

Justice Committee

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

Tuesday 23 June 2020

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Members present: Sir Robert Neill (Chair); Paula Barker; Richard Burgon; Rob Butler; James Daly; Maria Eagle; Kenny MacAskill; Dr Kieran Mullan; Andy Slaughter.

Questions 176 - 243

Witnesses

[I](#): Rt Hon Robert Buckland QC MP, Lord Chancellor and Secretary of State for Justice; Susan Acland-Hood, Chief Executive, HM Courts and Tribunals Service; and Dr Jo Farrar, Chief Executive, HM Prison and Probation Service.

Examination of witnesses

Witnesses: Robert Buckland, Susan Acland-Hood and Dr Farrar.

Chair: Good afternoon and welcome to this session of the Justice Committee. I am grateful to colleagues who are with us either here or remotely. I welcome the Lord Chancellor, the right hon. Robert Buckland QC MP. Thank you very much for joining us, Lord Chancellor, we are very grateful to you. Remotely, we also have the two senior officials dealing with the matters we are going to talk about, Ms Acland-Hood and Dr Farrar. Ms Acland-Hood is chief executive of HM Courts and Tribunals Service and Dr Farrar is chief executive of the Prison Service. Between the three of you, I am sure we will be able to deal with the issues.

We need to start with declarations of interests, which you are all familiar with. I am a non-practising barrister and consultant to a law firm.

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

Dr Mullan: I have no relevant interests.

James Daly: I am a practising solicitor and partner in a high street law firm.

Maria Eagle: I am a non-practising solicitor.

Richard Burgon: I was a solicitor before being elected to Parliament.

Andy Slaughter: I am a non-practising barrister.

Q176 **Chair:** I think that has covered everybody.

We are concerned with the whole situation over the Covid pandemic and its impact on the various aspects of the Department's responsibilities. On 22 May, the Lord Chief Justice said that courts were operating at around 50% of normal capacity. Where have we moved on to since then? Of course, he told us that that varied within jurisdictions as well. Could you, Lord Chancellor, and perhaps Ms Acland-Hood, help us as to the up-to-date figures?

Robert Buckland: Yes, of course. A lot has happened since 22 May, Sir Bob, and I am glad to say that, as the weeks go by, more and more court sites are being reopened. As I speak to you now, we have 246 buildings open to the public, 58 courts that are staffed by judges and other members of the team to deal with administrative hearings, and 37 sites where operations are still suspended. Since the beginning of this month, we have opened an extra 86 sites.

Q177 **Chair:** How many of those are able to operate at anything like normal capacity?

Robert Buckland: We are seeing a rapidly improving position. Susan can come in with the detail, but my recollection is that pre Covid about 8,000 or so hearings were being held every day across the jurisdictions, and now we are up to about 7,000 hearings being held. That is a mixture of virtual and actual hearings. The story of the crisis has been the ramping up in scale of the use of technology, which has singled out this jurisdiction in the world as a jurisdiction where justice could continue to operate, as opposed to many other jurisdictions where courts simply closed because of the crisis. Do you want to hear from Susan Acland-Hood?

Q178 **Chair:** Yes, please. Ms Acland-Hood, would you like to come in?

Susan Acland-Hood: The Lord Chancellor is entirely correct. We are increasing rapidly what we are able to do on the number of hearings, but the position varies across the different jurisdictions, because some of our work is much more affected by the requirements for social distancing. We published management information on 11 June, which sets out what we did through March and May and gives a bit of a picture of that. For example, in some of the tribunals jurisdictions, where we have been able successfully to move not just many of our preliminary hearings but quite a lot of our substantive hearings on to audio and video, we were operating at close to full capacity.

At the other end of the spectrum, the activity that is probably hardest for us with full social distancing in place is jury trial. As the Committee knows, we have restarted jury trials, but the numbers are still small and that is an area of concern for me and for the Lord Chancellor. We are

working very hard to try to ensure that we do everything we can to hear as many trials as we can, but it remains constrained by social distancing.

Q179 **Chair:** Will any change from 2 metres to 1 metre make a significant difference to that?

Robert Buckland: It will mean a change and we will need to do more, in a nutshell. Susan can come in with some of the figures.

Susan Acland-Hood: These are relatively rough estimates. We have done a lot of work on what 2 metres means for the court estate and have more recently been doing work on 1 metre. We estimate that it will take us from being able to use around a third of our capacity in the normal way to more like two thirds, although it is very dependent on the detail. We are working, as everyone else is now, to look at the precise detail of the new mitigating measures that we would need to put in place, because the announcement that has been made by the Prime Minister is not a straight shift from 2 metres to 1 metre, and we need to understand the mitigations.

Q180 **Chair:** The mitigations might be quite difficult to do, mightn't they?

Susan Acland-Hood: We are looking at that in some detail now, but we need to think carefully about some of the things that have been suggested, such as the wearing of masks in a context where the activity being engaged in is people speaking to each other.

Q181 **Chair:** That raises a specific issue, Lord Chancellor, which perhaps you can deal with. Issue was taken, many would say reasonably, with the wearing of face coverings by witnesses giving evidence in jury trials, for entirely separate reasons. I think some judges at first instance made certain rulings about that. How would we factor that in, because the argument is that it gets in the way of demeanour and assessment and so on?

Robert Buckland: I think we will adapt. Where participants perhaps do not need to speak—jurors and other members of the staff team—the wearing of coverings could work. We will need to use Perspex where appropriate as well. I can see that being particularly relevant where perhaps the legal representatives are addressing the court or a witness is giving evidence. I can think of Crown courts where docks are already enclosed, so we have already dealt with that issue anyway, for unrelated reasons. I am sure we can make the adaptations.

Let's not forget, taking Crown courts as an example where the issue has been the most sensitive and acute, that, in the 19 Crown courts that are operating, the spreading of the trial process across two, or even three, rooms has been tried and tested and found to work. That is due to the hard work of staff, of practitioners and of judges in making sure that everything is tested and tried in accordance with not just Public Health England but Public Health Wales in the Welsh courts. A big vote of thanks is due to everybody for their hard work in getting us this far.

Q182 **Chair:** It is true that a vast amount of work has been put in. I am going

to come back to the big issue in a moment, but I think I am right, Ms Acland-Hood, that on the earlier figures magistrates courts were operating at about 25% of usual volumes. Do I get the sense that has changed somewhat? Of course, in magistrates courts there are an awful lot of things being done through the single justice procedure and so on, so what is the real impact on trials and other matters?

Susan Acland-Hood: It is true that earlier in the crisis, particularly very early on, we focused right down on the most urgent matters in the magistrates court and were making sure that we could hear, for example, the urgent overnight cases as quickly as we needed to. We have now started listing all types of matters in the magistrates courts. That means we are seeing volumes of trial and other matters going up. We are listing youth court, GAP and NGAP cases as well, and we are seeking to do as much work as we can. It is still true that our capacity is constrained, so we have to be very serious.

We have done risk assessments of every court to look at the amount of capacity that we can safely use while ensuring that we do not make people come into excessively close contact. That affects both the number of courtrooms we can use safely and the intensity with which we can list. Many of you will be intimately familiar with the workings of the magistrates court, where the normal mode of operation is to list extremely heavily on the assumption that cases will crack and fall out. That comes with a lot of people sitting together in a waiting room, which, obviously, is not appropriate at the moment. We are still operating well under normal capacity in the magistrates court.

We have assessed what we think is the safe operational capacity of each court and we are seeking to list as close to that as possible. We are also looking at other measures that will enable us to use the space more intensively without filling it with people, which is why you will have seen discussions, for example, about looking at extended hours.

Q183 **Chair:** Lord Chancellor, the elephant in the room is jury trials, isn't it?

Robert Buckland: Yes.

Q184 **Chair:** There are any number of reports suggesting that the Government are going to restrict the right to trial by jury. Are they?

Robert Buckland: We have to look at all the options. Of all the Lord Chancellors in recent history, frankly, I think I am the one with the biggest experience of jury trials. I used to do dozens a year, and it might even have been in four figures, of contested jury trials in my professional career, so I think I am equipped to talk with knowledge and experience about jury trials.

Juries are the worst system—apart from all the others. I have believed that throughout my time in practice, and indeed my time as a parliamentarian and as a Minister, and, therefore, I would take a lot of persuading before there is even a temporary departure from the use of juries in our system. However, we are facing an unprecedented

challenge. The number of cases to be dealt with has been valiantly managed within the current constraints, but that leaves quite a number of cases that will sit there for longer and longer, and I have to think about defendants, about witnesses and about complainants and victims in all of this. We are not just dealing with cold statistics but with real lives. I have to get the balance right between making sure that we have a fair system of justice that everyone recognises as free and fair, and one that has managed its way through this particular crisis.

There are a number of options that we have been looking at for some time: first and foremost, maximising the space we have, and we have already talked about what might be done with the 1-metre rule coming in; and, secondly, it is looking at increasing that capacity. That is why from a very early stage I was a strong advocate of what were known as Nightingale courts; we are calling them Blackstone courts to give them a bit of legal context.

The work that has been done by HMCTS, by the judges, and by practitioners once again to identify alternative accommodation is already yielding fruit. I have been able officially to sign off a number of alternative venues this week, which we want to get up and running over the next few months. I need to scale that operation up dramatically, and to unprecedented heights, if I am not just going to deal with the current backlog but to manage it in a position that I think is sustainable for the long term.

I need also to look at court hours, making sure that we maximise the court sitting day, to stagger appearances by both practitioners and court users, and therefore sit as long as we can on perhaps even more days of the week than we do at the moment, so that we manage the backlog. Then, and only then, does the alternative of a change to part of the system really come into play.

For some months now, I have spoken about the experience that we had in the war, when we reduced juries in the vast majority of cases triable on indictment to a minimum of seven. I am still very attracted by that proposition. It has a lot of merit, because it preserves the principle while managing the number. Secondly, there is the proposal that you heard enunciated by the Lord Chief Justice and that has been discussed in recent days, relating to a judge and two magistrates, where cases fit in the either way category—in other words, cases that could be tried in the magistrates court but which, either through a defendant's choice or the magistrate's decision, end up in the Crown court.

It is that group of cases that we need to focus on. There may well be a way forward in managing those cases with a judge and two magistrates, but within that there are myriad different options as to how far that might extend, and whether it should be limited to certain offences and not others. Of course, we always, rightly, have to think about the interests of justice, the right to a fair trial and the fact that we need to deliver justice expeditiously in accordance with all the principles that have been set out in the criminal procedure rules and elsewhere.

At the moment, we are actively working and getting those practical solutions up and running, as you would expect us to, and, secondly, canvassing and developing policy options that could make a difference. I wonder if Susan might come in to talk through what we think in percentage terms the measures that I have discussed give us in extra capacity. The Committee might like to hear about that.

Q185 **Chair:** Before I do that, frankly, that is a shift in position from the Government, isn't it? You have been a robust defender of the principle that jury trials should not be touched. Your junior Minister Mr Philp was very firm when he gave evidence before our Committee only two or three weeks ago that there was no question of any change in jury trials, so what has happened?

