

Justice

Oral evidence: [The Work of the Attorney General, HC 409](#)

Tuesday 15 September 2015

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Members present: Robert Neill (Chair); Richard Arkless, Richard Burgon, Alex Chalk, Alberto Costa, Sue Hayman, John Howell, Victoria Prentis, Christina Rees, Nick Thomas-Symonds

Questions 1-62

Witness: **Rt Hon Jeremy Wright QC, Attorney General**, gave evidence.

Q1 Chair: Welcome, Mr. Attorney. You have managed to make it pretty much standing room only. Many thanks for coming and giving evidence to us. Did you give evidence to the Select Committee in the previous Parliament?

Jeremy Wright: In a previous incarnation I did, yes.

Q2 Chair: Of course you were a member of this Committee in the past, as I recall.

Jeremy Wright: I was.

Chair: We are very pleased to see you. The first formal thing is interests. I need to declare my interest as a member of the Bar, though not currently practising. I will go round the table.

Richard Arkless: I am a non-practising dual-qualified solicitor in England, Wales and Scotland.

Sue Hayman: I have no further interests other than those on my declaration.

Nick Thomas-Symonds: I was previously a practising barrister. I am now a non-practising barrister and I refer to my entry in the Register in that regard.

Christina Rees: I am a former practising barrister, now not practising. I am a JP.

Richard Burgon: I was a practising solicitor.

John Howell: No interests.

Victoria Prentis: I am a non-practising barrister married to a practising barrister. I should also say that much of my legal life was spent providing advice to Government Departments, including the Attorney General's Department.

Alex Chalk: I am a practising barrister married to a practising barrister. I should also make it clear that I am instructed in a case by the CPS and also instructed in a case by the SFO at the moment.

Alberto Costa: I am a practising English and Welsh solicitor, and a practising Scottish solicitor and a former solicitor in the Treasury Solicitor's Department.

Q3 Chair: That is the background and now everybody knows about us. We obviously have a number of topics that we want to get through, and I will try to move things along as quickly as we can. I want to kick off with what you see as the overriding position in your role as Attorney during the current Parliament, and in particular as set out in the Constitutional Reform Act.

Jeremy Wright: Yes, I will happily do that. First of all, thank you very much for inviting me. There are three parts to the role that I have as Attorney General. The first is as the chief legal adviser to the Government, specifically to the Cabinet and to the Prime Minister. I suspect it is probably there that some of the more interesting things will happen over the next few months and years.

The second part of the role is, as a Minister, to superintend the prosecuting departments: the CPS and Serious Fraud Office. The third part is a collection of public interest responsibilities, among them the administration of the unduly lenient sentence scheme, which I know the Committee may want to come to. It is also about deciding in some circumstances whether new inquests should be granted, and there are responsibilities under charity law and the like. They are all with the Attorney General for public interest reasons. They are not carried out as a Minister per se, but really as a guardian of the public interest. I can say with certainty that this is an interesting role. It sits at the intersection of law and politics, and that is what makes it most interesting, but it breaks down into those three areas.

In terms of what I expect, the Committee will already have had a flavour of the sorts of things that occupy my time. Certainly, since I started, there has been a good deal of time spent on advising on issues of international law as well as issues of national law.

Q4 Chair: You are supported in that, of course, by the Solicitor General.

Jeremy Wright: Yes, very much so. It is a partnership.

Q5 Chair: I know the Solicitor has done a certain amount of advocacy. Do you propose to do some court work yourself?

Jeremy Wright: Yes, I have done, and will do more. There is inevitably a time constraint problem. It is not simply the time to deliver the advocacy but also the preparation time. Because of the various responsibilities that really only I can carry out, rather more of the burden of advocacy has fallen on the Solicitor General. I have appeared in the Court of

Appeal and indeed in the European Court of Human Rights in Strasbourg. I would expect to do further advocacy in the next few months.

Q6 Chair: The other thing I want to ask you about is your role in attending Cabinet—the ministerial role. There was some debate, as you recall, as to what the position of the Attorney should be, given his separate constitutional position. Do you attend Cabinet by invitation or as of right?

Jeremy Wright: I attend by invitation, but so far the invitation has never not been extended. Having said that, now there may be an occasion when it is not, but it has not been so far. Technically, it is by invitation. I am not a full member of Cabinet, but I attend by invitation. So far I have attended all the Cabinet meetings that have been held since my appointment. I think that was true for my predecessor, too.

Q7 Chair: Thanks very much. Let's move on. One of the roles which, of course, is significant is your duty to uphold the rule of law.

Jeremy Wright: Yes.

Q8 Chair: That includes issues around human rights legislation at the moment, both in our domestic legislation and our treaty obligations.

Jeremy Wright: Yes.

Q9 Alex Chalk: I would like to ask a question about your role before we move on. You were on the Constitutional Affairs Committee in 2007. Is that right?

Jeremy Wright: I think that is right, certainly for part of 2007, yes.

Q10 Alex Chalk: There it was said that the status quo of the Attorney General being a politician who follows the party whip was not maintainable. It was put in very trenchant terms. It suggested that a series of steps should be taken to reform the role of the Attorney General, specifically: "We see no reason why the official exercising the role of legal adviser should be a political appointee." It made it very clear. Is that still your view?

Jeremy Wright: No, it is not my view, and I would have to be directed to which part of 2007 that was to know how much complicity I had in that particular recommendation. I think what is important is that you have somebody in this position who is clearly giving legal advice and doing so with proper attention to all the proprieties that go with that. None of the legal advice that I give is coloured by a political view. Then again, it is important that all lawyers have the ability to give advice to their clients in the ways their clients find most useful. It seems to me that having somebody who also has a political background enables the Law Officers to do that.

As I said to the Chair, having a position at the intersection of law and politics is quite useful to Government. It is important that Government has clear legal advice. You will be conscious of course—I know Mrs Prentis is very conscious—that there are hundreds of Government lawyers, most of whom have no political background at all. It is important that included in that mix there are two individuals at least who can give legal advice to their ministerial colleagues, while understanding clearly what the political context of that advice is, which I think makes that advice more powerful. You can rest assured that the

legal advice I give is not coloured in itself by the political views I hold. Getting that balance right is important. I have to say that it is not an easy balance to hold. Everybody who has held this job would say that the combination of law and politics is a difficult balance to strike. I think the difficulty is built into the constitution for good reason, and that is to enable somebody in that position, at that intersection, to give the most useful legal advice to the Government that they possibly can.

Q11 Chair: It is fair to say that, thanks to the researches of our Clerk, we have discovered that you were not at the meeting when that report was agreed.

Jeremy Wright: Thank heavens for that.

Chair: It may well have been that you had not at that time joined the Select Committee, so you are wholly exculpated. I must say that your assessment and explanation very closely mirror that which I remember being given by one of your predecessors, Lord Morris of Aberavon, with whom I was in Chambers. I remember John talking in very similar terms.

We were talking about the broader responsibility, including human rights issues. Mr. Thomas-Symonds is going to come in on that.

Q12 Nick Thomas-Symonds: At the end of this Parliament, do you expect the UK still to be a signatory to the European convention on human rights?

Jeremy Wright: The honest answer is that I do not know. A lot depends on what new settlement we can reach with the European convention mechanism. It is quite important to distinguish two things, as I always try to do when we are discussing this subject: human rights as a concept and the Human Rights Act as a piece of legislation.

