release on temporary licence. You said that prisoners who have absconded from open conditions should not be sent to an open prison a second time. There are two things. Are you confident that those measures will be successful and will deal with the problems? How will prisoners who have absconded and are then prevented from going to an open prison be prepared for eventual release?

Chris Grayling: On the second point, far from all prisoners, and far from all long-term prisoners, are released from open conditions. There are already established mechanisms to release prisoners from closed conditions and category C prisons. That will simply apply to those offenders in the future.

It is really important that we maintain both the open estate but also public confidence in it. Most of us would agree that we want to release long-term offenders and the most difficult offenders into the community with the least possible chance of them reoffending. That is the prime purpose of open prisons. We are now seeing a more difficult group of offenders coming into open prisons, particularly with the move to the open estate of some IPP offenders from the early and middle parts of the last decade.

We have seen some absconds. The review we carried out predated the most recent absconds. I set it up in the latter part of last year because I was very anxious about a number of incidents that happened during release on temporary licence. I asked the chief inspector of prisons to vet the work done internally, which he did. He has not published his report yet because of the ongoing court action over those cases, but we have acted upon the recommendations of the internal team, which he validated. I think we have introduced some sensible steps to try to make sure that we have tighter risk assessments and that we have focused use of open conditions and temporary licence conditions. To my mind, just sending people out to walk around town all day does not count as a sensible use of open conditions. They need to go out for some purpose linked to rehabilitation. Once we have the new generation tags in place in the last part of this year, we intend to tag people who are released on temporary licence from open conditions.

I do not believe it is defensible, if somebody goes into an open prison and absconds, that they simply go back into that open prison. I do not think that is credible in the eyes of the public, and it is an issue I have sought to address pretty quickly. Now those people will not

normally, except in very exceptional circumstances, be allowed back later in that same sentence into open conditions. I think that is really important. We had one high-profile abscond with a high-profile nickname and that has taken the issue of absconds back into the public arena. The reality is that the level of absconds is a fraction of what it was some years ago. About 250 people abscond each year. By definition, that means somebody will be absconding every week, or every few days. We have to be very careful to make sure that we do not allow legitimate concern about that to damage something that I think is important to rehabilitation. We are trying to find the right balance.

Q21 Chair: Could I move on briefly to the “Transforming Rehabilitation” reports which we produced? We will deal with those at a later meeting. What I am most anxious to secure is that the Government’s response to those two reports comes before us not later than the September sitting when we are expecting to have it. Can we be confident about that?

Chris Grayling: I will make sure that is done.

Q22 Mr Chope: Can I ask you about the White Paper published last week about opting back into various justice and home affairs measures? One of the issues is the possibility of opting back into the probation framework decision. The General Affairs Council on 24 June said that a solution had been reached. There is no mention in the White Paper of what that solution might be. I wonder whether you could enlighten us.

Chris Grayling: It is the view of the Commission that a number of measures are integrally linked, and the probation order is one of those which the Commission sees as integrally linked to the prisoner transfer agreement. I have some real concerns about the probation measure. It has not been implemented yet really anywhere in the EU. There are some legal questions surrounding it, including issues to do with deportations. If a prisoner is deported at the end of a sentence to serve a period of licence in a third country in the EU and they breach, what is the position at that stage if they have to be recalled to prison? What is the status of that deportation? What we are doing by opting back into those measures is giving the European Court of Justice ultimate say over the way in which some of those measures are interpreted. I think that area leaves a question mark.

There is also a question mark because many other European countries have a system whereby, for example, if a two-year sentence applies to an individual on a suspended basis, they effectively serve their sentence in the community unless they break the law again in that two-year period, in which case they are taken straight to prison for the rest of the two years. In a continent where people are moving round extensively, it is not clear whether we would then have responsibility for imprisoning a number of people who might be in this country having come here to work but who have a conviction in their home country. Until those questions are answered, I am not comfortable about this particular measure, so I took a decision very early on that we were not going to seek to opt back into it. We have had discussions about this with the Commission, who are keen that we do. What I have indicated to them is that this is an issue we will look at again when it is nearer to being up and running, which will be in the next Parliament, to see whether at that point it is in the UK’s national interests to rejoin it.

Q23 Mr Chope: Thank you. Can I ask you a bit more about the process? We have all these measures with a proposal to opt back into quite a lot of them, and there is a commitment that there should be a parliamentary debate about this. We have a general debate tomorrow, but I presume the vote will be later this year. Can you spell out a bit more clearly the nature of that vote? Will it be in a form that enables people to remove or add to the measures proposed by the Government, in the form of amendments?

