



Justice Committee

Oral evidence: [The work of the Secretary of State for Justice](#), HC 335

Wednesday 15 July 2015

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

Questions 1-65

Witness: **Rt Hon Michael Gove MP**, Lord Chancellor and Secretary of State for Justice, gave evidence.

Q1 Chair: Welcome. I have to say that I do not think I have seen a Secretary of State fill up the Committee room in quite the numbers you have managed to do. That is all the better. I am particularly grateful to you, as are my colleagues, for having agreed to be the first Secretary of State in this Parliament to come and give evidence before a Select Committee. That is deeply appreciated.

Secondly, genuine congratulations, both personally and politically, on your appointment; we wish you well in what I think is one of the most fascinating jobs.

You indicated, and we thought it would be helpful, that you would give us a sense of where you see the Department going in the course of this Parliament—what your objectives and priorities are. I am entirely happy to leave it to you to tell us about how it goes forward now.

Michael Gove: Thank you very much, Mr Chairman. Can I offer my congratulations to you on your election as Chairman of the Committee and welcome the new members to the Committee as well? I know that there are some very experienced parliamentarians on this Committee and also some new Members. I hope that we can have a fruitful session today.

In terms of priorities, there are three principal priorities that I have for the Department. The first, essentially, is courts reform in the broadest sense—improving access to justice and making sure that our courts work in a more effective and efficient way. I outlined some of my thinking in a speech I gave a little while back. The most important thing to stress about the reforms that I hope to introduce there is that, in essence, I am acting not as the initiator of these reforms but I am there to help the judiciary to achieve what has already been set out by the Lord Chief Justice and by Sir Brian Leveson as a programme

of changes that they believe are necessary in order to ensure that the courts work as effectively as possible, in the interests of all citizens.

The second area is essentially how we deal with offenders. That is everything from making sure that they are sentenced appropriately to making sure that when they are in custody their time spent in the care of the state is spent well, with more of an emphasis on work, education and rehabilitation, and that when they leave custody the great work of my predecessor in helping to transform rehabilitation and to improve probation is continued and we maintain the pace and the energy of the reform programme that he put in place.

The third area—this is a direct instruction from the Prime Minister and, indeed, from the British people—is that we need to have a look again at human rights and how we ensure that we strike the right balance between protecting people’s human rights and making sure that some of the concerns that have arisen about the way in which the Human Rights Act has operated are addressed.

Q2 Chair: That is very helpful. How do you do that within the budget envelope that you have?

Michael Gove: With unerring political acumen, you have hit on the biggest problem that I face, which is that the Ministry of Justice is an unprotected Department. Even though the Chancellor and the Prime Minister are very supportive of the reform programme that I have outlined, they also recognise, as I do, that I have to play my part in making sure that we can continue to reduce the deficit, so there may be some very difficult decisions that we will have to take.

It has already been the case, as you will be aware, that some of the reductions in legal aid expenditure have caused considerable concern. I do not think that those people who have expressed concern about reductions in legal aid are motivated by self-interest; I think that they are motivated by genuine concern about whether or not there may be, as a result of these reforms, some individuals who deserve access to justice who may not get it. I am keeping a very close watching brief on what happens as a result of these legal aid reforms, but it was the case that too much taxpayers’ money was being spent on legal aid. There had to be reductions.

In the same way, I also have to look at the way in which the courts operate. That will mean court closures, which will be difficult for some colleagues. I also have to look at the way in which our prisons operate, to ask the question whether or not they are operating in the most efficient way and to consider how the programme that Chris, my predecessor, put in place of thinking about how we can move from older prison estates to new prison build can be done in a way that will save money for the taxpayer. But it is not going to be easy.

Q3 Chair: The CBA obviously did not think it was terribly easy this morning. What is your reaction to that? How do we deal with that issue?

Michael Gove: I am disappointed that members of the criminal Bar voted in their ballot to take action, although it was interesting that the vote was closer than many might have anticipated and, of course, there were a number of members of the criminal Bar who did not vote.

The first thing I should say is that I have developed an admiration for Tony Cross, and for the people who lead the Criminal Bar Association, over the course of the meetings that I have had with them recently. I do not believe that the leadership believes that action was necessary at this time. I think they recognise that we want to work constructively with them and with the Bar in order to make sure that we continue to have a healthy, independent criminal Bar. It is one of my top priorities. I hope that—notwithstanding the vote today, which may be the consequence of bruised feelings in the past as much as anything else—I can continue to work with the leadership of the CBA and with the Bar Council to address a number of concerns that I think are perfectly legitimate.

One of the other good things that my predecessor did was to commission Bill Jeffrey to have a look at the quality of advocacy in our courts. The Jeffrey report reinforced something that I have always felt instinctively, which is that you have effective advocacy only if you have a strong, independent criminal Bar there for people when they need it—there for the courts as well—in the interests of justice. There are some changes that we may need to consider in order to safeguard the quality of advocacy and to ensure that there is a healthy pipeline of future recruits to the Bar. One of the concerns that we all have is that, for talented young people leaving university who have a vocation for justice and want to enter the law, the criminal Bar is proving an increasingly unattractive route to go down. That is a great pity. When you and I were leaving university, Mr Chairman, the criminal Bar offered all sorts of attractive opportunities. Now we have to consider, with people who are our successors, as it were, and are leaving university now, how we can make sure that we continue to have the quality of barristers that we have had in the past.

Q4 Chair: I had forgotten that you had done the research on me, Lord Chancellor. I am interested in the issue of the pipeline and how we ensure that independence. I got the impression that you were rowing back a little on the 10% advocacy fees cut and so on, and were prepared to talk about other ways in which the money might be found.

Michael Gove: Yes. We did not go ahead with the advocacy fee cut that had been factored into the system. The reason that I did so is that, as you say, I absolutely wanted to make sure that we sent a powerful signal that we wanted to work with the Bar in order to ensure that the concerns that the Bar leadership had expressed about the future of the profession were properly acknowledged. Again, whether it has been the Bar Council, the CBA or, indeed, circuit leaders, I have been impressed and heartened by the positive attitude that so many within the Bar have shown to the Department's desire to engage with them.

Q5 Chair: That is really helpful. We will start, if I may, with the first topic you raised, which is the whole question of the organisation of the profession and how it works, but it is not purely about that, as far as the Committee is concerned. Then we can move on, perhaps to prisons in particular, which is the other really major chunk of the budget that we have.

On courts reform, you are committed to taking Leveson forward. What is the timetable? What is the framework in which we start doing that?

Michael Gove: I have set out what I think is necessarily an ambitious programme, which is being implemented at the moment by a great team at Her Majesty's Courts and Tribunals Service. We have in Natalie Ceeney, the chief executive of HMCTS, a very gifted public servant, and in Bob Ayling a superb chairman, but at the moment we are

waiting for the Treasury to sign off on the business case that we have put to them. I have to hold fire on making too detailed a set of announcements about the timetable until the Chancellor of the Exchequer is happy with what we have done. Quite rightly—as you would expect, given that we require capital expenditure to get information technology in place in order to make sure that our programme can work—I have to be respectful of the fact that the Chancellor of the Exchequer and his team are kicking the tyres and want to make sure that our proposals will work. But over the lifetime of this Parliament, what I hope we would see at the end of it would be a transformation of both criminal and civil justice.