Robert Buckland: First, the initial context involved discussion about having a judge only to do trials, which I have utterly rejected, and continue to robustly reject. We are looking as a last resort at a response on capacity. I think I am absolutely duty-bound to consider, where the evidence and the information justify it, measures that deliver the capacity we need, because two-thirds capacity is not going to cut it. We are not going to be able to deal with a case load and a backlog with only two thirds. I am going to need at least 100% capacity, if not more, not just to manage the case load but to get ahead of it in a way that I think the public would expect us to do. Susan might be able to explain some of the reasoning.

Susan Acland-Hood: We have done a little bit of work. At the moment, it is relatively early analysis, initially based on a thorough review in the south-east of England, although we have now checked that it comes out proportionately when we look at the whole country. There are two things that concern me.

The first is the size of the outstanding case load, which is growing, and you can see that in the management information. From that, the problem looks more acute in the magistrates court than in the Crown court, because the numbers have grown more rapidly there. That is partly a tribute to all the work that Crown court judges have done to try to use preliminary hearings where they have not been able to hold trials, to try to manage work down. At the headline level, the backlogs or outstanding case loads are not higher than levels we have seen in the past. If you go back through the records, you can see significantly higher levels than we have at the moment, in relatively recent times.

The second thing that concerns me is the rate at which we are able to run, to recover those outstanding cases. That is where this situation feels very different from recent times. In the past, when we have built up large numbers of outstanding cases, we have been able to use the whole of the capacity of the system to run at a very rapid rate to recover. The challenge at the moment, as I was describing a little earlier, is that certainly at 2 metres social distancing, and even at 1 metre, if we use the full capacity of the court system we have, we are still well below the level where we can get our disposals to equal the level of receipts we expect to

see, so the backlog will continue to grow for the foreseeable future unless we do something different.

We have modelled the effects of some of the other measures that the Lord Chancellor has talked about. To fill the whole of the gap with additional courts, we would have to find somewhere in the region of 200 or more additional venues. To find additional venues that are suitable for a jury trial, particularly for custodial jury trials where we need cell provision and security, feels extremely challenging. We are searching for and finding alternative venues, and we are pursuing them extremely actively. As the Lord Chancellor said, he signed off the first set this week, so you should see more on that soon. There is a question about whether we can do that at the scale that is required to meet the challenge we have.

The second thing we have modelled is extending hours, but even if we were to extend hours to the extent that we had an extra 50% of capacity on what we have at the moment, it does not take us to the level where we fill the whole of the gap to get disposals to equal the level of receipts. That is why we have been giving the advice that we need to be ready to look at other measures in addition, to make sure that we can realistically recover.

The Lord Chancellor has described some of the things that we think would get us to that position, in addition to the other measures I have described. We would still need extended hours and additional provision, but with something else on top, to get us to the point where we can dispose of more cases than are coming in and start to reduce the level of outstanding work. That is clearly what we must do. Somehow, we have to find measures that mean that we are not building up outstanding cases because, as the Lord Chancellor said, this is not a statistical exercise, even though I may sometimes make it sound like one; it is people's lives, and, in many cases, people in extremely difficult circumstances are waiting for decisions from us.

Q186 Chair: Lord Chancellor, you are prepared to go to the Treasury, I imagine, and say, "I need more money to pay for more recorders, to sit every physically available court that I can, with social distancing to maximum capacity."

Robert Buckland: Thank you, Sir Bob. That gives me an opportunity to make it very clear what has happened with Crown court listing days. I had already agreed an increase in listing days for the year ahead, and we were coming close to an agreement that would have seen many thousands more days being listed in the Crown court for the year ahead.

We are now in a position where, frankly, those sorts of exercises are academic. It is all about making sure that we have the capacity and the ability to actually hear cases, and, therefore, questions of limit do not arise. It is about how much we can do within the available space, so I have signed off on the 10 additional Nightingale courts. As Susan says, I

would have to do that 20 times over. I want to scale that up, but I need to be realistic about the options ahead.

We need to remember the fact that we want to deal with this case load in the next few months rather than in years. That is an important point as well. Lots has been said about years and years of case load. Not true. Any suggestion of two or three or, as I saw today, five years is wrong. We are confident that we can manage the magistrates case load backlog this year. The Crown court is somewhat more complex, but we think we can, with all the measures that we have talked about, or a combination of them, deal with the problem by Easter 2021. That is the scale of the ambition, and that is what I think the public would expect of us.

Chair: That is very helpful, thank you.

Q187 **Andy Slaughter:** Could we be clear on the figures when we are talking about jury trials? I think Ms Acland-Hood just said there had been a higher backlog sometime in the recent past. If that is right, when was that backlog and what was it? What was the backlog before Covid set in, and how much is it increasing month on month at the moment?

Robert Buckland: I have immediately available to me a figure from back in 2014 of a Crown court outstanding backlog of 55,116, of which there were 30,000 cases awaiting trial, and the rest were a combination of committals for sentence and other hearings. With regard to the pre-Covid baseline, I am just trying to get the figure to hand. The pre-Covid case load in the Crown court was 39,214 outstanding cases, and in the magistrates court the pre-Covid baseline was 406,610, but I do not know whether Susan has any more figures as to that and where we are now.

Susan Acland-Hood: On the pre-Covid baselines, you will be delighted to hear, Lord Chancellor, that your figures and mine entirely agree, and those are also part of the published management information that we put out. They can be found on gov.uk. The latest published figures are from 24 May. Outstanding in the Crown court had risen to 40,526 and outstanding in the magistrates court had risen much more significantly to 483,678.

Q188 **Andy Slaughter:** Thank you for that. Could I stick with the Crown court? I want to continue with the point on jury trials because, certainly judging by our inboxes, it is an issue that has seized public attention, or at least professional attention. Looking at those figures, it is clear that there is a significant problem, but it is also clear that it is not as serious as it has been in the recent past. It is also clear that the increase because of Covid, while it is an increase, has not been significant compared with the existing backlog.

While commending the efforts that you are making to identify other means of expanding the system, and the figure of 200 is a significant but perhaps not impossible figure as regards venues, it seems like not an overreaction but a reaction on a different scale even to be contemplating restriction of jury trials at the moment, whether that is by reducing juries or by what we have heard about either way offences. Could you say a

little more about that? In other words, where are we in terms of the increase now? That has to be brought under control and brought down, but it begins to look, as a number of things with Covid do, as if this is an opportunity that Covid has given, rather than a crisis that Covid dictates, and to run to restricting jury trials seem like a complete overreaction.

Robert Buckland: Mr Slaughter, first, I understand entirely why you ask that question, and I share your instinct about jury trials. As I said at the outset, I am extremely reluctant to see a position where there is a restriction, even a temporary one. By the way, if it is to be a temporary one, it is my condition that it would have to be sunsetted in an absolute way so that there was no doubt or haziness about the fact that it is time limited and not permanent.

To answer your question directly, you are right that the headline numbers reflect an increase, but not one that looks alarming. However, within those numbers there is, shall we say, a fairly large cohort of cases that will require a trial. In other words, there has been good case management by resident judges and judges up and down the country to deal with PTPH and other hearings, to deal with those guilty pleas, and to get them in a position where they are awaiting sentence or being weighed off at sentence. Therefore, boiling it down, to use a cooking metaphor, we are left with the residue of cases, the majority of which will require a trial. Susan might have some more information and detail about that.

Q189 **Chair:** Can you help us, Ms Acland-Hood?

Susan Acland-Hood: Yes, that's right. It is about both the nature of the cases that are left in there, not just the overall size of the backlog, but, as I said earlier, the pace at which we can realistically work to recover. One of the things we have been modelling is how quickly we could recover that backlog if we continue to do jury trials as we have been doing them, where we take three rooms per jury trial, we cannot list as intensively as normal, and there are many rooms in the estate that we simply cannot use at all because we cannot fit the jury into them in a socially distanced way. The initial position is that, unless we do something different and if we cannot recover that position, we will continue to build a further backlog. None of us wants to be in a position where we are allowing the outstanding case load to grow. We need to get to the point where we are reducing it.

It is not realistic to think that we can find, readily, 200 rooms outside the existing court estate that will support custodial jury trial. We are looking for space that we can use for all types of work across the court system. It may be that we can find space that we can use, for example, for civil or family or tribunals work, and we can shift things around the estate. The particular needs of a custodial jury trial make it a bit more difficult than it might otherwise be, because we have to make sure that we are keeping people securely. We will do absolutely everything we can through that route, but we are keeping the other options on the table.

Q190 **Andy Slaughter:** No one says you are not doing your best in looking at all options, but while you have the escape route, as it were, of restricting jury trials, perhaps it does not concentrate the mind entirely. I have two more questions on this subject, and the first is on process.

It would be nice if the Lord Chancellor could tell us this afternoon which way he is moving, and on a percentage basis how likely it is that jury trials are going to be restricted and by what means, and, at the very least, when that decision is going to be made. When can we expect to hear something definitive? We heard what the Lord Chief Justice said last week. It is clear from what has been said already today that it is something you are seriously thinking about. What is the mechanism you would use? Is it restricting either way trials to a judge and two magistrates or is it something else, and when are you likely to be thinking of introducing it, if you are?

Robert Buckland: There are two real options with regard to jury trials. There is the either way option, with the judge and two magistrates, and the smaller jury option. As I said, I have long canvassed and aired the view about a smaller jury. From my understanding of the situation, certainly at 2 metres, smaller juries would deliver us perhaps an extra 5% to 10% capacity. That changes slightly and goes up, which is good news, because of the change in the 2-metre rule.

For the either way option, I think the figure was a pretty dramatic one of about 40% extra capacity, which I could not ignore. It is a significant figure and it delivers a significant step change in capacity. Within that, there are various options that we could consider, for example, limiting it to offences of up to two years' imprisonment, so the more serious offences—certainly section 20s, ABHs, and assault cases with a five-year maximum—would not be within that particular regime. There are different options that we can look at within it. I have not yet finalised precisely where we would land.

Secondly, you pressed me on timing. My view is that, for this to have the sort of Covid effect that we need it to have, it would need to be in force as early as September. It is no good passing legislation that would come into force at the end of the year, for example; that is stable-door territory. That would mean that we would need to legislate on it before the summer recess. That is obviously quite a high-pressure timetable. There is a lot of business at the moment, and it would need to be dealt with by both Houses. It is quite a tall order, to be frank with you. I am operating within significant constraints, and therefore I think it is right for me not to fix my sights on one option as the only solution, but at least to look at the two legislative options I mentioned—the two that I am looking at—and all the other non-legislative measures that we have talked about.

Q191 **Andy Slaughter:** Thank you for being frank, Lord Chancellor, but that fills me with alarm. The issue has been debated many times over the years as to whether to restrict jury trials, particularly in either way offences, and it has always been rejected. To introduce it under cover of a national emergency almost restricts the debate, and I am sure all of us

here are aware of the very serious implications.