Chris Grayling: I am afraid I cannot give a definitive answer to that today. We listened very carefully to some of the criticisms levelled at us earlier in the year. As I said to Sir Alan, there was genuinely no intention on our part not to give Parliament a fair chance to have its say. It seemed sensible to have the initial debate tomorrow so that people could take a look at what is on the table after the negotiations have taken place. They are not completed yet, but they are certainly at a stage when Parliament can become involved. We want to give the Select Committees a chance to give proper scrutiny of where we have got to, and then we will take a decision about how we close the loop later this year.

Q24 Mr Chope: Surely we could decide now, or the Government could decide now, on the process. If, for example, Select Committees come up with specific recommendations that measure x or y should be included or excluded from the Government's list, what we need to be assured of in advance is that there will be scope for amending the Government measure in that way in the House of Commons.

Chris Grayling: If Parliament was to recommend a change in the list it would have broader implications. Therefore, I think it is sensible not to define for certain now what the final shape of the process is. It seems to me sensible to say to Parliament, "This is where we've got to." That is why we have the Command Paper. It was not in our original plans, as you will recall, Mr Chope, to have a Command Paper in this way, at this point, in a take-note debate, but we listened very carefully to what was said earlier in the year. I think Sir Alan and his two colleagues—the other two Select Committee Chairs—were very clear in their view that Parliament had not been given enough time to scrutinise. It seems to me that what we have done is come pretty quickly back to Parliament to say, "Here's where we've got to. Now take a look, and then we will see how we take things forward."

Q25 Mr Chope: Can I ask about the time scale? You say the probation measure is one where, over the next year or two, the Government could decide whether or not they wanted to opt in. What is the mad rush about wanting to take a decision on all these other opt-in measures? Why can't we, likewise, sit back and reflect upon the wisdom of it, or otherwise, and have a proper debate, perhaps allowing these decisions to be made by Parliament after the next general election?

Chris Grayling: I am sure the Home Secretary will say in the debate tomorrow that her prime concern is that there should not be an operational gap in the delivery of international activities to combat organised crime. Because of that, she has been a driving force in trying to secure agreement to this in Brussels. She has been very clear in saying that she believes it is a really important part of that effort against international crime, and if we were not to make rapid progress on this it would have an operational impact. I am sure that is something she will set out very clearly tomorrow.

Q26 Mr Chope: But is it not right to say that there is scope for having transitional arrangements to cover any operational gap, should it be there? Otherwise, we are saying basically that we have to opt in on the first possible day. Even the process of opting in is subject to European Union discussion, and that is why there are transitional arrangements, as I understand it, to cover such an operational gap.

Chris Grayling: The range of measures and issues that are encompassed, particularly on the policing side of things, has created an imperative where the Home Office advice, and indeed the Home Secretary's advice, has been that we cannot allow an operational gap to happen. That has been very much a driver behind the work we have been doing to keep this process moving at the fastest possible pace.

Q27 Mr Chope: If there are justice issues for which there is not an operational gap issue, would you be agreeable to those being debated further and perhaps decided in the next Parliament?

Chris Grayling: The justice issues are different, in that we do not have the same operational side that the Home Office does, but these have been agreed within the coalition as part of a common package. Therefore, they are being brought to the House as a common package, but the Home Office need is very much an immediate operational one. That is one of the key factors behind the drive to move ahead with this as quickly as possible.

Q28 Mr Chope: You say the common package has been agreed by the coalition, and that common package effectively precludes Members of Parliament being able to decide to alter that package. Is that what you are saying?

Chris Grayling: We wait with interest to see what the recommendation of the Select Committees is. I sat in the debate in April, as Sir Alan will remember, when all the Select Committee Chairs stood up and said, "This is not good enough; we've not been given enough time to scrutinise." We promised that more time would be given for scrutiny, and that is what we have done. I think that was the right thing to do.

Q29 Mr Buckland: Can I move on to the Human Rights Act and the European convention? The debate is developing in terms of schools of thought as to whether the Human Rights Act needs tweaking or amending. Lord Judge, in a very interesting speech some months ago, talked about the potential for amending the Human Rights Act to make it clear that the Court in Strasbourg was not supreme. More recently, Lord Neuberger gave evidence to the Constitution Committee in the Lords, doubting whether such an amendment was necessary. There are some interesting signs domestically, for example in the whole life tariff case, of judges sticking to section 2, looking at the case law but coming to their own independent decision and not going along with what Strasbourg says. Which school of thought do you adopt, Lord Chancellor? Do you think there need to be amendments, or do you think judicial developments are now dealing with the problem of assuming that somehow Strasbourg is supreme, when we know that the case law of Strasbourg is not the law of this land and the Court is not supreme?