The Human Rights Act, as everybody here understands, incorporates the European convention on human rights. I do not think there is anybody, including anybody in government, who has a serious issue with the content of the convention. It is a document that I think encapsulates some of the most fundamental human rights that we would all support and wish to continue supporting. It is the interpretation of that document by the Court in Strasbourg that has caused us the problem. It is the interpretation of that document and the Strasbourg jurisprudence that goes with that interpretation that this Government would wish to challenge and seek to alter in terms of its effect on this country. A lot will depend on whether we can reach an accommodation with the Council of Europe that means we can gain some greater freedom in terms of the way in which the human rights convention is interpreted by the Strasbourg Court than we have at the moment.

I should say that the proposals that are going to be made will not be made by me. They will be made by the Ministry of Justice. When we have seen them, we can all comment more clearly on whether or not we think they will be effective. Certainly, for me, respect for human rights is something integral to what every Government should do. It is certainly what I expect this Government to do. I think this Government's record on the preservation and enhancement of human rights, both domestically and abroad, has been a very good one. You can think of numerous examples, such as the Modern Slavery Act, the work done on sexual violence in conflict and other things, too. There are good examples of this Government's respect for the enhancement of human rights. I have said publicly a number

of times that I do not myself think that the Human Rights Act is all that we could or should do to enhance human rights, both domestically or abroad.

Q13 Nick Thomas-Symonds: You will appreciate though, Attorney General, that the only European country at the moment that is not a signatory to the convention is Belarus. What sort of signal do you think it would send out internationally if we were to join Belarus as the only other European country that is not a signatory to the European convention?

Jeremy Wright: I have heard the argument made. I have to say that I do not think that the reputation in terms of respect for human rights that Belarus has is comparable to the reputation that the United Kingdom has, for the reasons I have just given. It is also true that there are many other countries around the world who are not signatories to the document but who have a very good reputation in human rights.

It is not solely the maintenance of our membership of the European convention that demonstrates our adherence to the principles of human rights. As the Chair rightly said, it is part of my responsibility in terms of respect for the rule of law to make sure that we continue to ensure respect for, and adherence to, the principles of human rights. As I say, I do not think that the only way to do that is to continue to be part of the convention. Having said that, the Prime Minister has been very clear that it is our objective to stay within the convention if we can; but it is not something we are prepared to do at any cost.

Q14 Nick Thomas-Symonds: I am trying to get a sense of what exactly you mean. The Conservative party manifesto of 2015 used this phrase, and I will quote it to you. It speaks about scrapping the Human Rights Act and introducing a British Bill of Rights, and that this will break “the formal link between British courts and the **European Court of Human Rights.**” I take it from what you are saying today, Attorney General, that that is no longer necessarily going to be the intention. You might want to keep the link, if possible, but reform it. Is that right?

Jeremy Wright: The intention that has been expressed is to try to reach a new settlement with the Council of Europe with regard to the convention, particularly its interpretation. As I say, you have to make a distinction between what is in the convention and the way in which it has been interpreted, and the jurisprudence that has come out of Strasbourg in recent years. We do not have a problem with the former; we have a problem with the latter. We now have to engage with the Council of Europe about exactly that point. If we are not able to reach the right accommodation, nobody—the Prime Minister nor the Secretary of State for Justice, and nobody else as far as I can tell in Government—has ruled out the possibility of leaving the convention, but that is not where we start the conversation. What we said clearly in the manifesto, and by the way this has considerable support among the public, is that the status quo—that we receive a number of judgments from Strasbourg that do not represent what we think is a realistic and sensible view of human rights applicable to this country—is not sustainable and we need to do something about it.

I have to again fall back on the point that we have not yet seen the proposals. They will come not from me but from the Ministry of Justice. When we have seen them, we will all be in a better position to judge their efficacy, but I think that the objective is the right one—the objective set out in the manifesto, which the Prime Minister has made it clear that we will continue to pursue.

Q15 Nick Thomas-Symonds: What mechanism do you envisage being available that can, in your phrase, “influence” the jurisprudence of the Strasbourg Court unless you are a signatory to the convention and accept its judgments?

Jeremy Wright: We will need to see the proposals to be able to judge that. They are not proposals that I can comment on now because they are not yet produced. When we have seen them, we will all be able to judge whether it does what we have set out to achieve.

Q16 Nick Thomas-Symonds: I appreciate that there are proposals to come. The Secretary of State for Justice told us the same thing. Presumably, you could at least take a view on what the mechanism is likely to be, or could be. I am sure you have considered that.

Jeremy Wright: I am not going to do that because we have not yet seen the proposals. My job is to make sure that whatever is brought forward by the Ministry of Justice is legally sustainable as well as politically sustainable. That is what I have to do when those proposals are brought forward. You can be assured that that is exactly the process that I shall go through. That is my responsibility, going back to the Chair’s point, within the constitutional settlement that produces the Attorney General’s position.

Q17 Nick Thomas-Symonds: I have just one more point. We have the European convention from 1950. I think it came into effect from 1953. The Human Rights Act 1998 incorporates the usage from October 2000, so we have this period from the early 1950s to 2000. In that period, for a UK citizen to enforce their rights, they have to go—do they not?—to the court in Strasbourg, which is a long and inconvenient process. What the Human Rights Act did by incorporating the convention into British law was to allow British judges to make decisions and contribute to the wider jurisprudence. Is that not right?

Jeremy Wright: That is right, but it misses one crucial element, which is that the jurisprudence in Strasbourg also changed considerably over that period, and has accelerated since the incorporation of the convention into our law via the Human Rights Act. What we have seen are considerably more sorts of judgments and an indication from our courts and from lawyers in this country that they take a different view of what human rights jurisprudence is compared with the time prior to 2000 when those rights became directly enforceable in British law. All that you say is true, but I think we should not lose track of the way in which the jurisprudence in Strasbourg changed over that period, too. That is what has really given us cause for thought in this Government. It is not the convention itself; it is the interpretation of it.

Q18 Nick Thomas-Symonds: We can talk about and debate the interpretations from Strasbourg, but you must surely accept that there is an enormous advantage in the Human Rights Act in that people are able to go to the domestic courts to enforce their rights. That has been a great benefit of the Human Rights Act, hasn’t it?

Jeremy Wright: There is certainly a huge advantage in people being able to enforce their rights in British courts. Frankly, I would doubt that it would be impossible to do so in the absence of the Human Rights Act. I would expect even claims based on fundamental human rights principles still to be litigated in British courts, and for British judges still to be able to reach conclusions on those issues, with or without the Human Rights Act. Again, all that you say is true, but I think it does not indicate that there is only one way forward, and that is for us to retain the status quo. I do not think that is the only way

forward, and I do not think it is the way forward that the majority of people in this country would support.

Q19 Richard Arkless: There is a peculiarity in the interaction between the Human Rights Act and the devolution settlements across the rest of the UK. My own view is that the UK Government have underestimated the constitutional impact of the repeal of the Human Rights Act and the potential enactment of a British Bill of Rights. Your predecessor recently mentioned that such changes—the repeal—would seriously disrupt the devolution settlements throughout the UK. What is your view, and what investigations have you made of this?

Jeremy Wright: It is going to sound like a cop-out, and you and I have discussed this before at questions, but it is going to depend entirely upon the nature of the proposals that are made. I agree with you that there is a significant element to this, which is how the Human Rights Act interacts with the devolution settlement, not just in Scotland but in particular in Northern Ireland as well. The effect on those devolution settlements of any change depends dramatically, in my view, on the nature of the change. Whether it is something very extensive or something not quite so extensive will profoundly affect how much difference it makes to the devolution settlement. I am afraid it is difficult for me at this point to say anything very substantive until I know precisely what the proposals are. When we know what they are, we will certainly want to look very carefully at what the devolution consequences would be. I would expect that my colleagues within the Ministry of Justice are thinking very carefully about that now, as they develop the proposals.

