

# Public Accounts Committee

## Oral evidence: Implementing reforms to civil legal aid, HC 808

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Members present: Margaret Hodge (Chair); Mr Richard Bacon, Mr David Burrowes, Meg Hillier, Austin Mitchell, Stephen Phillips, John Pugh

Amyas Morse, Comptroller and Auditor General, National Audit Office, Gabrielle Cohen, Assistant Auditor General, National Audit Office, Oliver Lodge, Director, National Audit Office, and Marius Gallaher, Alternate Treasury Officer of Accounts, were in attendance.

*Witnesses:* Hugh Stickland, Chief Economist, Citizens Advice, and Malcolm Richardson, Deputy Chairman, The Magistrates' Association, gave evidence.

**Q1 Chair:** Welcome. Thank you very much for coming, particularly you, Mr Richardson. We didn't give you very much notice, so we are very grateful to you.

You probably know how the Committee works. This first session is really about you two trying to tell us from the front line where you think the most fruitful areas of inquiry will be when we come to question those who are responsible and accountable for this policy. I am really letting you say whatever you want on that. Who would like to start? Hugh, would you like to start? We will see how we go.

**Hugh Stickland:** Thank you very much for calling us. I am an economist at Citizens Advice. We are the national charity that looks after the citizens advice bureaux up and down England and Wales. We have currently around 320 member bureaux. We see around 2 million people face to face each year through the bureaux network, and more besides on the phone and the internet. The impact of the legal aid reforms really hit bureaux quite hard.

**Q2 Chair:** Can I ask you to focus on civil legal aid, because we are not looking at criminal legal aid?

**Hugh Stickland:** Back in 2012, around half our bureaux held a legal aid contract. That was worth around £22 million per year to the bureaux network, distributed around 160 different

bureaux. The impact of the cuts—sorry, I should say reforms—saw that reduced by around £19 million.

**Q3 Chair:** £19 million? So you are down to £3 million.

**Hugh Stickland:** Out of £22 million, we saw a reduction of £19 million to our bureaux network.

**Q4 Chair:** Why?

**Hugh Stickland:** Because the majority of our legal aid budgets were around civil welfare law, civil debt law and civil housing, and a small amount for family law as well. We have maintained a small element of housing contracts and a small element of family and relationship contracts, but the majority of our legal aid budgets have gone.

That has really impacted the bureaux in a number of ways. First of all, we have lost the specialist advisers that the bureaux were able to employ to give detailed case work advice—ongoing, in-depth advice—to clients with complex cases that need a legal aid contract to cover some of the additional costs. The bureaux really have seen the impact of losing those advisers. It means that we cannot see as many people—especially people with complex cases—through the bureaux network. We have estimated that we see around 120,000 fewer people through our bureaux who would have otherwise accessed our help through legal aid budgets. In addition to that, where bureaux did not hold legal aid contracts, they were still able to refer people to other organisations that would have helped through legal aid money as well. Our survey of bureaux that we did last year found that 92% of them now struggle to find anywhere to refer people, with complex cases whom they cannot help, on to other organisations that would be able to help them.

In summary, it has had quite a startling impact on the bureaux network. We see 120,000 fewer people than we otherwise would have done, and those people tend to have the most complex cases that would have been applicable under the legal aid schemes.

**Q5 Mr Burrowes:** The impact assessment says, “Look, you are obviously going to take a hit on legal aid contracts, but you are going to get £16 million from the Cabinet Office to sustain you as a bureau.” Has that affected your sustainability? It also says, “Don’t worry, because we are going to respond to it by ensuring that they are going to fund the Royal Courts of Justice Citizens Advice Bureau, provide diagnostic tools to support litigants in person advice now, and ensure that there is appropriate signposting to alternative sources of advice.” That was put forward to mitigate the impact.

**Hugh Stickland:** We have received money through the transition fund for advice services. That has been very beneficial and bureaux have been at the forefront of using that, and looking to build relationships with other local advice and legal services and all sorts of advice givers where people could go for help. That money runs out at the end of 2015. It is unclear what will happen after 2015 and, of course, for us as a charity, and for the 330 charities that are affiliated to us, funding conditions are also unsure through the next election and into the next spending review period.

Our point is that advice works. Early intervention can and does work. We are much more able to help someone with an emerging debt issue when they come for early help, than when that debt has grown, become overly burdensome and some of the remedies that we might offer that person no longer exist.

We have done some surveys of our clients recently, which again show that advice works. Two in three people coming to a bureaux get their problems solved, which we think is amazing. That equates to about 1.3 million people who had their problems solved through the bureaux network last year. On top of that, we see additional benefits in terms of their mental and physical health and their relationships. They report much better mental health, they feel better about themselves, their relationships have improved and so on.

**Q6 Mr Burrowes:** On the impact on courts, the MOJ said it was going to provide funding, signposting, Royal Courts of Justice support for the Advice Bureau. Perhaps bring in Mr Richardson as well on the relationship with the bureaux and the courts and whether there has been any real mitigation to the impact.

**Hugh Stickland:** The complexity of the arrangements now does still cause the bureaux network a great headache. There are still places where you can apply for legal aid, but that is, in itself, a very complex process to go through to work out whether the claimant is eligible for that. That has had a great detrimental impact on that relationship.

**Mr Burrowes:** Particularly with litigants in person.

**Q7 Chair:** Right; your perspective, Mr Richardson.

**Malcolm Richardson:** The aspect that is relevant to us is family legal aid and family litigants in person; most particularly at our tier, we are talking about parents who are trying to—unsuccessfully, without the court’s support—come to an agreement about arrangements for their children. A survey we have done of our members says that they are seeing a significant rise in the number of litigants in person, which I don’t think anyone else would gainsay either.

They would also say—and something like two thirds of them said this to us—that that had a negative effect on the justice that we are able to administer. There are two strands to that. One is that, despite what the MOJ research that was released last week might say, we would say that hearings take longer when they come before us than they do if the parties are represented.

**Q8 Austin Mitchell:** Is that because they are representing themselves?

**Malcolm Richardson:** Yes, and because they do not understand the process. The application form is 24 pages long.

**Austin Mitchell:** Oh wow!

**Malcolm Richardson:** The booklet that gives you guidance as to how to fill in the 24-page document is 32 pages long. That puts a lot of people off.

**Q9 Chair:** Is this an application form for—

**Malcolm Richardson:** To make an application for a child arrangements order. One of the parents will make such an application and the other parent has to respond to it. They have to fill in 24 pages. That is one reason, undoubtedly, that fewer matters are being brought to court. That may be a good thing. I am not saying that we want more cases in court. If parents can agree, that has to be a good thing. My own process and so on is designed to help that.

**Q10 John Pugh:** Do you keep data on the average length of proceedings, adjournments and things like that?

**Malcolm Richardson:** We don't. My information, collected from my members, is anecdotal. I referenced the MOJ data but I am sure that your next panel will be able to talk more about that.

**Q11 Mr Burrowes:** Have you seen any benefits of the mitigating effects of increased signposting and diagnostic tools that were suggested to us when it was going through Parliament several years ago?

**Malcolm Richardson:** We haven't really seen that. There is some good work going on, such as that of Citizens Advice. I sit in a court centre in Bristol, where we are extremely fortunate to have a PSU—personal support unit. They are only in a few large court centres to help people and steer them into filling the forms in and understanding the process rather more. If they don't have those, it is either the counter staff in HMCTS who are taking the brunt of that or, in our tier, our legal adviser—we are of course always advised by a lawyer—has to do that interface and take that time. That is not part of the hearing; that is before they even get in front of us.

**Q12 Mr Burrowes:** The scope has changed in terms of civil and family legal aid. In a domestic violence case or a case where there are issues of child abuse—quite extreme cases—are you finding that people come into your court who do not have the necessary evidence of domestic violence or the letter from the local authority to confirm that there is a need for child protection? Are there practical, bureaucratic reasons preventing them from getting access to representation?

**Malcolm Richardson:** I could not give you concrete evidence of that but, anecdotally, our members would say that that is a problem, as is the problem that, even in domestic violence, the legal aid only applies to the party who has the evidence.

**Q13 Chair:** Have you got any evidence of that?

**Hugh Stickland:** Anecdotally, yes. We have found that it is difficult for people to be able to evidence matters of domestic abuse and domestic violence.

**Q14 Mr Burrowes:** You need a letter from the local authority confirming that there are child protection issues. The local authority has to do that and there is a time allowed for that to happen. For domestic violence, you cannot just have a police report. This probably applies to lots of issues of

domestic violence; you need a conviction or caution on the record to be able to confirm evidence for applying for legal aid. That is the reality for a practitioner who will then not be at court because the evidence is not there to apply for legal aid. You are seeing the effects of that.

**Malcolm Richardson:** Yes.

**Q15 Chair:** Just to remind us, what proportion of domestic violence are we talking about? Even in cases that are referred to the police, convictions went up 1%, didn't they?

**Mr Burrowes:** There have already been, on average, 30 or so cases of domestic violence before it gets to a conviction.

**Malcolm Richardson:** On average there will have been 30 incidents of domestic abuse before a victim will report.

**Q16 Stephen Phillips:** To what extent do your members feel that there has been a change in the nature of the function that they are discharging so that, particularly when litigants appear before them in person, they are now engaged in a much more inquisitorial process than they were previously?

**Malcolm Richardson:** I think, to a degree, yes, that is true; they do have to be more inquisitorial. They certainly have to find a way of being more supportive while still being balanced and independent, clearly, of the parties. That does put an additional challenge.

**Q17 Stephen Phillips:** That was going to be my next question. As a result of that alteration, even if it has only been minor, is there a change in perception on the part of litigants, whether representative or not, that those on the bench are now entering into the fray and losing some of their independence?

**Malcolm Richardson:** I do not have any evidence of that. To the extent that we can, we will use the legal adviser as an intermediary in that process, so that we might ask the legal adviser to seek information for us; so the legal adviser would do the questioning of the parties rather than—

**Q18 Chair:** Just explain to me—this is my ignorance. The legal adviser is an officer of the court.

**Malcolm Richardson:** Yes; an employee of HMCTS but a qualified lawyer who is there to advise us on matters of law; and that is true in all magistrates courts in the jurisdiction.

**Q19 Chair:** So you are asking that legal adviser, who is supposed to be your impartial adviser to you, as you come to a decision, to then try to also act as the support to ensure that the evidence is—

**Malcolm Richardson:** Yes.

**Chair:** It is a muddling of roles, isn't it?

**Malcolm Richardson:** Yes, but they always have, because there have always been litigants in person in criminal courts. It is just that there has been such an increase in the family courts that I think we are putting a particular focus on that.

**Q20 Stephen Phillips:** If one went to their association, which used, I think, to be called the magistrates clerks association—

**Malcolm Richardson:** The Justices Clerks Society, now.

**Stephen Phillips:** What would their view as to the additional burdens that that imposes upon them be?

**Malcolm Richardson:** I am clearly speculating, but I do not think they would see it as being an inappropriate role. I think the greater issue would be that their resources, just like anyone else's, have been reduced significantly, and it is the amount of time that takes, and whether the accounting systems which are used enable them to account for the time they are spending either in hearings, or prior to hearings, or indeed after hearings, because there is nobody else to write up the order, if a court makes an order. If you've got represented parties you will say, "Go away; e-file this in 48 hours." If you haven't got anybody to do that, there is nobody left but the court to do it.

**Q21 Stephen Phillips:** Finally, is there any impact as a result of these changes on recruitment to the bench and/or to the corps of legal advisers who advise magistrates?

**Malcolm Richardson:** I can really only talk to the former, and no, we are not having difficulties recruiting, because we are not being given the opportunity to recruit many more, but if we then look at the family jurisdiction, where the work load is growing, not least as a result of the allocation processes within the family justice review, which was implemented earlier this year, there is more work for family magistrates to do, and so more magistrates—because all magistrates come into the criminal jurisdiction and then specialise subsequently. I am not aware of any difficulties of getting people to take on that specialty to add to their other responsibilities.

**Q22 John Pugh:** Clearly, there has been a substantial change in your case mix and one of the objectives of that was to discourage unnecessary and adversarial litigation. Obviously, this will be anecdotal, but on the culture of the courts now, are they dominated to a greater extent by hard and complex cases, rather than the kind of cases the Government originally thought to divert from the courts?