Q6 Chair: I will hand over to Christina in a second for the rest of the questions, but there is just one point that you raised. When I was still in practice, I was deeply sceptical about the quality of the IT. I know that some other colleagues are. How are we going to make sure it works, because virtually no other Government-sponsored IT system I have met has so far?

Michael Gove: You are absolutely right. One of the biggest frustrations of any of us in government is to have found that the whole process by which we invested in IT has not worked. Actually, even so far in the MOJ I have discovered that the Department's own IT is hardly gold standard.

Part of it is learning from the Government Digital Service. The one good area in the operation of technology within Government is the work that Mike Bracken and the Government Digital Service have run. One of the things that they have stressed is that, rather than necessarily seeking to implement at the switch of a button a transformation from one IT system to another, the right thing to do is to work area by area, pilot by pilot. We should learn from the debugging of the implementation of an IT roll-out area by area, rather than attempt a big-bang approach.

Q7 Christina Rees: Last year the magistrates court in Neath in my constituency closed, and it caused considerable hardship. There is no easy way to get from Gwaun-Cae-Gurwen or Brynamman to Swansea, where they have to go now, by public transport. I understand that you also have plans to close Abergavenny and Caerphilly. Do you have plans to close any further courts? Could you give me an update on how you would maintain justice locally, please?

Michael Gove: The first thing to say is that there was a consultation, I think, after the announcement was made about Abergavenny and Caerphilly. At the end of that consultation, we took the decision—again, none of these decisions is ever easy—that we had to go ahead with closure. There will be more court closures across England and Wales. What we tried to do was to make sure that the time it will take for any citizen to travel to court remains less than an hour. One of the tests that we have set is that, even with the programme of court closures that we are preparing, it will still be the case that that will continue to apply. It is also the case that many of the courts that are slated for closure are courts that are dramatically underused at the moment. But when we make our announcement, it will be with the caveat that we are consulting. I know from past experience in another Government Department that when you announce a series of closures or economies it will always, always, always be the case that you will find that someone will make a very good argument as to why in a particular circumstance a closure should not go ahead, and you have to revisit one or two of the assumptions that you have

made. I want to stress that when we make our announcement about closures that it is not the final word. We do need to make economies. We have thought hard about which courts we can close and still maintain access to justice, but we are also listening to the concerns that communities may express. If a strong case is made and, on the balance of judgment, it is worth keeping a court open, we will revisit any individual decision where we think we may have got it wrong.

Q8 Chair: It is a big room. I am sure members will all help by trying to lean forward towards the microphone, discreetly. I am conscious that it is not easy to get the acoustic right. Before I bring other members in, in terms of court closures, when I was in practice, I was concerned that in London, for example, they centralised most of the family work at Wells Street. That meant a significant journey for people from Bexley and Bromley—from south-east London—having to go up in rush hour, when you are dealing with sensitive cases. That was a burden, particularly on witnesses and the parties. How can we factor that into the equation?

Michael Gove: You are absolutely right. What we have tried to do as much as possible is to look across the court estate and identify those courts that are underused, but also to take into account some of the particular sensitivities—the types of work that the court does and the need to ensure that in particularly sensitive cases people are not exposed to additional upheaval and unnecessary distress. I hope that when we publish our list for consultation people will appreciate that we have taken as much care as possible. As I was saying to Christina, I am sure it will be the case—it always is in life—that we will have to revisit one or two of the decisions that we have made provisionally.

Q9 Nick Thomas-Symonds: Picking up on the point that Christina made about court closures, I understand the answer you have given about there being a one-hour maximum for travel, but even when courts have been closed there may be scope for the use of other public buildings. It will not apply in criminal cases, of course, because of the specific facilities that are needed, but in certain civil cases, for example, and tribunal cases too, is there scope for using other public buildings to try to make sure that justice still remains close to the people?

Michael Gove: Yes. I am very glad that you mention it, actually, because I think there is considerable scope. There are public buildings in all our constituencies, whether they are borough or district full council chambers or other public buildings, which could be used by the justice system at particular points. You are quite right that it might be easier in some non-criminal cases, but there is no intrinsic reason why magistrates should not sit, if it is thought appropriate, in a council chamber. Arrangements can be made to ensure that justice is kept local in that way. We are absolutely open—we will stress that in any written ministerial statement that accompanies an announcement about closures—to working with the magistracy and others to achieve that.

Q10 Victoria Prentis: There is no need for it to be public buildings, is there?

Michael Gove: No, not necessarily.

Q11 Victoria Prentis: I have had very successful hearings in hotels, for example, for the Parole Board.

Michael Gove: Quite. That is one of the things I wanted to emphasise with respect to

public buildings. I myself have experience as a constituency MP of seeing how my borough council headquarters is being used by the police and by other public services in order to provide a more accessible single point—a one-stop shop for citizens—but you are absolutely right: there is no intrinsic reason why it would have to be a full-dress public building.

Q12 Chair: You move on, in a sense, from the use of the courts estate, which is an important point to us, to things like sentencing arrangements and whether or not jurisdiction should be changed between summary jurisdiction and the Crown court. Have the Government any thoughts about revisiting that?

Michael Gove: I met some of the leaders of the magistracy, and they made it clear that they were keen to follow up indications that the last Government had given that we might give our magistrates increased sentencing powers. There is a lively debate as to whether or not all magistrates are using all the powers that they have at the moment with the vigour that they might, but I have an open mind on this at the moment. As everyone knows, I am relatively new in post, but one of the things that I have done is ask officials within the Department to do work in a variety of areas, while I have asked some open questions. I have tried to come with as open a mind as possible.

One of the questions that I have asked is, to what extent can we lift the burden on magistrates by taking some work out of court, and to what extent can we give magistrates greater sentencing powers? One area that is a live area of debate, on which I think a report is due in the next day or two, is whether or not, for example, at the bottom end of magistrates court work, TV licence non-payment should be decriminalised. The other area, of course, is whether or not we should increase the capacity of magistrates courts to impose longer sentences. As I say, some work is being done at one end, but I wanted to make sure that we aligned sentencing powers properly with the appetite of individuals to be able to exercise them.

Q13 Philip Davies: On sentencing by magistrates, magistrates in youth courts already have two-year sentencing powers, which is double the change we are talking about here. I am not aware of anybody who seems very concerned about that or of any great uproar about it, so why are the Government dragging their feet on something that is just a simple change for them to make?

Michael Gove: Again, my experience in a previous job is that sometimes things that seem very simple, and which may ultimately be desirable, just need to be tested. There is a case—I know that it has been articulated very effectively not just by magistrates but by others—that increased sentencing powers for magistrates would take the pressure off the Crown court, but I want to be certain that that change, if we were to legislate for it, would not have unintended consequences. I just wanted to ask the Department to run through what the ramifications of such a change might be.

Q14 Philip Davies: What are the unintended consequences you fear?

Michael Gove: By definition, they are an unknown unknown.

Chair: One of the things we might well do as a Committee is to have the Magistrates Association come and give evidence to us and talk it over. I think I know the unknown unknown you are talking about, Secretary of State.

Q15 Alex Chalk: Secretary of State, I want to go back, if I may, to the first point. It is all fine to have court rooms that are high-tech and where everything is fine, but if barristers are not turning up to court to dispense justice, that is all irrelevant, whether it is a hotel room or anywhere else. What plans does the Department have as a contingency to respond to this strike?