Chris Grayling: I have to draw a careful dividing line between my position in the current Government, where I have made no secret about the fact that there are differences of opinion on these matters, and what I and we as a party would seek to do after the next election, if in government with a majority.

My view is that the recent developments are very welcome. I was very encouraged by the comments from the senior judiciary, and I am grateful to them for that. I thought that the decision in the Supreme Court on prisoner voting, with a focus on ECJ law and jurisprudence, was very interesting. Some of the other comments have been very interesting and helpful, but to my mind, that does not take us away from the core challenge, which is that too much of our law is being shaped by jurisprudence that has moved a long way from the original intent of its creators. The way in which the different articles are now being interpreted, both in Strasbourg and here, is a long way away from the original intent when the document was created to address totalitarianism in Europe and the appalling acts against human rights that had taken place in the 1940s.

I have never had a problem with the original convention. It is a laudably worded document with which it would be difficult for anyone to disagree. It contains many balances of rights and responsibilities, and caveats around the need for the state to act in the general interests of society and so on, but jurisprudence in Strasbourg and elsewhere has taken it a long way away from that original intent. My view is that it is time for Parliament to reassert its view about where and how human rights laws should be applied. I have said that I want to curtail the role of the European Court of Human Rights in the UK; I want to replace the Human Rights Act; I want a balance of rights and responsibilities in our laws; and I want our Supreme Court to be supreme. Those seem to me to be the principles for any sensible reform in this area.

Let me be clear. This does not mean that I do not regard human rights as important. Human rights are of fundamental importance around the globe, and we should always be a beacon for championing them, but I look at places where I see human rights being truly abused, like North Korea, where what is happening is absolutely horrendous, and I see little connect between that and a decision about whether, for example, somebody in one of our jails for six months is allowed to vote in a general election.

Q30 Mr Buckland: When it comes to it, Lord Chancellor, you are outlining a pro-human rights stance that is perhaps a more centre-right approach to human rights, whereas historically the left seem to have had all the best tunes. Do you think there is now a real need for more centre-right thinking on human rights? We have lots of organisations that work very hard in this field, but do you think there is a need for more articulation of an approach to judicial interpretation that does not adopt the automatic assumption that the living instrument approach to human rights, with judges able to develop it in quite a free way, is the right approach to judicial interpretation?

Chris Grayling: Your point about a living instrument is a very important one. I do not think it is an issue of right and left, though I take the point you are making. The key point is the living instrument one. You are absolutely right that left-wing pressure groups are using human rights in a way that I do not believe they should be used as a concept. We need to get back to a position where we have a sensible balance in this area between the elected Parliament and the judiciary deploying human rights laws.

In the UK, in terms of the way our legal system works, if a judge reaches a ruling on a piece of law that Government and Parliament do not agree with, we have the right to change the law. Those judges have the absolute right to reach a decision based on their interpretation of the law. That is what they are there to do, and as Lord Chancellor I absolutely defend their right to do that. I am sure there will be occasions when I disagree with what they rule, but they absolutely have the right to reach those decisions; it is a vital part of our constitution. Equally, it should be for Parliament to say, “The judges have found that this particular piece of law is wrong,” or, “We are using it in the wrong way”—or whatever it may be—“We are now going to go back to Parliament and say, ‘Actually, we don’t agree with this, and therefore we want to change the law.’”

The problem with the living instrument that is the convention, and with aspects of the ECJ’s jurisprudence as well, is that the democratic checks are not there, particularly in relation to Strasbourg. We do not have the ability to say, “No, that’s not how we think the Human Rights Act should be applied.” It is the living instrument that has taken it away from an essential tool for saying, “You shouldn’t send people to gulags without trial,” to a debate about the mechanism for giving people social security. I do not believe the authors ever intended to go there. The living instrument has become the problem, and that is what we have to address. That is what I would seek to address if I were re-elected to this position after the general election.

Q31 Jeremy Corbyn: Lord Chancellor, your continued remarks in criticism of the European convention on human rights, the European Court of Human Rights and your public statement that you wish to withdraw from the convention would leave Britain, alongside Belarus, as the only European country that is not a party to that agreement. What possible influence would we have if criticising human rights abuses in Russia, Hungary, the Czech Republic, or anywhere else, if we knowingly and deliberately withdraw from an historic and very important convention that has benefited and improved the human rights of many people? It is not perfect—that we all accept—but it would be a message that this country simply does not care about international human rights concerns.