Q20 Chair: I imagine you would expect to be involved in the drawing up of the proposals, would you not?

Jeremy Wright: Yes. I would certainly expect to see them before anyone else does here.

Q21 Nick Thomas-Symonds: You mentioned Scotland and Northern Ireland, but you did not mention Wales.

Jeremy Wright: You are entirely right, Mr. Thomas-Symonds. I apologise; I should have done.

Q22 Nick Thomas-Symonds: I am pleased to hear that. What would your position be if the devolved Governments were vehemently opposed to repeal of the Human Rights Act? How much will you take that into account?

Jeremy Wright: It is worth nothing—I think the Justice Secretary said this to you as well—that the Human Rights Act is not a devolved matter, so amendment of the Human Rights Act will not be a devolved matter either. This is something we consider as one country, one United Kingdom, and it will be this United Kingdom’s Parliament that will have to consider the matter when the proposals are brought forward. That does not mean that the views of devolved Administrations, and indeed of others in Wales, Scotland and Northern Ireland, will not be taken account of. They should be.

Q23 Richard Arkless: It is not just the repeal of the Human Rights Act; it is the potential removal from the ECHR and the potential enactment of a Bill of Rights. They are not within schedule 5 of the Scotland Act, so there is clear crossing into the jurisdiction of the Scottish Parliament. The Scottish Parliament has reiterated recently—and I imagine, though I cannot speak for other parties, that the statement may be replicated no matter which party is in

government—that this infringes the Sewel convention, and that consent is perhaps needed from the Scottish Parliament. The current Government have made it abundantly clear that that will not be given. Isn't this going to end up in a huge big mess?

Jeremy Wright: I certainly hope not, but I think the judgment as to whether or not legislative consent motions are required, and the effect on the devolution settlements more broadly, entirely depends on what you are proposing. If you are proposing leaving the convention, that is one thing. If you are not proposing that, it is something else, so I'm afraid that until we see the proposals it is very hard make a judgment.

Richard Arkless: I appreciate that point; thank you very much. I am grateful.

Q24 Victoria Prentis: I suspect you are going to say something similar in answer to my question. It concerns extraterritoriality of the Human Rights Act and whether you, yourself, have given much consideration as to whether we can carve out the military from anything that we produce going forward. If so, what should be put in its place?

Jeremy Wright: I think you and I would agree that it is one of the most controversial aspects of the recent jurisprudence from Strasbourg. There are cases, not necessarily even involving the UK but involving other countries, that move things on considerably. There is a Dutch case, whose name I cannot now remember, which moves on to discuss the jurisdiction of the convention being applicable to those who pass through a military checkpoint. There are some very serious questions we need to consider around whether or not the jurisprudence in this respect specifically is moving in a direction with which we are not comfortable.

Those questions cannot be resolved easily, but they are part and parcel of the work my colleagues in the Ministry of Justice are doing to determine what settlement we believe we should have going forward. There is little doubt that, whatever your view of this kind of judicial decision from Strasbourg, it is a very long way indeed from what those who originally formed the convention, and who believed it would do certain things, had in mind. It is important for us to take stock and decide whether this is the human rights regime that we believe is most sensible and, if it is not, what else we should do to produce something different.

Q25 Chair: I am sure this is a topic we are going to return to again. I am grateful for your help on that. Because we have a limited amount of time, I would like to move to another area, which you have referred to—your role in relation to unduly lenient sentences. Are you satisfied with the way the regime is working at the moment?

Jeremy Wright: The first thing I should say is that I am very much in favour of the scheme in principle. I think it is a good thing that we have a mechanism whereby public concern about sentencing decisions can be expressed. It is worth saying also, of course, that we are dealing with a very small subset of sentencing decisions. When I am discussing the unduly lenient sentence scheme, I never want to let the moment pass without saying that we are talking about a very small subset of judicial decisions. Most judges reach sensible conclusions on sentencing and, in terms of undue leniency, the issue does not arise. There were 30,000 or so sentencing decisions potentially within the scope of the scheme last year. The Court of Appeal considered 122 of them on the recommendation of the Solicitor

General or me. We are talking about a subset. As I say, I think it is a good thing that we have the scheme.

What I think is potentially problematic is that the scheme has grown up somewhat organically. At the moment, it covers all indictable only offences, but it does not cover all either-way offences. That leaves us with some strange anomalies, in my view. For those familiar with the terminology—there are plenty of criminal lawyers around the table—a section 18 assault, which is grievous bodily harm with intent to cause grievous bodily harm, is within the scheme, but section 20, which is grievous bodily harm without that intent, is not within the scheme. There are offences of sexual contact with minors which are within the scheme. There are offences of sexual contact with minors that are not within the scheme.

It is very difficult, apart from anything else, for those who are not lawyers, who would also want access to this scheme and who I would want to have access to this scheme, to understand where the boundaries are between those things within it and those things outside. We need to think carefully about the logic of the scheme, and if there is a case to be made for extension, so that it is easier to understand and more accessible for the public, I think those suggestions bear careful consideration. There are inevitably, as there always are, costs, benefits and resource implications to any changes that we make, but I am very much in favour of looking at an extension of the scheme. You will be conscious that that indeed featured in our manifesto for 2015. It is a good scheme. It could be better, and I am looking very carefully at how we can make it so.

Q26 Chair: The Solicitor told the House that work was “very much under way” on that. Those were his words. Can you help us as to when, for example, we might expect specific proposals for consultation?

Jeremy Wright: I do not think I am letting too many cats out of too many bags by saying that inevitably what we have to work through are the consequences of any extension to the scheme for the other parts of the criminal justice system. Not only is there an additional burden on my staff, because of course all the cases that come into the Attorney General’s office—there were 650 or so last year—have to be considered by somebody at the Attorney General’s office, and then of course each case that gets through the first filter has to be considered by the Solicitor General or me personally, but then there are the additional costs on the CPS if further cases have to be brought to the Court of Appeal; there are advocacy costs; and then of course if the Court of Appeal decides that it will extend or increase the sentence on the grounds of undue leniency, there is the additional cost to the prison system. All of those costs have to be worked through, and we have to decide what the appropriate balance should be.

Q27 Chair: There has been an increase in referrals in 2014 as against 2013. Is that because of the volume being referred, or are you and the Solicitor referring a higher percentage?

Jeremy Wright: It is the former, not the latter. The overall number coming in is greater. You can see that as a consequence of a number of things. It is a consequence of some very high-profile sentencing decisions on some very high-profile individuals. It is a consequence of greater knowledge and awareness of the scheme. The percentage of cases that the Solicitor General and I receive and that are referred on to the Court of Appeal has remained pretty much constant.

Q28 Alex Chalk: Could I raise the timetable? This partly arose out of the case in January, where there was sexual activity with a child and it turned out that it was not within part 4 of the Criminal Justice Act, so it could not be referred. Then the election came and there was the manifesto. Then the Solicitor General said in June that it was very much under way. We had the summer and we are now in September. I quite accept that all these steps need to be gone through and that is absolutely proper, but when can we expect some sort of indication as to where the Attorney General's office is going on this?

Jeremy Wright: It is very difficult for me to give you a date. The one thing that I am very sure of is that it is better to make sure that we have dotted all the i's, crossed all the t's and worked through all the consequences before we bring something forward, rather than bringing something forward and discovering later that some of the consequences to the criminal justice system have not been thought through properly.

