

Justice Committee

Oral evidence: Government Response to the Committee's Report on courts and tribunal fees, HC 880

Wednesday 14 December 2016

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Members present: Robert Neill (Chair); Richard Arkless; Alex Chalk; Alberto Costa; Philip Davies; Kate Green; Mr David Hanson; Victoria Prentis; Keith Vaz.

Questions 1 - 79

Witness

I: Sir Oliver Heald QC MP, Minister of State for Courts and Justice, Ministry of Justice.

[Government Response](#)



Examination of witness

Witness: Sir Oliver Heald QC MP

Q1 **Chair:** Minister of State, welcome to our evidence session on the Government response to the report of this Committee on courts and tribunal fees. Thank you very much for coming to give evidence to us; it is appreciated. I am conscious that there may be a Division very soon. Equally, I am conscious that there is quite a lot going on, so we will make a start and I will have to suspend the sitting in the event that there is a Division. We will then resume.

We published a report on 20 June. It was some 40-plus pages of text together with the appendices. As you know, the Cabinet Office has its own rules so there was a two-month response. The Department asked for an extension.

We may as well suspend the meeting; they have had the Division on time for once.

Sitting suspended for a Division in the House

On resuming—

Chair: The Division is concluded so we will resume. Sir Oliver, let me put it this way. You are the most courteous of men. We publish a detailed report. Time goes by and the two-month deadline is not met. The Department requests an extension and it is recess, so we agree, fairly enough, and then another two months go by and we do not get anything until 9 November. That is over four months, which is twice the Cabinet Office's own rules for responding to a Select Committee report. That is pretty rude of the Department, isn't it?

Sir Oliver Heald: Chair, I start by apologising. Sometimes things go in a smooth and efficient way, one would hope, but this is an occasion when they did not. I am very sorry that we were not able to respond by 12 September. We were given extra time and when we responded we were not able to provide you with some of the answers I would have hoped for.

A lot of it happened partly because we were trying to get answers to some of the issues in the report. For example, there were issues around bringing pregnancy claims within a more extended period of time, and there were some issues around FOI decisions, which were actually matters for Ministers other than MOJ Ministers. We were hoping that we would be able to get you replies to those. In the event we did not, although these matters will be made public very soon.

Q2 **Chair:** I understand, and I do not want to labour the point, but we had the situation that not only was there delay without any explanation—I appreciate what was happening—but then it was published during another recess, the short November recess. It was only a matter of days and I make little of that, but again it is normal under Cabinet Office rules for notice to be given of publication. Unfortunately, that did not happen



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either. Was that an administrative oversight, pressure or what?

Sir Oliver Heald: Again, I apologise for it. The rules within the Department are that you should have 24 hours' notice or more, and that did not happen on this occasion. Everybody in the Department has been reminded of the importance of that; I apologise again for that.

Q3 **Chair:** We accept the apology, of course, Sir Oliver. We are just concerned that it never happens again.

Sir Oliver Heald: Yes. Certainly with recent changes we have made, I believe I have managed to follow all the rules. On that occasion, it did not work out as it should have done.

Q4 **Chair:** Understood. I want to come to one of the points that you made. I appreciate that you were trying to get some other information. It relates not to what you have just said, but perhaps to the tone of the response, if I may put it that way. In relation to maternity and pregnancy claims, and in relation to FOI tribunals, you said that it was outwith the terms of the inquiry—in other words, none of our business. Forgive me for saying so, but it is not the job of the Government to tell a Select Committee what is within or without the terms of its inquiry. We decide that.

Sir Oliver Heald: I fully accept that. The tone of it may not have been right and, if so, I apologise. Of course, what we had been trying to do was to see if we could get the answer to the issue about the length of time for the pregnancy claims. In fact, another Select Committee—the Women and Equalities Committee—had also made the same recommendation. The decision was made within Government that it would be in response to their inquiry that the reply was made known. In fact, I understand that is about to happen.

Q5 **Chair:** That is welcome. Had it been phrased that way to start with, the misunderstandings might have been dealt with. Do you have any idea what will happen to the FOI matter? It was once MOJ, but it has gone now.

Sir Oliver Heald: It is still being considered. Of course, there is a recommendation from the Commission on that, but I am not in a position to say what the result of the deliberations is today. It is not me deliberating.

Chair: Very well. Perhaps we will return to it in due course, unless any members want to say more about it. We will now come to some of the specifics.