Chris Grayling: Let me give you two different responses to that, Mr Corbyn. The first is that you are putting words into my mouth. What I have actually said is what I have just said. I want to curtail the role of the European Court of Human Rights in the UK; I want to replace the Human Rights Act, to have a balance of rights and responsibilities in our laws; and I want our Supreme Court to be supreme. I have not yet set out our policy, and will not do so for a little while yet. You will have plenty of time to study it and see whether or not you agree with it when we come to the general election.

On the point about our standing alone alongside Belarus, we are and have been for 75 years an important part of the Council of Europe. We are judged by the senior people in the Court in Strasbourg to be among the good guys in the class. If as a nation we reach a point—it is not just my party; if you look at the public view, it is pretty substantial as well—where we say enough is enough, I would hope and expect that others will turn round and say, “Maybe there’s a problem here.” I do not think it is an issue about us ostracising ourselves and setting ourselves alongside Belarus; it is about our saying that this living instrument has gone too far. What we cannot have is unlimited jurisprudence where the Court can effectively apply human rights to any area of our life that it believes is vaguely relevant and tell us what

laws to make, because we are then giving up more and more of our ability as a nation to take decisions for ourselves. That is where I think the problem is, and that is what has to be addressed.

Q32 Jeremy Corbyn: Every time this country signs a treaty, any time any country signs a treaty, they reduce to some extent their independence. That is the whole point of treaties and collective agreements. If we withdraw from the convention on human rights, what about other countries, maybe Russia, Hungary or others, that have serious problems with abuse of minorities and Roma people? If they decided to withdraw, would our criticism be worth anything in that situation?

Chris Grayling: The issue is what is different about the arrangements that we have on human rights. It is not a static treaty. Historically, we signed treaties that set out very specifically what our commitments were under that treaty. The nature of this as a living instrument means that there is no limit to the way in which human rights can be applied. Let me give you an example.

The case that exercises me the most is one that we actually won, not one that we lost. We won it by one vote. It was the Animal Defenders case, where a charity went to Strasbourg and challenged the ban that we have in this country on political television advertising. The reason we have a ban on political television advertising in this country is to protect the little guy against the big guy with deep pockets. As we have seen in some other countries, if you have very wealthy coffers and you have access to the media to go out and buy television and radio advertising, it creates a bit of a bun fight. It means that if you have deep pockets, you have something of an advantage from the start.

We have always not adopted that approach. We have said there should be strict limits on access to television, which we do through party political broadcasts, and I think we do that for good reason. I defend our arrangements. If we were ever to change them it would be a matter for Parliament to decide, yet we came within one vote of one judge in Strasbourg from being told we could not do that any more. I do not think that has anything to do with human rights. I don't think it's got anything to do with the convention in the first place. It should never have been heard. Had it been lost, it would have been a total travesty, and the fact that cases like that are getting so close—

Q33 Jeremy Corbyn: But it was not lost.

Chris Grayling: It came within one vote.

Chair: I think we know what Mr Grayling's views are on this subject. I am going to turn to Mr Brine.

Q34 Steve Brine: I think that is a very good idea, Chair. I thought we would turn to an easy subject, Lord Chancellor: prisoner voting. The Draft Voting Eligibility (Prisoners) Bill Committee sat last year; I was a member of the Committee. We published our report in December last year and recommended that the Government introduce a Bill in the 2014-15 Session to provide that all prisoners serving sentences of 12 months or less should be entitled

to vote in UK parliamentary, local and European elections. The Government did not announce the Bill in the Queen's Speech, and, as far as I know, they have yet to respond officially to that draft report. Could I ask you to update the Committee on the Government's current thinking following our report, and when you expect to be able to respond substantially?

Chris Grayling: I responded in brief in February to thank the Committee for the work it had done and to indicate that we would take matters forward. The Committee came up with a very interesting report. The recommendation that was particularly interesting was that one of the options we lay before Parliament should be to allow prisoners the vote in the last few months of their sentence.

Q35 Steve Brine: We said it should be the last six months, and they would register in the constituency to which they would be released.

Chris Grayling: That is clearly quite a complex issue. In some cases we know exactly when people are going to be released; in other cases, we do not—indeterminate prisoners, life sentence prisoners and others. My Department has been looking quite carefully at the issue since then, with a view to establishing how best we might make that work as one of the options we lay before the House. That work is not yet completed, but we will be reverting to Parliament in due course to inform them of the conclusions we have reached about that.