We do not have time to go through all the deficiencies of using an alternative to jury trials, but one in particular, which is what the Lammy review found on this, is the effect in relation to prejudice on the basis of race. It was found specifically that the jury system was an exception within the criminal justice system as something that did not have an institutional bias, and that was specifically said to be in contrast to the way the magistrates courts work. We all aspire to have a fair trial in all parts of the system, but restricting jury trials is going to make an unfair justice system, and one of those aspects is on the basis of race, is it not?

Robert Buckland: You are right to mention that point, Mr Slaughter, and I would expect the judiciary to take the fullest account of it when making sure that benches are suitably diverse. It is particularly important when it comes to trials. You are absolutely right to make that point. While I cannot of course directly control listing or the operational administration of the courts, I would, as Lord Chancellor, expect the judiciary to bear very much in mind the points that you have made—indeed that I make—when it comes to mitigating any effects of inequality or lack of diversity in the make-up of the magistrates element of any panel. It is a system we are familiar with. Of course, it is used in appeals against conviction and sentence to the magistrates court, so it is not totally alien to our system.

May I emphasise that, if it is done, it would be temporary and would absolutely not be the basis of a permanent change? I take the view that as Lord Chancellor my job is to defend and uphold the right to trial by jury. You can imagine, therefore, what is going on in my head when I consider the gravity of the situation and the natural reluctance I have to interfere with it in any way. If there is to be any change, it will be temporary, it will be sunsetted, and there will be no secondary legislative power to extend the application of any change. It would be a hard and fast sunset that would go a long way to reassure parliamentarians that I mean what I say when I indicate that everything I want to do is to uphold and preserve jury trials, which have been part of not just the life of this country but my own professional life for so long.

Chair: There is a big important issue on jury trials specifically. We are going to move to other bits later.

Q192 **James Daly:** Lord Chancellor, I have some very brief questions covering a number of the points that you have talked about today. I am sorry to take you back to my interest in magistrates courts, but are magistrates now dealing with first appearances from the police station, and how widespread is that practice within the magistrates system at the moment?

Robert Buckland: Susan can give you the fully up-to-date position. My understanding is that, again, a lot of technology has come into play. Susan may have more up-to-date information.

Susan Acland-Hood: So that I am clear, is the question about dealing with first appearance from the police station remotely?

Q193 **James Daly:** No. I apologise if I have not explained it clearly. When the Lord Chancellor last appeared before the Committee, the courts were dealing only with remand matters. It appears to be the suggestion from the evidence given today that magistrates courts are now dealing with first appearances—new offences charged by the police on bail. Is that correct or not?

Susan Acland-Hood: Yes, we are starting to list GAP and NGAP courts on all matters. We are still giving priority to the most urgent cases, but, yes, we are seeking to list all matters in the magistrates court now.

Q194 **James Daly:** Thank you. I believe that release under investigation is a sore on the justice system. We do not have enough time to discuss here how bail matters have been dealt with by the police. The police have done a fantastic job, but we have hundreds, if not thousands, of outstanding criminal offences, many of which have a very strong evidential base, which are not within the court system at all.

Lord Chancellor, I am being unfair to you in the sense that how the police investigate matters is not your responsibility, but when you have been talking about delays within the system, I think you are talking about delays with matters after charge. I do not know whether you have talked to the Home Secretary or other Ministers, but, potentially, if justice is to be seen to be done, we are going to have hundreds of new matters being charged before the courts, hopefully, because I certainly believe that needs to be done. Has any provision been made for that level of work coming into the system, which certainly is not usual in the timeframes we are talking about?

Robert Buckland: You are right to highlight the fact that the effect of Covid has been, in some measure, to slow the supply of cases into the system. I will give you an example. We have been talking about the Crown court backlog. We have to be realistic: there are some cases in the magistrates court that would otherwise have come up to the Crown court by now. We have to build that into the equation as well.

If you take that right back through the system, you are right to talk about the release under investigation cases. As you know, the Home Office has launched a consultation into it. It is our intention to change that system, but in the meantime, clearly, the police have been working very hard on a lot of clear-ups. They have been executing warrants, quite rightly, which has resulted in more court appearances, and they have been investigating major crimes. Already, I am having the sorts of conversations you would want me to have with the Home Secretary, and, indeed, only recently I had a conversation with senior police officers, and in that conversation the request from HMCTS and the MOJ was for the police to help us identify some of the cases coming into the system, particularly the big, complex multi-defendant cases, which will take up a lot of time and space. That is happening now. There is that dialogue. As a result of those interventions, I am confident now that the police know what is required of them, and that means that Susan and her team will be in a better position to understand the nature of the flow.

Q195 **James Daly:** I have one final brief question, from a practical level, having appeared as a solicitor and High Court advocate before the Crown court. I may have misunderstood what was said, but I think it was suggested that trials were now being undertaken over three separate courts. The vast majority of courts that I have appeared in—and I suspect, Lord Chancellor, the same might well apply to you—could, with a bit of imaginative thinking about some of the social distancing guidance that has been issued today by the Prime Minister in respect of other matters, fit a jury into one courtroom. If you can fit the jury in, the people who need to be in the court are two barristers and perhaps two solicitors, the defendant, and the witnesses who are brought into court. I do not understand on a practical level why you need three courts to run a trial in those circumstances.

Robert Buckland: I can explain why. You need a retiring room for the jury, and retiring room facilities are quite small. You are putting 12 people into a room with each other for a long period and you have to give them space. That is the safe and right way to operate. That is why you need extra space for the jury.

I think you and I are to be forgiven as practitioners, because we often see life from that side of the court, the public entrance, counsel's row or the solicitors' bench. Let's not forget that there is another dimension. When I sat as a judge, it opened up another world to me, of staff space, judicial rooms, and retiring rooms for juries. That has to be factored into the equation.

When we talk about Nightingale courts and scaling up, let us not forget that not only do we need custodial facilities but we need staff. You have to think of the levels of staff who can support practitioners and judges in those courts, and things such as wi-fi and technological reach as well. While nobody is more committed than me to scaling up capacity, and I think Susan would probably say that I have sometimes been a bit of a slave driver on that, there are limitations to what we can do based on staffing and logistical support.

Q196 **Rob Butler:** There is clearly a huge amount of controversy about any concept of getting rid of trial by jury. We all understand and agree with that. Rather than introducing new legislation, is there any scope to activate existing legislation on the statute books? I am surprised that I am proposing this because I have never approved of it before, but what about temporarily enacting the legislation to give magistrates the power to sentence up to 12 months, which would presumably mean they could retain some cases for trial in their own courts that, therefore, would not need to go to the Crown court? That has already been through a very thorough legislative process and it has been fully considered, and, again, could have a sunset clause, so it could be purely a temporary measure. Would that deal with a considerable amount of the backlog?

Robert Buckland: We have considered that, Mr Butler, with regard to the options. We do not think that it yields the sort of step change that we would need in capacity. I have been driving my civil servants on to look

at all the options, and thinking of many options in the bath, as to how we can do it. Coming to two options that would make the most difference is what you would expect me to do rather than shilly-shallying my way through the summer umming and ahing and in the meantime seeing a backlog grow. That is why I am being frank with the Committee that these measures are not ones that fill me with joy, but they will be limited and they are the ones we need quickly, sooner rather than later.

Q197 **Chair:** Primary legislation is required for limiting jury trials and to reduce the jury number.

Robert Buckland: Yes, that would be right.

Q198 **Chair:** The final thing that has been suggested, and I think JUSTICE has done some work on this, is juries operating virtually, remotely. I do not think that would require primary legislation, or would it?

Robert Buckland: It would require one amendment, it seems to me, having spoken to the participants in the JUSTICE experiment. May I thank them publicly? They have been doing quiet but important work. We have had a retired judge, a former recorder of Westminster, a very experienced Crown court judge who has been presiding, some very senior counsel and a great team of volunteers. They have now done four trials and they have been sending me the information. I have been talking to them remotely as well.

It would involve a change in a defendant's options about the way in which they give evidence. At the moment, it is optional with regard to giving evidence remotely. If you were to bolt on the Zoom jury concept—using that as shorthand—you would probably need to go one stage further and make all parts of it compulsory. There is an issue. Of course, there are natural concerns about remote justice and what that might look like and how people behave remotely. All those things have been the focus of a lot of academic study.

Where I am on it is that, having listened very carefully to the participants, I am more in favour of it than I was. I gather that in Scotland they are going to move to using a system of remote juries as early as next month, so we will have real-life jurisdiction next door using the system, which will no doubt help to inform us. Again, I do not want to rush into using that system. It needs a bit more evaluation, but I am certainly not going to rule it out as an option we could use as part of the way to deal with this.

Chair: Thank you, that is very helpful.

Q199 **Maria Eagle:** I have similar concerns to those expressed by colleagues on the Committee about the abolition of jury trials for either way offences, even for a short period. I hope that a different way can be found, Lord Chancellor. I do not think that legislating to do it within six weeks is very satisfactory either.

Could you update the Committee, Lord Chancellor, on the progress of other elements of the recovery plan for the criminal justice system and

give us a bit of an idea about which of them will require legislation?

Robert Buckland: To be specific, Ms Eagle, are you talking about the court system or are we looking more widely at the penal system as well?

Maria Eagle: The court system, Lord Chancellor.

Robert Buckland: I have been extremely encouraged by the Covid regulation-based changes that we made at the beginning of the crisis, with the support of Parliament, as a way of expanding the use of technology. What we have seen in many jurisdictions is effective management of the backlog, and again Susan can come in with some more detail.

In some jurisdictions, family in particular, there has been a rise. I am concerned about both public and private family law cases and the backlog we have there. There have been some really good examples. Let us take the Special Educational Needs and Disabilities Tribunal; a lot of us as MPs will have met worried families who have to undergo that particular process. That has been an example where technology is popular and families say they like it. All the early indications are that we would want to retain remote technology as much as possible in that field, because not only is it dealing with the case load effectively and shortening waiting times, but it seems to be a better system, particularly for families who might find it difficult to travel because of their care responsibilities. There are good examples in other tribunals of the way the case load has been managed.

Having said that, there are challenges, for example, with employment tribunals, where we have not been able to get technology engaged, for regulatory and legislative reasons. We are anticipating what might happen with employment tribunals by seeking to change that, to modernise the system and to be ready for any increase in claims that might be made, if, sadly, we end up in a position with a high number of redundancies and people losing employment. That is a little flavour of the tribunal system. Susan, could you come in as to any other points more generally about the other jurisdictions and how we are managing the current crisis?

Susan Acland-Hood: The question was whether we can flesh out the rest of the recovery plan, particularly any other areas that might need legislation. We are doing a set of things. The first is that early in the crisis we reduced the number of courts we had open, but, as the Lord Chancellor said at the beginning, we are now well on the way to reopening all the courts we had closed. We expect to have all of our courts, save for a very small number where there is a real challenge about operating them at all with social distancing because they are so little, open again by the middle of July. There is a set of courts opening every week at the moment. We opened another 27 courts yesterday. For all those, we have done extremely thorough risk assessments and pieces of work to make sure that we can operate safely.

The second thing is to continue the work on hearing as much suitable work by audio and video as possible. The Lord Chancellor has spoken about that at some length. We are also upgrading the equipment we are putting in and the systems we are using to do that. Early on, we used whatever we had available. We are now rolling out a cloud video platform, which is a better platform for remote hearings.