**Malcolm Richardson:** Again, anecdotally, I think yes. The cases which are still before the court are the harder ones, and that is what you would expect.

**Q23 John Pugh:** They would necessarily take longer, wouldn't they?

**Malcolm Richardson:** Absolutely, yes, but I think the greater concern, given that our focus is on the administration and delivery of effective justice, is that there are people who are not coming

to court. Parliament re-endorsed, earlier this year, the fact that a child, where safety allows, has a right to a relationship with both parents; and if people are being frightened off by the process from applying for such contact with their children, there are children who are losing out, and my members are very concerned about that.

**Q24 Chair:** The other thing in the Report is that there are more cases coming to court where access to children, or custody of children, is contested. It is on page 15, paragraph 127. The figure has gone up from 64% to 89%. We all know that that is bad for the children. Is it because there is not somebody to mediate between the couple—that is the role that an adviser, whether a CAB specialist or a solicitor, would have fulfilled—so the case is contested in the court? Is the reform having quite the reverse impact of what was intended? It was intended to limit the number of cases contested. Does this trend suggest that more cases are being contested, which is worse for kids, who become a football between warring parents?

**Malcolm Richardson:** One needs to look at the two stages by which the change occurred. If we go back to changes that occurred two years ago, when the legal aid changes were implemented, at that point you effectively cut off most people's natural gateway into a mediated settlement. That could have been a lawyer mediating in an informal or a formal sense, because many solicitors, in particular, are also mediators.

**Austin Mitchell:** Was that because they were referred to the settlement process by the lawyer?

**Chair:** No, not necessarily. Well, partly.

**Q25 Austin Mitchell:** Why did we cut it off?

**Malcolm Richardson:** If you prevent access to legal aid for many of the family cases, you are cutting off the access because people know they are not going to get legal aid, and therefore they cannot consult a solicitor. Therefore, they do not get access either to the service provided by the solicitor or to the mediation service that the solicitor would have signposted them to, which would have allowed them to get resolution.

**Austin Mitchell:** That is what I meant.

**Malcolm Richardson:** That happened 18 months or so ago. Only this April, the changes in the family justice review brought in this thing called MIAM—the mediation, information and assessment meeting—which everyone has to attend before they come to court, unless they can demonstrate that there is a domestic violence issue and therefore they will not be safe. In the year in between, the amount of work that mediators got in this area plummeted. Many of them—we hear this anecdotally, but the mediators will be able to tell you much better—were not able to sustain their businesses. Then when the MIAM process came in, people had to go and find mediators, but where are they? We are concerned—again, I don't have any absolute evidence about this—that we are going to get mediation advice deserts, just as one find legal advice deserts.

**Q26 Chair:** Have you any better knowledge, Mr Stickland?

**Hugh Stickland:** Just to add to the specific cases of family law, we have done some research recently looking not just at domestic abuse and domestic violence but at financial abuse, which is when one partner in a couple has excessive control over the family finances, forces people to take out credit and drains bank accounts. That, within this setting, can also affect the ability of the other partner—the victim—to access justice, pay solicitors’ fees and get fair representation. There is an imbalance of power between the partner who has the money and the access to the justice system and the partner who doesn’t. It is quite common to see that now across our bureaux.

**Q27 Chair:** The Report picks up an increase in contested family cases. There are more contested cases about children—64% to 89%. Any insights there?

**Hugh Stickland:** Not directly from myself. We haven’t accessed our bureaux to ask those sorts of questions.

**Q28 Chair:** Have you any insights on that?

**Malcolm Richardson:** Not beyond what I have already said, Madam Chairman.

**Q29 Austin Mitchell:** If folk are not able to get representation, the odds in court must be weighted to social services, which are under pressure. You read in the newspapers that they are committing all sorts of enormities and brutalities and are making hasty decisions. Those must go unexamined and uncriticised because, when there is a care application or whatever, the parents cannot contest it adequately.

**Malcolm Richardson:** We need to be careful. What we have been talking about so far is what we call private law applications—applications by one private individual against another. If we are talking about care applications, we then move into the public law sector where the state—in the person of the local authority—is bringing proceedings, for example, for care and so on. Those are not covered by any changes to legal aid. They still get non-means-tested legal aid in those cases, so they would get representation.

As I understand it, there is a problem if a local authority has a supervision order and then wants to go further to make applications, for example, to take care proceedings, get a full care order and place a child somewhere else. Because they already have the supervision order, it falls into a different category. But that is a very narrow area, which the president of the family division has given some fairly strident—or forceful, if I correct my language—judgments on.

**Chair:** Stephen, I’m going to ask you to come back on that and then draw it to a close unless anyone has anything else to say. We have quite a tight timetable.

**Q30 Stephen Phillips:** One of the things that this Report identifies is that costs are arising for the Government out of these reforms—or cuts, if you prefer—in terms of litigants being unable to resolve their differences because of the absence of civil legal aid and therefore having to access other public services. It seemed to me that CABs were perhaps in a unique position to put some flesh on those bones. You have people turning up who, in the old days, would ordinarily have been able to resolve their dispute because they would have had legal aid. They would not have needed to

access other services. Are you able to assist with the sorts of service that they now need to access because those disputes are not being resolved? What might the costs around that be?

**Hugh Stickland:** I can speak more generally about the outcomes of some of our advice, rather than specifically about those affected by legal aid. We have produced evidence which suggests that, as a service, we are worth at least £750 million to society, plus another £300 million or so in terms of debts written off and rescheduled, for an income of around £200 million a year. So we think that we are worth about 5:1, in terms of the cost-benefit ratio. Some of those costs are savings to public services—in particular, Jobcentre Plus and HMRC, by not having to go through a whole round of administrative complexity in assessing benefit claims, benefit rates and benefit decisions, and the same on tax credits. Potentially even more dramatically, it is also through local government and housing decisions, where we help our claimants to identify and get the right housing solution for them in collaboration with whichever local authority or, indeed, housing association it might be. We are seeing the possibility of people being made statutorily homeless, not accessing the right benefits and therefore moving into poverty, with the wider social costs in terms of their diminished health, a potential route into crime and so forth.

**Q31 Stephen Phillips:** Just pausing there and focusing on the health outcomes—is there a health detriment as a result of these reforms, in the sense that people are now having to access, for example, more mental health services because they are not able to resolve their disputes, whether it is in relation to children or any other civil problem?

**Hugh Stickland:** Again, I can speak more generally about the impacts of the CAB service as a whole, without necessarily being able to dictate whether they hold for the most complex legal aid cases that we saw. Our advice workers produce positive mental health impacts on our clients. Around two in three people come to us with some sort of mental health problem, which can range from mild stress or anxiety through to much more serious cases of psychosis, bipolar and so on. The impact of the advice we give shows that four in five people feel better about their mental health and, indeed, move back up to the national average on the Warwick-Edinburgh mental health scale. The effect that the legal aid reforms have had on us not being able to serve 120,000 of our most complex cases—you would think that those cases had some of the greatest mental health problems and conditions—is that that positive impact has been mitigated.

**Oliver Lodge:** It is interesting to hear about the amount of work that Citizens Advice has done to try to demonstrate the value that its advice adds, and the absence of similar thinking about the wider costs and the value added by civil legal aid.

**Q32 Chair:** Is there anything else that you want to tell us? Is there anything else that you think we should pursue with our next set of witnesses that you have not covered?

**Hugh Stickland:** The one thing that I should cover, if you will allow it, is that one of the greatest areas for our bureaux was civil welfare issues, such as complexities with benefit claimants, and appeals and decisions with jobcentres and tax credit offices. Of course, the reforms have come in at the same time as we have seen sweeping changes to the welfare system: the introduction of the under-occupancy charge, council tax localisation, general uprating, and many different housing and tax credit changes. That has added to the work load of our bureaux staff and complexity to the cases that we see, at exactly the same point as the reforms have taken away the specialist advisers

who understood the case law and the decision making and appeals processes that the DWP and others had. In itself, that was bad timing in terms of the reforms.

**Q33 Chair:** So you change the system, make it more complex, and then take away the right to appeal.

**Hugh Stickland:** Looking ahead, of course we have universal credit, which is being rolled out and introduced gradually over the next few years. I know that the Committee has probed the Department on those plans many times.

**Q34 Chair:** We are sceptical as to whether it will ever see the light of day.

**Hugh Stickland:** Our evidence finds that nine in 10 of those who would be moving on to universal credit are not ready for the transition because they are perhaps unbanked, not aware of the process, cannot budget, and so on. There is a massive gap for advice provision that could be filled by Citizens Advice and others to help those people to become ready for universal credit.

**Q35 Chair:** Before we go to Mr Richardson, I want to ask you one more question about the new constraint with the residence test and the impact there. I do not know whether you have picked it up, but I was thinking about examples from my constituency of young asylum seekers, the sort of people who are over here and, because they do not meet the residency test and are perhaps trafficked women or fleeing from terror, find it difficult to represent themselves or get proper representation. Has that hit you?

**Hugh Stickland:** I do not have any numbers on that in front of me today; I would be happy to go away and ask our bureaux whether they can provide any.

**Q36 Chair:** It would be helpful if you could do that quite quickly so that if the numbers are interesting, we can incorporate them in our Report.

**Hugh Stickland:** I would happily do that for you.

**Q37 Chair:** Mr Richardson, would you like to add anything else?

**Malcolm Richardson:** Just one very brief thing: last week, the MOJ released some experimental statistics, the headline for which was that hearings for litigants in person are shorter than they were previously. From our perspective, I would urge some caution on that because they are not comparing like with like. They should be looking for cases that would have been represented before the LASPO changes but no longer are. Now, what's the difference? They also said that hearings that are represented are now taking longer than they did previously; that is not surprising because the ones that are still represented are probably the most complex—with domestic violence and so on. They are likely to be the ones that take longer, because they always took longer. Although I am not trying to go behind the statistics, our view is that they do not tell us very much.

**Q38 Mr Burrowes:** In terms of the impact on other aspects of the court process, have you found that the listing of contested hearing has got further away? I am hearing of the listing of contested hearings going into April and May for London courts.

**Malcolm Richardson:** I have not heard of that. In fact, from the perspective of my members we are hearing more that, because fewer matters are being brought to court, lists are being combined, courts are being closed and court hearing days are being reduced because there is not the work load there to follow. That will probably pick up, but there is obviously a lag around the mediator and assessment process that has to occur, so I do not think we have got enough history yet to be able to talk about anything sensible.

**Chair:** Thank you. That was really good. You gave us very helpful evidence.

### Examination of Witnesses

*Witnesses:* **Ursula Brennan**, Permanent Secretary, Ministry of Justice, **Matthew Coats**, Chief Executive, Legal Aid Agency, **Catherine Lee**, Director General, Law and Access to Justice Group, Ministry of Justice, and **Peter Handcock**, Chief Executive, HM Courts and Tribunals Service, gave evidence.

**Q39 Chair:** Welcome. Ursula Brennan, can I start with you? “Legal aid is so important to the operation of the judicial system that it is vital to get reform right the first time. If the Government gets it wrong, British justice could be irretrievably damaged.” Do you agree with that?

**Ursula Brennan:** Yes, if you get reform wrong, you can certainly damage the system. I do not know whether you would damage it irretrievably, but if you get reform wrong in any system, you will damage that system. I acknowledge that.

**Q40 Chair:** I will be absolutely honest with you. I came here and I thought, “Okay, the Government have decided to cut £300 million out of this budget. That is their policy decision. Let us go with it.” However, when I started reading the papers last night, the thing that jumped out at me was that good policy is based on evidence. You would agree with that as well, would you?

**Ursula Brennan:** Yes.

**Q41 Chair:** And that is necessary if you are going to ensure effectiveness, economy and efficiency, which is what we are interested in here. Do you accept that?

**Ursula Brennan:** Yes, I do.

**Q42 Chair:** The thing that distressed me was how you embarked on it as a Department with so little knowledge. I do not even know which one to take first. This is right the way through. You have no idea why people go to court. Page 22, paragraph 2.5 states: “The Ministry currently has a limited understanding of what influences people to go to court”. Is that true?

**Ursula Brennan:** That is true, yes.

**Q43 Chair:** So when you were changing the rules, you had no idea what impact that would have on whether people would go to court?