I want to make sure we do it properly, not least because when we make an extension we can explain it clearly to everybody involved in the system, and those who are victims of crime in particular understand very clearly what they can then do and what use they can make of the new scheme. I want to make sure that all of that is done properly before I bring it forward. As you will detect, I am very enthusiastic to make this change and will do it as soon as I can.

Q29 Victoria Prentis: I want to talk about the publication of the Attorney General's advice. At the beginning of my Government legal career such a thing would have been unthinkable, but about 10 years ago we had a great deal of discussion about the provision of the advice, following whether or not we should intervene in Iraq. We now have a situation where it is likely that you will be put under considerable pressure to publicise copies or some annotated or shortened version, at the very least, of your advice. What do you personally feel about this, and what do you think your obligations are to share your advice more widely?

Jeremy Wright: I think I am part of an obligation to ensure that legal advice is taken by Government and that legal advice is as full and as frank as it possibly can be when it is given to Government. The preservation of the Law Officers' convention, which says that we do not, in ordinary circumstances, disclose Law Officers' advice, supports that. It means that we can give clearer and more straightforward legal advice without any thought of that legal advice later being disclosed to the world, and that that assists in the giving of good legal advice.

I also think that it is important, when you are talking about Law Officers' advice, to take account of the collective responsibility issues that apply to Cabinet government. As we discussed, I attend Cabinet meetings. I do that, at least in part, so that the Cabinet can hear legal advice. It is important that that legal advice is part and parcel of the decisions that Cabinet takes. It is not sensible to start extracting different bits of the Cabinet's consideration from the overall conclusions the Cabinet comes to about what the right way forward may be. This is partly about collective Cabinet responsibility, and it is partly about the integrity of good quality legal advice. For all those reasons, I am a supporter of the convention. That does not mean that there are not circumstances when, exceptionally, it is appropriate, with the Law Officer's consent, to disclose the fact of legal advice having been given. That of course is what happened recently. I gave my consent that that should be done. I believe it should only happen in exceptional circumstances. In this case I think it was exceptional because, given the context of action in Syria and Parliament's views on

that subject, the Prime Minister had made it clear previously that it did not exclude the possibility of action being taken when particular British interests were threatened, and that he would then come to Parliament afterwards and explain that. It seemed to me that it would be very difficult for him to do that in a meaningful way, without artificiality, if he could not at least say that I had been engaged in that process. I was content for him to say that on this occasion, but I hope that does not suggest that I believe the convention is ready to be put aside.

Q30 Victoria Prentis: Are you comfortable on such very unusual occasions with a summary of your legal advice being provided?

Jeremy Wright: On this occasion, it is probably important to make a distinction between the Government's legal position and the Attorney General's advice. They may be similar, but they are not exactly the same. A summary of the Government's legal position has already been given. The Prime Minister has already set that out.

Q31 Victoria Prentis: But you do not feel it necessary to give a summary of your advice.

Jeremy Wright: The Prime Minister has been clear that we will always look at ways in which we can be more helpful in explaining why these decisions were taken, and that, I am sure, is going to be, as you say, the subject of further discussion. I think that the convention is there for good reason. It is not simply there to be awkward, and it is certainly not there to protect Governments. One suspects that Governments of both colours would have found themselves in less political trouble if they had disclosed their legal advice than if they had not. Generally speaking, we have all maintained, whichever political party has been in power, the view that the convention should be respected. I think that still applies, but, as I say, it applies partly for reasons of collective responsibility within Government decision making and partly because, as with all other forms of legal advice you might argue, it is always better legal advice if it can be given in closed circumstances.

Q32 Richard Burgon: You mentioned the fact of providing legal advice in relation to the Prime Minister's recent retrospective announcement of the drone strike. On this occasion and in future, do you think it appropriate, even if the whole advice is not published, to distinguish the kind of advice, given the question that you addressed—on this recent occasion whether or not it was a sign-off of drone attacks that took place—or whether you merely stated that there was an arguable legal basis upon which to take action?

Jeremy Wright: I am afraid that that constitutes a discussion of the content of the advice. I think, for the reasons I have set out, that the convention should be adhered to in all but the most exceptional circumstances, and that there is good reason why we do not go into the detail of what the Law Officers have advised. If you were to take a subset of it, you would still be disclosing some part of the content of that advice. In my view, only in the most exceptional circumstances should the convention not be adhered to. The adherence to it is, for very good reason, around the need to make sure that Government decision making is as fulsome and effective as it can possibly be.

Q33 Richard Burgon: You would not think it appropriate to disclose the legal test applied in such cases.

Jeremy Wright: No. Again you have to make a distinction. I do not think it is right for me to disclose the content of the advice that I have given. As far as I can see, all other Attorneys General have, broadly speaking, taken that view. However, the Government has set out what it believes the basis of the legality of this action was. You can take it that I agree wholeheartedly with the Government's legal position. It is not right that Parliament should be expected to decide on this without any indication at all of the basis on which the Government took action. That is why the Prime Minister made his statement on the first day back in Parliament last Monday. I supported what he said and I agree with what he said, but that is different from disclosing the detail of Law Officers' advice, which, as I say, should be preserved so that good government can be maintained.

Q34 Richard Burgon: I have one last point. Could you confirm or refresh my memory on this? Was the Caroline principle of the standard of self-defence, of which I am sure you are aware, being instant, overwhelming and leaving no choice of means and no moment of deliberation, a test that was applied in the advice which was provided?

Jeremy Wright: Yes. The Caroline case, as you will appreciate, goes back to the 19th century, and we are talking about very different circumstances now. Certainly, what has not changed is that, in order for any state to act in lawful self-defence, it is necessary to demonstrate that there is an imminent threat that needs to be countered and that, in countering that threat, the action taken is both necessary and proportionate, and it is necessary to demonstrate that what you do complies with international and humanitarian law. In all of those respects I was satisfied that this was a lawful action. To that extent, we are clear about what has happened on the basis of principles of self-defence that are well established.

Of course, that is something that will doubtless be the subject of further conversation. One of the things we probably need to think about as a society in any event is what imminence means in the context of a terrorist threat, compared with back in the 1890s when you were probably able to judge imminence by a measure of how many troops you could see on the horizon. That is something that everyone—including the academic world, no doubt—will want to consider, but the basic tenets of acting in self-defence have not changed.

Q35 Alex Chalk: Let me explore that a little bit. It seems that we, the public, get to hear some of the advice, but not all of it. We are all able to work out that the justification appears to be self-defence, so we hear a bit. For example, posted on your website we hear some of the reasons why the Attorney General's office declined to prosecute somebody who had been to Syria and came back. We are told that it was to do with age, immaturity and the fact that he decided to come back. We seem to get these titbits leaked out. Is there an argument for saying that there should be some coherence and codification about the extent to which you are able to disclose parts of the advice? At the moment, it seems to be unclear. You could just say nothing or you could say everything, but we seem to have a middle ground and it seems a bit unclear as to what that middle ground is.

Jeremy Wright: I would say two things. First, I hope the Committee will have detected that I am as enthusiastic as possible about assisting Parliament to understand this. I suppose I could have been dogmatic about it and said, "You will not disclose even the fact that I have advised on this occasion." It seemed to me that that would not assist Parliament to understand what happened. Equally, one of the difficulties that we encounter with the types of offence that you are describing and with, I am sad to say, the increasing number

of terrorism cases with which the CPS are currently wrestling, is that a large amount of the evidence may be intelligence-based. It is difficult to disclose the evidence on which these decisions are taken without disclosing intelligence material that, for reasons we all understand, it is not right to disclose. There are some very real practical obstacles to my being of any more assistance than I am able to be at the moment on some of these things, but I am keen, as I say, to give Parliament what assistance I can without undermining some of the more fundamental principles that we should all be conscious of in these kinds of cases.