Michael Gove: The first thing that I would say is that, even though there has been a vote and even though there is a preparedness to take action, I still think that it is possible—this Committee hearing gives me an opportunity to say it—for the Department to continue to talk not just to the CBA but to representatives of the profession overall about meeting their concerns. The CBA in itself is not a trade union. Certainly it is a vote that indicates preparedness on the part of many people to take action and action may follow, but, as far as I am concerned, in the meantime we will continue to talk.

Of course, we have the Public Defender Service. There are skilled advocates who are retained at public expense in order to be able to ensure that the administration of justice goes ahead effectively; but, notwithstanding the vote that has been announced this morning, I think that we can continue to talk to the leaders of the profession in order to reassure them and their membership that we take seriously their concerns.

Chair: John?

John Howell: I have some questions on prisons.

Q16 Chair: The final thing I was going to say is on organisation, if you like; then I will bring in Alberto as well. You have said you are prepared to talk and to meet their concerns. That, I imagine, has to be within the budget envelope that you are given.

Michael Gove: Yes, absolutely. One of the points that I have made to the leadership of the Bar—I think they understand this—is that, exactly as you have articulated, we have to continue to make savings overall as a Department. Legal aid spend before the coalition Government took office was far too high, but the explicit concerns of the Bar are not just about reductions in legal aid expenditure; other factors also bear on the Bar's future. One thing we can do is that, by placing an emphasis on quality advocacy, we can consider some reforms that will ensure that there are not perverse incentives for solicitors' firms or others to instruct anyone other than the best advocate in any given case. If we take those steps—Bill Jeffrey outlined some thinking on that—we can both continue to make savings overall in the administration of justice and ensure that proper advocates are properly rewarded and properly instructed.

Q17 Sue Hayman: Secretary of State, before you move on from this, I wonder whether you could let me know what sort of review of the impact of the first set of cuts was undertaken before making the decision to implement the second set.

Michael Gove: There are two things I should say. We conducted a very close look both at the impact on justice overall and at the operation of the courts following the first set—the 8.75% reduction. We had to do so in order to make sure that we could press ahead with the next. One of the things that I have said to the profession is that, having conducted a thorough consideration of the impact of the first reduction, we are also committed—and we are committed in law—to conducting a review of the overall impact of LASPO, the

legislation that allowed us to give effect to these cuts. As a result of that, if the subsequent review that we conduct once the cuts have taken place leads me to believe that we need to revisit any aspect of the operation of these reforms, we will do so. That was one of the things that I tried to articulate in the speech that I gave a few weeks ago.

Chair: Alex, do you want to come in on court fees? It may be convenient to put that in before we go on.

Q18 Alex Chalk: On a separate topic, what was the evidential basis for the figures in the new court fee regime? They are stark, and a number of people have raised what you may feel are legitimate concerns about access to justice. What was the basis upon which such significant hikes were made?

Michael Gove: We felt overall that, while the courts could never be totally self-financing, we needed to move to a basis where the fees better reflected the cost of the justice system. It was also the case that we felt that some of those charges or fee increases could be borne by individuals of significant means who had access to the courts at what had been, in effect, a discount.

Q19 Alex Chalk: But what about the precise figures? It is all very well to say that they needed to go up, but some of them have gone up by a very large amount. I am interested to know what the evidential underpinning was for some of the figures that were set. Was there market research? How is it that you were able to be satisfied that this hike could be tolerated without an unacceptable impact on access to justice?

Michael Gove: We did some modelling to see exactly what we felt the impact would be, but of course we cannot know until the fees are in place what the real impact will be. As ever, if you are going to increase the price of any good, whether it is access to justice or anything else, you cannot know until you see how people behave what the wisdom or otherwise of going down that path might have been, but within the Department we have had some analysis and modelling of what we thought the impact would be and who we felt could bear these burdens. Of course, as I mentioned earlier, we will keep under review what the impact has been. If we find that there are cases of rough justice, we will revisit them, but also, if we think that the market can bear in the future a revision upwards in any particular area, we will be happy to do that as well.

Q20 Nick Thomas-Symonds: Secretary of State, in your answer to Alex you just said that fees better reflecting the cost of justice is the general principle. I am sure you will appreciate that employment tribunals, for example, were a cost-neutral environment, so surely that argument cannot apply to the enormous hike in employment tribunal fees that has happened. Is that something that you intend to revisit, because clearly there is an access to justice issue? People who have lost their jobs are clearly not going to be in a position to fork out the kind of fees that they now have to.

Michael Gove: There are two things I would say. First, what we have to try to do is to make sure that, as much as possible, the justice system overall recovers costs, so it will be the case that there will be costs in one part of the justice system that will cross-subsidise other parts. That is the first thing.

The second thing is that, with respect to employment tribunals, we are committed to reviewing the impact of those changes. My predecessor entered into a commitment to review them. I think that the former Business Secretary, the former Member of Parliament for Twickenham, was concerned that that review should take place before the election, but we are carrying it out. We will share with this Committee and with the Commons more widely the result of that review.

You are right that it is important with employment tribunals that we balance the rights of individuals who may have been dismissed with the need to ensure that, as I think will have been the case in the past, we do not have—what is the word?—too promiscuous a use of employment tribunals by individuals who have been fairly dismissed.

Q21 Nick Thomas-Symonds: If the evidence shows that there has been a severe and substantial reduction in the number of cases going through employment tribunals, would that be, first, a cause of concern, and, secondly, something that might lead you to rethink the level of the fees and reduce them?

Michael Gove: Not intrinsically. Without wanting to pre-empt the review—by definition, there will be issues that will be raised by the officials conducting that review that I might not be able to anticipate—

Nick Thomas-Symonds: I appreciate that.

Michael Gove: But my view would be that it is only if one can point to examples of rough justice that one should seek to revisit it. A simple reduction in the number of people going to employment tribunals is not in itself proof that there has been any injustice visited on anyone.

Q22 Nick Thomas-Symonds: The point I made was not simply whether there was a reduction; it was whether there would be a severe and substantial reduction. I have seen some figures, for example, about a 79% reduction or something like that. While I appreciate that, in itself, a reduction might not point to it, that level surely is and should surely be a matter of concern for you.

Michael Gove: It is a certainly a cause to want to review things, yes, but it is not necessarily the case that such a significant reduction has automatically led to people who should otherwise have had a particular outcome not enjoying the justice that they deserve.

Q23 Richard Burgon: Secretary of State, I was a bit disturbed to hear you refer to access to justice as a “price of any good”, as if access to justice is a good to be sold on the market. Feeding into what my colleague has just said in relation to employment tribunal fees, it was disturbing to find that when people lodge employment tribunal claims and enter their debit or credit card details, they are referred to as customers. It says “customer” on the employment tribunal website: “Customer, please enter your debit card details.” To refer to people seeking justice as customers suggests to me that we are going down the wrong track.

My colleague mentioned that there have been figures of up to 79% decrease in employment tribunal claims, particularly in relation to discrimination claims. Do you think that, if there has been a decrease in employment tribunal claims of up to 80%, there has been a similar decrease in employers treating employees badly?

Michael Gove: You have raised a number of very interesting points. To go to the first part of your question, in the phrase that I used in my speech on justice a few weeks ago, I said that the law was both a community and a marketplace. It is undeniably the case that economics governs all human relations. It is the case that there are economic questions that govern, for example, the supply of good lawyers and access to justice overall. I would not want to suggest that I am in favour of a red in tooth and claw, survival of the fittest, Darwinian approach towards access to justice, but we just have to be realistic about the environment in which we operate.