**Ursula Brennan:** No, we did not have no idea; we had some idea. The thing that we knew very clearly was that there was an imperative to cut legal aid funding. The Government was absolutely explicit about that from the start, and that it would need to do that—

**Q44 Chair:** Let us take that as a given. But when you have got a given, it should not stop all of you implementing that policy. That is why I read the principle out. It was a David Davis quote, so it did not come from some leftie lawyer. If you accept the principle, the responsibility is on you to ensure you implement it in a way that conserves that principle.

**Ursula Brennan:** And, indeed, we did everything we could, consonant and consistent with the Government's very clear stated intention to make these savings swiftly. It was very clear that we would launch research to analyse what happened to people and what happened to the behaviour change after the event. We were absolutely explicit about that.

**Q45 Chair:** Let me just say on this issue, and then I will come to others, that the Ministry has a limited understanding of what influences people to go to court, and you commissioned the research only in 2014 and will not publish it until mid-2015. Remind me when these reforms came in.

**Catherine Lee:** In April 2013.

**Q46 Chair:** So you commissioned it a year after they came in.

**Ursula Brennan:** Yes, deliberately and consciously.

**Mr Burrowes:** It has got a good title, though: "Varying Paths to Justice".

**Q47 Stephen Phillips:** I am a bit confused, Chair. Ms Brennan, you say that best policy is evidence based. Obviously, we are not here to look at the policy, but the policy of the Government is to reduce the bill by £300 million, and that is what you were told. You essentially went ahead with the reforms in order to save the £300 million, without any evidence at all about what the impact of that might be, other than what is contained in the impact assessment, and we know the defects in that.

**Ursula Brennan:** I was going to say—and it is really important to be clear—that the Government was absolutely explicit that it needed to make these changes swiftly. Therefore, it was not possible to do research about the current regime before moving to the cuts.

**Q48 Stephen Phillips:** I don't want to stop you, but you have just identified the implementation of non-evidence-based policy.

**Ursula Brennan:** No. I would say that the piece of evidence that was overwhelming was the level of spend. The evidence that was required here was that the Government said, “We wish to cut the legal aid bill. We will have a strategy for how we cut that.”

**Q49 Stephen Phillips:** Forgive me, that is not evidence about the impact of the policy. That is simply the Government’s policy: to reduce the bill by £300 million.

**Ursula Brennan:** Yes, and that was the policy that we implemented.

**Q50 Stephen Phillips:** That’s fine. That’s what you are there to do and I understand that, but don’t try to dress it up as evidence-based policy making. You have in fact simply described the implementation of a desire to remove £300 million from the budget, without any evidence at all of what that might mean.

**Ursula Brennan:** I can only repeat that it was quite explicit from the start that we would not be able to do research in advance if we were to make the savings to which the Government committed. Therefore, we would conduct the research on the basis of what happened to people, because we were seeking to make a behavioural change, after it happened.

**Q51 Stephen Phillips:** We all understand that, but would you please stop describing that as evidence-based policy making, because it isn’t, is it?

**Ursula Brennan:** I was simply saying in terms of the evidence, the most critical piece of evidence that was relevant to the decision that was made was the size of the spend.

**Q52 Meg Hillier:** The size of the spend was £300 million out of the MOJ’s budget. We have often in this Committee looked at the shunting of costs. To give one example, at the Hackney Community Law Centre demand has risen 40%, probably growing to 50%. A third of people calling are being turned away, as the staff are no longer able to help. The council has increased its grant by £35,000 a year, even though its budget is incredibly pressed. Other bits of money are also being sought. Our surgeries are busier; we have fewer places to refer people. There are also impacts on the health system. Those are all costs. Your bit might be sacrosanct, but when you took this on, what attention did you give to that cost-shunting on to the overall public purse?

**Ursula Brennan:** It is important to be clear that we were very explicit about fewer people coming to court. That was never in any doubt and there was nothing hidden about it; it was explicit. The impact assessment sought to identify where impacts would be. Funding for the not-for-profit sector was put in place before the changes happened in order to prepare it for the changes that were made.

**Meg Hillier:** For a nearly 50% increase?

**Q53 Chair:** Did you look at costs arising out of your cost-cutting?

**Ursula Brennan:** We did that in the impact assessment.

**Q54 Mr Burrowes:** You say that the impact on the volume and duration of cases going to court is uncertain and that the offer of publicly funded mediation might divert more people away from the courts. Do you still hold to that view?

**Ursula Brennan:** When we did the impact assessment there were lots of things that you could not quantify.

**Chair:** Ursula, it would be really helpful—you have not answered questions directly.

**Mr Burrowes:** Do you still hold to the same view that came before Parliament?

**Ursula Brennan:** That it would be difficult to predict?

**Mr Burrowes:** No. That the offer of publicly funded mediation might divert more people away from the courts.

**Ursula Brennan:** There was an intention to divert people away from the courts.

**Q55 Mr Burrowes:** The impact assessment anticipated that 10,000 cases would be diverted through mediation.

**Ursula Brennan:** Sorry, are we talking about the mediation part? Yes, that was one of the changes that we expected to happen. That is correct.

**Q56 Chair:** With no evidence.

**Ursula Brennan:** No, we didn't have evidence.

**Q57 Chair:** I thought your job was—I was going to ask you about your job. Maybe I could do that quickly before you reply.

**Catherine Lee:** Yes, sorry.

**Chair:** Your job is about access to justice. Is it about inhibiting access to justice? Is it inhibiting or facilitating?

**Catherine Lee:** It is facilitating.

**Ursula Brennan:** It is inappropriate to ask Catherine Lee about whether her job is to inhibit access to justice.

**Chair:** It is her job description.

**Ursula Brennan:** Her job description is to implement the policies of the Government, including in relation to legal aid.

**Chair:** She comes to us as the person with the job description of “access to justice”.

**Ursula Brennan:** It is completely inappropriate to ask her whether she is the person who is responsible for inhibiting access to legal aid.

**Q58 John Pugh:** Would it help if you just gave us a brief account of why you think mediation was not picked up in the way it should have been, and what went wrong? That was your expectation. The policy expectation was clearly defeated. The stats are even worse on mediation than they were before. What is your explanation of it and how early did you note that this was happening?

**Catherine Lee:** Our expectation was that there would be greater take-up, as we said in the impact assessment.

**Q59 Chair:** Based on what?

**Catherine Lee:** Based on the fact that when we first introduced compulsory mediation for legal aided people back in '97, there had been just 400 mediations at the time. That went rocketing up, by the time we were writing the legal aid review consultation, to the thousands; I think it was 13,000. There was evidence.

**Q60 Chair:** What in the legislation or in your evidence gave you the confidence that it would go up 9,000 or 10,000 or whatever it was?

**Catherine Lee:** Partly, the evidence that I have just mentioned, and partly the assumption that if you are taking away legal aid for people going to court but providing it for people to go to mediation, they would take up that option.

**Q61 Chair:** Did you know that people were referred to a mediator by a solicitor?

**Catherine Lee:** We did know that they were referred by a solicitor. That was not the only route.

**Q62 Austin Mitchell:** If they couldn't get a solicitor, they wouldn't be referred. Didn't you anticipate that?

**Catherine Lee:** Going to the solicitor was obviously one of the main routes of referral but not the only route. We also anticipated that—

**Austin Mitchell:** But it was a major route.

**Catherine Lee:** It was a major route.

**Austin Mitchell:** And they wouldn't be referred if didn't get a solicitor.

**Catherine Lee:** If they didn't go to the solicitor, they didn't get referred.

**Austin Mitchell:** So you did not anticipate that?

**Catherine Lee:** We anticipated that they would not be going to a solicitor. We anticipated that all the publicity that we put out around mediation would mean that they would, anyway, go not via the solicitor.

**Ursula Brennan:** We said when we did the impact assessment that what was going on was that in the past, a whole raft of cases that people had taken to court, gone to a solicitor with and taken to law were being removed from the legal aid scheme. We knew that people's behaviour would change; we said in the impact assessment that it is very difficult to predict how people's behaviour might change. That is why we have been tracking what has happened and why, when we saw that the numbers going to mediation were lower than we thought, we took a number of steps to ensure that people were aware of mediation. We set up a—

**Chair:** We have read the Report.

**Ursula Brennan:** We did a variety of things to address a problem that was very difficult to predict when we started.

**Q63 Austin Mitchell:** You had a consultation on the proposals. How many replies did you get to that consultation and how many said, "Don't do it; it won't work."? How many were against it? What proportion?

**Catherine Lee:** On that issue, I am afraid I don't have the numbers.

**Austin Mitchell:** But how many replies did you have to the consultation?

**Catherine Lee:** About 12,000.

**Austin Mitchell:** How many of those were against it?

**Catherine Lee:** The whole package or specifically mediation?

**Austin Mitchell:** Against it or any part of it.

**Catherine Lee:** The majority, as we set out in our response.

**Q64 Chair:** Let us ask the question another way: how many supported it?

**Catherine Lee:** A small proportion.

**Chair:** What? This is a fact you can give me. Perhaps we can allow Catherine to answer that question.

**Catherine Lee:** I have not got the exact number of people who supported them.

**Chair:** Maybe somebody behind you can get you the fact so that we can put it into the record of this Committee.

**Catherine Lee:** Certainly.

**Chair:** While we are sitting.

**Catherine Lee:** When we responded to the consultation, we explicitly said that most people were against it.

**Austin Mitchell:** The Bar Council—to give you some figures—says that more than 5,000 responses were submitted to the consultation, the majority of which rejected the Government's proposals. Perhaps you could provide us with the detailed figures.

**Q65 John Pugh:** You put out publicity at the start, which didn't work, didn't you? Then you changed something you did so you would get a better effect. What was wrong, in your view, with your publicity at the start that made it so singularly ineffective?

**Catherine Lee:** Several things. We expected the mediation sector to do more to promote itself. We realised that that was not happening after we looked at six months' worth of data, and we knew that we had to provide some support for them, so we did. We helped them beef up their website. It was very internally looking before—it was like a website for themselves as a professional. It now has, thanks to the funding we put into it, a "Locate your local mediator". I went into it myself, and you find a list of about 10 within half a mile of where you live. So we really helped them beef up their promotional material.

**Q66 Mr Burrowes:** May I bring in Peter Handcock on the impact? Given that we see from the NAO Report a 30% increase in litigants in person, do you consider that the reforms have delivered value for money?

**Peter Handcock:** Just in terms of the impact on the courts, it is right to say that the number of litigants in person has gone up. Litigants in person are more difficult to deal with than those who are represented, at least anecdotally—I will say something more about that in a moment. At the same time, the volume of work coming into the courts has gone down, which was an explicit intention of the policy. The balance between those two things has left the resource position in the courts pretty much unchanged. It hasn't been hugely problematic, in terms of the number of cases running through the system and the speed at which they are running through the system. In fact, the evidence is that cases involving litigants in person are taking rather less time to progress through the system than those in which both parties are represented.

**Q67 Mr Burrowes:** Are you dealing with the same litigants in person as you were pre-LASPO?

**Peter Handcock:** It is very difficult to say.

**Mr Burrowes:** Exactly, but you made a proposition—

**Peter Handcock:** No, you are entirely right. Litigants in person have always been a feature of the system. It may be that getting the balance between the work load and the nature of the work

has helped us manage what otherwise would have been a resource strain, but the fact is that there has not been a resource strain.

**Q68 Mr Burrowes:** So you are not finding any increase in the numbers of adjournments thorough litigants in person who may previously have been represented.

**Peter Handcock:** To be absolutely clear about it, the length of time that it takes a litigant in person case to clear the system, from the beginning of the case to the making of the final order, is significantly shorter than the length of time it takes for cases in which both parties are represented.

**Q69 Chair:** Do you want to say something about that, Oliver?

**Oliver Lodge:** I just want to point out that that is not the length of the hearing itself and the interventions. It is a much broader period of time.

**Q70 Chair:** Of course. Can we deal with the hearing length?

**Peter Handcock:** Some experimental data was published on hearing length, but we have to acknowledge that it is based on estimated hearing length, not actual hearing length. Actual hearing length data is neither collected nor published, because it has never been required to be collected or published. That data correlates reasonably well with the other data set about the length of time that elapses between the making of an application and the delivery of an order. There is no evidence to show that average hearing length has increased across the life of a case, nor is there evidence to show that cases are in the system for longer.

**Q71 Stephen Phillips:** You have read the Report. The practical experience of those on the ground who are actually engaged in the system, rather than those who are trying to spin the statistics, appears to be that cases take 50% longer when they involve litigants in person.