Q36 Alex Chalk: Have we got to a point where there is a convention that the Attorney will give the gist of the advice—in other words, that in this case there was a self-defence justification—or would you say that we have not had enough experience for it to be a convention and it is simply done on a case-by-case basis?

Jeremy Wright: No; I do not think we have got to that point. We retain a Law Officers' convention that neither the fact nor the content of Law Officers' advice is disclosed. Incidentally, this is something that has survived several pieces of legislation, too. It is reflected in the Freedom of Information Act. It is reflected elsewhere. As I say, Governments throughout the decades have accepted that it is a sensible thing to have. What has happened, as Mrs Prentis indicated, is that certainly over the last 10 years or so there have been some cases where the convention has been to some degree moved away from, but in my view those are exceptional cases and they do not undermine the logic for the convention as it stands. That is not about being awkward; it is about trying to maintain some principles of good government and enabling legal advice to be given in the fullest and frankest way, which in my view improves the product at the end of it—decisions made in government as to what is best to do.

I do not think the convention has changed in that sense. The convention remains. It is up to every Law Officer to decide to what degree they are prepared to move away from it to a limited extent. I have explained why I did on this occasion, but I think the convention remains intact.

Q37 Richard Arkless: Is the advice that you delivered to the Government in relation to these drone strikes conducted on a case-by-case basis, or have you given them blanket authority to do this again if the circumstances arise?

Jeremy Wright: It is another nice try, but I am afraid I cannot go into the detail of the advice that I gave. I am not going through the justification again; I am sure you understand it.

Q38 Richard Arkless: Yes, but whether it is case by case or—

Jeremy Wright: Anything that I say along those lines tends to indicate what the content of the advice was. As I have said, and repeated here, the legal basis for the Government's action has been set out. We will consider whether there is any elucidation of it that would be helpful, but I do not think it is right for me to disclose the content of the advice that I have given.

Q39 Richard Arkless: I appreciate that. It was not an attempt to extract it from you, and I apologise if that seemed the case. I have one further point, though we may be straying into

that territory again. The Government have relied on article 51 of the United Nations Charter. Please tell me quickly if it is the case that I am straying into advice again. The test is that nothing in the charter impairs the right of self-defence if an armed attack occurs against the member state. When was the armed attack?

Jeremy Wright: I can help with that. The jurisprudence and, I think, all the academic legal thinking on this has moved to a place where it is generally accepted that the armed attack does not have to have happened. It could instead be imminent. That is very much the point I was describing to Mr Burgon in terms of the way in which the test for lawful self-defence works. You can of course either defend yourself against an armed attack that has happened, or defend yourself against an armed attack that is imminent.

Article 51 is an inherent right that pre-existed the UN Charter—I think that was the conclusion. Certainly, article 51 reflects the right of states to act in that way. The other thing that has changed, and there have been UN resolutions which have noted that change, is that the armed attack may not be solely from another state; it may come from a terrorist organisation. There are UN resolutions which follow on from the events of 11 September 2001, as you would of course expect, which make that clear.

The armed attack is not necessarily one that has already happened. Again, as the Prime Minister said, he would have had a choice in the circumstances that you described. He could have waited for something to happen, and no doubt then legitimately be criticised for having had the opportunity to take action and not taking it.

Q40 Alberto Costa: You said a moment ago, “You can take it from me that I wholeheartedly agreed with the Prime Minister’s statement.” Would you agree that your constitutional obligations under the rule of law might trump the convention in the event that a Minister uses an Attorney’s advice in a manner which misrepresents the advice?

Jeremy Wright: That is an extremely interesting but very hypothetical question, which I haven’t considered.

Q41 Alberto Costa: Given the fluidity of terrorism and the issues that we are now facing, I would expect that Law Officers’ advice might be more readily required. I would like the assurance at least that the Law Officers would disclose the fact if advice had been misrepresented.

Jeremy Wright: If the advice were misrepresented, you could certainly expect the Law Officers to react to that. Whether the appropriate and best reaction would be to abrogate the convention I do not know, but I can assure you that that is not what happened.

Q42 Chair: I imagine if an Attorney was asked as part of collective governmental responsibility to sign up to a misrepresentation of the advice he was giving, his position would be untenable.

Jeremy Wright: I think it would be very difficult for any Law Officer to sustain that position. I agree.

Q43 John Howell: I want to look at prosecution practice and policy in a number of different areas. This relates to the activities principally of the CPS. The first of those is in relation to

child sex abuse cases, where the practice was changed in October 2013. How effective have those changes been?

Jeremy Wright: The first thing to recognise is that, of course, we are dealing with many more such cases than we have previously dealt with. The CPS have, as a consequence, done a number of things. You referred to some of the changes that have been made. There are now specialist prosecutors dealing with this kind of work. That is a positive move, with one reservation which I will come back to. It is a good idea that we have people who are familiar with this kind of work, with this kind of witness and victim, and are able to prosecute those cases from a basis of knowledge and experience. That is positive.

It is also important that we trial, as we are doing, pre-recorded cross-examination for vulnerable witnesses. For those witnesses to be able to get all of their evidence out of the way in one go is of huge benefit in a system that does not move as swiftly as we would all like it to. Coupled with that is the advent of ground rules hearings to allow judges to say, “These are the kinds of questions I think it is reasonable for you to ask, Mr. Defence Lawyer, and these are the questions it is not. This is how I think you should conduct yourself.” That is again a positive move to improve the experience of very vulnerable witnesses as they give evidence. It does not mean that defence advocates are not entitled to put their case, and to do so robustly where that is appropriate, but it does mean that we do what we can to improve the experience of vulnerable witnesses in child sexual abuse cases in particular by this kind of practice. It is up to the Ministry of Justice to decide what they make of those pilot programmes of pre-recorded cross-examination. I have seen some for myself in Liverpool. I do not know whether the Committee have, or intend to, but I commend it to you. It is a very interesting exercise. I am sure there is a great deal that is positive in those pilots that the Ministry of Justice will want to consider very carefully. All of those things are important in improving the experience of those giving evidence as victims and witnesses.

It is also worth noting something else. The nature of the caseload that the CPS are dealing with has changed quite substantially. They are seeing a lot less of some things and a lot more of other things. One of the things they are seeing a lot more of is child sexual abuse cases. There is no indication at the moment that the increase is levelling off, or reducing again. We are going to have to get used to that kind of case making up a large proportion of the workload in our courts. That means courts simply have to do things differently. Some of the things I have mentioned already are indications of the courts doing things differently.

What results of that can we see? First of all, we can certainly see an increase in the number of those cases being completed as prosecutions. The number of completed prosecutions in child sexual abuse has increased quite substantially. I think what we can see is that through people being prepared to come forward and make reports, and being prepared to see prosecutions through, there is some indication, I hope, that some of these practice changes are having a positive effect. It will take a little longer, I think, to work out exactly what the effect of all of these cases has been and to be able to judge precisely how well the CPS and of course other parts of the criminal justice system acting together have done in prosecuting those cases. Some of the changes we have made so far are very positive and I hope are delivering positive effects.

Q44 John Howell: There has been a dramatic increase in the number of private prosecutions. Would you like to comment on whether you are able to accommodate that, or whether there should be a review of the relationships over those private prosecutions? Is lack of resources a feature in being able to deal with them?

Jeremy Wright: I do not think it is the latter. I think it is almost certainly a consequence of people realising they have the right to pursue private prosecutions. That is a right, of course, that has been maintained certainly since the Prosecution of Offences Act 1985 made it clear that that right would be retained. I would not seek to take that right away from people.