On your specific point about employment tribunals, I would have to see whether or not there was an example of people, or an individual, who had been dismissed and had not had appropriate access to justice as a result. That hard case or those hard cases would lead me to think again, but, at the moment, what I think is likely to have been the case is that the bar has been set at a higher level—absolutely—but there is no evidence yet that the bar being set at a higher level has meant that meritorious claims by people who feel they have been discriminated against are not being heard.

Chair: You can have one more, Richard. I am always happy to give people follow-ups. Short and sharp questions are usually the best.

Q24 Richard Burgon: I am concerned not just that those who are seeking to bring employment tribunal claims might have their access to justice denied but about the effect that it has on the whole work force. If employers know that the chance of an employment tribunal claim being brought against them is so much lower than it used to be, that can affect the way workers right across the field of employment are treated, including those who would never dream of bringing in a claim, even if they are treated badly.

Michael Gove: I absolutely understand your line of thinking. If it is the case that it appears that workers' rights are eroded, that can become a charter for tyrannical bosses to behave in an outrageous fashion, but I do not see that there is any evidence of that. While it is a perfectly internally coherent, theoretical argument, I do not see evidence that employers are behaving in an outrageous way. I should say that if one looks at some of the other things that this Government have done, from our proposals to increase the minimum wage to a national living wage through to the announcement yesterday by the Prime Minister of equal pay audits, what this Government have done is show that you can safeguard and enhance workers' rights but not necessarily in a way that a different political party might have done.

Q25 Philip Davies: On court fees, you are a loyal team player, so you are desperately trying to defend decisions made by your predecessor. I am sure we all admire you for that, but you are a clever guy, and somebody not half as clever as you can see that this hike in court fees is leading to a ridiculous situation where, in effect, people are having fees imposed upon them when everybody in the court knows they are never going to pay them. The courts cannot currently collect the fines that are already being administered on criminals. Is it not just making the law an ass to impose court fees on people who you know and everyone in the court knows are never going to pay them?

Michael Gove: Are you thinking particularly about the charge when someone is found guilty?

Philip Davies: Yes.

Michael Gove: It is too soon to say. You are absolutely right—this change was brought in by my predecessor. We have not had enough time to know what the impact will be. You make a broader point about lack of success in collecting fines. The Department is on the verge of signing a contract with a new commercial organisation in order to ensure that we are more successful in collecting fines, but we keep all of these under review. If there are specific examples that colleagues here have of the introduction of fees or charges that people think are not working or that we should revisit, we will absolutely look at them. At the moment, while a number of concerns have been raised about the charge for those found guilty, I think it is only fair to see what the operation of that charge is like in the courts before coming to a judgment.

Q26 Alberto Costa: Just following through, Secretary of State, it is not too soon to say—at least for your permanent secretary, in the main estimate memorandum—that you expect collection of £40 million through the criminal court charge income? I have had a magistrate—a constituent—explain to me very early on that it is not justice to impose these fees. I think it would be useful for this Committee, given that some members have raised this with you, if you could indicate an early review of those charges.

Michael Gove: I will reflect on exactly what you have said. As I say, a number of members of the judiciary have expressed concerns about it. I think it is important that any judgment that we make takes place with a sufficient period of time of the charge being in operation for us to make a mature judgment, but I absolutely take your point.

Chair: We move to court structures and the legal profession. Alberto, do you want to follow on about regulation?

Q27 Alberto Costa: Yes. Thank you, Chairman—and good morning, Secretary of State. I should have said that before. At the outset, I would like to declare an interest relevant to my question: I am a practising English and Scottish solicitor.

Secretary of State, you will by now be familiar with the organisation set up under the Legal Services Act 2007—namely, the Legal Services Board. You are also familiar with the coalition Government having undertaken a review of the Act. A decision was taken not to take that review forward. Do you anticipate that during the course of this Parliament your Department will undertake a review of the Legal Services Act?

Michael Gove: Yes.

Q28 Alberto Costa: Good. The follow-up to that is, what is your preliminary view of the number of approved regulators within the environment? I think there are about eight, with this oversight body, the Legal Services Board. Do you have any comment to make about that?

Michael Gove: Again, I would not want to pre-empt any conclusions that I might reach, but I do think that there is a danger of regulators falling over one another's feet.

Q29 Chair: Very properly, Mr Costa has reminded people that when we have specific questions that involve an interest we declare it again, although we made a general declaration

at the meeting that we had earlier. Hopefully, the bottle of champagne from my former clerk does not count as an interest for the purposes of the general election result.

Is there anything else on regulation of legal services? The other half of the budget, Secretary of State—and a really important part, of course—is prisons policy. Can you give us a bit more of a sense as to where you are going on that? Toby Harris—Lord Harris of Haringey—brought out a very interesting report last week highlighting issues of suicides among young detainees and so on. If you look at the appendix, he went on to a number of other issues that were raised with him that were not specifically within the scope of his inquiry. Where do you see some of those issues going?

Michael Gove: Lord Harris's report was, in the best sense of the word, difficult reading, as was the report yesterday by Her Majesty's chief inspector of prisons. We have significant problems in our prisons at the moment. You cannot look at the number of suicides and self-inflicted injuries or at the level of violence overall in the prison estate and feel anything other than concern about the conditions in which prison officers have to work and the conditions in which offenders are kept.

One of the things that weighs very heavily on my conscience is the fact that when the coalition Government was formed we promised that we would introduce a rehabilitation revolution, but circumstances in our prisons—as both the chief inspector and Lord Harris pointed out—are making that particularly difficult at the moment. The recidivism rate has not really changed in years, so the Department and I have to think hard about how we can make sure that our prisons are better governed, how prison officers can be better supported in the work that they do and how the place of prisons more broadly in rehabilitation can be enhanced.

It is always invidious to name names, but one of the people I have been most impressed by in the two months or so I have been doing this job is Michael Spurr, who is the chief executive of the National Offender Management Service. I know that members of this Committee will have heard from Michael before. I wanted to stress that the problems that have been highlighted by Lord Harris and by Nick Hardwick should not take anything away from the fact that, at a time when an enormous amount is being demanded of the Prison Service, Michael Spurr has managed significantly to reduce costs, and to do so in a way that safeguards, in so far as it is possible, humanity and decency.

Q30 Chair: Nick Hardwick, of course, is going to stand down in due course. In the previous Parliament, the Select Committee raised some issues about the manner of the recruitment of his successor. What is the current situation on that?

Michael Gove: We are currently considering the composition of a panel to conduct those interviews. We will be inviting applications for that post and for the chief inspector of probation as well. I am grateful to Nick Hardwick for having agreed to carry on for a period, so that we can have a proper and full recruitment exercise.

One criticism that was levelled at the recruitment exercise that took place before the election was that there were members of the panel who were declared Conservatives. It will probably not surprise you to know, Mr Chairman, that I do not think that that is a crime.

Chair: You and I are at one on that.

Michael Gove: Yes. It is perfectly possible—in fact, it is often desirable when you are making public appointments—to have people on the panel who have political experience, so I do not think that there was anything wrong with that and I would absolutely defend that decision. I also think that when you are choosing a chief inspector of prisons it is good to have a mix of skills in the panel that is deciding on that appointment, but ultimately the decision on the appointment should be, I still think, the Secretary of State's. It is important that we also recognise that these appointments are ministerial appointments. I know that there are different views on whether or not they should remain ministerial appointments, but I think that is important.