**Peter Handcock:** I absolutely resent the suggestion that I am trying to spin the statistics. The 50% longer statistic is anecdotal.

**Q72 Stephen Phillips:** A moment ago you said you do not know, because the data is not collected, how long cases take when there are litigants in person involved, as opposed to parties who are represented. Is that right—yes or no?

**Peter Handcock:** No, that is not right.

**Q73 Stephen Phillips:** So how do you know that cases don't take any longer when they involve litigants in person?

**Peter Handcock:** The average time that elapses between the commencement of proceedings and the making of an order has not increased.

**Q74 Stephen Phillips:** That is the disposal time for the entirety of the case—from the time that the case commences to the time that a final order is made in it. At some point during that case, there needs to be an oral hearing. Correct?

**Peter Handcock:** Yes

**Q75 Stephen Phillips:** Right. What data do you have as to how long that oral hearing takes when there are litigants in person involved as opposed to parties who are represented?

**Peter Handcock:** As I have just said, the data that is available relates to the estimated time for those hearings. The experimental data that was published on, I think, 27 November shows that, on the basis of those estimates, there is no increase in the average hearing length.

**Q76 Stephen Phillips:** What are those estimates? Are they set at the outset?

**Peter Handcock:** Those are judicial estimates of the time required to dispose of the case.

**Q77 Stephen Phillips:** Right, and the judiciary no doubt gives those estimates on the basis of the normal time that an application or a case of this nature would take to dispose of. It does not take into account actual experience in the real world of litigants in person arguing those cases, as opposed to those cases being argued by represented parties, does it?

**Ursula Brennan:** It is data that we have collected and entered on our system, so it is not estimates in advance. It is experimental. It has many caveats, as the judges—

**Chair:** Can you answer the question again, please?

**Ursula Brennan:** It is data that we have collected. It is not an estimate in advance<sup>1</sup>.

**Peter Handcock:** Those estimates—the anticipated length of a hearing is determined by a judge at a first hearing. What many judges have said to me is that, as a consequence of having more litigants in person, they are having to invest significantly more time in those first hearings—aneccdotally, about 50%. What judges have said to me is not that the entire time devoted to hearings goes up by 50%, but that the first hearing is longer. That enables the substantive hearing of the case to be shorter.

**Sir Amyas Morse:** As we are talking about the information, I just want to ask for your reaction to testimony we had from the previous witnesses. In terms of the experimental data that you have—thank you for being careful to describe it as experimental; I appreciate that—they were saying that there was, in fact, a risk of not comparing like with like. That is because the cases that are now being legal aid-funded and are still qualified to have professional representation are, by definition, quite a small subset of the most difficult and complex cases. Comparing how they run with litigants in person is therefore not comparing apples with apples. Is that a fair point?

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<sup>1</sup> Amendment to witness statement: The data to which Ursula Brennan is referring is based on pre-hearing estimates, as explained by Peter Handcock in his response to Q76.

**Peter Handcock:** It is entirely fair. This is just a judgment; it is speculative. I do not have any more evidence than anyone else.

**Q78 Mr Burrowes:** Is the point not that, at this stage, we are dealing with experimental data? At the beginning, the impact assessment was clearly saying that, in terms of the outcomes for litigants in person, the extent to which the finding about the impact on the outcome of the case applies to particular reforms is less than clear. We then have this latest research, “Litigants in Person in Private Family Law Cases”, which says that “Follow up independent research is needed to examine the impact of the legal aid reforms on the types and experiences of LIPs, their impact on the court system” and the effectiveness of it all.

You still do not know: on an evidential basis, you clearly cannot say what the situation is in relation to litigants in person and the impact on the court system. You have acknowledged that you need to do further independent research to work it out. So whatever you are saying now, you do not have clear independent research to be able to say to us what the impact of these reforms is on litigants in person.

**Peter Handcock:** Indeed. The point that was being made, which is an entirely valid one, is that it is quite clear that one impact of the change has been a change in the case mix. We are seeing longer disposal time for those cases where both parties are represented, because those are the most complex cases coming into the system. The less complex cases are LIP cases.

**Q79 Chair:** Can I ask a naive question? If the evidence coming from the judges is that they are having to spend 50% more time, which you accept—a judge costs more than a legal aid lawyer per hour.

**Peter Handcock:** I am not sure that that is true. I do not know. That is an interesting point, but I am not sure it is true.

**Q80 Stephen Phillips:** You have to have a court room available; you have to have somewhere where the judge can sit.

**Ursula Brennan:** That is true, but it also relates to the distinction between the initial hearing and subsequent hearings. On the judge time and legal aid time, we are looking at not only the initial hearing, but what happens to subsequent hearings. You can understand why this might be the case. With litigants in person, your first hearing will take longer to get to the bottom of what is going on. Subsequent hearings appear to be going faster.

**Chair:** We do not know. You are not really looking at that.

**Q81 Stephen Phillips:** You do not know that to be the case.

**Ursula Brennan:** No, but to be really clear, we absolutely are dealing with a big change that has happened, and we need to track what has happened to it. There is lots of anecdotal evidence. All we are saying is that the limited experimental evidence that we have got does not back up the anecdotal evidence.

**Q82 Mr Burrowes:** But this is your problem. You are giving us a narrative of the lack of evidence, but fundamentally, from the start, we still do not know how and why people access legal aid. There was a trend away from accessing legal aid before these reforms, and we still do not know exactly why it bottomed out. Your impact assessment acknowledges that, “Legal aid recipients are amongst the most disadvantaged in society”—perhaps even more so, given the now limited scope. We do not know why they are not accessing legal aid, which is why it is a fair question to the director responsible for access to justice and her view on whether the spend on those most disadvantaged people is delivering value for money for them to access justice.

**Catherine Lee:** So we did not, as Ursula Brennan mentioned, have the time, in view of the urgency to make the cuts, to do the research in time. We are now embarking on—and in the middle of—a very extensive programme of research to look at exactly those issues.

**Chair:** It is a bit late.

**Q83 Mr Burrowes:** It is late. This research is examining those litigants in person prior to the reforms as well.

**Catherine Lee:** It is a much broader piece of research. We have got one piece looking at the not-for-profit sector, to try and understand that environment. We have got another qualitative series of interviews with 120 people just to ask them about their justice issues.

**Q84 Mr Burrowes:** You are seeking to deliver access to justice to these most disadvantaged people. Can you say that you are delivering value for money for them without that evidence?

**Catherine Lee:** We are gathering the evidence now, but on the basis of a year’s worth of operations.

**Q85 Mr Burrowes:** You must be making a judgement. Given the responsibility for the spend, can you say that you are delivering value for money for those people?

**Ursula Brennan:** When you say—

**Chair:** Let Catherine answer.

**Mr Burrowes:** Your day-to-day responsibility is access to justice for those people.

**Catherine Lee:** As was made clear in the impact assessment, we were not, and nor was the NAO, able to monetise the possible knock-on impacts to health and other services, so you need to take all of that into account. The NAO was not able to do it, and nor did we. It would be spurious to attach figures when you absolutely do not know what your baseline is.

**Q86 Mr Burrowes:** When these reforms were decided upon, it was not just a decision about cutting the spend. We had objectives A to D. A was “to discourage unnecessary and adversarial litigation at public expense”. That objective had to be achieved. Has that been achieved?

**Ursula Brennan:** We certainly have fewer cases coming to court.

**Chair:** You have no idea.

**Q87 Mr Burrowes:** We have realised that we need to have more evidence on that. The next one is “to target legal aid to those who need it most”. Has that been achieved? Do we know that?

**Ursula Brennan:** That was a policy change, which we delivered.

**Q88 Mr Burrowes:** Has that been achieved?

**Catherine Lee:** We would say so, in the sense that—

**Q89 Mr Burrowes:** How can you say that? You are commissioning a wonderful, very important wide-scale review as to how and why people are accessing legal aid and access to justice. We acknowledge that we have not got that evidence base, so can we say—

**Catherine Lee:** The rationale underpinning the choices that Ministers made about how to reduce the scope was to focus the smaller amount of money available on the most important issues: those that involve life, liberty and a roof over your head.

**Q90 Mr Burrowes:** I appreciate the policy, but have we achieved that objective and provided value for money for those people who need legal aid the most? Can we say that we have accessed justice for them?

**Catherine Lee:** We have achieved the objective of narrowing the scope to target.

**Q91 Mr Burrowes:** You say yes, but you have acknowledged that we have to do this wide-ranging review to understand the varying paths to justice. By implication, that means there is variation for those people. Let’s take people who are, on the face of it, eligible for legal aid: not of all them are accessing legal aid. We have to acknowledge that. Matthew Coats would acknowledge that.

**Matthew Coats:** Acknowledge what?

**Q92 Mr Burrowes:** That all those who could, on the face of it, be within scope for legal aid are not necessarily accessing legal aid.

**Ursula Brennan:** One of the things that’s very difficult—

**Q93 Chair:** I don’t want a waffley answer. It would be lovely to have a few yeses and noes. Is that right?

**Matthew Coats:** I am not sure whether, from our point of view, it is knowable. We know only about the people who apply for legal aid.

**Q94 Mr Burrowes:** Exactly. From your point of view, that's all you know, so we are doing a review to understand how and why people access legal aid.

**Ursula Brennan:** Can I try to tackle this? Entitlement to legal aid is not like an entitlement to a benefit, where you say, "What's your income? This is the benefit and these things match across."

**Mr Burrowes:** I appreciate that.

**Ursula Brennan:** Legal aid is something to do with whether people choose to resolve their problem by bringing it to court or in some other way. When we ask whether legal aid is getting to everyone who needs it, part of that judgment is how people choose to resolve their problems—

**Chair:** You don't know that either, do you?

**Ursula Brennan:** There was a conscious policy decision to say, "We will severely restrict access to the court and expect people to solve their problems in different ways." That was a policy choice.

**Q95 Mr Burrowes:** I appreciate that, but I was going back to the point, Catherine Lee, that because you have undertaken this review to discover how and why people access legal aid—because we have not known previously—surely you cannot say, clearly and with hand on heart, that you are delivering value for money for those who need legal aid.

**Chair:** Can you just say yes or no?

**Catherine Lee:** Hand on heart, I haven't got numbers around this, so I cannot say yes or no.

**Chair:** I want to say something to Ursula Brennan, and then I am going to move on to Meg. We all understand that people wanted to save £300 million. This is the second or third thing that we have looked at in the MOJ, and the MOJ does not have a good record on it. In implementing things, we expect you to move forward on the basis of evidence and some certainty of the outcome. Our criticism—we are only starting; you wait till we get to the end—is not of the policy objective, which was set by Government; our criticism is that the way you have set about this with so little evidence has had unintended consequences that mean that you do not meet the objectives of the policy. You should not be moving without evidence. If I may say so to the permanent secretary, that is where you should be exercising your proper powers to ensure that we do not go ahead and implement decisions without knowing either what the impact will be or the proper evidence for it. We see too much of it in this Committee and it is really bad. Sorry, that is my rant over.

**Q96 Meg Hillier:** I am going to add to it. There has been all this discussion about evidence, and there was evidence out there. My own experience is that back in 2010, or the end of 2009, I initiated an investigation into support for people with immigration issues. Among other things, we concluded that there needed to be much better early legal advice. Only on Monday, Lord Dyson and Sir James Munby told the Justice Committee that the priority must be to provide early legal advice

that might divert people from court if their case was hopeless. These reforms targeted that early legal advice—the cuts did that, even though you had little evidence. Why? Surely there is evidence out there to show that.

**Ursula Brennan:** I can only say that it was a conscious policy decision to remove access to legal aid from a whole set of areas and to be very explicit at the start that we would collect the evidence of what happened to the behaviour change after the event.

**Meg Hillier:** But you won't be able to collect some of it for some time.

**Q97 Chair:** Can I repeat something that you agreed with? David Davis said: "Legal aid is so important to the operation of the judicial system that it is vital to get reform right first time. If the Government gets it wrong, British justice could be irretrievably damaged." In implementing this £300 million cut, it is vital that you get the operation right so that British justice isn't irretrievably damaged. That is the point. Don't blame the politicians on this one.