Q36 Steve Brine: One of your duties as Lord Chancellor is to uphold the rule of law. I just wonder how you respond to the Committee's conclusion and reconcile that with the principle of the rule of law while remaining within the convention, because if we decline to implement the judgment of the court, by virtue of doing so you are not upholding the rule of law.

Chris Grayling: My belief is that I am fulfilling my obligations to follow the rule of law, in that following that judgment we tabled a draft Bill before Parliament. It has been through pre-legislative scrutiny, which is standard practice for many items of legislation, particularly difficult items of legislation. We have taken the conclusions of that pre-legislative scrutiny work and we are now working through the implications of that and the practicalities of what will be tabled before the House, and we intend to return in due course. My view is that, although this is not a straightforward process and it is taking a bit of time, the requirements of the law are that I pursue the process rather than set a timetable for it.

Q37 Steve Brine: On practicalities, could you update us on the 2,300 compensation claims for British prisoners that were reactivated by the Court last September, and the reasons the Court has given the UK for doing that?

Chris Grayling: The Court has started the process in a small number of cases, and we have argued to the Court. We do not intend to play an active part in those cases; we simply made the point that we do not believe any compensation will be liable under the judgments, whatever the outcome.

Q38 Steve Brine: As Secretary of State and Lord Chancellor—the real Chris Grayling—do you believe that prisoners having the franchise plays any role in their rehabilitation?

Chris Grayling: I have not seen any evidence to suggest to me that the introduction of votes for prisoners would have a material effect on the reoffending rate.

Q39 Nick de Bois: On the last point, given the ability to register almost immediately you are out of prison, if there is no evidence as to registration in a six-month period beforehand, given all the implications, is there any merit in suggesting that that is more a tactic to satisfy the European Court of Human Rights if it does not have any substantive value in rehabilitation? My second point is: given all of these issues, do you think it is at all realistic that anything would be put before Parliament in this Parliament?

Chris Grayling: It is important that anything that is tabled before Parliament is right, and we have to do the work to make sure that it is appropriate. The worst thing we could do is to implement a change inappropriately. This is an area where Parliament itself has very strong issues. One of the reasons we tabled a measure with a non-compliance option, as I explained at the time and as the original legal advice from the House of Lords in 2000 from Lord Hoffmann indicates, is that Parliament is sovereign in these matters. Whatever we table before Parliament, it will be for Parliament to decide whether or not anything is to be done about it.

Q40 Jeremy Corbyn: On prisoner voting, Lord Chancellor, have you had any discussions with the prison authorities or the Government of South Africa? It has a far worse criminal problem than we do, yet all prisoners are given the right to vote in South Africa. Their philosophy is that it is a means of giving a small degree of responsibility to prisoners as part of the rehabilitation process. Do you not think there is some merit in that discussion and argument?

Chris Grayling: I have not had discussions with the South Africans. I have not met my South African counterpart, though in the course of business I have met a number of Justice Ministers from other countries. Many other countries allow prisoners to have the vote. If we are to introduce votes for prisoners voting in this country, it will have to be with the consent of our Parliament. I know many people feel strongly that we should give votes to prisoners, and that opinions are divided in the House, but that is democracy. Ultimately, what we lay before the House will have to be voted on one way or the other.

Q41 Jeremy Corbyn: Do you think it would make any difference in rehabilitation?

Chris Grayling: I have not seen any evidence to suggest that giving prisoners the vote would improve the likelihood of rehabilitating them or would reduce reoffending levels. My experience is that a house and job are much more important.

Q42 Andy McDonald: Good morning, Lord Chancellor. Can I turn your attention to restorative justice? RJ has been put on a statutory footing so that it plays a far more prominent role in victim support and the rehabilitation revolution. We are aware that restorative justice is not consistently available across the UK. Are you still committed to the principle of restorative justice, and what are you doing to ensure consistent access to it?

Chris Grayling: We are supportive of restorative justice. In reality, there are two different dimensions of restorative justice, depending on which Department you are talking about. From my point of view, in terms of the Ministry of Justice, restorative justice is bringing victims and offenders into contact so that the offender understands the impact of the offence on the victim and, hopefully, does not do it again. Restorative justice in a Home Office sense focuses more on out-of-court solutions to more minor problems—community resolutions. The two can often be conflated in the use of the title.