Q31 Chair: Are you proposing to refresh the non-executive team at the Department—the NEDs?

Michael Gove: Yes. When I joined the Ministry of Justice, I was very conscious of the fact that when I had been at the Department for Education I had been helped enormously by a great team of non-executive directors. It is very flattering that one of them, Jim O'Neill, was made a Minister by the Chancellor. Another of them, Paul Marshall—who is a Liberal Democrat donor, but let's not hold that against him—was a huge help to me in that job, so I wanted to make sure that I will have a team of non-executive directors who can help me, Ministers and civil servants to achieve a quite ambitious reform programme. Theodore Agnew, who worked with me at the Department for Education and then voluntarily stood down, has accepted a position as a non-executive director. I am looking to appoint more non-executive directors in due course.

Again, it is important to stress—different people have different views on this—that non-executive directors are ministerial appointments. Some people have tried to argue that non-executive directors are there, in effect, to sit on the Minister's shoulder and to tell him or her off when they are misbehaving. That is not the role of a non-exec—they are there as ministerial appointments, to help the ministerial team and to help civil servants to provide leadership and direction to a reform programme.

Chair: Having a non-executive director made a Minister is not quite as painful, I discovered, as having your pupil become a judge. Anno domini kicks in.

Q32 Christina Rees: Coming back to the Harris report, among the recommendations was that if a prisoner died in custody the Secretary of State would phone the family. Another recommendation was that there would be a care and rehabilitation officer. Another was that there would be a statement of purpose regarding rehabilitation. Do you accept those proposals?

Michael Gove: I do not want to accept them yet, because I want to give the Department time to respond to a series of questions that I have asked them, not just about the Harris review but about how NOMS and our prison system work. There are one or two aspects of Lord Harris's report that I questioned and have questioned officials about. I wondered whether his reasoning was absolutely right in every regard, but I do think overall that the report was fair and helpful. As I have said, it was difficult reading in the best sense of the word. But I cannot commit to any of those yet, because I am reflecting both on his

recommendations and on some other concerns that I have about the prison system that I want the ministerial team and the leadership of NOMS to address before I can come down firmly in favour of particular changes.

Q33 John Howell: Secretary of State, can I take you back to the prison estate and the benchmarking exercise that has been taking place? In the last Committee we found that that was a far better way of approaching things than tackling them on a prison-by-prison basis. Can you say what your attitude to the benchmarking process is?

Michael Gove: It is undoubtedly the case that it saved a considerable amount of money and that it was implemented with the support, or certainly the co-operation, of the Prison Officers Association. That helped to ensure that we could make economies and, at the same time, that we could do so in a spirit of collaboration with people who have a uniquely difficult and important job.

I have to say that to have taken out so much cost from the prison system was an example of real leadership by my predecessor, but of course, one of the things that I have to do now is to consider, that exercise having taken place, did the shoe pinch too tightly in any particular area? Are there consequences of benchmarking and of the reforms that were made that we need to reflect on? One of the aspects of benchmarking that was successful was that it encouraged everyone within the prison system to ask themselves what is best practice, which are the most efficient ways of working, where are the best examples of leadership and what can we seek to emulate and entrench across the system.

Q34 John Howell: One of the negative consequences of benchmarking, which we generally supported as a Committee, was that it created a one-size-fits-all impression of prisons. That led to a real problem in providing the space for working experience as part of the rehabilitation process. Would you like to say something about how you intend to address that?

Michael Gove: Yes. I think you are absolutely right. As an exercise in reducing cost and an exercise in collaborative working, benchmarking had many successes, but you are absolutely right. One of the concerns that I have—not just about benchmarking but about the way in which the administration of prisons has developed over recent years—is that there is insufficient autonomy and discretion for governors. One of the things I am anxious to do is to see how we can give a greater degree of autonomy and discretion to governors.

One of the things I am particularly interested in is how we can incentivise governors to make more and better provision for prisoners' working and for prisoner education. One thing that comes out very clearly from Nick Hardwick's report is that the level of purposeful activity in our prisons is way below what any of us would want. There is only so much that you can achieve through exhortation and direction from the centre. Part of it has to be making sure that governors feel a greater degree of confidence in working with local businesses, providing opportunities for prisoners to do meaningful work and, critically, addressing the low level of educational qualification that so many prisoners have.

Q35 John Howell: One of the things that came out of our trip to Denmark in the last Parliament was seeing the ability of prisoners there to cook their own food. That had made a

big difference to the rehabilitation of offenders. To what extent is that possible within the British prison system?

Michael Gove: It is not something that is going to be easy to do in some of our big Victorian urban prisons, but anything that we can do to encourage prisoners to take more responsibility for acquiring the sorts of skills that will enable them to lead confident, rounded, normal lives when they leave—anything that we can do to facilitate that—is worth while. One of the things that my predecessor was very interested in doing was considering how, when we build new house blocks and new prisons, we build them in such a way that we can balance the absolute need for security with making sure that there are facilities that encourage prisoners to take more responsibility for their lives.

Q36 Chair: Do you think there is more that you can do to encourage restorative justice, which the Committee has done a lot of work on in the past? That recognises the fact that prison is an expensive way to deal with people, although sometimes it is necessary. Do we do enough to punish and reform people within the community, rather than outside it?

Michael Gove: I am completely open-minded about it. There are two things to say. In the past, it has sometimes been the case that successive Ministers responsible, whether they have been Home Secretaries, Justice Secretaries, Prison Ministers or whatever, have always talked about the need for tough and meaningful community sentences. The public are understandably cynical when they hear someone talk about that, because they think, “Yes, we’ve heard all this before.” The public also think, “If these offenders have committed serious crimes, custody is an appropriate answer.”

I do not want to be too naive in putting my faith in technology, but I do believe that there is the possibility, through electronic monitoring—tagging—of finding ways of making sure that there are some offenders in the future who can have genuinely tough and effective community sentences. As I said, I am conscious that there is a great deal of public cynicism towards this and that the technology has not been got right, so, instead of making any extravagant promises about it at this stage, I just want to say that I am open-minded on it, but I will set some tough criteria for the Department and for the criminal justice system before we go wholesale into saying that this is an effective alternative to custody.

Q37 Sue Hayman: I would like to ask a few questions about restorative justice. First, do the forces keep any statistics on how many people receive more than one RJ a year? If they do, do forces share information so they can look across one another? Is there any kind of shared system that they can access to look at how many people are having RJs?

Michael Gove: I do not know. It is a very good question. I literally do not know, but I will go back, ask and share the information with you.

Q38 Sue Hayman: I would be very interested to know, and on non-compliance as well, just so that we know whether the system is actually delivering what it is designed to deliver.

Michael Gove: Absolutely, yes. I will come back to you. Public confidence in restorative justice depends, exactly as your question implies, on being confident that it is not the case

that once a sentence is handed down we shrug our shoulders and believe that that is job done—far from it.

Q39 Sue Hayman: Thank you. Finally, do you think that we have a sufficient distinction between restorative justice and community resolution? Do you think there is a bit of muddying of the waters there sometimes?

Michael Gove: I think there can be, yes.

Q40 Victoria Prentis: Going back to safety in prisons, I know that since this Committee last reported, staffing levels have improved, but there are still significant places where it is difficult to retain and, indeed, find new staff. I know that London is obviously a problem. At my local prison in Bicester they also have a problem finding members of staff. What are your plans for dealing with recruitment and retention?