**Ursula Brennan:** I don't think that the Report comments on how the legal aid system has been operated. All the discussion that we have had so far has been about groups and their access to legal aid. Our responsibility was to implement a policy that was heavily debated through Parliament and that went through primary legislation. Nobody was in any doubt about what would happen when we made these changes. We have sought to implement these changes—

**Q98 Chair:** So you think now that we have got it wrong and British justice has been damaged, do you?

**Ursula Brennan:** No, I don't think British justice has been damaged.

**Q99 Meg Hillier:** On another issue, I have talked about the impact on Hackney law centre. Work on LASPO shows that no new legal aid work was undertaken in 14 local authorities and among 12% of providers—the Report covers that on pages 34 and 35—and that civil legal aid is massively underspent. I have constituents in desperate need of help, but they cannot access the legal aid providers because so many of them have had problems and gone under, or providers have a licence, as the Report says, but are not providing advice in certain areas. We had a problem with immigration, and it is probably still there—I haven't followed it in massive detail. There are not-spots across the country. You could hardly get an immigration lawyer in Wales six years ago, and these cuts have had a bigger impact and mean that many providers are not providing advice because it is not cost-effective. There are deserts of advice. Do you have any comments about that? What is happening with the underspend in the legal aid budget? The money is there, but it is not being spent because people cannot reach it.

**Matthew Coats:** There are points about coverage, providers with no starts and the underspend, and I will tackle them in that order. The helpful map in the Report shows 14 local authorities without an office in their area, but that does not mean that people in those areas do not access legal aid.

**Q100 Mr Burrowes:** There are another 39 areas with fewer than 49 pieces of legal work per 100,000 people.

**Matthew Coats:** We contract slightly differently for different areas of law, but if we take family law as the most straightforward with the most local coverage, we contract on the basis of local authority tempered by population. There isn't a provider in Christchurch, for example, but there are providers in neighbouring Bournemouth. The 14 areas tend to be areas—

**Q101 Chair:** It is a wider problem than just the areas with no provision.

**Matthew Coats:** The same principle applies. We contract on the basis of local authority tempered by population, so the areas with lower provision tend to be areas of lower population density, and they tend to be adjacent—

**Q102 Chair:** A third of areas.

**Matthew Coats:** That would reflect the population spread of the country. The areas that have the lowest level of representation tend to have the lowest population density.

**Chair:** Are you content that it is a third of areas?

**Q103 Mr Burrowes:** The NAO says that there is a variation. It refers to Camden, where the providers based in the area started 4,283 pieces of legal work for every 100,000 people, whereas there are other areas that do not have any at all. You cannot just base it on population. Something deeper is going on here. Again, we just do not know the answer because we do not have the evidence.

**Matthew Coats:** I think population density is the major factor.

**Oliver Lodge:** We have adjusted for population density by expressing figures per 100,000 of population.

**Q104 Chair:** Sorry, what does that remark mean?

**Oliver Lodge:** We have expressed the number of cases started per 100,000 people. Those figures adjust for population.

**Q105 Chair:** So your assertion that a third of areas do not have enough is based on population density?

**Oliver Lodge:** We have factored population density into the figures.

**Q106 Chair:** So population density isn't an answer because they have factored that in. What is the answer, or do you not know?

**Matthew Coats:** There is variation between the areas. Our job is to ensure that there is local coverage and that people can access a relatively local provider.

**Q107 Chair:** A third of areas don't have enough.

**Matthew Coats:** A third of areas have access to the service but take it up in a differential way.

**Q108 Chair:** No, a third of areas do not have enough.

**Oliver Lodge:** We can't be definitive about that. As Matthew says, people can get advice by crossing a local authority boundary.

**Q109 Chair:** If they are poor, they can travel down to London on the really inexpensive trains, can't they?

**Oliver Lodge:** What is really important to note is that the agency had not done this analysis—we did

**Q110 Mr Burrowes:** The civil and social justice survey was last done in 2010. Has there been any similar survey since then?

**Matthew Coats:** There hasn't. Our remit does not include research on the basis—

**Q111 Mr Burrowes:** Would the Department agree with the NAO that the agency does not know whether all those eligible for legal aid are able to access it?

**Matthew Coats:** I think I said earlier that, from our point of view, it is not a knowable fact.

**Ursula Brennan:** We seek to make sure that legal aid is available across the country. It is the case that there are population areas with a higher net wealth where there is less legal aid demand. Some of those are alongside places where there are a number providers nearby.

**Q112 Mr Burrowes:** Mr Coats says it is not knowable, so would you agree with the NAO that the Ministry does not know whether or not all those eligible for legal aid are able to access it?

**Ursula Brennan:** I agree that that is not knowable.

**Mr Burrowes:** Do you agree with that conclusion? I am not asking whether you agree with Mr Coats.

**Stephen Phillips:** In that case you agree that the Ministry of Justice does not know. Come on, Ursula, give a straight answer.

**Q113 Mr Burrowes:** Would you agree that the situation, from the demand and the map that you so helpfully produced, shows a market shortfall?

**Matthew Coats:** It shows the distribution of the contracts that we have got. It shows a differential take-up in some areas, but I don't think, from my point of view, that you could infer a shortfall.

**Q114 Mr Burrowes:** So you don't think there is a developing market shortfall in family legal aid?

**Matthew Coats:** No.

**Sir Amyas Morse:** I agree with you that it is not knowable in precision terms. Our Report is absolutely not focused on whether the policy is right or not. That is really not a germane—

**Chair:** Amyas, I have to ask you to speak up.

**Sir Amyas Morse:** It is really not a germane point. The Report does not set out to discuss the rightness of the policy at all, and nor should it. We are trying to say that there are a lot of things that might or might not be knowable, but many of them are knowable and you should know more about them by now. We will rely an awful lot on the results of this research.

I have two points I want to make. First, would it be fair to say that it would be rather disappointing if we waited for the much heralded research and it did not answer some of the fundamental questions about what might be happening within the system in terms of cost, accessibility, length of hearings and so on? We have waited this long for it, so it needs to answer those questions, doesn't it? If we have another hearing on this in the next Parliament and we find that we still don't know the answers to those questions, that would be rather regrettable, would it not? Is that a fair comment?

**Catherine Lee:** Yes, and the fact that it is such a broad programme, which is a mixture both of quantitative telephone surveys and in-depth qualitative interviews, should provide some really useful, rich information on how the system is operating now.

**Sir Amyas Morse:** That is great. The other thing I want to say as regards knowable and unknowable, is that that is true in terms of point information. That is a fair point and is, if you don't mind me describing it as such, a lawyer's point, and a very good one too, of course. The fact is—

**Chair:** An accountant to a lawyer.

**Sir Amyas Morse:** The fact is that it should put you on inquiry, shouldn't it? In other words, if you see that there are gaps in the statistics, it might be because everybody is rich in that area and they don't need legal advice, which is possible—I don't say it is impossible and therefore we can argue about unknowable and all those interesting arguments—but it should make you scratch your heads and say, "We need to know the answer. Is it because of that or is it because our offering is somehow not accessible in that area?" That is the sort of question that I would have thought, when you see these meaningful gaps in distribution, you needed to develop an answer to.

That is really the only proposition that I wanted to put to you. I am not trying to say that you should interpret information purely as something that either gives you an answer, specific or not, but I would have thought that you should be looking at information and saying “We really need to dig into this.” Is that a fair proposition?

**Q115 Mr Burrowes:** Can you not look in the 53 local authorities that have no, or less than 49, pieces of legal aid work? Could you not drill down into those areas and see if there is a market shortfall? If there is, you would then follow your impact assessment that says you will respond promptly, effectively and appropriately.

**Matthew Coats:** Yes.

**Q116 Mr Burrowes:** Yes? You can do that? Can we do that then? Can you give us a time scale for when you can do that?

**Matthew Coats:** If it is okay, we will respond—

**Chair:** In writing before we publish the Report, which means in a week or so.

**Q117 Mr Bacon:** Mr Coats, you said earlier that you did not think you could infer particular conclusions from this gap in distribution. What do you think you can infer from the gap in distribution?

**Ursula Brennan:** Are you talking about the 14?

**Q118 Mr Bacon:** Ms Brennan, you keep on answering questions that have not been addressed to you. I have not come in, because I arrived late, so I have been sitting patiently, but I have noticed about 10 times people asking questions of other witnesses and you answering them. If you could wait until a question is addressed to you, it would save us all a lot of time and be really helpful. I addressed the question to Mr Coats, because he was the one who started talking about what he could not infer. My question, which is to Mr Coats, is: what can you infer?

**Matthew Coats:** The best approach to that, as we are going to respond quickly, is to come back with some considered opinions on it.

**Q119 Mr Bacon:** You mean that, at the moment, you do not know what you can infer?

**Matthew Coats:** We would just like to consider that more and come back with a full answer.

**Q120 Mr Bacon:** Hang on. Even if it is an inadequate answer—plainly it will be, judging by what you have said so far—I would like to know what, if anything, you think you can infer. I do not want to put words into your mouth, but if the answer is, “I don’t think I can infer anything,” please say so. What is it that you think you can infer?

**Matthew Coats:** I do not think you can infer a shortfall.

**Q121 Mr Bacon:** You have said that already. I am asking you what you think you can infer.

**Matthew Coats:** I do think that you can infer that there are differential take-up rates according to different areas and that there is proper local coverage.

**Q122 Mr Bacon:** Actually, it is not a question of inferring. You said that you think you can infer that there are differential take-up rates, but it is not a case of inferring. This is merely a fact. It is not something that you have to deduce. The word “infer” means “deduce”. I am asking you what you can infer; what you can deduce.

**Matthew Coats:** I can deduce that different populations have a different take-up rate for reasons that I am not certain about.

**Q123 Mr Bacon:** Good, that is an excellent answer—a clear answer. Let’s put it that way. Are there things that you feel you need to know but that you do not know at the moment, so that you can infer more than you currently can?

**Matthew Coats:** Yes.

**Q124 Mr Bacon:** Could you tell us what those things are?

**Matthew Coats:** It would be a good question to look at, to provide the answers that I have already suggested that we would.

**Q125 Mr Bacon:** Okay. I am not sure that I understood any of that, but let me just explain it in simple Donald Rumsfeldian terms: there are four kinds of thing you can know. There are known knowns. Those are things you know, and you know that you know them. There are known unknowns. Those are things that you know you don’t know. There are unknown knowns. Those are things that you don’t know that you know; you have the information, but you don’t know that you have it. And there are unknown unknowns. Those are things that you don’t know that you don’t know.

Could you write to us with a clearer and fuller answer to the question that I asked about the things that you currently don’t know but think you need to know? In line with other questions asked earlier, we can then look at this later, once you have finished your research, and discover to what extent your research helps you answer these questions to which you think you need to know the answers but don’t yet know. Is that fair?

**Matthew Coats:** Yes, I certainly will.

**Q126 Mr Burrowes:** This research is helpful now, but the impact assessment says that to mitigate any potential risk that clients may not be able to access legal aid services, the Government

are working with the Legal Services Commission “to ensure that they have robust mechanisms in place to identify any developing market shortfall” and so that “they are able to respond promptly, effectively and appropriately, should this materialise in any form.” The NAO Report is helpful, but what have you been doing to ensure that this happens properly—that there are those robust mechanisms and that you are actively not just dealing with knowns and unknowns but ensuring that you respond promptly, effectively and appropriately?

**Matthew Coats:** Probably two things. We carefully consider how we should let contracts for any given area of law. The way you would let contracts to get coverage in an appropriate way for, say, family is different from what you might do in other areas. For example, in specialist areas, you might have a smaller number of providers that cover the whole country, given the depth of knowledge required. For specific areas, there might be a geographic element to that—near an immigration centre or a secure hospital. The way that we allocate the contracts must be targeted and correct for the type of work. We give a great deal of thought to how that works, and I hope that I illuminated in my earlier answer about weighting for population around local authority areas. We go on to closely monitor those contracts, which also have built in quality assurance. We audit against those contracts for compliance. We also have peer review against contracts—

**Q127 Mr Burrowes:** What mechanisms are in place to identify the market shortfall?

**Matthew Coats:** We also watch for where providers are not—

**Mr Burrowes:** These are the people doing the job, but we are talking about where it was not taken up. Where are the robust mechanisms that we were assured of?

**Matthew Coats:** The robust mechanism is regular and ongoing review by us.

**Mr Burrowes:** Of contracts?

**Matthew Coats:** Yes.

**Mr Burrowes:** Anything else?

**Matthew Coats:** And of quality and decision making.

**Q128 Mr Burrowes:** You talked about the unknown. How do you identify the shortfall?

**Matthew Coats:** There are a couple of different things. In terms of coverage, which is the local availability of a provider, despite different challenges across the country of different areas of law, we do not believe that there are any areas where you cannot access legal aid. Geographically, there are not.