If I may concentrate on the area that is important to us, we funded the Restorative Justice Council to develop appropriate standards for restorative justice and the development of a quality mark. We have devolved funding to police and crime commissioners so that restorative justice can be supported on a localised basis. We are very supportive of the use of restorative justice, but the important thing is to make sure it always works in the interests of the victim. That is of paramount importance. What we must not do is seek to use restorative justice as a tool to reduce reoffending, out of sight of the impact one way or the other on the victim. The victim must always come first, but my view is that restorative justice can be a very good tool in making it less likely that somebody will reoffend.

Q43 Andy McDonald: We all accept that it could be a useful tool, but if we are not collating data and figures on its use centrally, how can we ever come to a judgment as to its effectiveness?

Chris Grayling: What we are doing is effectively pushing restorative justice down to a local level. We are funding £30 million for RJ provision, and most of that is being channelled through the police and crime commissioners. I think restorative justice is better organised on a local basis. We have done some work at a national level, but I think all of us, on both sides of the political spectrum, are agreed at the moment that, where we can sensibly do so, devolution from Whitehall is a good thing.

Q44 Andy McDonald: I accept that, but would it not be good to have an idea at the centre of how it is working locally? There does not appear to be any mechanism whatsoever to do that.

Chris Grayling: I will take a look and see if there is anything to be done. I am reluctant to put in place too many extra bureaucracies, but I will have a chat with our analysts and see if there is a good way of improving how we keep track, and I might write to the Committee then.

Andy McDonald: Thank you.

Q45 Nick de Bois: Secretary of State, on that point, although it is not so much on the collection of data, in my time in Parliament I have noticed that quite often the sharing of best practice is not all it should be. When you are looking into Mr McDonald's suggestion, it may be worth seeing whether the police commissioners themselves are sharing best practice across the United Kingdom. If it is being implemented locally, while there may be local characteristics, there is no question, as I have seen in the NHS, but that best practice is difficult to share. Maybe the MOJ could do something to formalise or encourage that.

Chris Grayling: That is a helpful point. I will do that.

Q46 Andy McDonald: If I may turn now to the small matter of criminal legal aid, there have been many changes to legal aid in recent times, not least of which is the 30% reduction in fees to the criminal Bar for very high-cost cases. Can I ask you generally how you see the future of the independent criminal Bar?

Chris Grayling: It is very important that the independent criminal Bar has a good future. It faces some structural issues, and I think they were very well highlighted in the Jeffrey report. Sir Alan, if I might be so presumptuous, over the next few months there is a lot of debate to be had off the back of the Jeffrey report about the future shape of advocacy in this country, and how we deal with some of the structural challenges that the Bar faces. We need to have a number of discussions with the Bar Council, Law Society and others within the legal world, but it would be enormously helpful if this was an area your Committee looked at as well.

The Jeffrey report was a very good piece of work. It set out some of the challenges both in terms of making sure we have the right quality coming through for future recruits to the judiciary and also in the supply and demand issue. We have seen a substantial increase in the number of advocates in recent years, at a time when the amount of work and crime has been coming down. There is a genuine and quite substantial structural challenge that the Bar, and indeed advocacy generally, faces. A substantial debate needs to happen, and this Committee could play an interesting role.

Chair: We will consider that.

Q47 Andy McDonald: Can I carry on with a similar point? In the case we know as Operation Cotton, in the skeleton argument on the deficit created by the absence of defendant lawyers it was reported that the Government would implement "any necessary increase" in the public defender service to ensure representation in cases where defendants were unrepresented. In that context, could you tell us more about your plans for the public defender service?

Chris Grayling: I now have no further plans to increase the size of the public defender service. As you know, it was set up about 10 years ago under the last Government. It is a small operation; it has been increased slightly in the last few months, but I now have no further plans to increase it. The agreement we have reached with the Bar on a short-term solution to ensure that the issue in those cases is resolved, and also the agreement we have reached to look to replace the VHCC case structure in the future, means we have no further need to increase the size of the public defender service.

Q48 Andy McDonald: Last month the Crown court at Kingston upon Hull issued a local practice direction regarding unrepresented defendants. Does it worry you that the resident judge there felt it necessary to do that?

Chris Grayling: As you know, Mr McDonald, there has been some limited disruption to our courts in the last few months. There have been disputes over the proposed changes, and I understand that there are many unhappy people. I wish we did not have to do them, but the budget reality means we have no choice. I am not aware of any significant disruption having taken place to our courts. While we may have some isolated problems, our courts continue to function normally.