We have been looking at some of the rapid evaluative work that has been done by third parties, in family and in civil in particular, on which hearings are most appropriately done remotely and which are best done physically. We are also looking at moving towards hybrid hearings in some jurisdictions. The president of the family division has written about trying to make sure that for hearings where it is important, or where a particular party feels they want to be present physically, they can be present physically while others can attend remotely, a bit like this hearing today.

The third thing, which we have discussed to some extent in relation to jury trials, is that across the whole system we are looking at the hours of operation of the courts. Where we have less physical capacity we can use, if we can spread it out in time, we can get more work done. There are working groups with judicial leadership being set up to look at that in each jurisdiction.

We are looking at how efficiently we can hold remote hearings, again with lots of judicial engagement and leadership, and at how we list for virtual and hybrid hearings. That is different from the way we would list for a physical hearing and may help to address some of the points I raised earlier about the intensity with which we can list new cases.

The things that have been discussed so far around jury trials are the principal areas that require legislation. The other thing that we are looking at, as we move towards more remote hearings for first appearances from police stations, is the restriction in law that says that the police end of a video link has to be supervised by a police officer. That is restrictive from a police resourcing point of view. If the person was brought to court, they would only need to be supervised by a PECS officer, and we think we would need legislation to change that position. We are interested in making that change to make the position less resource-intensive for policing colleagues, who have supported us incredibly well through this crisis, as indeed have Jo and her colleagues, in making sure that we have the video connections that we need to prisons.

Q200 Maria Eagle: What timeline do you envisage for implementing all the arrangements that you are making to try to recover from Covid in the court system? When do you expect that to be done? I am not asking when the backlog will finally be cleared, but when do you expect all the provisions that you want to put in to attack it being completed?

Susan Acland-Hood: We expect to have all the closed courts reopened by mid-July. We are working actively now on opening additional court

provision as quickly as we can. As soon as we identify it, we open it. There is an extent to which some of this will be ongoing and it will depend quite a lot on how circumstances change. We have provisions in our plan looking at what happens in the event that you have local lockdowns or other bits of reverse direction. To some extent, our planning depends on those external circumstances.

Looking at the legislative programme, the Lord Chancellor has given you an indication of the timetable, but from an operational point of view we are trying to do all of these things as fast as we can. Getting better video technology rolled out is well under way in Crown and magistrates courts, and the full rollout starts next week in the civil and family courts. Again, we will go as fast as we can and would expect to see it rolled out and operating everywhere over the summer.

Q201 **Maria Eagle:** Lord Chancellor, you made some reference to how you discussed with the Lord Chief Justice the need for more sitting days, and you have made some agreements in respect of this year, but what discussions are you having, given that you have greater appreciation of the backlog and the implications, about the need for more sitting days, as well as longer hours, in coming years? That is obviously one way of tackling the backlog effectively.

Robert Buckland: It is a fair question. The way in which the negotiations work, as I think you know, is based on the year-on-year allocations in the different jurisdictions. It is not a multi-year exercise because flows change; they ebb and they flow. A decision was made before my time, for example, on criminal hearings in the year 2019-20, which, frankly, was overtaken by events, and could not have been foreseen by those who made the calculations on which the decision was made back in late 2018/early 2019. Having said that, for this year the exercise is wholly academic. We need to find as much space as possible, use as much time as possible and get as many sittings as possible to get on with the work.

Thinking ahead to the year 2021-22 has not yet taken shape in a formal way. It is going to, because I have been talking about my ambition to get things sorted and manageable by Easter next year. That will take us into the new financial year and, therefore, those conversations are starting already. I need to consider whether I take an exceptional approach to this period generally anyway, because I do not want a wholly unrealistic exercise deep in the middle of this particular challenge that tries to make projections that, frankly, will not be borne out by events or are just too difficult to make.

The crisis gives us all an opportunity to evaluate how the system works, whether it needs a change and whether it can be done over a longer period, or whether there needs to be a system that is perhaps even more flexible and allows, potentially, in-year changes. In effect, that is what happened last year when I made some adjustments towards the end of the year to increase sitting days by a few hundred.

You make a really interesting point. It is another item on my list as I reflect on the long-term effects of Covid on the system and the opportunities it creates to improve the way in which we predict and provide for court sittings and the system more generally.

Q202 **Maria Eagle:** On 22 May, the Lord Chief Justice told us that the consequences of underfunding the administration of justice were coming home to roost. Do you agree with that assessment?

Robert Buckland: In my time as Lord Chancellor, I have done my very best to try not just to maintain the system of justice but to respond to rising demand and provide for it. It is not an easy task. We know the history of the Department. We obtained the largest rise in many years last year, a rise of nearly 5% in the revenue budget, which I think is a very interesting sign, not just in itself but of the direction of travel, and the ambition that I have for my Department, and, indeed, the ambition the Prime Minister has for the justice system generally.

While I cannot sit here and promise you Finian's rainbow, with a crock of gold at the end of it, I can say that we are going to continue the emphasis on improving our justice system and understanding the consequences that the expansion of our police force, which is a good thing, will have on the justice system. I have a real sense of common purpose with the Home Secretary and the Prime Minister, and, most importantly, the Treasury. People understand the fact that, if you want a justice system that is going to work, you have to pay for it. That is the message that I think everybody now understands loud and clear from me and from my Ministers.

Chair: We are going to talk briefly about technology.

Q203 **James Daly:** Lord Chancellor, I apologise for being negative. A lot of my colleagues are practising in the magistrates courts every day. I agree that the use of technology is a positive outcome, but they report to me that the way it is being used at this moment in time causes delays and that the best part of an hour can be taken up with the most straightforward hearing. I do not blame anybody for that whatever. A solicitor has to speak with their client, and there are all the other things that we are tackling within Covid.

I just wanted to make a comment and ask for your comment. I do not think we should overlook the fact that in the magistrates courts, in particular, technology is creating delays as well. I do not say that as a criticism. What is your view on that and is there anything that can be done to tackle it?

Robert Buckland: It is a very interesting observation, Mr Daly. From my own experience of technology, it can be frustrating, and, of course, if one part of the system is not working well, it causes huge delay. What I am impressed by, though, is the cloud video platform that is increasingly being rolled out to both the Crown court and the magistrates court estate. That common platform brings together the police and the courts and allows everybody to operate on the same technology and on the

same basis. Susan might have some observations, but certainly what I am hearing about the cloud video platform is that it is leading to greater efficiency.

There is also an issue with regard to legal conferences and lawyer/client interviews. That has been communicated to me frequently, and, again, we are working at and implementing ways of expanding that capacity to allow those vital conversations to take place. I know from my own experience that the conference with counsel or the client's ability to give instructions in a confidential way is absolutely essential. It is a legal right, and it can and does lead to greater efficiencies in the system; clear instructions are given, pleas can be entered at the right time, and the system of justice is supported. We should not hesitate but drive forward qualitative increase in technology to make sure that the system is working in a way that speeds things up. Susan might want to come in at this point about CVP in particular.

Q204 **Chair:** Very briefly, Ms Acland-Hood, because we have a bit to get through. The Lord Chancellor says the technology is good and fine, and you are going to tell us the cloud platform is a good one.

Susan Acland-Hood: I think the Lord Chancellor has covered it well. I completely appreciate that when we first introduced this we were introducing a new way of working at incredible pace, in a way that we would never do in normal times. You are right that in some places that has meant things have taken longer than they would have done. We are now learning much more about how to do it more effectively. That is partly about the new technology, the cloud video platform, and partly about people learning how to do it better, as well as making sure that we have the kind of links we need—for example, links for client consultation so they are not taking up court time.

Chair: That is very helpful. Before we move off courts, does anybody want to come back on any court or technology issues?

Q205 **James Daly:** I have a question on the use of magistrates courts. Manchester magistrates court is the court that I am used to. I think more courts could be used. Magistrates courts are places where social distancing can take place. I fully accept that the issue is when you bring people on bail into the court system where they wait, but practitioners repeatedly tell me that more courts should be utilised to deal with the work in magistrates courts and that the court capacity is there.

Robert Buckland: That is a helpful observation. It builds on what Susan said earlier; the expansion in capacity is not just about setting up a Crown court in a civic building. It is about having jury trials, for example, in magistrates courts where there is space and there are custodial facilities, and moving out the non-contentious family and chambers-type applications to civic offices. That could happen in many towns and cities across the country, and I think it is that sort of approach that will yield the quickest results.

Chair: We have spent a lot of time on the courts, and it is a very

important and topical issue. May I hand over to Paula Barker to ask about prisons?

Q206 **Paula Barker:** Can we look at the latest developments in prisons in relation to Covid-19? I am interested in statistics on how many prisoners have tested positive, how many staff have tested positive and how many staff are currently self-isolating.

Robert Buckland: Thank you very much indeed for that question. As of 19 June, with regard to the current figures in prisons, and this is a cumulative figure, we had 505 confirmed Covid cases in prisoners between the beginning of the outbreak and 19 June, and 984 confirmed Covid cases being suffered by members of staff. Sadly, the confirmed deaths, as of 19 June, were 24 prisoners and nine members of staff in the Prison Service.

Jo might have the most up-to-date figures with regard to testing. My recollection is that the number of symptomatic prisoners is now around 100 throughout the whole estate, but Jo Farrar will have some more information about that.

Chair: Dr Farrar, welcome. It is very nice to see you.

Dr Farrar: Thank you. On Friday, we had 107 symptomatic prisoners. That is likely to rise this week because we have a wing in one prison in the north-east where we have a number of symptomatic prisoners, so it may go up a little. We have generally seen that figure reducing. There were 2,897 prison staff off work on Friday 19 June due to Covid, but that has reduced from a much higher figure when the epidemic started.

Q207 **Paula Barker:** I would be interested to hear Dr Farrar's opinion, and the Lord Chancellor's opinion, on the assertion that there are a number of rogue governors across the estate who have taken appalling risks during this crisis, which have led to unnecessary increases in cases of Covid-19. I would be interested to hear what your views are on that.

Robert Buckland: I would say, first, certainly from my experience—I am doing a governors roundtable remotely this week—that the national scheme of cohorting that we introduced, which is now in about 98% of our prisons, whereby for the first 14 days new inmates were quarantined and kept separate, existing inmates who were symptomatic were put into a cohort and vulnerable inmates were shielded, has been the source of the considerable progress that we have made in prisons in limiting this unpredictable and worrying disease.

We were faced at the beginning, as I think every Committee member knows, with a very alarming and stark set of predictions that we responded to quickly with a regime that I think has saved lives and protected staff. It has been supported by constant communication between staff and prisoners to allow prisoners to understand why the significant restrictions that have been placed on them have been carried out, but in a way that gives them confidence that it is their safety that is

being put first. Jo might be able to come in with regard to specific issues about any local governance problems.