**Q129 Mr Burrowes:** I do not know how you can say that, when you have acknowledged that you are just basing the review on the contracts. Where is this robust mechanism? You have a positive obligation, and you have said in your assessment that you are going to identify, with robust mechanisms, any developing market shortfall.

**Matthew Coats:** The robust mechanism is the regular re-contracting for the contracts and our ongoing monitoring of the situation.

**Mr Burrowes:** Perhaps others can judge how robust that is.

**Q130 Meg Hillier:** I find it a bit odd that when I make a quick inquiry to my local law centre, they can tell me that demand has risen by 40% so far and is going up, and that around a third of people who call are being turned away because the law centre is no longer able to help. That is just a quick response. What conversations are you having with the remaining law centres, given that 90% of voluntary providers have gone, to find out the impact on those providers?

**Matthew Coats:** Others may want to comment, but it is a different point. Our responsibility is to ensure the availability locally, not the scope of that. That is a choice for Ministers and for Parliament. What you refer to—people not being able to get those services—is not about the availability of the service locally.

**Chair:** I think we accept that, actually.

**Q131 Stephen Phillips:** Mr Coats, very briefly, you do not know one way or the other where there is a developing market shortfall in any area of the country. Is that right? Because you do not have the evidence.

**Matthew Coats:** I am sure that there is coverage of contracts and there is access to services. I have already said that we will investigate further the differential take-up rates in different geographical areas.

**Q132 Stephen Phillips:** In the absence of having already investigated those differential take-up rates, and therefore being unable to infer anything from them, as you made clear in answer to Mr Bacon's question, you do not know that there is not a developing market shortfall in any area of the country, do you? You just do not know, one way or the other.

**Matthew Coats:** Put in those terms, no. We need to do more work.

**Q133 Stephen Phillips:** Right. And therefore the assurance that was given to Parliament in the impact assessment when these difficult reforms, which I supported, went through the House that a careful eye would be kept on that and there would be robust responses where market shortfalls did develop and were identified—that assurance has been a thing writ in water, has it not, because you have not done the work?

**Matthew Coats:** I do not agree with that. Our responsibility is to ensure the coverage of the contracts, and I believe that we have done that.

**Stephen Phillips:** We can read the answers and form our own views.

**Sir Amyas Morse:** Just on this point, I refer you to 3.22 in our Report, where we point out that 12% of the offices that have legal aid licences are actually not doing any legal aid work

at all. That may be for perfectly good reasons, but you used to have a requirement, which you have rescinded, that legal aid licence holders would be doing a certain amount of legal aid work. Now there is no minimum, so the concern is that there may be some offices that hold licences and do not find doing legal aid work attractive any more. We do not know that. That, unfortunately, is another unknown, but one that I think that we need to understand. If it is that there is not demand, that is one thing. If it is that the offices do not find it an attractive proposition, notwithstanding the fact that they have got licences, that is something else. Is that another thing I can add, if I may, that we need to understand a bit more, going forward?

**Matthew Coats:** Yes, I think it is.

**Q134 Austin Mitchell:** I have been holding myself back in deference to the lawyers, but the impression I get is that we have got a bit of a mess here, created by the fact that it was cut in haste, repent and research at leisure, and you are now making some amends.

However, I just want to tackle, first, Ursula Brennan's point that there has been no damage to justice, because I was reading—as I do, of course—a judgment by the president of the family division, Sir James Munby, in a case about child D. I can give you the reference at length, although you probably have it, but in the case he says, "Stripping all this down to essentials, what do the circumstances reveal?...The parents are facing, and facing because of a decision taken by an agent of the State, the local authority, the permanent loss of their child...The parents, because of their own problems, are quite unable to represent themselves...The parents lack the financial resources to pay for legal representation...In these circumstances it is unthinkable that the parents should have to face the local authority's application without proper representation...If his parents are not properly represented, D will also be prejudiced."

Sir James Munby goes on to say in his conclusion, "Thus far the State has simply washed its hands of the problem, leaving the solution to the problem which the State itself has created—for the State has brought the proceedings but declined all responsibility for ensuring that the parents are able to participate effectively in the proceedings it has brought—to the goodwill, the charity, of the legal profession. This is, it might be thought, both unprincipled and unconscionable. Why should the State leave it to private individuals to ensure that the State is not in breach of the State's—the United Kingdom's—obligations under the Convention?...It is unfair that legal representation in these vital cases is only available if the lawyers agree to work for nothing." That is damage to justice.

**Ursula Brennan:** Could I make two points in response to that? The first is that I do not think it's fair to say that these cuts were made in a precipitate hurry. They were legislated—

**Q135 Austin Mitchell:** Well, they were made without knowledge of the consequences.

**Ursula Brennan:** They were legislated for and were fully debated in Parliament.

In relation to the specific case of child D that you mentioned, the exclusion in the initial judgment, about whether the person could get legal aid, was on the basis of the means test. Government decided to set a means test for legal aid. That was not changed as a result of the LASPO Act, and it was under that ruling that initially the individual here was excluded from legal aid. The case was actually reviewed and legal aid was granted. A number of the cases that have been a cause

of concern have concerned the means test, and it is the case that there is a means test for legal aid. It has always been Government policy that access to legal aid should be means-tested.

**Q136 Austin Mitchell:** So Sir James Munby was talking rubbish when he said that justice is damaged in this case, was he? He's wrong?

**Ursula Brennan:** Of course Sir James Munby isn't talking rubbish, but he's entitled to his opinion about the impact of Government policy, including the impact of the means test.

**Q137 Chair:** Let me go to Catherine Lee, because I think the interesting issue here is where the state brings a case against somebody. Isn't it absolutely imperative—again, I ask you with your access to justice hat on—that the resources should be available to ensure that those being challenged by the state have the ability to respond to those challenges? So it is a very specific set of circumstances.

**Catherine Lee:** It is. I fully accept that, and that is why public children law was left very firmly within scope. It was fully acknowledged and recognised that these are very significant issues, where the state is threatening potentially to take away your child. There was never any question that such cases should come outside scope. In this particular case, "D", as I understand it, there was an existing anomaly that was not a result of LASPO, which is that, although you get legal aid without any means or merit-testing for such cases—that has always been the case—at the outset, for this particular part of the proceedings, a means test was brought in. The Lord Chancellor has recently written to the president of the family division on this particular case to say that he would be happy to look at whether the situation is in relation to some follow-up proceedings that should also not be subject to the means test. That change was not made as a result of LASPO.

**Q138 Austin Mitchell:** But it is still unfair to argue that these people should only get justice if the charity of the legal profession can be invoked to give it to them.

**Catherine Lee:** They were subject to the means test.

**Q139 Chair:** So are you looking at amending the law so that this sort of situation does not arise?

**Catherine Lee:** Potentially. The Lord Chancellor has said to the president of the family division that we will specifically look at this issue, which existed pre-LASPO; it is not something that was brought in as a result of LASPO reforms.

**Q140 Chair:** So you are looking to amend?

**Catherine Lee:** We are looking at the situation.

**Q141 John Pugh:** There is a danger in all this of you being arraigned for Government policy. It must be very tempting for you to turn around and say, "There are four people on the other side of the room who probably voted for it", but that is not quite where we are going. What we are looking

at and trying to probe is how well you have managed the process of mitigation. That is where publicity and monitoring and all that sort of thing come in.

I was struck by paragraph 15 of the Report, which mentions “exceptional case funding”, which is one form of mitigation. It says that you expected 5,000 to 7,000 applications, received 1,520, and only granted 69. I know that it is an arm’s length agency but it falls within your remit. That seems to indicate, maybe misleadingly, that you have been rather severe in applying the regime that Parliament has given you to administer. Is that a fair assumption?

**Catherine Lee:** In the impact assessment, where we were talking about the potential impact of the exceptional cases funding scheme, it was acknowledged, explicitly, that we could not put numbers around this because it was a completely new scheme and there was absolutely no baseline.

**Q142 John Pugh:** So you planned for 5,000 to 7,000?

**Catherine Lee:** So what we planned for and what we said in the impact assessment was that we thought that the impact might be that up to 5% of cases might blow back into the scope of legal aid under exceptional case funding; translated into numbers, that might be about 5,000.

**Q143 John Pugh:** But you received 1,520, which is less than you expected. You only granted 69. That smacks of severity, doesn’t it?

**Catherine Lee:** The Lord Chancellor’s guidance, which informs Matthew Coats’s and the Legal Aid Agency’s decision in these cases, sets out very clearly the relevant ECHR case law and provides a test that is applied in every case.

**Q144 Chair:** You knew that. You set that guidance.

**Catherine Lee:** It is the Lord Chancellor’s guidance, yes.

**Q145 Chair:** Yes. So it is your guidance that set it.

**Catherine Lee:** Yes.

**Q146 Chair:** So did you get it terribly wrong?

**Catherine Lee:** I don’t think we got it terribly wrong. We made prudent provision in the impact assessment to ensure that funding would be available for up to 5% of cases, should they come back in. The fact is that they are far fewer, but there was never a target for the number of cases. This is demand led. Every case is different and you have to apply the criteria to each case individually on its merits.

**Q147 Stephen Phillips:** It is just another example of the fact that this policy was implemented, as we all understand, to save £300 million and that, because it was implemented

quickly, guesses or guesstimates could be made about its impacts, for example, in relation to how many cases would need funding to comply with our obligations under the ECHR. It was all done on the hoof, as it were, because it had to be done so quickly to save the £300 million.

**Catherine Lee:** It did have to be done quickly for the reasons that Ursula Brennan has given but, in relation to the exceptional case funding, I am not sure that any amount of research would have helped us to come up with a specific figure.

**Q148 John Pugh:** I will take you away from research and back to the question of monitoring. An objective of the policy that you are obliged to implement is to target cases that most need targeting—one thinks immediately of things such as domestic violence. Are you able to tell us what percentage of court load they were pre-LAPSO, what percentage they are now, and what the absolute numbers look like? I would assume that the percentage has gone up. Are you able to give us that information? Obviously this area that must be safeguarded, as child protection is.

**Catherine Lee:** It is. Again, on domestic violence, our estimate was that there might be about 28,000 cases. That included 8,000 injunctions: things like non-molestation orders and—

**Q149 John Pugh:** That was post-LASPO?

**Catherine Lee:** Yes, that is what we thought the impact would be. In actual fact, the number of grants in the first year has been, I think, 6,400, so you should be comparing that 6,400 with 20,000, not 28,000; so indeed, a lot lower than estimated. The Legal Aid Agency did not and still does not collect exact numbers of cases with a domestic violence element involved, so we estimated about 25%.

**Q150 John Pugh:** If there is a big difference between the estimate and the outcome, would that not lead you to probe the issue significantly? Obviously, a lot of cases are not coming to court and being processed. There is a lot of wrong out there that is going unaddressed.

**Catherine Lee:** In fact, of the cases seeking legal aid on the basis of domestic violence, 73% are being granted. For the ones that aren't, it tends to be because of means rather than lack of evidence.

**John Pugh:** I have one final question on the research you are going to do—

**Q151 Mr Burrowes:** Sorry, can you repeat the last point about the means?

**Catherine Lee:** They fail on the means test.

**Q152 Mr Burrowes:** Rather than on lack of evidence?

**Catherine Lee:** Yes. They are submitting evidence, but actually they are not eligible for legal aid.

**Q153 Mr Burrowes:** So on practitioners' concerns that in terms of domestic violence, they have to show evidence of a conviction or caution, or that in terms of child protection, they need a letter from a local authority, that is not a barrier to their being granted legal aid?

**Catherine Lee:** A small number have been granted.

**Q154 Mr Burrowes:** A small number?

**Catherine Lee:** Yes.

**Matthew Coats:** Only 3% of the applications that were refused cited evidence as the refusal reason. The remaining ones were on means and merits.

**Chair:** But they cannot apply.

**Q155 Mr Burrowes:** They know that they can only apply if they have got the evidence, and the evidence needed is a letter from the local authority for child protection or a conviction or caution for domestic violence. We know there is increasing reporting of domestic violence, and child abuse is not decreasing, but unless they reach that evidential bar, they will not get legal aid, will they?