Michael Gove: The most recent round of recruitment showed that there was a healthy interest in people joining the Prison Service. There are examples even in London and the south-east of individual prisons—sometimes in the private sector—that have been quite successful in recruiting and retaining staff.

I have had some initial conversations with the Prison Officers Association about what may be the barriers to recruitment. One of the barriers to recruitment, of course, is just a sense among some that their work is insufficiently valued, whether by Government or by the public. Your question gives me an opportunity to underline the fact that I am, on the basis of the prisons that I have visited so far, a huge admirer of the work that prison officers do. It requires a sense of vocation to do the job well. Prison officers operate in uniquely challenging circumstances. Anyone who works with offenders will be in an environment where the risks are often under-appreciated by those who are unfamiliar with what life is like inside. I hope that anything we can do in order to stress to prison officers and to their families that we appreciate the work that they do will help to ensure that people feel that the commitment that they have made is worth while and that the job they do is properly appreciated.

Q41 Chair: That is particularly apposite, Secretary of State, given that sadly we had the death of a custody officer very recently.

Michael Gove: That was very much in my mind. You are absolutely right. It gives me an opportunity to say that Lorraine Barwell's death was one of the worst moments of my time in politics and in this job. There was someone who had been doing that job in a dedicated fashion for 10 years, and then an horrific incident meant that her family were robbed of a loving mother and someone who had dedicated themselves to working in the justice system. I have written to Lorraine's family, and I hope that we will have an opportunity to talk to her children to see what appropriate lessons can be learned. Absolutely—Lorraine's death was a terrible tragedy. It reminds us all that people who work in the criminal justice system—custody officers like Lorraine and prison officers overall—put themselves at risk or in harm's way, sometimes, in order to keep the rest of us safe.

Chair: That is a sentiment that genuinely the whole of the Committee will share and be grateful for. Victoria, do you want to follow up?

Q42 Victoria Prentis: I am sure we all agree with what you have said about the valuable work that prison officers do, but it is not just prison officers who are at risk in prisons; attacks on prisoners themselves are also up. Obviously staff shortages are one area that we can tackle. What other areas do you think there are that can help with safety in prisons? What else do you have plans for?

Michael Gove: One of the biggest problems contributing to violence is drugs. First, it is still the case that there is an unacceptable level of illegal drugs use in our prisons. I remember the very first time that I visited Wormwood Scrubs being told that the mandatory drug-testing regime meant that one in 10 prisoners tested positive for drugs at that time. I simply could not believe that, in what should have been a secure environment, drug use was so rife. A subsequent chief inspector's report into Pentonville showed that 9% of prisoners there leave with a drug habit, having entered without any evidence of drug use—terrible.

More than that, one thing that makes the danger of violence worse is that there has also been an increase, as the chief inspector pointed out, in the use of psychoactive substances. These are, as I am sure the Committee knows, synthetically manufactured drugs—cannabinoids and others. They have ridiculous names like Spice or Black Mamba. They are sometimes referred to as legal highs; my colleague Andrew Selous has pointed out that they are actually lethal highs. These drugs can have a dramatic effect, as the chief inspector recorded, on individuals. They can lead to psychotic episodes and examples of violence.

One of the things that my predecessor was very anxious to do, and that I am very anxious to build on, was to think hard about how we can ensure that we make it far more difficult to get these substances in. That is everything from the right sort of scanner to changing some of the ways in which we can interdict the operation of mobile phones, which should not be in prison in the first place. There are strict security measures that we could take to try to deal with this problem. Unless we deal with it, there will be continued episodes of self-harm but also of violence—offender against offender or offender against prison officer.

Q43 Victoria Prentis: Yes, and the problem is not just the drugs coming in—it is the way we test. My understanding is that the more traditional drugs come up in the testing we do at the moment, but some of the new drugs do not.

Michael Gove: Correct.

Q44 Victoria Prentis: What can we do to deal with that?

Michael Gove: It is a technical problem. Part of it is that, for example, there are dogs trained to sniff out traditional drugs, and these synthetic drugs are not detected by the same means. One of the questions is, how can we get better at detecting them, whether that is through the use of body scanners or by other means? My predecessor was very eager to make sure that we had the technology in place to make our prisons more secure and to keep those substances out.

Q45 Richard Burgon: Secretary of State, I have been looking at some of the figures in relation to front-line prison staffing. Just as an example, between 31 March 2010 and 31

March this year there was a cut of over 50% in the number of supervising officers and a cut of over 40% in the number of operational support staff. This has meant that there is a net reduction in prison front-line staffing of over 30%. At the same time, the prison population has, despite efforts, remained stubbornly high. I wonder what you think the implications of this could be in relation to rehabilitation, safety of prisoners, safety of staff and things like clamping down on drug use in prisons, as you just mentioned.

Michael Gove: In a way, your question reinforces the question that John put to me about benchmarking. What we have managed to do over the course of the last five years is make prison more cost-effective. We have been able to ensure that we can take cost out of the system through the benchmarking exercise, but, as the chief inspector's report points out, it is also the case that there are real problems in our prison estate.

One of the things that I have to look at is what are the most effective ways of making sure that the savings we have made are not eroded, but that we organise our prison estate in a more effective and more humane way. I have asked some questions of the Department about how we can do that, whether that is partly through the new for old programme—changing the way in which our prison estate is configured—or partly by looking at how we can provide the right incentives for prison governors and those who lead within our prison system to create a better and more purposeful environment. I hope that I will have the chance to come back to the Committee in the autumn with more detail about that. I think that your question is a fair one, because you cannot look at staff reduction at that level and you cannot look at what is happening in our prison estate and say that everything is for the best in the best of all possible worlds.

Chair: That is an offer that I have no doubt the Committee will want to take up. Richard, do you want to come in?

Q46 Richard Arkless: Yes. I have a couple of points, Secretary of State. First, in relation to prisons, I was rather pleased to hear over the weekend about your enlightened idea to lift the quota on books that prisoners could receive as a rehabilitative step. Is that something that is being done in isolation, or are there more enlightened steps to help the rehabilitation process? To jump back a little to court fees and access to justice, we heard this morning about a reduction in courts, an increase in fees and what you would describe, no doubt, as unavoidable cuts. There seems to me to be a very important balancing act with access to justice. I was slightly concerned about one of your answers in terms of employment tribunal fees, where it is too early to tell. What assurances can you give the Committee that access to justice is a principle running through these decisions?

Michael Gove: Thank you very much for what you said about what we have done on books. It is critical—we touched on this in some of the earlier exchanges—that we think hard about how we can encourage and incentivise the people running our prisons to put education at the heart of what they do. Of course, all sorts of people end up in prison, for all sorts of reasons, but if you look at the prison population there are a stubbornly large number of people in prison who have been failed by the education system. Prison gives us an opportunity to get their lives back on track so that they can contribute to society, rather than being a cost to society. I thought that it was important at the earliest possible point to try to send that message. In direct response to your question, there will be more that I hope that we can do in order to emphasise the importance of education.

More broadly, on the question of access to justice, the speech I gave at the Legatum Institute was designed to underline how seriously I take the concerns that some have expressed that access to justice is impeded by cost and inefficiency within the justice system, and I want to tackle that. But the very first question that the Chairman asked me was about the difficult budgetary decisions that my Department has to take. In my mind all the time is, what will the impact be on citizens, particularly poorer citizens, who need access to a justice system that works in their interest? I have to balance their concerns with the need to save money. I believe that it is possible to make our justice system more efficient and at the same time to improve access to justice, but I have to keep those two in balance throughout.