Q6 **Mr Hanson:** Sir Oliver, I know that you are on a bit of a sticky wicket because you are the third Minister dealing with this in the year, after Shailesh Vara and Dominic Raab. We have the post-implementation review of the impact of employment tribunal fees. Why haven't you published it?



Sir Oliver Heald: It is not finished. I know it has taken a good deal of time. The Committee is right to say, if it does, that it has been a longer period than it should have been. The review is a thorough and proper review. I can say that we hope to be in a position to publish the conclusions as soon as possible in the new year.

Q7 **Mr Hanson:** Is it anything to do with the court case with Unison and the Government not wishing to, as the Chair said earlier, show their hand?

Sir Oliver Heald: I cannot really say anything about the case. It would obviously be helpful to have concluded the review before that case is heard in the Supreme Court. There is no question of trying to slow it down for that reason.

As you know, some information is in the public domain through the quarterly statistics that show the number of cases going to the employment tribunal. Of course, we also know a good deal about the way in which ACAS has been conciliating in this space since it became compulsory. We are seeing a major change in what is happening in the employment tribunals.

The review is looking at three main issues: the transfer of a proportion of the cost to users where they can afford to do that; encouragement of people to use alternative dispute resolution; and protecting access to justice. The basic information from the statistics is being looked at together with financial information on the costs, income and fees remitted in the employment tribunals. You will know that remission levels are increasing. There is data on the volume of ET cases, case progression and outcomes. There is more detailed information on ACAS conciliations and then data on the protected characteristics for equalities. That is the basic area that is being looked at.

Q8 **Mr Hanson:** One of the specific recommendations that this Committee made, on a cross-party basis, was that you publish the factual information collated as part of the review. Are you planning to do that?

Sir Oliver Heald: As I was saying, some of the information, the quarterly statistics and so on, is already in the public domain.

Q9 **Mr Hanson:** But it is about the factual information, with respect.

Sir Oliver Heald: The point I was going to make, if I may, is that we are now very close to the point when we will be publishing this, as soon as we can in the new year. The last piece of work being done is looking at some of the points I mentioned just now about the effect on the protected characteristics and so on. That work has not been published because it is not complete, but, when it is, we would like to put it all in the public domain so that people can see that we have done a thorough job in the Department.

Q10 **Mr Hanson:** The written Government response, Sir Oliver, said that you are going to produce the conclusions of the review.



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Sir Oliver Heald: Yes.

Q11 **Mr Hanson:** Does that mean that it will be just the conclusions and no factual evidence will be published?

Sir Oliver Heald: Obviously in order to explain what we are doing, it will have to set out the background information. We are going to publish all the statistical information that goes into it. On issues like protected characteristics and so on, you will be able to see what the proportions are and the effects.

Q12 **Mr Hanson:** The Secretary of State's comment to us on 7 September was that one of the priorities was to get the "right data and analysis in place." Does that mean that the information on which you base your conclusions, including detailed data and detailed analysis, will be published at the time of the conclusions?

Sir Oliver Heald: Yes. We aim to publish the statistical data that underpins our conclusions.

Q13 **Mr Hanson:** Is there anything that you are not publishing that the Committee would see in normal circumstances and that is helping you reach those conclusions?

Sir Oliver Heald: Not that I am aware of, no. Is there anything you had in mind, Mr Hanson?

Q14 **Mr Hanson:** I do not know what the conclusions are yet, do I?

Sir Oliver Heald: That is true, and I apologise for how long it has taken.

Q15 **Mr Hanson:** I am going from the response that the Government have made, which is that you will publish the conclusions of the review, but at the moment you have also indicated that you are not going to publish the factual information collated.

Sir Oliver Heald: No; what I have said—

Q16 **Mr Hanson:** You have said that now, but it was not in the initial review. I have a final question before I hand over to my colleague Richard. Are you aware of anything in the evidence we have received that you would take specific issue with?

Sir Oliver Heald: We obviously take full account of all of it, Mr Hanson. The extent to which we take issue with points in the report, although expressed in a way the Chair described as terse, explains what we think about the various points. I think that is clear, although I apologise if—

Chair: I think "offensively perfunctory" was my phrase, as I recall it.

Sir Oliver Heald: Yes, and I think on another occasion it was terse.

Chair: Terse will do for these purposes.



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Sir Oliver Heald: We will bear that in mind for future responses, but we certainly were not aiming to insult the Committee in any way.