Dr Farrar: I am very surprised to hear that you feel there are a number of rogue governors. We have strict governance around the process. In fact, we work closely with Public Health England at national and local level. Public Health England oversees the arrangements we have put in place and recently assessed that we reduced the risk of people dying through this period from between 2,000 and 3,000 to around 100 to 200. In fact, we have only seen 24 prisoners lose their lives from Covid-related causes, 21 of whom were either older prisoners or had an underlying health condition.

We have a really strict process around how we operate in prisons. Phil Copple, my director-general, speaks to governors every week. I speak to all our senior leaders every week. We have exceptional delivery models in place that set out exactly what needs to be done in each prison. If you have specific examples, of course I am very happy to follow them up, but I think we have had quite a success in prisons because of the way we have operated.

Q208 **Paula Barker:** I am happy to provide the additional information you have requested. You said that you speak to the leaders every week. Do you speak to the trade unions on a weekly basis, because the information I am receiving from the trade unions is converse to the information that you have?

Dr Farrar: Yes, we work closely with the trade unions. Either I or Phil Copple speak to the trade unions every week. They feed back to us if they have concerns, and we follow them up, but generally we have worked well together. We published a statement earlier on how we introduced the exceptional delivery model and how that has the support of the trade unions. We are issuing another statement today to show how closely we are working together. We have had real support from the Prison Officers Association and the Prison Governors Association on the measures that we have rolled out.

Q209 **Paula Barker:** As I say, I am happy to provide that additional information and I will write to you. I am led to believe that one of the prisons in Staffordshire has the highest number of Covid-related incidents, so I am happy to do that.

The final point from me is that there are some prisons where governors are described as allegedly bullying—shall we say—and are extending staff shifts, forcing overtime and only using lieu time instead of using the bonus scheme that has been brought in to deal with the pandemic. What are your views on that, please?

Dr Farrar: Again, we have been working really closely with the trade unions. They have been very supportive about the measures we have brought in to make sure that we have enough staff to cover the pandemic. We have different schemes in place, including overtime and a bonus system, to make sure that we have staff to cover the period, even

progressing through to the autumn. Again, I would be really interested to follow up on any individual cases you have, but that is certainly not the feedback that I have been receiving. In fact, staff have spoken very positively about the measures we have put in place and the additional payments, which have helped them to work during this period.

Paula Barker: Thanks very much. I am happy to follow up with the information and evidence I have.

Chair: Mr Burgon, do you wish to come in on this point?

Q210 **Richard Burgon:** My first question is for the Secretary of State. Thank you for joining us today. Eight national trade unions, which represent the majority of prison staff, have asked you to support their Safe Inside recovery strategy, which is to protect all workers in prisons. As part of that, they have asked if the Government can introduce a Know your Rights campaign and, something I think is very crucial, a whistleblowing hotline, which would be alongside a commitment to intervene to prevent contractors or rogue governors enforcing unsafe working practices. Would you take the opportunity today, Secretary of State, to make that commitment to workers, and introduce the measures the unions are calling for, including very specifically the whistleblowing hotline?

Robert Buckland: Thank you, Mr Burgon. I would need to know the fullest details about the proposals. I am always interested in and engaged in issues that will allow frontline workers to bring their concerns to the fore without fear or favour. That is the sort of system we should all be working towards.

Without having looked at the detail, which I will do, as an undertaking to you, I can say this. I absolutely share and endorse the aims of any campaign that leads to a culture of openness. It is only through openness that we improve the system. When I was able to do so before the lockdown, the visits that I undertook to our prisons and our probation services were a chance for me to have frank conversations on the frontline with people who were able to tell me about the challenges they were facing, in confidence where appropriate. I value that and I expect that every senior leader in HMPPS should value that approach.

It disturbs me if there are examples and evidence of a failure of that approach, because I think that is a failure of leadership. I will consider very carefully what you have said, but you can rest assured that the aim of openness and the aim of freedom of complaint, to coin a phrase, are things that I very much share with the unions you have mentioned.

Q211 **Richard Burgon:** That is very useful, Secretary of State, and thanks for that commitment to consider the proposals, including the whistleblowing hotline. One of the purposes of the whistleblowing hotline is to ensure that both you and the chief executive of HMPPS are aware when there are rogue governors.

No one disputes the fact that the vast majority of governors are doing a great job in very difficult circumstances, but recently there was a meeting

of the justice unions parliamentary group, and at that group the national chair of the Prison Officers Association, Mark Fairhurst, referring to a particular prison, said, and these were his words: "The governor there thinks he can play God with people's lives." He gave a troubling case study of appalling risks being taken; for example, sessions were still being held in the chapel after lockdown—choir sessions, craft sessions, bingo—allowing prisoners to congregate in large groups. There are unrepresentative instances of rogue governors, and I think that a hotline would ensure that workers in those prisons could raise these very concerning issues quickly without it escalating in a way that ends up bringing the whole operation in the prison to a standstill unnecessarily.

Q212 **Chair:** Are you happy to have a look at that, Lord Chancellor?

Robert Buckland: Yes.

Chair: Thank you.

Q213 **Kenny MacAskill:** Before I come to specific questions, perhaps I could follow up those from my colleagues. Lord Chancellor, and indeed Dr Farrar, would you accept that the POA has been acting extremely constructively in the dialogue that has been ongoing during the current crisis? In that regard, could you tell us where things stand with regard to the pay review body that was due to report in April?

Robert Buckland: I will bring Jo in, but, as I have said before to this Committee, the POA has worked extremely constructively with HMPPS and with me in the approach it has taken throughout the crisis. I have endeavoured to do everything I can to support them. The bonus scheme was a case in point, which signalled not just our words but our actions when it comes to support for prison officers, who are doing a job in incredibly difficult circumstances. I think the relationship has been a very positive one. I am proud of what they have done and proud of them, and it has shown that, when a crisis comes, we are at our best when we work together. I will bring Jo in with regard to some of the other details.

Dr Farrar: Yes, we have been working really closely with the POA, and the relationship has been very constructive. We have been very grateful for their support. On previous points, I am very happy to follow up if you feel that individual prisons are not operating properly.

With regard to the pay review body, its review was, unfortunately, slowed down by Covid, but we are expecting it to report very shortly, and we will consider what it has to say, as we do every year, and we will consult with the POA, again as we always do.

Q214 **Kenny MacAskill:** May I move on to some specific questions? There are reports coming in from HMIP, and indeed IMB, about isolation and some symptomatic prisoners having difficulties in access to exercise and showers for periods of up to 14 days. How extensive is that, and what is being done to try to address it?

Robert Buckland: I, too, have been viewing all the inspection reports that have been coming in. I am glad to say that, where we have seen

examples of lack of sanitation, those problems have been addressed very quickly, and addressed by the time of publication of the report. In particular, I remember that the situation at Coldingley was acute, but all the reports I had from Jo Farrar and other officials were that measures were put in place to deal with the issues.

In particular on shared sanitation, we have moved progressively away from that type of accommodation, which, naturally, caused huge anxiety to prisoners and to staff. We are taking action and, wherever we get reports of those problems, we make the necessary interventions. Perhaps Jo could come in to deal with the wider point about other instances where we have seen those problems.

Dr Farrar: I hope we spot most of the issues before the inspectorate does, but where it spots issues we act on them immediately. We have been able to give people access to regular showers. We have introduced a number of new units in prisons through temporary accommodation to allow fewer double cells. We now have over 5,000 fewer people sharing cells than we had in February.

It is worth noting that HMIP also identifies areas of good practice, and today Peter Clarke has written to me to show me that he is publishing on his website areas of notable practice. We will be sharing those with governors so that they can all make sure that they are implementing best practice.

Q215 **Kenny MacAskill:** Obviously, there is going to be a great effect on mental health. What is being done to monitor mental health, self-harm and indeed, sadly, suicide?

Robert Buckland: Again, that is an issue of personal concern to me. I have told the Committee before that every loss of a life or the taking of a life by self-harm is reported to me individually as soon as it happens, so they are more than mere statistics to me. I have some figures that I am able to assist the Committee with.

First, in the three months to the end of May this year, there were just under 11,000—10,999—incidents of self-harm in the male estate. That was down from the previous quarter, which had reported 12,433, but for the previous year for the same period it was significantly down. The previous year there were 13,417 incidents of self-harm. Clearly, there is some Covid factor. We need to maturely reflect on it and understand what is happening, but there has been a more than statistically insignificant decline.

In the female estate, there has also been a decline in the last three months, although looking at the figures it seems to me not as statistically significant, with 2,784 incidents of self-harm. That was down from the previous quarter, which recorded 2,870 incidents, but for the same period the previous year there were just under 3,000—2,988. It is a welcome decline, but I am not going to pretend that it is anything other than a very serious issue. In the female estate, there is a particularly acute

concern, and all of us who have taken an interest in and debated the female offenders strategy will know about that.

On self-inflicted deaths, again the figures are fairly, and sadly, consistent. In the three months since 31 May, we lost 20 prisoners due to self-inflicted death. That was slightly up from the previous quarter, by three, but down from the same quarter last year, when it was 23. As I said, I think the Committee is owed mature reflection about this issue. Frankly, it is glib of Ministers to start making headline comments about mental health trends, but what I am hearing from officials and from the estate is that prisoners are responding in different ways to isolation.

Some prisoners are finding it very hard and very difficult, which is why in-cell telephony, video facilities and the ability to connect with families are so important. Other prisoners are finding it a slightly easier regime, in the sense that they are more worried about contact with other prisoners and find that a difficult aspect of prison life. It very much depends on the individual prisoner and how they react, but, generally speaking, it would be right to say that the prison recovery plan we published on 2 June gives us the pathway out of the current highly restrictive regime we brought in because of Covid.

Reading that, and I am sure the Committee will have read it, will give the Committee a very clear idea about what we want to do. For example, the progressive reintroduction of visits to prisons will allow prisoners to see their families. The reduction in the number of hours prisoners spend in their cells will allow more exercise to happen and more freedom can be allowed. All those things are in our plan, but, of course, our plan is based very much on the imperatives of the community-based plan, the R rate and the need to keep prisoners and staff safe.

We are busy communicating with our prisoners to make sure that they know what is to come and that, as lockdown restrictions change in the community, we can reflect that as well in the prison estate. Communication is everything if we are to minimise the mental health effects on prisoners.

Q216 Kenny MacAskill: Thank you. Minds everywhere are now beginning to turn to the easing of lockdown, given that the prison situation has been ongoing for almost 13 weeks. With regard to that, when do you propose to start easing restrictions in prisons? What criteria will be set for each prison to meet to allow that? Specifically, what arrangements will be made in the criteria and at various levels with regard to activity level and indeed access to exercise? Finally, what will be done to ensure that the control that prison staff now have is maintained?

Robert Buckland: Again, I am able to refer to the national framework recovery plan that we published on 2 June, which clearly sets out not just in written form but in chart form the stages we will operate in our prison estate in accordance with the level of infection in the community. We have, as you know, five stages, which range from No. 5, which is complete lockdown, right down to No. 1, where we are in a benign state

of no known infections. There are clearly gradations within that, and lockdown stage 4 is where we have been in most recent times. Moving down to level 3, for example, allows a change in the delivery mechanism. We can have visits and reintroduce classroom-based education, offender management work and offender behaviour programmes, with the appropriate safeguards and adaptations.