The safeguard that we need to have is the safeguard that we have, which is that in appropriate cases the CPS can take over a private prosecution, either in order to continue with it, or indeed to stop it. I think that is an important safeguard, and of course that right has been exercised on some occasions in both directions. There are good logical reasons why it should be there. If you are talking about cases that will continue, there may be cases where a prosecution should not be conducted by a private individual because cross-examination of the complainant by that individual would be inappropriate. There may be good arguments where the CPS would take over that prosecution. Equally, there may be good arguments where the CPS feel that their test on evidential sufficiency and the public interest would not be met by a particular private prosecution, in which case it is entirely appropriate that they should take it over and then stop the prosecution. With that safeguard, I think it is a right that it is perfectly proper should continue.

Q45 Alex Chalk: On that point, is it anything like enough of a safeguard? I did some Googling and some private prosecution specialists are saying that you should have criminal litigation as a clever alternative to civil litigation. It describes it as “a good deterrent due to the powers and sanctions. With a private prosecution the client controls the speed of the investigation and prosecution rather than relying on the police or the CPS.” What actual safeguard exists to make sure that those individuals are properly complying with their duty of disclosure? We will probably never know about it. Isn’t the truth that they are all too often a recipe for blackmail?

Jeremy Wright: I am not sure I would go that far. Obviously, I have not seen the particular company or organisation that you are talking about.

Alex Chalk: It is worrying.

Jeremy Wright: Certainly, it is of concern if people are being encouraged to pursue private prosecutions where that is not appropriate. It certainly is not the case that a private prosecution is a direct alternative to a civil action in most cases. They are different things and they need to be approached differently. Given that either party in a private prosecution has the opportunity to contact the CPS and say, “I would like you to have a look at this,” and given that the CPS have done some work to make sure that we advertise more widely the existence of that right, that is the necessary safeguard. There is now CPS guidance which I hope sets out clearly for participants in criminal cases that, if they are parties to a private prosecution and they think that is an inappropriate thing, they can contact the CPS and ask the CPS to apply its two-part test to it. If the numbers increase so far from where they are now, even more dramatically, there may be a resource question for the CPS, but I do not think we have reached that point at the moment. As I say, we need to be very clear

that people who are subject to a private prosecution, and who believe it is an inappropriate vendetta or the like, have the opportunity to contact the CPS and ask the CPS to reach—shall we say?—a slightly more dispassionate view.

Q46 John Howell: My third point concerns prosecutions that are going to be conducted for ISIL-related terrorism, which I think have to have your permission to go ahead. How satisfied are you with the effectiveness of the CPS in delivering on those?

Jeremy Wright: The terrorism cases that require my consent are those where the effect of the offence is likely to be felt abroad, or where some part of the offence is carried out abroad. I think the remainder broadly require the Director of Public Prosecution's consent. Certainly, in my experience, when those cases are brought to me for me to give my consent, we receive the necessary information from the CPS to enable me to make that judgment. Of course, it is true that sometimes the timescales are contracted because of the nature of the offences and how quickly we need to respond. Both the Solicitor General and I can probably both recount having phone calls at strange hours of the day on these questions, but that is a necessary part of the kind of offence we are dealing with. No, I do not have concerns at the moment about the way in which my consent is to be given, but inevitably as the number of terrorism cases continues to increase, we will have to think through quite carefully the workload pressures on every part of the system, through the CPS all the way to Law Officers themselves.

Q47 John Howell: My last scenario for you is on preventing assaults in prison of prison officers. Do you think the new joint protocol has helped towards that?

Jeremy Wright: I certainly hope so. You will be aware, Mr Howell, that I started to be concerned about this as the Minister for Prisons. I was told by the Ministry of Justice that it might not be able to be done because the Attorney General would have to sign off on it. I then became the Attorney General and signed off on it. It is something that I very much hope will make a difference.

It seems to me, and I know the Committee will readily agree, that prison officers are entitled to the full protection of the criminal law. They do not go to work on the basis that they are being paid to be assaulted by prisoners or anybody else. There is no reason in my mind why an assault that takes place within a prison context should be treated any less seriously than assaults outside. You might make an argument for them being treated more seriously. The protocol is designed to make sure that all parts of the system, the CPS included, take those assaults very seriously, and that they proceed where the evidence leads them. Of course, if the evidential test is not met in each of these cases a prosecution would not be appropriate, but it seems to me that, in terms of the public interest part of the test, the public interest is very strongly in favour of prosecution where a prison officer is assaulted.

Chair: I want to move on to your more general superintendence of the Crown Prosecution Service and its resourcing.

Q48 Alex Chalk: You will be aware of the report this morning on the “Today” programme referring to 18% of cracked trials being due to faults with the prosecution. It talked about disclosure failings and staff leaving, with Nazir Afzal, the Chief Crown Prosecutor in the

north of England, leaving and the former DPP saying that there is not enough support around the DPP. The BBC headline is, “Is the CPS on the brink of collapse?” Can I put that to you?

Jeremy Wright: No, is the answer to that. I do not recognise, and I do not think the current Director of Public Prosecutions recognises either, entirely the picture that is being painted there. There are several things worthy of note. The first is that, of course, it is true that the CPS is under pressure. It is under pressure partly because of the caseload mix that we talked about. I promised to come back to a point that I forgot to come back to: when you look at child sexual abuse, one of the reasons they are under pressure is that, although it is great to have people who are specialists in this kind of case, those of us who have done these kinds of cases know full well that the effect on you as a human being of dealing with these cases day in, day out, can be considerable. We have to look after our staff. We have to make sure that prosecutors who do this kind of work repeatedly are properly supported in the work that they do. That is not a matter of money; it is a matter of attention to their needs as individuals.

Undoubtedly, the CPS faces pressure. It faces that kind of pressure in terms of caseload mix and it faces financial pressure. There is no getting away from it. It is a part of Government, like many other parts of Government, which faces considerable financial pressure. The CPS has taken on savings of something like 25% since 2010, and I pay tribute to them for the way in which they have done that and still maintained a good service at the front line.

It is not true that when you look at the statistics all is terrible. The CPS conviction rate is something like 80% if you average it out across magistrates courts and Crown courts. It is a bit higher than 80% in the magistrates courts but a bit lower than 80% in the Crown courts. In terms of cracked and ineffective trials that are a result of prosecution failings, that percentage has come down since 2010. It has not gone up. We are seeing progress. The CPS have had to take on some of the financial challenges and make the necessary changes. They have tried to do that by making sure that the back office functions bear the brunt, not the front office functions. That certainly has been what is happening, but I do not think that the CPS is on the brink of collapse. Neither do I think that the CPS has been without its challenges over the last few years, and frankly will not be without its challenges for the next few years either. That is partly unrelated to money and more to do with the kinds of cases they now have to contend with.

Q49 Alex Chalk: I accept that, but you even have the DPP acknowledging that the service is under more pressure than it was and, as I say, Nazir Afzal talking about a tipping point having been reached in 2015 and saying that too much was being asked of the people he was working alongside. You talk about the figures having come down, but isn't it actually the case, to judge from those remarks, that things are getting worse?