Q17 **Alex Chalk:** If I may be allowed to say so, you are both courteous and straightforward. I want to ask about this business of timing. Putting this in context, we were told on 9 February by your predecessor that it would be published sooner rather than later. On 4 July, your predecessor said that the review was very close to completion. We are now some five months or so on from that. Can we really have any confidence that we are likely to get something in the new year? As I say, we were told that it was very close to completion several months ago.

Sir Oliver Heald: Yes. As you will know, there was some early statistical information that was brought together for Ministers. It was then decided to do a considerable amount of work, looking at the points I have just outlined—things like financial information on the costs, income and fees remitted; data on the volumes of ET claims; case progression and outcomes of the ACAS conciliation; and the protected characteristics. The work that is being finished at the moment is the work on the protected characteristics. I have no idea why it took longer than everybody thought at each stage, because I was not the Minister at the time. When I tell you that we are aiming to publish as soon as possible in the new year, I mean that.

Q18 **Alex Chalk:** January?

Sir Oliver Heald: I am not putting a month on it. I am saying it will be as soon as we possibly can. I would not rule that out.

Q19 **Chair:** I appreciate that this is a bit of a late return, if I can put it that way, Sir Oliver, but we are concerned. Had we known some of the factual matters you have mentioned to us, and which are perfectly understandable and unobjectionable, I might not perhaps have used some of the phrases I used, if we had been informed a little bit more by the Ministry as to the reason for the delay.

Sir Oliver Heald: Yes, I fully understand that. Certainly it is a priority for us to get our response, the review report, out early in the new year for the reasons I mentioned to Mr Hanson.

Chair: I am grateful to you for that because we do not want this report turning into the MOJ's answer to Jarndyce and Jarndyce.

Sir Oliver Heald: No, we don't.

Q20 **Richard Arkless:** Leaving aside the delay for a moment, this Committee made recommendations in its report based on what we thought was good, sound evidence. Can you at least confirm that our recommendations are still under consideration? You will obviously know a lot more about where you are in the process. Specifically in relation to quantum of fees, type A/type B classification, fee remission and the three-month time limit for pregnancy and maternity discrimination, where



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are you in the process, and can you confirm that all those recommendations are still under serious consideration?

Sir Oliver Heald: The danger with me answering that question on each particular item is that we are obviously hoping to produce our review as soon as we possibly can in the new year and it will go into each of those issues and explain our thinking, the data and so on. I would not really want to take individual parts of that and say, "On that particular part, we think your recommendations are still in play and on this we don't." The position is that we have certainly not committed ourselves on any of those recommendations. There is a review coming out. It will be a proper and detailed explanation of our thinking.

Q21 **Richard Arkless:** Will all of our recommendations be considered in your review?

Sir Oliver Heald: Yes.

Q22 **Richard Arkless:** If you disagree with those recommendations, I would request that you set out an alternative evidence base for it, as you indicated to Mr Hanson that you will provide.

Sir Oliver Heald: What we have said is that we will produce the statistical data that underpins our decisions. It would not necessarily be that we would answer a particular question with data. We would set out what we think and the data that underpins it.

Chair: That is helpful. We will move on to the topic of immigration and asylum tribunal fees, where there has been a change of approach which we welcome.

Q23 **Keith Vaz:** Sir Oliver, you changed your mind about increasing the level of fees for immigration and asylum cases. Why did you do that?

Sir Oliver Heald: I will put it in a bit of context. There had been a consultation and the policy had been set. A new team came in and looked at it. I was satisfied on access to justice issues. I believe that those who use our courts and tribunals should pay more for the service if they can afford to. It is a principle of managing public money that they should make more of a contribution than they have made. In terms of immigration fees I was satisfied on access to justice. Of course, there is an exemption scheme that also helps people with fees. That seemed to me to be a reason to proceed. One of the things that had been underpinning our thinking was taking an overview of the Courts and Tribunals Service as a whole, and thinking of it as a whole. The point that was made quite strongly to us in the autumn—it had been made previously but it was made more trenchantly—

Q24 **Keith Vaz:** By whom?

Sir Oliver Heald: By a range of organisations and individuals. The point that was made was that we should be looking at consistency and how we operate across the tribunals, not the courts and tribunals. The more I



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looked at that, the more I came to the conclusion that we should have another look at it. It is true that I changed my mind because I thought maybe we had not considered that adequately. My view as a Minister is that, if you think you have not considered something adequately, you should have another look at it, look at the evidence and review it, so that is what we are doing. We are reviewing fees across the tribunals and we are doing it on that sort of basis.