It is very similar to what we have seen in the community. The Government in Westminster and the Scottish and Welsh Governments have produced a similar scheme in our prisons. It is also a scheme that will not necessarily apply uniformly. It might look different in different prisons, according to the prevalence level of the disease. Therefore, I think we have sufficient flexibility, within an agreed and carefully calibrated framework, which was the product of consultation with staff and unions, that gives everybody, prisoners included, a high degree of certainty as to how we will manage our way forward to a post-Covid scenario. I commend that document to the Committee. I do not know whether Jo has anything to add to what I have said.

Dr Farrar: May I come in on the governance? The Lord Chancellor has summed up exactly where we are going. We are very keen to move to the next stage. At the moment, we are developing a number of exceptional delivery models for stage 3. We are agreeing those this week with the trade unions. Prison governors are preparing their local plans to ensure that they are ready to open up. As soon as those are written and signed off, when we have an agreement with the trade unions, and Public Health England is comfortable for individual prisons to move forward, we can start to relax the regime. We hope that will happen within the next few weeks.

Q217 **Rob Butler:** Could you touch on the youth estate, Lord Chancellor? You have talked about the male estate and the female estate. Could you give us the picture in the youth estate, referencing, for example, self-harm and what is being done to protect mental wellbeing?

In the wider community, children may not have been going to school but they have been getting online lessons. The same has not been true for children in our custodial establishments. How quickly might we move to them getting a full education offer?

Robert Buckland: There has been one exception to that, and that is at HM YOI Parc in Bridgend, where they have continued to deliver some education, which I think is commendable. It is obviously being done in as safe a way as possible. I am not shaming other institutions by reference to Parc, but it is interesting to note that that was achievable.

I understand the concerns, and we have listened very carefully to representations from staff and the unions about not rushing into a situation where suddenly we put people in quite close proximity to each other, which of course happens with education. It is certainly our ambition, as part of stage 3, to get education running again in a safe and sustainable way, and in agreement with the unions.

With regard to the youth estate, it is right to say that there have been particular challenges faced by staff there, not so much from an outbreak or vulnerability, but from the fact that young people naturally struggle with the concept of lockdown, whether it is in the community or not. It is even more acute in the youth estate, and therefore the management of young people, keeping them calm, keeping them safe, and making them understand why a particular regime has to be involved, has been quite a task. It is a task that has been executed very well by staff, and it is one that, as we go into the summer, is going to be even more important in managing their expectations.

We are still in a long period of marked decline in the number of young people we keep in detention. When I think back, 10 years ago the number of children in detention was probably about three times where it is now, and where we are now is a figure, in total, if you include all secure accommodation, of about 700 or so. We have seen a progressive reduction in absolute numbers.

Jo might want to come in with some more details as to what the next steps are, but thus far I think we can safely say that the staff have done everything they can to keep young people occupied and to make sure that they can talk to their families as much as possible. I cannot deny that there have been stresses and strains, and particular anxieties among the families of young people, who, quite naturally, would like to have greater opportunity to interact, which has not been possible because of the restrictions. I do not know whether Jo wants to add any more.

Chair: We need to move things along a bit because time presses on us.

Dr Farrar: We have been watching the youth estate very carefully. We have been particularly concerned about our children. We have a small number of young women who tend to self-harm, so we have a package of support around those young women and other people in the youth estate who tend to self-harm more than others.

We have been issuing technology to cells for some of our young people to make sure that they have opportunities for distraction, as well as distraction packs. We prioritised them for video facilities as well so that they can keep in touch with their families.

Chair: That is very helpful. Mr MacAskill, do you want to move on to population issues?

Q218 **Kenny MacAskill:** Yes. How many temporary single-occupancy cells have been installed? How many are actually in operation and how much have they cost?

Robert Buckland: I can give you the latest figures as of Monday. We have now had the delivery of 896 units across 26 sites; 477 units have been installed and are ready for use, and 289 of them are now being used. We have opened up an annexe at HMP YOI Rochester to hold up to 70 males; 32 cells are currently in use. It is our intention to go further with regard to that accommodation because we think it will have some

long-term benefits with regard to the way in which we can manage maintenance on the prison estate. Therefore, it is not, I am glad to say, a one-off investment that will only have limited use. It will have, I believe, longer-term benefits. Perhaps Jo can update us with regard to where we are with cost.

Dr Farrar: I do not have the figures for cost in front of me, but I can certainly let the Committee have them.

Chair: If you could send them to us, that would be the easiest thing. Thank you very much.

Q219 **Andy Slaughter:** While we are on the figures, 289 temporary cells of the 2,000 promised are in use at the moment; is that right?

Robert Buckland: Just under 300.

Q220 **Andy Slaughter:** Do you think that is good progress three months into the Covid crisis? The other thing we looked at as regards the numbers was the early release scheme. It was billed as 4,000 and revised down to 2,000. That is the number of tags that were purchased. The latest figure I saw for that was about 150-plus. Is that right and do you think it is a success so far?

Robert Buckland: In a nutshell, yes. I think the combined approach of increasing capacity and shutting down capacity that was particularly unsuitable in Covid circumstances was absolutely the right way to go. Jo can testify to this; I was extremely anxious to push extra capacity from the earliest stage.

I take into account the fact that these things need to be properly procured and we need to make sure that we obtain the sort of accommodation that, while it might not be permanent in the sense that it is a permanent construction, is very akin to a lot of the constructions we have, particularly on the open estate. This is capacity that is being used at a category D level.

The next stage is for me to scale up temporary accommodation at category C level. Of course, that will require a slightly higher-level security specification, but, as I said in answer to Mr MacAskill, this is not some short-term fix; the units will be able to be redeployed across the estate. Where, for example, we are doing a big maintenance job in one prison, we can use that capacity to house prisoners in a safe and dignified way while doing the work that needs to be done on the rest of the estate. I think there is a long-term benefit.

With regard to early release, the number of 4,000 was indeed a potential number of eligible prisoners that we were looking at, particularly in the early days of understanding the outbreak when we were facing some, frankly, pretty concerning and very high numbers from PHE about the number of people the Prison Service could safely accommodate. It was, I think, right to recalibrate, and look at what was necessary in terms of the overall fall in prison numbers, and to apply a rigorous control check on

people being released from custody. Each one of those people has been tagged. They have been subject to rigorous check and they are the sorts of checks that I think the public would demand of us. As of Friday, the combination figure is 175, of which 23 were pregnant prisoners or prisoners with very young children, and 20 were extremely vulnerable—people with a very serious health condition.

While in the context of the whole pandemic the total might look low, it must be accompanied by the fact that since February, when we were near to 84,000 prisoners, the numbers in total on the prison estate have now dropped by about 4,000. They stand at about 79,500 as we speak. That in itself has been a significant contribution to the headroom issue that PHE identified and that we have endeavoured to follow. The work goes on. We are not saying that we are near mission accomplished. That would be inappropriate, bearing in mind the fact that the work in prisons is never done, but we are making huge progress in not just getting the right capacity but managing the prison population in a safe way that has resulted in mercifully few fatalities in the prison population.

Q221 Andy Slaughter: Thank you for that. It is very clear in the sense that there has not been the number of deaths you expected, and that is clearly good news, and fewer people are coming into prison compared with those leaving, but is your target still 2,000 for the temporary cells? On the early release, are you saying, effectively, not that you have abandoned it but that you have stood it down? You are looking at about 5% against the original target. If that is a deliberate policy, it looks like you have stood it down as policy.

Robert Buckland: I am not going to make a binary choice. I am going to stick to the 2,000 target on increased capacity. I think that is absolutely right and I want to drive that on. Of course, we were not just looking at the prison estate; we were looking at other Government estate as well, and work continues with regard to identifying potential suitable accommodation that would meet our specifications.

With regard to early release, I am not standing it down. I am still using it in a careful way, and it is still, I think, a useful additional tool to have, bearing in mind the need to be flexible. One thing this pandemic has taught me as a Minister is that putting all one's eggs in one basket is not the way to manage this sort of crisis. That is why I was anxious, with my officials, to be as imaginative as possible to try to find a range of different ways of tackling the problem.

We understand the fact that the prison estate is not a monolith. It has myriad different types of institution with different ways of working. Within that, I am trying to provide a sense of national co-ordination, but giving us a series of options that can be used at any one time to achieve the overall goal of making the estate a safe one and, of course, following the advice that we have been given by PHE. In large measure, we have been doing that, and we have to keep going and keep our eye very firmly on the ball.

Q222 **Andy Slaughter:** I am looking at a letter that the Prison Reform Trust and the Howard League sent you on 15 June. May I quote a couple of sentences from it? "Most people in prison are either in prolonged solitary confinement or in overcrowded conditions...prisons are devoid of purposeful activity or an opportunity for people to make amends. The children in prison have had no education, rates of self-harm in women's prisons have increased and the entire estate has been starved of contact with the outside world. Open prisons no longer serve their function of preparing people for the community. Deaths in prison are rising." Do you agree with that analysis?

Robert Buckland: No, I do not agree with it. It does not acknowledge the statistics accurately. That is not me playing it down. Anybody who has engaged with me on it knows that deaths in prison trouble me hugely, and the sense that prisons are not places of purpose, again, troubles me. What they are doing is describing a situation of lockdown.

Lockdown has resulted in a significant change in the way we run prisons. Not having education and not having exercise has been part of that, and that has been a sad fact of life for prisoners, but it has been a fact of life for all of us in the community as well, because we have lost a lot of our freedoms as a result of it. I find that when you explain that to prisoners, and I have been on prison radio to say just that, they understand it and accept it, as they see their families and friends having restrictions.

With respect, what that letter ignores is the recovery plan that we published a fortnight before it. We set out in the recovery plan what our aims are and what we want to do to allow things such as education, visits and exercise. The idea that somehow my officials and I have been sitting back and have been inactive on this is just wrong.

Rather than sending letters that emphasise the problems and the challenges, which are there and which we all know about, we need a sense of constructive working together on the issues, identifying the problems, being honest about them, as I hope you think I have been, and doing something about it. That is what the recovery plan does. As we move in the community to a new phase in July, I want to see that happening in our prisons too, but in a way that is safe and saves lives.

Chair: This is going to have to be the last question, Mr Slaughter, as we are pressed for time.

Q223 **Andy Slaughter:** I accept that is your ambition, Lord Chancellor, but do you disagree with the factual content of that paragraph?

Robert Buckland: I am afraid some of it is wrong. I have set out some of the information about self-harm. There was an issue about rates of self-harm. I have given the figures in relation to absolute numbers in the female estate and I will think about that, because I know the female estate has declined by several hundred in overall numbers, so there might be an issue about the rate.

May I say that I am not dancing on the head of a pin? I know the problems about self-harm in the female estate. I have talked with women inmates and seen the results of self-harm. We were seeking to tackle that in the female offenders strategy that was agreed two years ago. A lot of it is based on trauma that women experienced prior to their incarceration.