Jeremy Wright: Not in the specific respect that is being quoted. The particular statistic you gave me was around cracked and ineffective trials as a result of prosecution failings. As I say, my figures tell me that that number has come down, and not gone up, since 2010. Regardless of that, I am not disputing your contention that the CPS is under pressure. It clearly is under pressure, because a large number of new cases that they are dealing with are of a nature that is more complex and more challenging than in many of the cases they have dealt with before. That undoubtedly creates pressure, but I think that the CPS are responding very well to that pressure. What you are seeing is, yes, people working very

hard, people taking on very difficult cases, but prosecuting them with enthusiasm, talent, ability and resolution to get the outcomes that they want. When I go out and talk to CPS employees, I find people who are wholly committed to protecting the public. They are a very important part of the general cross-criminal justice system effort to do that. They take their work very seriously and they do the best they can to keep people safe. I think they deserve our thanks and a good deal of credit for it.

Q50 Chair: Do you pick up concerns when you make visits about morale within the CPS?

Jeremy Wright: The staff engagement survey, which the Committee will appreciate is something that we use to try to measure levels of discontent or otherwise across different parts of Government, actually indicates that morale in the CPS is increasing and not decreasing. As I say, I would not want to give anybody the impression that I don't recognise the difficulties the CPS faces, but I think they are responding well and that we should recognise that as well as expressing our concern.

Q51 Sue Hayman: Picking up on what you have been talking about concerning resources, you accept that the CPS is under a lot of pressure. You accept that we now have cases which are more complex and take more time and expertise. You accept that the staffing has fallen. How are you going to move forward? Your Department is not protected from budget cuts, so how do you see the tough decisions regarding funding and making savings within the CPS being managed going forward?

Jeremy Wright: I promise I will come to that, but while I have them in front of me, it might be helpful to the Committee to illustrate the point I was making about how the caseload mix has changed, because that is a cause of quite a large amount of the pressure that the CPS faces. For example, sexual offences have risen as a percentage between 2010 and 2015 by 10%. If you look at some of the other types of offences that the CPS deal with, they have dropped. Burglary is down by 26%, robbery by 38%, public order offences by 35% and motoring offences—primarily because responsibility for prosecuting a great many of them has now transferred to the police—dropped by 61%. The caseload mix is changing. The point I make is simply that some of the things that have reduced are more straightforward to prosecute and some of the things that have increased are more difficult to prosecute. That is what I think is causing some of the pressure.

What do you do about that? One of the things I think is important is to make sure that the impact on the CPS, which is downstream in the criminal justice system, is recognised when funding is being considered for people upstream in the criminal justice system. If, for example, we want to put more resources, as we do, into counter-terrorism, and we hope very much that the police and intelligence agencies will be able to catch those engaged in terrorist activity, we hope also that some way down the line they will be prosecuted. It is necessary that funding is available further downstream as well as upstream to enable those cases to be continued and completed. That is something that we are very keen to make sure happens as the spending review continues. It is important that we recognise that some of the pressures are not down to money. They are down to the type of cases that the CPS are dealing with. In those that are down to money, we obviously have to expect the CPS to operate as efficiently as they can. They are not immune from what everyone else is expected to do, which is to do the best they can with more limited resources. Where there is clear additional workload resulting from something that is entirely outside the CPS's

control, which is a particular block of cases, I think it is perfectly reasonable to ask for additional funding.

Q52 Sue Hayman: Following up on something I am specifically interested in, I am aware that the number of rape convictions has fallen recently. I wondered if you thought that the lack of funding and the reduction in staff had any impact on that. How can we go about turning that around?

Jeremy Wright: First of all, the number of rape convictions has gone up, not down. What has changed is the conviction rate. The conviction rate has dropped slightly and that is a concern. We need to understand exactly why that has happened.

One of the things which is encouraging is that, as you will know, when you look back in history one of the causes for failed prosecutions has very often been that the complainant has decided that she—it is generally she—does not wish to go through with the prosecution and therefore things have fallen apart later in the process. Failed prosecutions where the witness has had problems, or the prosecution has had difficulty getting people to court and the prosecution has not proceeded, have dropped, so we have had some success in that. There has, however, been an increase in jury acquittals. You have got the case to court; you have put the case before a jury, but the jury have concluded that the case was not proven to the required standard. That is not necessarily a failing of the CPS, but it is important to understand why it might be happening.

One of the things that the Director of Public Prosecutions has been very keen to do, and I have very much supported, is to ensure that when you deal with sexual cases in particular, it is vital that the jury are given as much indication as possible by various evidential means, and that some of their preconceptions, and even myths that are out there, about how people might behave when they are victims of this kind of offending, are challenged. It is important to give evidence, sometimes as part of the prosecution case, or to say to a jury, “Look, you are probably thinking that she would not have done that if she were genuinely a victim of rape. Well, here is some evidence which shows you that actually victims of rape very often behave like this even when they are genuinely victims of rape.” Giving that kind of evidence is helpful to try to make sure the jury reach the right conclusion. I am not saying what the right conclusion might be in any specific case—that is for them to decide—but I think they should do it in possession of the maximum amount of evidence. Those are some of the things the CPS are trying to do in order to address concern over reductions in conviction rates.

Sue Hayman: That is very helpful; thank you.

Q53 Christina Rees: I have a specific follow-up question. As a policy of cost saving, magistrates courts are closing. I will take you to south Wales as an example. Neath magistrates court closed about a year ago and was transferred to Swansea. There is now a proposal to close Bridgend and transfer to Cardiff. They are very busy courts. Can you first of all comment on what is happening in Neath, the consequences on Swansea and the strain on the CPS, as well as the anticipated strain on Cardiff as Bridgend is closed?

Jeremy Wright: The bit of that which is of direct concern to me is the impact on the CPS and their ability to cover the cases that will be transferred. You will appreciate that decisions on court closures are for the Ministry of Justice and not for me. The CPS has

already gone through a process of, frankly, operating out of fewer offices. One of the reasons they have been able to save money at the back office level is that they operate out of fewer offices than they previously did. That is a process they have managed and, of course, the CPS will adapt to whatever the new court structure may be. I noted that the Secretary of State for Justice, probably asked by you on this subject, indicated that there would be a consultation and that those who contributed to the consultation would be entitled to make their arguments about specific courts. I do not think he entirely ruled out the possibility of changing his mind about specific courts if a good enough argument was made. I am sure you will be seeking to do just that.

Q54 Nick Thomas-Symonds: I want to ask about the victims' law. It is something that was raised with you, Attorney General, at questions in the House back in July by my hon. Friend the former DPP, who is now the Member of Parliament for Holborn and St Pancras. What is your thinking on a comprehensive victims' law? Would you be committed to one, going forward?

Jeremy Wright: My view has not changed since I answered the question to him. I think there is huge merit in making sure that victims understand more clearly what is available to them. Whether we do that by the mechanism of a particular law that consolidates everything in one place or whether we do it another way, I do not honestly know. I think there is huge merit in making sure that victims know what is available to them. That is not just about support for them as they go through the court process; it is also about what they can do about it if they do not like what happened. That partly goes back to our conversation about the unduly lenient sentence scheme.

It is also important that we recognise the invention of the victims' right to review, for which of course Keir Starmer deserves a good deal of the credit. That means that victims who believe that a prosecution decision not to proceed against a particular individual was wrong can ask for it to be looked at again, and in some cases can find that the decision is changed. I think that is a huge step forward for the involvement of victims in the system, but the most important thing we can do for victims throughout the criminal justice process is to make sure that they understand more clearly what is happening. I am sure we all recognise, even those who have been in the criminal courts for a long time and have got used to it, what an alien atmosphere it is for people who do not understand the court process. Just to be able to grasp what is going on in court, what they might expect to happen next and sometimes having explained to them what has just happened is of huge value.