Q25 Keith Vaz: As far as immigration and asylum are concerned, Ministers have said in the past that they believe people are using the tribunal system in order to appeal in cases where they really have no chance of succeeding—if you appeal an immigration and asylum case, you get to stay in the country longer. Do you share that view? Do you think there is abuse of our immigration tribunals?

Sir Oliver Heald: If you look at the statistics, obviously a lot of those cases fail. Having said that, that is not what we were thinking about in this particular instance.

Q26 Keith Vaz: It was not a factor. You do not think that people are—

Sir Oliver Heald: Not in this instance, no. It may well be a larger concern, but in this case I was worried that we had been proceeding on the basis that we thought access to justice was all right and we had our exemptions in place. We had been looking at the Courts and Tribunals Service as a whole, but the point made to us was, “Yes, but are you looking at the tribunals sector very clearly and consistently?” I thought that we should have another look at that.

Q27 Keith Vaz: Sticking to immigration and asylum in particular, I have a very heavy case load on immigration. People do not mind paying more if they get a better service. The problem is the delays in the immigration and asylum system. If you are appealing in order to bring a spouse into the country, it now takes up to a year and a half to get a tribunal date. If you pay more in fees, do you get a better service or do you just get the same service that you had before?

Sir Oliver Heald: You are making a very important point, which is that there are too many delays. One of the things that the Courts and Tribunals Service has done this year is to put an extra 4,500 days of tribunal time into this area to try to speed things up. I am hopeful that—

Q28 Keith Vaz: But you have fewer immigration judges, not more.

Sir Oliver Heald: I can certainly check the number of judges, but of course we also use people who sit part-time and—

Q29 Keith Vaz: But they are judges, aren't they?

Sir Oliver Heald: Yes, exactly. They are judges who are not just sitting as salaried judges, if you like. We have certainly increased the resource in terms of judicial time available this year.



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Q30 **Keith Vaz:** Do you accept the principle that if I am paying more in fees I want a better service, and that if I pay more I will get my case dealt with quicker?

Sir Oliver Heald: I would not put it like that. My view of it is that the right fee should be set for the service, with proper exemptions and remissions, but you are entitled to a good service from the public sector anyway.

Q31 **Keith Vaz:** But you accept that you are not getting it now because of the delays of a year and a half.

Sir Oliver Heald: That is why we have put the extra 4,500 days in. I accept that we need to improve that area. We are working very hard on it, and I am hopeful that speeds will improve.

Q32 **Keith Vaz:** You said in your statement of 25 November that pending the review the Government would revert to their previous levels of fees.

Sir Oliver Heald: Yes.

Q33 **Keith Vaz:** And refunds of the difference would be provided to those who had paid the increased fees. How much has been refunded?

Sir Oliver Heald: I have the number of cases.

Q34 **Keith Vaz:** Basically, you overcharged them because the fees were too high, and now you are giving the money back.

Sir Oliver Heald: We put the fees up believing that the evidence base and the policy was right, as I described, but when we decided to have another look at it that meant that we had charged higher fees for a short period.

Q35 **Keith Vaz:** How much extra did you get and how much has been paid back?

Sir Oliver Heald: There are 616 cases involved. I can certainly write with the total amount of money involved, but it would be the excess of fees in those 616 cases.

Q36 **Keith Vaz:** You said that on 25 November, but how much have you actually paid back?

Sir Oliver Heald: We certainly are in the process of paying back and I will write—

Q37 **Keith Vaz:** Do you know the figure now?

Sir Oliver Heald: I do not believe it is in my notes. It is something that I am keen to follow closely. I am more than happy to write to the Committee with the exact figure. It is 616 cases that are affected.

Q38 **Keith Vaz:** This is my final question. Do you know the current level of immigration backlogs in the courts?



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Sir Oliver Heald: I do, because we have done some work on that, but if you are asking me if I can give you the figure off the top of my head, the answer is probably no.

Q39 **Keith Vaz:** Does it go into thousands or hundreds? Immigration is a priority for the Government, isn't it?

Sir Oliver Heald: Yes, we are dealing with large numbers of cases.

Q40 **Keith Vaz:** Are there 1,000 cases in the backlog—2,000?

Sir Oliver Heald: The backlog? There is a delay with cases, of course—

Q41 **Keith Vaz:** That is a backlog, isn't it?