Q49 Andy McDonald: You talk about isolated problems. I am a little concerned that the seriousness of this situation is perhaps not resonating. Is there not now a real risk that criminals are going to evade justice if they do not have any barristers there to defend them?

Chris Grayling: The barristers are working normally on this. There have been one or two cases where solicitors have decided not to continue with a case. In the situation in Hull, another firm of solicitors stepped in very quickly to take on the case.

Q50 Chair: Can I turn briefly to something that the Lord Chief Justice said to the Lords Constitution Committee, and has said to us as well? He said he would like to use section 5 of the Constitutional Reform Act more flexibly, rather than seeing it as a nuclear option, which perhaps we thought it was when it was introduced in legislation—a means by which he can assert that the judiciary’s legitimate place has not been properly recognised, and so he makes a statement to Parliament. I think the view of the Lord Chief Justice and one or two of his predecessors is that a more continuing interchange with Parliament is desirable. Do you accept that section 5 could be used in that way?

Chris Grayling: We have to be very careful not to allow what I think are quite sensible constitutional arrangements to be undermined in any way. It is absolutely appropriate that the Lord Chief Justice should, from time to time, enter into discussions with the relevant Committees in Parliament, but I worry about getting the judiciary too greatly involved in the process of parliamentary scrutiny. We rightly have separation between our Parliament, our executive and our judiciary, and long may that continue. Part of my job is to make sure that while occasionally both I and my colleagues have frustrations with decisions in the courts, we are very firm in saying that the courts have the right to reach the decisions they reach. Their independence in doing so is of paramount importance. That should not change. I think that the constitutional arrangements we have at the moment are broadly sensible. I am not saying that they are perfect—no arrangement is ever perfect—but I think they serve us pretty well.

Q51 Mr Llwyd: I would like to ask you about legal services regulation. You recently completed your review of this area by publishing key conclusions, with a summary of stakeholder responses and a written statement. When consulted on the possibility of a wider review, rather than a post-legislative assessment of the 2007 Act, the Committee assumed

that it would lead to a more comprehensive evaluation of the current system. Given the lack of clear conclusion from your review, other than do nothing for now, will you now consider a post-legislative assessment of the 2007 Act?

Chris Grayling: I will certainly take that away and give it a careful look. It is a bit frustrating. I am naturally a deregulator. I am aware that many parts of the legal world feel themselves overburdened with regulation. It particularly affects smaller firms. A big city firm has a compliance department that is geared to dealing with regulation; for a small high street firm, that is billable time from senior people that could be used for other purposes. While it is really important that we have a sensible regulatory structure to make sure there is no room for malpractice, you can go over the top and have too onerous a regulatory structure. One of the things I said recently is that with a two-tier structure, as we have at the moment, I would like the Legal Services Board work to make itself unnecessary in the future and abolish itself in due course, so we have a simplified structure of regulation.

One of the disappointments about the call for evidence is that it was a genuine attempt to say, “What are some of the things we can do? What are the quick wins, and what is the longer-term strategy we should pursue?” The honest truth is that the answers that came were inconsistent and gave me no clear pattern or direction to follow. I have not given up on this; I am very open to further processes and ideas about what we can do, but I hoped that we would already have had enough direction from within the legal services world to say, “These are the first things we can do,” and, to be honest, we haven’t really.

Q52 Mr Llwyd: If you do have post-legislative scrutiny of the 2007 Act and take stock, are you likely to be attracted by the idea backed by the Lord Chief Justice of a single cross-cutting regulator?

Chris Grayling: It is certainly one of the options, but what I do not want to do is just move the deckchairs. It is very easy to say, “We’ll take this lot and turn it into something else.” What I am concerned about is how I make sure that for the partner in the high street firm who is spending too much time on regulatory matters we will simplify what he or she does so they have time to concentrate on earning money from clients.

Q53 Mr Llwyd: I find myself agreeing with you on this. There is a plethora of regulators out there and it is confusing for the layman and for the legal profession as well, but surely the idea of a single cross-cutting body must be attractive in the longer term, hopefully bringing in a simplified mode of regulation. I know from my own experience years ago that a small firm can ill afford to have one person simply sitting there filling in forms in order to comply with regulation. I hasten to add that it is also important that the public have a proper level of service, but a balance needs to be struck. I hope that at some point this whole area can be simplified, while building in essential safeguards.

Chris Grayling: I am very much in favour of that. Being realistic, it is unlikely that we can deliver it before the election; there is not enough legislative time to do the process properly. That was why I hoped that from the call for evidence we would have established some quick wins to enable us to reduce some of the burdens. Whoever is sitting in my chair in 12 months’ time, whether it is me or somebody else, this is an area they should be looking to pursue, to reduce the burdens on business in the sector.