I am not minimising or pooh-poohing what that letter says. What I am saying is that, rather than constantly confronting us in an adversarial way, I would like to see a little bit more acceptance of the realities of the situation within which HMPPS and I are working, and of the fact that we are all united in our desire to save people's lives, to keep people safe, and do everything possible to provide a humane regime, but consistent with the demands of the Covid crisis.

Q224 Dr Mullan: I want to move on to talk about the deployment of pepper spray in prisons. Last year, there were more than 9,000 assaults on prison staff. More than 900 of them were serious. I have seen recent examples where prison officers have been jumped on, on their head, by a prisoner with both feet, assaulted with a 12-inch metal bar and given concussion by a prisoner swinging a billiard ball in a sock. Those are just some of the things you can quite easily see reported in the media. To what extent were those kinds of incidents part of why you think it is important that we give prison staff the option to deploy pepper spray?

Robert Buckland: Thank you very much indeed, Dr Mullan. Some of the examples you have given are a stark reminder of the danger that prison officers and staff face every day. Some of the incidents of assault have been, frankly, appalling. I for one have been a very active supporter of using the prosecutorial system to deal with those assaults, which can often result in life-threatening injury. Indeed, we will be consulting very shortly on the assaults against emergency workers legislation, with a view to potentially increasing the maximum sentence available under that particular law, which was passed by Parliament in the last few years. I want the message to go out very clearly that I will do everything I can to support our dedicated prison officers.

PAVA spray has been a very important additional element, which I think is necessary, and which, with the right training, is absolutely a safe and sensible option for prison officers to have. We have sought to balance the need to get it rolled out as quickly as possible across the estate with the need to ensure that there is appropriate training and support for officers in their use of it. Frankly, it has been a source of some debate. I know that the unions are very anxious for me to get on with it, and they make their case very powerfully to me regularly. At the same time, I have to recognise that I would not inadvertently want to expose prison officers to legal challenge, whether direct or indirect, and I have to make sure that the regime is absolutely within what the law will allow.

Covid has presented us with particular challenges. As a result, I think rightly, we took a decision to issue PAVA more widely. It is now in 81 of our prisons; 23 of them were sites that had already been issued PAVA

prior to the exceptional arrangements and 15 of them had already passed readiness, so they had passed the eligibility stage. Yes, we have gone further than that in some short order, but, frankly, in these exceptional circumstances, for me the safety of staff was paramount.

It was essential that we gave them all the support that they genuinely required, and this was the case. It is important to remember that, locally, in the remaining sites where we have issued PAVA, the staff who use it are trained. They have the requisite training and support and all the sites have the good governance toolkit, as they call it—in other words, the guide— alongside general guidance for the use of PAVA and support from HMPPS as to how to use it safely. Of course, I am going to have to review those arrangements once we get through the emergency, but it is my aim to make sure that we roll out PAVA in a permanent way with all the safeguards that I know are in place.

Q225 Dr Mullan: It is in use in a number of other jurisdictions—Sweden, New Zealand, Canada—so it is not unusual for a prison service to make use of it. Have we learned any lessons, or can we learn any lessons, from its use in other countries that we might bring to bear in our rollout?

Robert Buckland: Already we have learned from those other jurisdictions about how proportionate use of that type of spray can not just protect prison officers but lead to a greater sense of order within our prisons. We have taken that learning and we continue to adapt it. We look constantly at the data that we get from the use of it.

The latest information I have is that since 21 April there were 28 PAVA recorded incidents, but in only 12 of them was the spray actually administered. That shows you that, just because a PAVA implement is drawn, it is not inevitable that it is going to be administered. I think that can give people a high degree of confidence that the approved techniques are being adhered to, and, of course, any failure to do so means there is a chain of accountability about these things. Prison officers know that. We are monitoring the use of force. We have a national tactical response group. We are using that to monitor what is happening across the system. I am confident that as a result of what we have done we will keep staff safe and, frankly, keep prisoners safe as well.

Q226 Dr Mullan: I echo those sentiments and the value of its use. The obvious question that arises is that while, of course, Covid has produced challenging circumstances, those circumstances, particularly in relation to the high degree of lockdown and the reduced interaction of prisoners, might not lend themselves to increased risk of violent incidents. There is the obvious question, while I support the use of it, about the justification for making the rollout quicker if there was not a Covid-related increase in violence or behaviours that you might want to control.

Robert Buckland: Jo Farrar might have a view about that. My instinctive response is that, yes, you are right about the number of assaults; they have gone down as a result of what has happened, but I think the fear was that Covid is not just a physical danger; it is also a mental challenge

to us all. The fear of the spread of the outbreak can cause anxiety and instability, and, in an institution like a prison, it only takes a few things suddenly to spark a problem. Prison officers have jailcraft and the ability to de-escalate and defuse hundreds of problems a day, and they do it quietly and they do it in a brilliant way, but there come moments when suddenly a little thing can spark something quite significant. I think it was felt, and I certainly shared the view, that having that extra element at the disposal of prison officers at this particular time was the right thing to do.

Dr Farrar: At the beginning, when we assessed the situation, we had never been in a situation where we were going to lock down prisons for such a prolonged period. We were worried about what might happen in the estate and wanted to make sure that we had the necessary protections in place so that our staff were safe and we minimised the risk of disorder. It has been a very exceptional time, but we are looking to continue the rollout of PAVA, as we promised, as soon as the outbreak is over.

Dr Mullan: I want to ask about the MOJ equality impact assessment. It is important to have on the record that, while it identified in a pure numbers sense an increased deployment in relation to prisoners of BAME background, the study was very clear in saying that the sample sizes of the individuals concerned were too small to draw any conclusion about the use of this tool in relation to particular ethnicities. But we know that, when we look more broadly at the use of force, there is a better evidence base that it is not necessarily deployed in a proportionate manner. What steps are appropriate to take to monitor the wider rollout of that tool and to assess whether it translates into disproportionate use?

Robert Buckland: Clearly, it is very important that we not just monitor it but take appropriate action if we think that the disproportionate use of force is as a result of a systemic problem or failure. We have the national tactical response group and the national dog and technical support group as well—another restraint is the use of prison dogs. That allows us to look at the data and not just crunch the numbers but ask the question why. It is through those national bodies that I think we can improve.

We already have in our staff training programme unconscious bias training. That is mandatory for all staff. We are also developing more training, based on the evidence, to improve awareness of the fact that, whether we like it or not, we carry biases, and therefore adjusting our behaviour to take that into account has to be part of it.

It would be wrong of me not to take this chance to say that, when it comes to BAME and the criminal justice system, we still have a heck of a challenge ahead of us. We are making progress. A lot of the recommendations made in the Lammy review have been implemented. I think 16 of the 35 have been completed, but I want to get on with completing the rest within the next year. I think we can do that, which means that that body of work can be properly completed. We can play our part, as we develop our new independent review and take the work

forward, in making sure that we are as effective as possible in providing a criminal justice system that provides equality for everybody within the law.

Chair: Thank you.

Q227 **Rob Butler:** Could we move on to probation, Lord Chancellor, specifically your recent announcement that you are going to bring pretty much all probation services back under the control of the National Probation Service? I do not want to ask you to rehearse the arguments, not least because of the limited time we have remaining this afternoon, but I recall that you mentioned that the coronavirus crisis had been one of the triggers for that decision.

Private sector providers were given very little notice of the potential change of heart. Could you explain a little more why they were they given so little notice and so little option to potentially put forward alternatives that they felt were sustainable? Given that there was such a big shift in focus away from the private sector, does it worry you at all there may be a lack of trust in the future when the Ministry has given an undertaking that is then—bluntly, the only way to put it—reversed?

Robert Buckland: It is a fair question to ask, Mr Butler, but we had to make decisions under extreme pressure. The probation reform programme was announced last year by my predecessor, when I was a Minister of State. The aspiration then was to complete the reforms by spring next year. That clearly became an ambitious target. I wanted honesty from my officials, and they told me that the summer of 2021 was when it was going to be achieved by, so we already had a necessary adjustment in the timetable. We made the announcement relating to the bulk of the work, as opposed to the unpaid work provisions and the parts we wanted the private sector still to be involved with. Then came Covid, and it changed everything. The viability of a process that we wanted as many participants as possible to take part in, in the context of Covid, was going to be difficult.

Frankly, I had a choice: should I postpone the reforms into the blue yonder or keep to the timetable we had publicly set ourselves and that had already been slightly adjusted in any event? I decided that it was right to keep to the timetable. Why? Because I have a wide duty, not just to the parts of the system that provide the services that the CRCs provided, but to the National Probation Service as well, and the need to make sure that any transition period was as smooth and as non-disruptive as possible. I took the judgment that it would not be right for me, in effect, to keep things in suspended animation, running a system that I think had run its course, and promising change but not then delivering it.

Of course, things would have been increasingly out of kilter with what we have done in Wales, where we have implemented the merger, for want of a better word, and the new model started at the beginning of this year. I was conscious that we would have staff on different regimes, some

working for the NPS, some working for CRCs, some working in the Wales service. Frankly, there needed to be a high degree of certainty. Therefore, weighing it all up, and looking at the options—there were a number of options; we could have perhaps extended matters by some months or moved to a GovCo-type provision—I thought it was far better and far more straightforward, and I owed it to everybody who had an interest in this, to be straightforward and to come to a decision. Yes, it meant an end to the current situation with regard to that element, but I think it now clears the decks and allows us to get on with the dynamic framework model, which is already up and running on the website, and is already inviting tenders and bids for the sort of provision that I think the previous model never got round to delivering properly.

Q228 Rob Butler: How can we make sure in the future that if the Ministry of Justice wants private sector provision for any role, or indeed any other Government Department, potentially bidding firms can be sure that the Government mean what they say?

Robert Buckland: That is a really important point, and that is why in my statement I made the point that we will carry on with our mixed economy approach. For example, there is very active involvement of the private sector in our prisons. Kier is currently building the Wellingborough prison project. It is doing a really good job and it is employing a proportion of ex-offenders. It has managed to keep it going through Covid. It only fell a few weeks behind schedule, amazingly. That is a really good example of private sector involvement. As we scale up and build modern prisons fit for the future, I am going to need their support and investment to deliver that. The message I am sending to the market is a very clear one: we are open for business and we want the mixed economy to prevail.

Q229 Rob Butler: In terms of sending messages to the staff, I think you will remember, as I remember, that when transforming rehabilitation first came in staff were in what was the equivalent of a national service and were very reluctant to move to the private sector. Quite a number that I visited in my previous role said, "To our surprise, we really welcome it because we have been allowed to be more innovative and we have been more empowered." Is there a way you can ensure that the benefits that have been brought to staff, and onwards to the offenders they are looking after, can be retained as they move back into the National Probation Service?

Robert Buckland: My officials have a very clear steer from me that that is exactly what I want to happen. I do not want those talented probation officers, who are public servants, feeling in any way encumbered or stymied when they come back into the National Probation Service. There is plenty of room for the sort of imagination and innovation that we have seen, and, frankly, I would expect no less. It may well be that Jo Farrar has something to say, and I very much hope she will echo the comments that I have made about harnessing the best of what we have seen in the private sector with the new national framework.