Q47 Alex Chalk: In your view, are there too many or too few people in our prisons?

Michael Gove: It is a very good question. I do not think it is for me to decide, because I believe strongly in giving judges—and, for that matter, magistrates—discretion over sentencing. If I were to say that there were too many or too few, in a way I would be second-guessing sentencing decisions. I believe very strongly in the principle of judicial independence and in the principle that I should not try to second-guess what happens in the courts.

Q48 Alex Chalk: One of the things that this Committee has to do is to look at sentencing guidelines. You will be aware that for certain offences the sentences have increased dramatically. Judges would say, “Look, if the Committee says they go up, it is a matter for the Department to work out whether there are sufficient prison places.” What steer should we be taking about the prospects for accommodating prisoners in the event that we suggest that sentencing guidelines should be extended and people should be going to prison for longer?

Michael Gove: We discussed earlier the impact of fees on behaviour. There is more work that I and my Department need to do about the impact of sentences on behaviour. We know, for example, about very short sentences—under 12 months. As a general rule, people who are sentenced to under 12 months in prison are more likely to reoffend than people who have longer sentences imposed. Is it because longer sentences have a more powerful rehabilitative effect? Is it the case that there is a deterrent effect that particular sentences send?

That is an area where more work and research requires to be done. What is interesting is the way in which other jurisdictions, including America, are reviewing how sentencing operates. It is too soon for me to come down definitively on either side of the debate about what impact sentences have, but I know that there are members of this Committee who have done interesting work about the deterrent effect of particular sentences. They are more up to speed than I am with where the research is, so I will try to make sure that I can get into as good a position as them.

Q49 Christina Rees: I have two quick points, Secretary of State. I understand that there have been some technical hitches with the new provider for electronic tagging, and that the old providers are still being paid.

Michael Gove: Absolutely.

Q50 Christina Rees: Could you give me an update on that, please?

Secondly, I have already asked you about youths in custody. Even though the rate is falling, the number of white youths in custody is falling at twice the rate of those from ethnic minorities.

Michael Gove: Yes.

Q51 Christina Rees: You said that you would be combining with the Department for Education for early intervention.

Michael Gove: Yes.

Q52 Christina Rees: Please give me an update on that as well.

Michael Gove: Okay. With respect to electronic monitoring, we have had a number of problems. If you can get electronic monitoring and tagging right, there is a huge potential to give the courts an additional weapon in their armoury for dealing with a particular type of offender. Part of the problem that we have had—without going into all the commercial detail—is that we have had a deeply unsatisfactory process so far. John Manzoni, the head of the civil service under Jeremy Heywood, is looking at precisely why we have got into the position that we have, with some recommendations, I hope, forthcoming about how we can get delivery back on track. Yes, it has definitely been a problem—a big problem.

The second thing you asked about was the fate of black and minority ethnic young people, in particular, in the justice system. I am hoping that we will be able to announce in due course a particular approach—a particular review—to how youth justice operates, but I still have to finalise some of the details and some of the personnel. If you will forgive me, I will not say more at this stage. You are right that, while we are fortunate that we have been able to reduce offending overall by young people and, therefore, reduce the number of people who are in custody, by definition that means that those who remain as offenders become a harder core, as it were. Many of those young people who come into contact with the justice system are people who are involved in urban gangs. There is a direct link with what may happen early in the lives of some individuals—disordered lives at home, educational failure and being drawn into gang culture. Work to deal with that is not just work that the Ministry of Justice can do; it has to relate to work in other Government Departments as well.

Chair: In the 2005—10 Parliament, the Committee went to have a look at the work done in Red Hook, in New York, which was precisely about bringing together that raft of interventions—not purely in the criminal jurisdiction, but a raft of other things. That is welcome.

Q53 Sue Hayman: On the issue of youth offending, looked-after children, particularly girls, are far more likely to enter the system. I wonder what kind of strategies the Department has to try to reduce those figures. Looking at bringing the Departments together, do you feel that your time as Secretary of State for Education can bring particular insight into how those strategies can be improved?

Michael Gove: Yes. It is precisely because when I was at the Department for Education I became more and more interested in how the care system operates that I appreciate that the

number of young people who end up in the criminal justice system who have been in care is shocking, but, as I indicated to Christina, I think that you almost have to look before that. The reason why young people are likely to end up in care is that they will have grown up in the most difficult circumstances, where they will often have been witnesses to domestic violence. They will often have been at risk of abuse or neglect. They will by definition have been on the child protection register, so it will be the case that by the time they come into the care system they are already children who have been starved of the love, security and support that they need in order to lead fulfilling, happy lives.

We have to think hard about where we intervene. That comes back to the justice system in one respect, in that we have to think hard about making sure that we can take children into care in circumstances where in the past the justice system has sometimes, I think—personal view—been over-eager to leave children with biological parents, even when those children are at risk. We have to think about whether or not we should be more interventionist at that point. We also have to think about whether or not, once children have been taken into care, we can ensure that they are in a loving environment as quickly as possible. That means helping to speed up adoption. One of the things that I was pleased we were able to do in the Department for Education and that I am delighted that Edward Timpson and Nicky Morgan are doing more on, through the Education and Adoption Bill, is to take the steps that are necessary in order to ensure that that happens.

It is also the case that I have to give some thought to working with the Department for Education on what happens with people in their teenage years who have had multiple placements and have often been excluded from school. All the dangers and warnings are there—all the red lights are flashing. These are young people who are almost certain sooner or later to come into contact with the criminal justice system. We have to think hard about what we can do. As I say, working with the DFE is my top priority.

Q54 Nick Thomas-Symonds: At Prime Minister's questions last week, the Prime Minister was asked whether he would make it absolutely clear that Britain would be staying in the European convention on human rights. This is the answer; it is at column 311 of *Hansard*: "Our intention is very clear: it is to pass a British Bill of Rights, which we believe is compatible with our membership of the Council of Europe." Can the Secretary of State say today that, as long as he is in post, Britain will remain a signatory to the European convention on human rights?

Michael Gove: That is my hope, but I cannot give a 100% guarantee.

Q55 Nick Thomas-Symonds: Right. On the hoping side of things and trying to be optimistic, I wonder whether you could also inform the Committee when you intend to publish proposals about the British Bill of Rights, and the form and length of any consultation.

Michael Gove: We will publish them in the autumn. We will stick to the Government's current practice on consultation.

Q56 Nick Thomas-Symonds: Right. I have just one further question. Would you agree that if we are to stay in the European convention on human rights, with virtually every other European country, any British Bill of Rights will be subject to the European convention on human rights?

Michael Gove: Again—this has been my theme of the day—I do not want to pre-empt what we are eventually going to say. I do think it is the case, as the Prime Minister said, that human rights existed in this country before the Human Rights Act. Indeed, at the time the convention was drawn up, a Labour Lord Chancellor was worried that the convention might not be absolutely the best safeguard of traditional British liberties. All I would say is that the rights contained and articulated in the convention are admirable, but we have to make sure that they apply in a context where people believe that the culture of human rights is not being abused.

Q57 Nick Thomas-Symonds: But isn't the point this, Secretary of State? The ECHR came into force in the early 1950s. Between then and when we incorporated it into our domestic law by the Human Rights Act, the reality was that to enforce human rights people had to go to the European Court. What the Human Rights Act 1998 actually does is allow British judges to have a say and it allows people to enforce their human rights in these courts. Doesn't the Human Rights Act actually give British judges a say?