**Matthew Coats:** That is correct.

**Q156 Mr Burrowes:** Have you assessed from your point of view whether that is a concern in terms of access to justice?

**Catherine Lee:** Many of you will recall that during the course of the debate on LASPO, domestic violence was one of the issues that kept coming up. The Government made a number of concessions in recognition of the concerns, so the range of objective evidence was widened considerably.

**Q157 Chair:** But is what Mr Burrowes is saying right? You only apply—

**Mr Burrowes:** Mr Coats has said it is right.

**Q158 Chair:** So you have made the criteria so limited—within those criteria, I hear you when you say that you have only turned down 3%. I wonder how many you have had; probably not a lot. But the criteria in themselves are discriminatory and prevent access to justice.

**Catherine Lee:** The criteria were widened considerably during the passage of the Bill, and have been since implementation of the Act. In April this year, we widened them.

**Q159 Mr Burrowes:** Here is one real, current case as an example. A mother had to flee the home with the children because of domestic violence. As it happens, the father applied before the changes and got legal aid for the proceedings, interestingly, but the mother had to flee. No further action was taken by the police, for whatever reason, and because of that, she has not been able to access legal aid, and she is now left with a five-day fact-finding hearing at the family division, unrepresented against a represented person. English is not her first language. She is going to have to set up her case. That five days is going to be problematic. She has reported a long history of domestic violence. CAFCASS has recommended that contact should be with her. Despite all that, she is not eligible for legal aid.

**Catherine Lee:** The range of evidence is not limited to police evidence. There is an awful lot of other evidence, as I am sure you know, that you can provide as objective evidence that there is domestic violence in the relationship.

**Q160 Chair:** Like?

**Catherine Lee:** Like, for example, GPs. Very recently, one broadening of the range of evidence that we made in April was beyond the doctor who had examined the person.

**Q161 Mr Burrowes:** Yes. So in this case, police disclosure has been obtained detailing all the incidents of domestic violence reported, but despite all that, legal aid has not been granted.

**Catherine Lee:** So this particular person submitted the evidence, and it wasn't granted?

**Mr Burrowes:** Yes, because it did not come within the category of being able to show that there was a conviction or caution warranting legal aid on the basis of domestic violence. Mr Coats has confirmed that that is the case. We are dealing with just one example.

**Catherine Lee:** That is right, but there are about 12 types of evidence beyond conviction for DV.

**Q162 Mr Burrowes:** Then, on the other side, you have child protection issues where you must have a local authority letter confirming that child protection is about child abuse. And if that letter does not come—the local authority may have issues of conflict, because it might want to support the other parent—you may not be able to get within the requirement for legal aid.

**Catherine Lee:** You can also have evidence from a multi-agency risk assessment panel—

**Q163 Mr Burrowes:** I appreciate that, but that takes time, and in that time we put a child at risk. This is an issue of not just access to representation, but concern for that child and ensuring that the process happens quicker. In that child's interest, justice delayed is very much justice denied. Are you concerned about that?

**Catherine Lee:** We are clearly concerned about the operation of the evidential basis—that is why we continually look at it; indeed, it was why we expanded it in April this year to take in new types of evidence. An example is a woman being turned away from a refuge because there was no

accommodation. That was another expansion back in April, because before it had to be someone who had stayed in the refuge. Sometimes people are turned away because there is no room, and that now counts as evidence. So we are listening to the concerns that are being brought to us and trying to make assessments—

**Q164 Mr Burrowes:** Similarly, in the example that I gave you, she was supported by Solace Women's Aid but she was not accommodated in the refuge. Despite all that, to this day she is waiting for that five-day hearing in April, which is some months away, so there is that pressure going on, but she is still without legal representation.

**Catherine Lee:** I appreciate that. Clearly I cannot comment on this particular case but, as a general comment, I would like to say that even Rights of Women themselves—we have done a recent survey—have said that, as a result of our broadening of the evidence available, they are seeing more cases of domestic violence getting legal aid.

**Q165 Chair:** Can I just tell you what the criticism is? Our knowledge about domestic violence is not new—it is not something that came in just after you changed the legal aid rules—so for those who have been trying to work in this field, this has all been known, for ever. What is so upsetting about the whole of this is that if you knew, why did you set the rules so wrongly? I am glad that you are listening and that you are now changing, but the criticism is that you got them so ruddy wrong in the first instance.

**Catherine Lee:** To be fair, the ACPO definition of domestic violence was the one that was adopted, so that is a quite broad definition, and the range of evidence now is pretty wide, so there are lots of different types of evidence that you can produce in order to prove. I think it was made very clear in Parliament that this is not about doubting people's integrity, but, in order to spend public money, you need to have objective evidence that there is domestic violence in a case, and that it is not just someone claiming it. Otherwise, every single private family law case could potentially do that.

**Mr Burrowes:** Police reports are not good enough.

**Chair:** If we had found an easy answer to that— You know that it is incredibly difficult to assert evidence of domestic violence, and that is why you need greater flexibility.

**Meg Hillier:** I have come across a very distressing case of someone who has had big challenges with the father of the child who has a serious mental health problem. That has led to very serious threats, including laying out the means to kill them—he has talked about wanting to kill both the mother and the child. That individual has spent private money on legal advice to try to ensure that they keep their child safe, so while the police are involved to some extent in protection, there has now been a ruling that there should be supervised access with the father to enable him to have his rights—arguably the child's too—and that individual has just run out of money and steam to take this on. They need advice to know how to take on the system, but this violent parent is being allowed access to the child, which they do not want to happen. It seems to be against all common sense and justice that someone who has already spent £80,000 of their own money and had to move three times has no access to legal aid to tackle that.

**Mr Burrowes:** The reality we are in is that, for the victim of abuse to be represented and for that case to be prosecuted, it is quicker to gain access to the criminal court—as happened in this case—than it is to access the civil court to protect your child and yourself.

**Q166 Chair:** Can I ask two other things about the way in which the scope was changed? One is around debt cases. We had some very good evidence from the CAB—I do not know whether you were able to hear it—about the value for money to the public purse of intervening early, as well as the effect on the quality of life and health and well-being of those who are in debt. This question is really to you, Mr Coats: why are you funding 86% fewer debt cases than you expected?

**Matthew Coats:** I am not sure that there is a simple answer. There is a variety of different places where people can get debt advice, and they are choosing to—

**Q167 Chair:** They cannot; the CAB haven't got any funding to do it—they have had theirs cut.

**Matthew Coats:** The most straightforward answer that I can give is that people are going elsewhere to get that advice.

**Q168 Chair:** The straightforward answer that might save all my friends on my right coming in on me is that you don't know.

**Stephen Phillips:** Just a yes, Mr Coats.

**Matthew Coats:** Indeed; it is an area we do need to continue to look into, and—

**Q169 Mr Burrowes:** Was that “indeed” a yes?

**Matthew Coats:** Indeed, yes.

**Mr Burrowes:** Okay.

**Q170 Chair:** Let me ask something else raised, I think, by David Davis: the residency eligibility. As someone who is dealing with social cohesion in my own constituency, I can understand the thinking behind that, but did you mean to put in a test on residency that meant that people such as the Afghan interpreters, who really did risk their lives for Britain but had to fight for the right to stay here, could not access legal aid? Did you mean to put in something whereby the Gurkhas couldn't have accessed legal aid? And did you mean to put in something that meant that the family of Jean Charles de Menezes, who were fighting for a real understanding of why he was murdered, could not access legal aid? Was that the purpose and intent of the way in which you changed the rules?

**Catherine Lee:** The purpose was to ensure that those claiming legal aid at the expense of the public purse had some kind of connection with this country.

**Q171 Chair:** Did you mean to exclude those guys? Did you mean to exclude cases like that?

**Catherine Lee:** We did not have in mind particular cases.

**Q172 Chair:** Did you realise that you were excluding cases like that?

**Ursula Brennan:** We certainly knew that we would be excluding a large number of cases, yes.

**Q173 Chair:** Nobody raised with you the Gurkhas—all these high-profile instances of access to justice when things had been done wrong by us, Britain?

**Ursula Brennan:** Ministers responded to representations in a number of areas, including around asylum seekers, but they were clear about the intent of their change.

**Q174 Chair:** So they knew that the Gurkhas, the Afghan interpreters and the family of Jean Charles de Menezes would not get access to legal aid to pursue justice in the courts—to pursue cases created by the actions of UK public authorities? They knew that.

**Ursula Brennan:** I cannot tell you which individual cases people went through to identify the hard cases that would be excluded, but it was very clear that to say that you had to have a strong connection to the United Kingdom was a very significant restriction, and that although asylum cases and particularly vulnerable cases were excluded, otherwise there were not to be exclusions around that concept.

**Q175 Chair:** And, back to what David Davis said, you don't believe that that has irretrievably damaged British justice?

**Ursula Brennan:** That was a piece of policy that was consciously done—it is not appropriate—

**Q176 Stephen Phillips:** It went beyond a strong connection with the UK; in fact, the test was residency, wasn't it?

**Ursula Brennan:** It was a test that was designed to establish—it was intended to be so that people had a strong connection, but the test—

**Q177 Stephen Phillips:** Right, stop there. I am going to ask my question again, and either you are going to answer it or we will draw our own conclusions from your not having done so. The test was for residency and not strong connection—yes or no?

**Ursula Brennan:** Yes, it is a residency test, and it was explicitly a residency test.

**Stephen Phillips:** Thank you.

**Q178 Chair:** I want to move on to the quality of the legal service provided. When I looked at page 30, paragraph 3.12, I was shocked. I do not understand what is meant by “targeted firms” and “firms selected at random”, but we will take that as read. A third of the firms that were targeted and a quarter of the firms that were selected at random failed on a quality threshold. My question is to Matthew: is it because you are paying rock-bottom prices that you are getting rock-bottom quality?

**Matthew Coats:** We’ve got a number of quality tests—I referred to them earlier. One is where we audit the firms against the contract, and one is where we get our panel of independent solicitors to peer-review the cases that are undertaken and paid for by us. They tend to be by referral, rather than randomly selected, so I suspect that there is a slightly higher proportion of problems found than there would be in the general population of providers. Which figure were you referring to?

**Q179 Stephen Phillips:** “23% of firms selected at random failed the review.” In other words, a quarter of the practices you are paying money to are not up to scratch.

**Matthew Coats:** And we are helping to identify that fact and ensure that they are. There is a balance between getting the right level of coverage, identifying where there are problems and helping people to improve.

**Chair:** Oh God, this is so waffly.

**Q180 Stephen Phillips:** We understand that you are going to try to improve it, but that doesn’t alter the fact that at the moment a quarter of the public money that is spent on delivering civil legal aid is spent with providers that are not up to scratch on your own terms.

**Matthew Coats:** And we do take action on that. We offer and agree thousands of contracts, and we issue many hundreds of warnings, sanctions and contract notices. In the past financial year, we terminated 84 contracts for various reasons, including quality. I believe that we follow up on that, and there is a balance to be struck between how you follow up the evidence you have got and how you maintain coverage.

**Q181 Stephen Phillips:** Can you imagine what the position would be if a quarter of the defence budget was spent on troops who ran away or equipment that did not work? We would all be up in arms. Yet you are spending a quarter of your budget on solicitors, legal representatives and providers who are not up to it.

**Matthew Coats:** And we’ve got mechanisms to improve that situation.

**Q182 Stephen Phillips:** Right. So when you come back in the next Parliament, that figure of 23% will be down to 1% or 2%, will it?

**Matthew Coats:** I’m not sure I am able to make a prediction or a commitment to that.

**Q183 Chair:** There are two things. One is that you shouldn't have them anyway. Is there a link to the fact that over time, the return for working in legal aid has gone down badly? Do the prices you are paying mean that the quality you obtain will inevitably be poor, as it is in one in four cases, or one in three? I don't understand what the one in three is; it comes earlier in the Report, Stephen. This is for the poorest people. They are getting the poorest quality, and you just sit there saying, "Well, we'll sign contracts in a different way next time round." God, I don't know how you guys wake up every morning.

**Matthew Coats:** As the Report acknowledges, the situation has improved. It is relatively early days.

**Chair:** Is it to do with the money you are paying them?

**Matthew Coats:** It is relatively early days to be able to make that judgment. I've got no evidence that that is the case.