Sir Oliver Heald: Yes, and you want to know how many cases are waiting to be heard. Is that right?

Q42 **Keith Vaz:** Yes; people in the country who perhaps should not be here because they do not have merit in staying here, or people who have merit and should be given the right to stay. Do we know what the backlog figure is?

Sir Oliver Heald: We do, and I will make sure you have it. I do not have it to hand but we can certainly provide it.

Keith Vaz: That would be very helpful.

Sir Oliver Heald: It is something that we follow quite closely, but it is hard to remember every single figure.

Keith Vaz: Of course. We understand.

Chair: We understand that. Anyone would welcome the fact that a Minister changes their view in the light of the evidence. That is a good Keynesian philosophy. We are grateful to you for that.

Sir Oliver Heald: Yes, there are a lot of cases.

Chair: If you are willing to write with the detail, we can publish it and it will be in the public domain.

Sir Oliver Heald: I am more than happy to do that.

Q43 **Alberto Costa:** I should make a declaration. I am a practising English solicitor. I do not know whether the declarations we made this morning still count.

Chair: If it is particularly in relation to the matters that you are asking about, that is fair.

Alex Chalk: I am a practising barrister.

Keith Vaz: I declare that my wife is an immigration solicitor.

Victoria Prentis: I am a non-practising barrister.

Chair: I should declare that I am a non-practising barrister and a



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consultant to a law firm.

Sir Oliver Heald: I am too.

Alberto Costa: Could I turn Sir Oliver's attention to the financial impositions on offenders? The Government's response to the Committee's report on the criminal courts charge in December announced a review of the entire structure of financial impositions on offenders. When the Government withdrew the criminal courts charge last December, following our report, the then Secretary of State said there would be a review of "the entire structure, and purpose, of court-ordered financial impositions for offenders." Sir Oliver, what happened to that review?

Sir Oliver Heald: We have not sought to continue with the criminal courts charge. There was an internal review of that area, and it was designed to help us with that decision.

Q44 **Alberto Costa:** Could I press you on this? The point made was that there would be a review of the entire structure and purpose of court-ordered financial impositions. You have just said that there was an internal review.

Sir Oliver Heald: Yes, that is what we were planning. We did not plan to have a public inquiry into it.

Q45 **Alberto Costa:** I see. The Department carries out entire thorough reviews of structures and policies and changes them without disclosing it.

Sir Oliver Heald: Yes. We are very lucky to have some excellent officials who work on these reviews.

Q46 **Alberto Costa:** Would those excellent officials, through you, kindly disclose to this Committee why they came to the conclusion that the financial penalties imposed prior to December 2015 were not suitable? Why have they come to the decision? Was it the report from this Committee? Was it other evidence that the Ministry received?

Sir Oliver Heald: As you will remember, there was considerable concern about the criminal courts charge, and that is why it was suspended. We then reviewed matters, as we said we would, and decided it would not be imposed, so that is what happened.

Q47 **Alex Chalk:** Looking at everything in the round, there was a suggestion that it was confusing. To give an example, a defendant who is convicted of, say, a battery might be required to pay a fine, prosecution costs, defence costs, compensation and victim surcharge. It probably would not be POCA in that kind of case, but the point is that there are five potential costs, and it was suggested that that was complex and confusing. The question is: was any review done to provide more clarity? If it was, why was it felt that the existing system could remain as it is?

Sir Oliver Heald: We did not continue with the criminal courts charge that would have added to the burden, which was the criticism of it.



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Q48 **Alex Chalk:** That was the sixth.

Sir Oliver Heald: Yes, but the point about the review was to look at the issue. I have had policy advice about it from officials, and we are not continuing with it. That is the review.

Q49 **Alex Chalk:** But nothing in respect of the rest—the other five.

Sir Oliver Heald: They were looked at as part of that picture. That was why we were looking at the structure, because one element was the criminal charge. We decided, having suspended it, not to continue with it.

Q50 **Chair:** There might have been an impression that there was going to be a review of the other five. That was certainly the impression in how the Ministry's statement at the time came across.

Sir Oliver Heald: I am more than happy to see, if I am able to, whether under previous Ministers something more widespread was done, but certainly in my time I have had policy advice about this that looked at all the different impositions in the context of the criminal courts charge, and the decision was not to continue with it. That is as far as I can take it without further inquiries, which I will make.

Q51 **Chair:** I mention it in the context of our inquiry into magistrates courts, which the Department is in the process of responding to. It became very clear from the evidence we had from magistrates and others that there is still complexity even around the other five. On the basis of that evidence, whether or not it is in your response—we hope it is—it is not something that will go away.