You may know that the CPS, again with my strong encouragement, have just gone through a process of consulting on guidance for prosecutors as to how they should communicate with victims and witnesses at court and beyond it, to make sure precisely that witnesses and victims understand what is going on. I have said this before, and it will perhaps come as a surprise to the legal profession but I think it is important, and something on which we should assess you if you are a CPS advocate: how you speak to victims and witnesses outside the court is as important as how you speak to people when cross-examining inside court. We should expect our advocates to be good communicators to victims and witnesses, just as we should expect them to be good at presenting cases in the courtroom. If we do not do that, we will find victims and witnesses leaving court completely bamboozled and not understanding what has just happened. That is not acceptable. Greater

communication is a large part of what we need to do for victims. I do not know whether that is necessary to do by law, but it is certainly something that it is necessary to do.

Q55 Chair: You also superintend the Serious Fraud Office.

Jeremy Wright: I do.

Q56 Sue Hayman: Obviously, the Serious Fraud Office has also had a number of budget cuts. There are a few things I would like to ask. First of all, do you think that the fact that the Serious Fraud Office has to go to the Treasury to ask for extra funding for cases undermines its ability to operate independently?

Jeremy Wright: I am prepared for this; I have brought my statistics.

Chair: You are always prepared.

Jeremy Wright: I will come back to the blockbuster aspect in a minute. The total of the funding that the SFO has received has gone up in each and every year since 2011-12. The SFO are not seeing reductions in the overall funding that they are receiving.

The interesting thing about the Serious Fraud Office, of course, is this blockbuster funding element to their income. The logic for it is that the Serious Fraud Office was set up, and now operates, to deal with the most complicated and difficult cases of economic crime. It is quite hard to predict in any given year how many of those cases there will be, how big they will be or how complex they will be. The Treasury recognised that the most sensible way of doing this was to give an amount of core funding—last year that was something of the order of £33 million—but then to allow the SFO to come back, based on need, to make an argument for additional funding when they come across those very big and difficult cases. There have been very clear examples of that. LIBOR is a very good example where there are very large and complex investigations and they require a good deal of resource to prosecute effectively. It is entirely right that, rather than expect either that there will be no such cases and therefore deny the Serious Fraud Office the funding they need to carry out those prosecutions, or anticipate that there will be lots of them and give them more money than they need, it is more sensible to judge this on the basis of need as the need arises. That is what we do and I think that is the right model. It is also important to recognise that the SFO then have to demonstrate that they are spending that money well and effectively. It is not a blank cheque from the Treasury, as you might expect, but I think that it is a sensible funding model.

Q57 Sue Hayman: Do you think it undermines their independence at all?

Jeremy Wright: No, I do not think so. Again, what they would be expecting to do is come back and make a case for funding on the basis of need. If a case has arisen, is brought to them and they consider it appropriate to prosecute—they operate in those decisions entirely independently of Government—and they require extra funding, they ask for it. Generally speaking, I do not think I can think of an example where they have been refused it. There certainly has not been an example that I am aware of where the Director of the Serious Fraud Office has not been able to proceed with a case on the grounds of funding. That should continue to be the case.

Q58 Sue Hayman: On another matter, it has been considered before that the SFO could be dismantled. I just wondered if that was going to be looked again and whether you would move the investigative area through to the National Crime Agency, and then the CPS would pick up the prosecutorial function. Will you be looking at that again within the budget cuts and trying to be more efficient?

Jeremy Wright: If the SFO is to be adequately resourced to do the work it does, whether you call it the SFO or something else, the money would still be required. In terms of its structure, the first thing to say is that no one should deny that the SFO has had its problems. The current Director of the SFO has made some substantial and positive changes to the way in which the SFO operates. Indeed, there have been successes. The conviction rate in terms of defendants for the SFO is something like 78%, so this is not a record of unrelenting failure. Some of the things that people probably believed would be beyond the SFO, like securing successful prosecutions in the LIBOR case, have also been achieved. There have been indications that the SFO has had some success as well as the problems it has undoubtedly had.

My view is that no organisation is perfect, and no Minister superintending it should ever turn his face away from any possibility of change or improvement. If there is a better way of doing this, in my view we should consider it, but I think there is something quite distinctive and quite effective about the model that is being used in these prosecutions: the so-called Roskill model that puts together lawyers, investigators, accountants and others, all working together on what are, as I have said, exceptionally complex investigations. I think that model has served us pretty well and I would want to see that model continue, but I have no doubt that if there are proposals being made for improvement, I will want to consider them, as I am sure the SFO themselves will want to consider them. It is not about saying no change under any circumstances. It is about asking what has worked well, and if it has worked well let's make sure we don't change it; if there are improvements that can be made, then of course we should make them.

Q59 Sue Hayman: To what extent do you think your superintendence function allows you to take action in that area? How far can you push it?

Jeremy Wright: Superintendence is a strange beast in a way because it is not direct control. Of course there is good reason why I do not control who gets prosecuted, either by the SFO or the CPS, but I have the opportunity to be consulted about specific decisions where it is appropriate for that to happen and I have the opportunity to take an overview of what the SFO are doing and the way in which they are doing it. That is how I think I am able to conclude that the Roskill model works well. I do not think I am hamstrung in that respect. I do not think it is inappropriate that there should be some ministerial supervision of what the SFO does, but we have to strike the balance between the opportunity to look at what it is doing and have some oversight, yet not trespass into prosecution decisions which are clearly not appropriate for politicians to take.

Q60 Alex Chalk: The SFO, and the CPS for that matter, spend vast amounts of public money installing temporary IT in courtrooms for these long trials. They pay third parties, often very substantial sums of money, for equipment which, to you and me, seems very basic—flat screens and that sort of thing. What is being done to ensure that we, the taxpayer, get a fairer deal on that?

Jeremy Wright: The answer to this, and it is something that I know you will have done and will continue to pursue with the Ministry of Justice, is to make sure that that equipment does not need to be brought in on a temporary basis because it is there on a permanent basis. The digital presentation of evidence and the ability for files to be transferred from paper to electronic format has huge advantages for the running of the criminal justice system.

If I may say, I think the CPS have played a significant part in that process by making sure that, where they can digitise, they have done so. It is going to be essential, if we are to manage a modern criminal justice system, to get much further down the road of digital presentation of cases. I remember doing a case in 2002 of a large VAT carousel fraud where exactly the process you describe was under way, which was bringing in screens for evidence to be displayed, and yet we still do not have a full-throated digitalisation of the criminal justice system. I do not belittle the challenges that there are in getting that done. You only have to mention the words “IT project” to see why it is not as easy as it sounds, but I think it is essential, and it is part and parcel of the changes the court system has to go through. I fully encourage all of my colleagues at the Ministry of Justice every chance I get to proceed with that. As and when that process is completed, I do not think you will any longer see screens being wheeled in for SFO cases because they will already be there.

Q61 Chair: We have dealt with a number of matters and we are going to have a vote fairly soon, so it may be a convenient point to wrap up. More generally, in terms of your advice to Government, do you, for example, routinely advise the Ministry of Justice on any legal aspects of their responses to reports by this Committee?

Jeremy Wright: Based on the neither confirm nor deny principle, I had better neither confirm nor deny that. All I will say is that there are many and varied aspects to the legal advice that I or the Solicitor General give on a range of subjects within a range of Departments.

Q62 Chair: If I press you a little, might that include things like English votes for English laws?

Jeremy Wright: It would include a whole range of things.

Chair: Are there any other questions from anybody else? Mr Attorney, I am very grateful for your time. It has been a very helpful session. I am sure it will not be the last time that we see you in the course of this Parliament. If there are any supplementary matters that arise, I am sure that if we put them in writing, you will always be happy to answer them, with the assistance of your team. Thank you very much indeed.