Dr Farrar: That is absolutely the case. There is some really good practice in the private sector. We want to bring that together with the good practice in the public sector so that we have a really high-quality probation service. I am very supportive of the comments that the Lord Chancellor has made. We are also working very closely with our trade unions so that we can bring people across from the private sector as harmoniously as possible.

Q230 **Rob Butler:** There are several players in the private sector, and all their systems are going to need to be brought in and merged with your public sector model, and those private sector providers all do things slightly differently. Are you confident that the timescale to do that is achievable, because some of the private sector operators themselves are rather nervous about that?

Dr Farrar: Yes, we are confident, and we are working really closely with our private sector providers on the transition, as we have been in Wales, where we saw quite a smooth transition.

Q231 **Chair:** Regarding timelines, when are you going to move to step 2 of the road to recovery? You are in the exceptional delivery model at the moment. When are you going to start moving from that onwards?

Dr Farrar: We are consulting at the moment. We promised our partners that we would give them two weeks' notice, so within the next couple of weeks we want to be, as with prisons, opening up our probation services and having more face-to-face visits.

Q232 **Chair:** When can we expect a return to something like normal levels of supervision, because at the moment it is very limited indeed?

Dr Farrar: That very much depends on the announcement today from the Prime Minister and the restrictions that remain in place. We want to do it as soon as possible, but I want to reassure the Committee that we have continued to see our high-risk offenders face to face throughout the Covid period. With our lower-risk offenders, even where we have been doing telephone contact, we have been increasing the amount of contact with people.

Chair: Lord Chancellor, you mentioned the Lammy review. Mr Slaughter, do you want to pick up any remaining issues around that?

Q233 **Andy Slaughter:** There is a specific recommendation in the Lammy review on the commitment to capture protected characteristic data for users, which HMCTS committed to. What progress has been made on that? Is it still the intention to do that?

Robert Buckland: I am just checking the list. As I said, we have implemented 16 of the recommendations and we have completed them. I am just checking to see the HMCTS recommendation. I have one here: the common platform additional capability for cross-CJS measurement of ethnicity. That is the court data. I think we faced a bit of a logistical challenge in getting that done. I have already said to the Committee that my aim is to get all the outstanding commitments we made within the

next 12 months; there were only two we did not accept but the rest we did. I do not know whether Susan has any more detail as to that particular recommendation.

Susan Acland-Hood: The specific recommendation on the common platform is related to the rollout of the common platform, which is not yet out there in courts, but we are building that capability in. We have also now built the collection of protected characteristics data into the mechanisms for our new digital services, as part of reform across the court system. The common platform is the crime-relevant part, but we are looking at it across the whole of the court system. We have gone live with the first data collections on protected characteristics in our new services in the last couple of weeks.

Q234 **Andy Slaughter:** When can we expect to see those?

Susan Acland-Hood: They are happening now in the services we have introduced them to. For the common platform, we cannot put that in until the common platform is rolled out, which will happen during the second half of this year.

Andy Slaughter: Thank you very much.

Chair: That is helpful, thank you. Finally, but not unimportantly at all, we have talked about the impacts of Covid in a number of areas, and the legal profession itself has been significantly impacted. Ms Barker, do you want to start on that?

Q235 **Paula Barker:** Lord Chancellor, have there been any conversations with the Treasury about extending financial support for the legal sector?

Robert Buckland: There have been many conversations and they continue. The challenge has been to try to devise a scheme that is particularly bespoke for the legal profession—indeed, there are differences between the solicitors and barristers professions—which fits into the overall welcome approach the Treasury has taken to support millions of jobs and thousands of businesses. To some extent, some of the Treasury measures have already had a beneficial effect. The furlough scheme has been useful in some measure. The bounce back scheme has also been used, as have other measures.

What has been particularly difficult for the legal professions is cash flow, particularly with regard to legal aid. I have instructed my officials and the Legal Aid Agency to do everything they can to help to improve cash flow in a revenue-neutral way. In other words, money that would go to firms in the normal course of events because of the work they do should continue to flow as much as possible, whether it is in paying unpaid bills, potential advance payments, or hardship payments. We took steps to radically change the hardship payment regime, to lower the threshold amount before you could apply, from £5,000 right down to £450, and to allow claims to be made after only a month, which I think was a reduction from three months, and to relax some of the evidence requirements.

I accept that more is sought, and I am working very hard, not just with the Treasury but internally, to see what more can be done to help the flow of regular income to the professions, particularly those at the sharp end of legal aid. What attracts me is the idea of making sure that, for example, a solicitors firm can have a regular monthly income that keeps the firm viable and keeps it afloat, because we are going to need their capacity not just now but in the future. Similarly with the Bar, I want to see whether we can do more to reflect the particular cash-flow problems that I know many practitioners are facing, particularly young practitioners and returning practitioners.

The conversations go on, the negotiations continue, and I am going to continue to do whatever I can to improve provision and to provide the necessary support. I am being as imaginative and inventive as I can, as quickly as I can, to come up with some more solutions to help both solicitors and the Bar.

Q236 **Paula Barker:** I am delighted to hear that, but, as you know only too well, there are lots of newly qualified barristers who do not have accounts for 2018-19. Why won't the Government support them, Lord Chancellor?

Robert Buckland: I have made a specific request. As is so often the case, and quite understandably from a Treasury point of view, if it is Government money, it needs to be based upon evidence, and there needs to be a clear audit trail about the award of any grant or any financial support. I think the taxpayer and parliamentarians would expect that. You can imagine that I or my officials would be hauled in front of the Public Accounts Committee if we departed radically from that principle.

Having said that, I understand; I get the problem. I have been there myself. If I do not know the individuals personally, I know a lot of people in that position from my own professional experience, and I want to do something to help. That is why, while I know that time is pressing and people are getting increasingly worried and anxious about the situation, I will use all the imagination and power I have to make more provision to recognise the particular challenges being faced by the most vulnerable parts of the professions.

Q237 **Paula Barker:** What is your view on providing monthly average incomes to those who can demonstrate a track record in providing routine legally aided services?

Robert Buckland: I alluded to that in the first answer. I think it has a lot of attraction, because it is income that they would have earned anyway. We need to make sure that we make it as revenue neutral as possible. In other words, providing consistency of income might mean that, later on in the process when they are doing more work, they will find that their income stays fairly steady.

Frankly, remembering the challenges that I faced with cash flow, what is important for practitioners is a regular stream of income so that they can plan ahead and know that at the end of the month they will have enough

to keep going. There is an existential question, a question of viability. I am very attracted by that sort of approach. It is not just thoughts in my head. It is being very actively considered by my officials. I am pressing all my team about it and I would like to address it as soon as possible, to provide the sort of help that will make a difference, I think, to many hard-pressed practitioners.

Q238 **Chair:** Isn't the problem that nobody in the Treasury, apart perhaps from some Ministers, has ever been self-employed, Lord Chancellor, and they simply do not get the issues? They have the security of the public purse and they do not seem to be giving it the urgency it deserves.

Robert Buckland: I could rail about the Treasury, but I have to say that the last spending round was a positive piece of work in which the Treasury engaged with my Department, understood the problems and acted, and, therefore, I regard the work that I do with the Treasury as constructive. I might not be able to get everything I want all the time, but I have had a high degree of success thus far. I am not going to sit here and breezily and confidently say that I can get everything I want, but we will find a way. I am going to work hard to find a way to provide the extra support that I know is needed.

Q239 **James Daly:** Lord Chancellor, I have to say something I have said to you before. I keep coming back to criminal legal aid firms. I should make a declaration that I have been 16 years in that line of work.

I am very pleased to hear about the potential for some form of monthly sustainable income. One of the suggestions on criminal legal aid was that you take a period going back from the start of the lockdown of the courts system, say, three or six months, and you look at the average monthly payment criminal solicitors have received for that period. They would continue to receive that through this period, because it is cash flow that is the issue. Both you and I know there are ways of recouping that money within the next six to 12 months. I do not know whether I can tempt you, Lord Chancellor, to say whether that has any merits.

Robert Buckland: You put the case very strongly. It would be wrong of me to make on-the-hoof commitments. I am working as hard as I can to look at it not just from the avenue of that sort of support but through the courts recovery programme to provide the case flow. My primary interest has to be the public interest, but there is a benefit for the professions to be able to work. Therefore, increasing capacity and increasing case flow will of course bring its own rewards to hard-working legal practitioners who help keep the system going day in, day out.

Q240 **James Daly:** Have there been any discussions with the Treasury regarding business rate relief support for solicitors? That is an issue that many firms talk to me about.

Robert Buckland: It is one of the specific points that I have made. The difficulty with it is that the business rates scheme was designed for a particular part of the economy, and particular types of outlets, such as retail outlets and particularly the catering and restaurant and pub

industry, which, of course, were always going to be acutely affected by inability to trade from their premises.

Professional services are somewhat different and we have to acknowledge that. While premises are a very important part of professional services in many respects, the current restrictions do not necessarily prevent people from working, as we have found. Looking at it from the Treasury's point of view, they will be anxious to draw quite a high threshold. While I think it is absolutely right that we made the case and make the case, we also have to be realistic, which is why rather than me relying on specific requests that might not be fulfilled, it is my job to be as imaginative as possible with the resources that might be available to me, to come up with another solution.

Q241 **James Daly:** Colleagues have spoken to me regarding the duty solicitor rota. Is there any merit in taking away the requirement for an office in the area where you are on the duty solicitor rota? Obviously, the fixed cost of an office is a burden for many criminal legal aid firms, and if they could still be on the duty rota, which is one of their main sources of income, I think that would be welcomed by many of them.

Robert Buckland: What I would say about that is it is worth us talking further with the Legal Aid Agency to see what can be done. It is another example of the effects of Covid, and it makes us ask some fundamental questions. We have made assumptions based upon history and experience; we do things because that is how they have always been done. The crisis has meant that we have had to change the way we do things. There are plenty of aspects of it that make me and others ask the question: just because we have always done it like that, is it the best way to do it? We need to take up that sort of detailed conversation directly, and, with my help, you can engage directly with the Legal Aid Agency about aspects of the duty solicitor scheme and its administration.

Q242 **Chair:** That is very helpful, Lord Chancellor. Ultimately, as the courts come back on stream, unless we have the infrastructure of the profession to do the legally aided work in those courts, none of it will come to anything, will it?

Robert Buckland: That is absolutely right. Being as long in the tooth as me in the profession, I saw the problems that were being wrought on criminal legal aid in the noughties by the previous Labour Government, and I saw a progressive decline in young people coming into the criminal Bar then. So the problem is, I am afraid, not of recent creation.

Q243 **Chair:** That is perhaps all the more reason that we need to think about a fresh look, once Covid passes, as to how we approach and support it.

Robert Buckland: Yes, I agree with that, Sir Bob.

Chair: Lord Chancellor, we are very grateful to you, to Ms Acland-Hood and to Dr Farrar for your time and for your evidence. Staff in the Prison Service, the probation service and the Courts Service are working immensely hard in a stressful situation. The Committee, through you,

thanks them all for what they are doing. We appreciate that. We are very grateful, as always, for your time and courtesy, Lord Chancellor.