Q54 Jeremy Corbyn: On the court interpreters service follow-up, are you satisfied that the contract is working effectively? They failed to meet their targets last year.

Chris Grayling: Typically, the performance level is well up in the 90 per cents. It is not perfect, but there is no clear benchmark to judge against. One of the assumptions has been that the introduction of the contract has led to a long-term decline in performance compared with what was there before. The truth is that we do not have benchmarks against which we can set this performance. It is a shame, but it is the truth. I am not claiming the system is perfect, or that an interpreter is always available, though with the different challenges the court faces in language terms it will not always be easy to find the right interpreter at short notice. It is an area that we continue to work on. My Courts Minister, Shailesh Vara, has been focused very much on trying to make sure that we work with the contractors to improve performance. It is much, much better than it was in the troubled period. It is now at or close to the target level most of the time, and we will continue to try to make sure we get performance as close to 100% as possible.

Q55 Jeremy Corbyn: What response have you given to the report on this by the National Audit Office, which was concerned about the numbers of tier 3 interpreters rising from 3% to 10%? When will your report on the tiering system be available?

Chris Grayling: I am not sure of the answer to that, but I will write to you.

Q56 Nick de Bois: If we could consider for a moment the Freedom of Information Act, the Government's response to our report on it, which I think was published in 2012, said that in order to address the claims of "disproportionate burdens" on public authorities arising from almost an industrial use of the Act, you would consult on proposals intended to reduce costs of compliance. That caused alarm among some campaigners. That response to us was some time ago. Have you dropped the plans? Where are you on that?

Chris Grayling: We are working on this at the moment. It is getting towards completion. The plan is to publish a revised code of practice for the FOI Act during the course of the second half of this year, which I hope will provide further clarification. We think we can do quite a lot in the code of conduct that sets some of the parameters about the way the Act is implemented. There are other issues to address, which may in due course require legislative change, but at the moment our focus is on the code of practice.

Q57 Nick de Bois: For clarity, you think we can see that later this year.

Chris Grayling: Yes. It is not far off being done.

Q58 Nick de Bois: Have you undertaken a review of policy on the use of the ministerial veto under the Act, which was also something you said you would do? Will that be commented on in that report as well?

Chris Grayling: We have been working on this. There are a number of issues. There have been the legal cases around the use of the ministerial veto. It has been the subject of extensive discussion in Whitehall, with more to be said in due course.

Nick de Bois: Yes, Minister.

Q59 Steve Brine: We recently published our report “Crime reduction policies: a co-ordinated approach?” It contained a bit about early intervention, which I know is something you are personally passionate about. It was really to do with children whose parents are in the secure estate. They do not fall within the remit of the troubled families programme. Barnardo’s gave evidence to us. If we are going to break the cycle of offending—the children of offenders have terrible outcomes in that respect—is that something you would care to comment on, or would you take it away? We look forward to your response to the report in due course, and I particularly look forward to your response on that bit.

Chris Grayling: I am very attracted by that as an option. We know there is a generational issue. If your parents have ended up in prison, you are more likely to end up in prison yourself. The suggestion about including those families in the troubled families initiative is very good, and is one that I am very sympathetic to. I am very happy to take it up with the programme itself. It would be helpful if the Committee also made that view clear to DCLG, who drive the programme.

Q60 Chair: Our most recent report invited more than one Government Department to take an interest in what was happening.

Chris Grayling: Indeed. I thought it was a very pressing point, and a very valuable contribution.

Chair: We look forward to your response to that as well.

Q61 Mr Buckland: Can I come to the very welcome enactment of the Presumption of Death Act 2013, which was a private Member’s Bill? As a member of the all-party group on missing persons and of this Committee, which published a number of recommendations about it, that was a very welcome move. The Act has not yet come into force. The Government also indicated that a consultation paper would be prepared to deal with the status of guardianships for missing persons. The Act has not come into force yet, and that consultation paper has not yet appeared. Why?

Chris Grayling: The Act will be implemented on 1 October, and we will shortly embark on the consultation. Both are very necessary and I am keen to press ahead with them. We have set the commencement date, and I hope that will be welcome to many families. To lose a loved one is bad enough, but to lose a loved one without really knowing what has happened is a terrible thing to have to go through. I hope this will at least ease some of those burdens.

Chair: Thank you very much indeed, Lord Chancellor. We conclude our sitting, and we look forward to your response to those two reports.