Michael Gove: It does give British judges a say, but by definition it is not the only way in which British judges can act as effective defenders of individuals' rights. I would say several things. The first is that, even before the incorporation of the Human Rights Act, we had active judges who were standing up for liberty and occasionally checking the Executive, when the Executive overreached itself. Before the Human Rights Act was in place, you also had reforming Home Secretaries of different parties who were capable of introducing legislation that allowed the House of Commons to extend the sphere of individual freedom and liberty. That is one specific instrument. It is not the be-all and end-all when it comes to making sure that people's rights are adequately protected, and that the Government or other public authorities are conscious of their need to respect people's liberties.

Q58 Nick Thomas-Symonds: If your hope is unfulfilled and we are no longer signatories to the European convention, what signal do you think that would send internationally about Britain's attitude to human rights?

Michael Gove: Britain's attitude to human rights is exemplified in lots of different ways. Everyone recognises that the administration of justice in British courts—in English and Welsh courts and in Scottish courts—sets a gold standard, and did so before the Human Rights Act was passed and before our adherence to the convention. The critical question is, when you look at the administration of justice, the way in which Governments behave and the culture of rights in a country, is that country continuing to act as a beacon?

I would say two things. First, the Lord Chief Justice—not the sitting Lord Chief Justice, but a previous Lord Chief Justice, Lord Judge—has said that there is nothing in the convention that is not in common law; it has grown out of that. Some people may argue against that view, but that is not the view of a party hack; it is the view of one of the most distinguished judges in this country.

The second thing is that Britain's moral leadership on the world stage, under this Government and under previous Governments, is exemplified every day by the way in which we choose to

use our power and influence to support freedom and democracy globally. We should look overall at how a Government acts, rather than concentrating just on one particular instrument.

Q59 Nick Thomas-Symonds: Which other European countries are not signatories to the ECHR?

Michael Gove: I think every European country is. There is one country that I know you are going to tempt me to—

Chair: Belarus is not a signatory.

Michael Gove: Yes. I will take that point, but the point I would make is that that is a geographical question. I will respond by using historical comparison. Before the convention existed and before the Human Rights Act was passed, Britain was a beacon of liberty. It will remain so.

Q60 Alberto Costa: Secretary of State, I very much welcome confirmation that there will be a proper public consultation and that you are not prejudging anything on this matter. I know that you are very keen on ensuring that all three jurisdictions of the United Kingdom of Great Britain and Northern Ireland are properly consulted—for example, bodies like the Law Society of Scotland. It is really just a confirmation that I look forward to welcoming the consultation process with bodies like the Law Society of Scotland.

Michael Gove: Absolutely. I would not want to prescribe exactly how we will engage with the devolved Assemblies and Governments at this stage, but it is not just about engaging with the Scottish Parliament, the Northern Ireland Assembly and the Welsh Assembly, important though that is; it is also about engaging with civil society more broadly. Organisations like the Law Society of Scotland, the Faculty of Advocates, other Scottish civil society organisations and other interested groups in Wales and Northern Ireland are critical. Lawyers and courts are there to ensure that people have access to fundamental rights, but rights belong to all of us and it is important that everyone should be involved in this debate. This is a debate not about eroding anyone's access to rights but about making sure that rights work in the interests of everyone in these islands, British citizens and others, who, rightly, expect the protection of the courts as they go about their daily business.

Chair: Perhaps that is an argument for a draft Bill and some pre-legislative scrutiny. Secretary of State, you have been generous with your time, and I am grateful to you.

Q61 Philip Davies: On open prisons, in his report earlier this week, which you mentioned, the chief inspector of prisons looked at three specific prisoners and the general issue of releases on temporary licence and open prisons. It is not often that I agree with him, but he said, "These...men should not have been given temporary release...The system failed the public it was supposed to protect with awful individual consequences." What are you doing to protect the public from future awful consequences?

Michael Gove: There are two things I would say. We have to be absolutely vigilant about release on temporary licence. You are absolutely correct, and so is the chief inspector. We also need to be clear about individuals who are transferred to open prisons, and to make sure that we carry out an appropriate risk assessment. It is always, always, always possible

that someone who is released on temporary licence, or who finds themselves in the more permissive environment of an open prison, may abscond and commit another offence, but we need to be clear that proper risk assessment has been carried out and that what we do not do—as you have alluded to, and as the chief inspector has pointed out—is allow individuals who pose a significant risk to the public to be in circumstances where they can do the public harm.

Q62 Philip Davies: Given that all three of those referred to in Nick Hardwick’s report reoffended with the same offence they were sent to prison for originally—somebody was murdered by a previous killer, the armed robbery was committed by the armed robber and the rape was committed by a convicted rapist, which is not an irregular occurrence—how worrying is it that there are 363 murderers in open prisons, and that a third of that number have absconded over the last 10 years?

Michael Gove: Anyone who absconds from open prison is a cause for concern, but by definition transfer to an open prison should only follow an appropriate risk assessment. Murder, of course, is a uniquely serious offence. That is one of the reasons why the number of years that people spend in prison for murder has risen. But there will always be cases where there are individuals who, even if they have committed very serious offences, may be suitable for transfer to an open prison. Each case has to be judged on its own individual merits. I will look again at the numbers that we have. If there are particular examples where you or members of the Committee feel that the wrong decision has been made, I will look with interest at those.

Q63 Philip Davies: Finally, on that point, whenever these people abscond from prison, the police do not say, “Don’t worry about these people. They have been rehabilitated. They are at the end of their sentence. You’ve got nothing to worry about.” They always say, “Don’t approach these people. They are dangerous.”

Michael Gove: Yes.

Q64 Philip Davies: Would it not indicate to you that something goes wrong in this risk assessment when the police are telling everybody, “Don’t approach any of these people. They are dangerous.” If what you are saying is right, they should say, “Don’t worry about approaching these people. They are rehabilitated.”

Michael Gove: The first point I would make is that the police are always going to err on the side of caution, but the second point is that you are right. We do need to be careful that the conditions under which offenders are kept balance two things: one, helping to rehabilitate them; but, two, public safety. Public safety has to be paramount, yes.

Q65 Chair: Secretary of State, you have been immensely generous with your time. We have gone on longer than we intended. It is the first evidence session we have had. Mr Costa and others declared interests at the beginning. While you are present, does anybody else wish to declare an interest?

Alex Chalk: I declare an interest as a practising barrister.

Nick Thomas-Symonds: I am a non-practising barrister.

Chair: Most of us have them all down in the register.

Richard Burgon: I am a non-practising solicitor.

Christina Rees: I am a non-practising barrister.

Richard Arkless: I am a non-practising Scottish and English solicitor.

Victoria Prentis: I am a non-practising barrister.

Chair: There are an awful lot of old lawyers here.

Secretary of State, I am very grateful to you, genuinely. It has been immensely helpful. I hope we may accept your indicated offer to come back to speak to us again before too long.

Michael Gove: Absolutely. Thank you very much, Chairman. One of the things I want to stress is that I wanted to take up your invitation as early as possible, but I am also very conscious of the fact that lots of fairly detailed questions have been asked to which I was not able to give a total and complete answer, because we are reviewing, as a new arrival in post, some of the policies that we have inherited. As decisions are taken, I hope I will have the opportunity to come here to explain them and justify them to you.

Chair: I welcome that. Thank you very much.