**Q184 Chair:** Have you got evidence that it's not the case? Have you been tracking quality over time?

**Matthew Coats:** Yes.

**Q185 Chair:** Okay. Since you started cutting the rates—the hourly rates, or whatever it is; the rates that you give for civil legal aid—what has happened to your quality?

**Matthew Coats:** According to the Report, it has got better.

**Q186 Chair:** No, we have looked at two sessions. The cuts came before this. The rates have been reduced by about a third since they were last raised.

**Matthew Coats:** Well, it is 18 months since the cuts—

**Chair:** But there hasn't been an inflation-related rise since well before 2008.

**Matthew Coats:** I've got no evidence that the quality of the service that has been provided has been adversely affected by the roughly—

**Chair:** If you care about this service, shouldn't you be trying to assess whether or not there is a correlation between the price paid to solicitors and the quality of service provided?

**Matthew Coats:** And we are assessing it.

**Q187 Chair:** You are assessing it? How?

**Matthew Coats:** As the Report suggests, the proportion of the reduction from 2012 to now has gone down.

**Chair:** No, that was not my question. We all know that the rates for legal aid have been declining for years. I can't remember: when was the last time that they got even an inflation-related rise?

**Oliver Lodge:** 1999.

**Chair:** So we are talking about 15 years during which the rates have been declining. You would have thought that if you care about the quality of the advice given to vulnerable and poor people, you would make some sort of assessment of how far you can shovel down those rates and still get good quality. Are you making that sort of an assessment?

**Matthew Coats:** We are. As I have described, we audit against the contracts, against the quality standards in the contract, and we do peer review, run by independent solicitors. I have no evidence that the quality of the advice is falling.

**Q188 Chair:** So if you had gone back to 1998, you would have found that a quarter of your lawyers providing advice through legal aid were poor, would you?

**Matthew Coats:** I don't know the answer to that.

**Q189 Austin Mitchell:** But you haven't assessed the sustainability of the service in light of the financial returns to solicitors. My usual concern for the deprived and oppressed is now extending to lawyers, because my grandson is training as a lawyer, so I am very anxious about their future.

Paragraph 3.20 of the Report says, "The Ministry reduced fees for legal aid providers by 10%." That is on top of the fact that "Fees paid for legal aid have not been increased for inflation since 1998-99, which equates to a 34% real-terms reduction." The next paragraph says, "A large majority of respondents to our consultation said that the fees paid for providing legal aid did not cover the costs of providing them." Now that must mean a shoddy service.

Last week Mackesys, a big criminal legal aid firm in London, went bust and fired 27 staff. That was on the criminal side. The lawyers who are providers of civil legal aid must be feeling the same stringency. What do you know about their financial viability and the sustainability of the service in light of these cuts?

**Ursula Brennan:** What we know about the sustainability and viability of the service is that we continue to receive bids that meet the quality standard for the provision of services that need to be provided. That is the key thing that concerns us. We look at the amount of legal aid help that needs to be accessed in the different subject areas of legal aid and we look at the number of contracts that are needed to deliver that, and we look at how many people are bidding for those contracts and whether they meet the quality standard. We are continuing to get bids that meet the quality standard for the contracts we need to let.

**Q190 Austin Mitchell:** But as the Chair has just said, some of those bids are inadequate: a quarter or so. That must be a consequence of inadequate financial returns.

**Ursula Brennan:** The fact that the percentage of them that are inadequate has been reducing suggests that it is not related to the amount of supply. When people bid for the contracts, we set a quality threshold and we are getting sufficient numbers of people bidding to have a sustainable market.

**Oliver Lodge:** The percentage of firms that were targeted has not been falling. That percentage has increased from 28% to 32%. That is firms failing the review. That is firms failing the quality test. That percentage has increased.

**Q191 Chair:** Has increased. Well, there you are, that is at odds with evidence we have.

I have one more question about the way you have implemented this. I stress again: it is not about the process. Do you think that the way in which you have implemented has enabled us to stand by our Magna Carta commitment that everybody should have the right to a fair trial and that there should be equal protection for all? Has the way you have implemented it enabled us to maintain that Magna Carta principle?

**Ursula Brennan:** The way we have implemented it?

**Chair:** The way.

**Ursula Brennan:** I don't think it has had any impact on that. There are protections that exist within the law to ensure that for people. There is a long list of things that are included in legal aid and those that are not. The Government legislated to meet the requirements so that people who had those most severe requirements—things like risk of losing their home, risk of violence, and so on—were retained within legal aid, and they legislated to provide for the exceptional case funding scheme, to meet the requirements of the European Convention on Human Rights and EU law. We have implemented that and we believe we have delivered that.

**Q192 Chair:** So you believe that the way in which you have delivered that enshrines the principle articulated in Magna Carta, do you?

**Ursula Brennan:** Yes, we do.

**Q193 Chair:** Okay.

My final question is to Peter Handcock, about the work we did on interpreters. You told us in January that the independent assessment on the quality of interpreters' standards, provided through Capita, would be complete by April. I understand that it has not yet been published and that, in response to an FOI request in September, you said that you could not disclose it because it had been prepared for this Committee and will be published once we had considered it.

**Peter Handcock:** I will have to undertake to come back to you. I cannot immediately answer that question, I'm afraid.

**Chair:** It's the sort of thing I should have thought you might have thought about in preparing, given the wonderful hearing you had on that issue. Can I have an answer by Monday, please?

**Peter Handcock:** You can.

**Q194 Stephen Phillips:** Dame Ursula, I just want to come back on one point, if I may. Could you look at paragraph 1.17 of the NAO Report? I just want to look at the value for money across Government in respect of these reforms.

**Ursula Brennan:** Yes.

**Stephen Phillips:** It states that the reductions in the scope of legal aid have “the potential to increase costs to the Ministry and across the public sector.” This is an agreed Report and it says that you recognised that in the impact assessment “but did not quantify these costs”. That is still the position, isn’t it? You do not really have any handle on what those costs might be.

**Ursula Brennan:** We identified areas where costs might arise, and there would be costs and savings. So, for instance, in the courts we looked at whether litigants in person might increase costs, but also there were reduced costs because there would be fewer cases coming to courts. So we looked at a range of areas and we identified the areas where we attempted to make an assessment.

**Stephen Phillips:** Hold on a moment. This is an agreed Report. I just want to look at the position as at the date on which the impact assessment was published. You did not quantify the costs as at that date.

**Ursula Brennan:** No, indeed.

**Stephen Phillips:** That is what the Report says.

**Ursula Brennan:** That is correct.

**Stephen Phillips:** Are you saying that you have subsequently done some work to quantify the costs, not only to your own budget, but to other departmental budgets as well?

**Ursula Brennan:** We are not able to identify all of these costs; some of them, because the reforms are not settled down yet. All—

**Stephen Phillips:** I don’t want to stop you, Dame Ursula, but it was a very simple question to which I would like an answer.

**Ursula Brennan:** We cannot—

**Stephen Phillips:** Have you done some work—yes or no—since LASPO came into force, assessing the costs either to your own Department or to other departmental spending across Government?

**Ursula Brennan:** We have sought to track some of the costs where we were able to do so. We have mentioned today the experimental work we did, for example, on litigants in person. The costs to the Ministry of Justice are very small in comparison with the savings that are made in the Ministry of Justice. It would not be possible—and nor have we attempted—to calculate what might happen in the broader public sector. We have looked at funding for the not-for-profit sector, because one of the intentions right from the start was to encourage people not to come to court and instead to get practical help elsewhere, and we are doing research on what is happening in some of

those areas. But we have not attempted—and nor will we attempt—to say, “This is the cost of legal aid reforms to the wider public sector.” We could not do that and we are not planning to do that.

**Q195 Stephen Phillips:** Right. Well, given that answer, how do you know that the costs to the wider public sector are not more than the £300 million saving to the Department’s budget?

**Ursula Brennan:** One would have to identify what kinds of costs you think might be being incurred elsewhere. If you take—

**Stephen Phillips:** Let’s take an answer that Ms Lea gave earlier in the sitting: “We are not able to monetize the knock-on in terms of other things, like health.”

**Ursula Brennan:** Like?

**Stephen Phillips:** Health. How do you know that there isn’t £100 million of mental health costs that flow from these reforms, which is now being borne by the Department of Health?

**Ursula Brennan:** We have no basis for believing that a sum of anything like nature would result—

**Q196 Stephen Phillips:** Let’s pick another number. The answer is that you don’t know, do you?

**Ursula Brennan:** It is impossible to tell what happens when people change their behaviour in terms of their health, their housing—

**Chair:** You missed the evidence, but CAB collected some rather interesting evidence, which would give you the basis for some proper understanding.

**Q197 Stephen Phillips:** We can tell you, 120,000 people have had legal advice from the CAB who otherwise would have done so—that is the number its chief economist came out with. The evidence, I think, was that four in five of the people who attend have better mental health once they have gone through the CAB process. So there is an impact on the mental health budget. You don’t know what it is, do you, Dame Ursula?

**Ursula Brennan:** No.

**Q198 Stephen Phillips:** Do you know what the impact is on the defence budget, for example in relation to service accommodation, as a result of these changes?

**Ursula Brennan:** Service accommodation?

**Stephen Phillips:** Yes. You could end up with a wife who wants to secure legal aid and does not, and as a result she has to be housed or dealt with by a welfare officer or something of that nature. Potentially, there are knock-on effects in all departmental budgets, aren’t there?

**Ursula Brennan:** The changes in people's behaviour can knock on into all sorts of places. No, we have not attempted to quantify that, and nor would we do so.

**Q199 Stephen Phillips:** In fact, you agree with me: you do not know that, as a result of the changes, the saving of £300 million or thereabouts in the departmental budget is not exceeded by the costs to the public purse in other areas. You do not know that, and you would do yourself some credit by admitting it. That is right, isn't it?

**Ursula Brennan:** We do not know that, but it would be extraordinarily difficult to see how the impact of these cuts in any other part of the public sector could be on that scale.

**Stephen Phillips:** The answer to my question is yes, isn't it?

**Ursula Brennan:** We do not know and would not attempt to measure the impact on the wider public sector, that is correct.

**Q200 Meg Hillier:** Earlier, we covered the issue of work beginning on assessing why people would access legal aid. I do not know if you have had any contact with the Legal Services Board about this, but in May of this year it published a report by Professor Pascoe Pleasence and Dr Nigel Balmer on how people resolve legal problems. If the board is doing that work, first, why aren't you and, secondly, have you thought of funding any such work, because it seems to be doing it quicker than you are managing at the moment?

**Ursula Brennan:** My colleague Catherine has mentioned a range of reports that we are undertaking, including research known as the justice problem resolution survey and the varying cost of justice project, both of which are attempting to get some kind of understanding of how people resolve problems.

**Q201 Meg Hillier:** When will they be published?

**Ursula Brennan:** Next year.

**Meg Hillier:** I am just pointing out that this report was published in May this year, so it could be useful reading for the MOJ.

**Q202 Stephen Phillips:** On my point, how many economists are employed in your Department?

**Ursula Brennan:** How many economists? I don't—

**Stephen Phillips:** Dozens, isn't it?

**Ursula Brennan:** There is certainly a significant number of them, yes.

**Stephen Phillips:** There is a significant analytical services team.

**Ursula Brennan:** Yes, indeed.

**Q203 Stephen Phillips:** In fact, it would be possible, wouldn't it, to try with other Departments to work out what the costs to departmental spending and other budgets were as a result of the implementation of these reforms?

**Ursula Brennan:** I don't think that would be a practical piece of research.

**Stephen Phillips:** Even though you don't know whether you have in fact ended up costing the taxpayer money.

**Ursula Brennan:** We attempted in the impact assessment to explain the types of impacts that might happen. As for the kind of research that would seek to identify how things are influenced by the way in which people choose to operate—the different choices that people make—it would simply not be possible to do quantitative research to get an answer to that.

**Chair:** There are plenty of areas of public and social policy which are even more complex than this where economists do make assessments. It does not mean they are right, but it means you are able to make more informed decisions. That is really an endemic failure in the MOJ.

**Q204 Stephen Phillips:** May I ask the Treasury, were you aware that there had been no real assessment across Government of what the cost of these reforms might be?

**Richard Brown:** The pattern you have here is very common when you are doing an impact assessment. You seek to identify the big factors that are material to the policy change that you are pursuing, but there will always be ones that are difficult to quantify. That is the sort of picture we have here.

**Chair:** And that should be your job. Okay, thank you.