Sir Oliver Heald: Let me check that what I have said is as much as I can say. I will write to the Committee if there is further information I can give.

Chair: That is most helpful.

Q52 **Richard Arkless:** In relation to divorce petition fees, Sir Oliver, you have said previously that so far there is no evidence that the fee increase has led to a fall in applications for divorce, but do you accept that the fee amounts to about twice the cost to the public purse of uncontested divorces?

Sir Oliver Heald: It is certainly more than the cost.

Q53 **Richard Arkless:** Do you know what the average is for divorce cases?

Sir Oliver Heald: It used to be £420, didn't it, and it has gone up to £550? The view taken was that that was an appropriate figure.

Q54 **Richard Arkless:** Do you know the average cost of divorce proceedings?

Sir Oliver Heald: In the sense of the actual divorce itself—getting a decree absolute?

Richard Arkless: Yes.



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Sir Oliver Heald: But not in a case involving children. Obviously, in a divorce there are ancillary proceedings.

Q55 **Richard Arkless:** Public purse court costs.

Sir Oliver Heald: An actual divorce costs £270, but that is just the divorce itself.

Q56 **Chair:** That is for an uncontested divorce.

Sir Oliver Heald: Yes. That is a straightforward uncontested divorce, not taking into account any ancillary proceedings. The fee is £550, so it is much more, but we have a policy of enhanced fees because we look at the court structure as a whole. We are trying to make the contributions from those who use the system as fair as possible, with a remission scheme to help those who have financial issues.

Q57 **Richard Arkless:** What is the rationale for having a fee that is about twice what it costs the public purse?

Sir Oliver Heald: The way it works with court fees is that there are some areas where it is possible to charge an enhanced fee that is more than the cost recovery. The reason it is done is that we do not look at each particular area in a silo; we look at the whole system. We look at courts and tribunal fees as a whole, albeit that my earlier comments relate to tribunals now being looked at in a separate way for the reasons I outlined. We are saying not that every area has to be full cost recovery and no more than that, but that the overall contribution from the users of the system has to be a fair and proportionate one, and that it is right to have remission of fees and exemptions in some cases as well.

Q58 **Richard Arkless:** While I understand that—it is very sensible—why divorce?

Sir Oliver Heald: It is not the only area with enhanced fees. There is a range of cases, such as civil claims, where the level of the fee for that particular part of the system is higher than the strict cost, but there are other areas where it is much lower, and a judgment is made in each particular area as to what is fair, reasonable and proportionate. It is a systemic—system. Systemic system? It's a system.

Q59 **Alex Chalk:** On the fair, reasonable and proportionate point, as a matter of principle is it right to use fees incurred in the civil justice sphere to subsidise general Government spending beyond justice?

Sir Oliver Heald: What we are aiming to do is to have a system that is acting within the justice sphere, so we are looking at the fees in the context of what it costs to run the courts. Unfortunately, it is still a long way short.

Q60 **Alex Chalk:** Can I make sure that I understand? You are saying that surplus fees generated from civil will subsidise crime, but you are saying that as a matter of principle it should never go beyond that to subsidise



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other Departments—health, education and so on.

Sir Oliver Heald: It doesn't. We spend much more on the courts than we recover in fees.

Q61 **Alex Chalk:** As a matter of principle, would the Government's position be, for the sake of argument, that, supposing you could squeeze commercial fees without interfering with access to justice, you would get more out? As a matter of principle, would you ever be comfortable with those fees subsidising other areas of Government expenditure?

Sir Oliver Heald: As a matter of law, when enhanced fees were introduced—fees that are higher than the cost of providing the service in certain parts of the courts system—it was on the strict basis that the money had to be used for running the courts, so there is no question of our using it for anything else. Personally, I think it would be wrong to do that, because we are trying to have a system where those who use the courts pay a reasonable contribution towards the costs, not something else.

Chair: A statutory ring fence, in effect.

Q62 **Victoria Prentis:** Do you think it is right that families at the most stressful time in their family life should be subsidising the criminal courts system?

Sir Oliver Heald: I would not say that is what is happening overall, because if people are in financial need we have remissions, and legal aid is available in certain situations, such as cases involving domestic violence or where a child has been taken away using the public law system and so on. We are concentrating the money on cases where really important issues are at stake—life, liberty, loss of a child or loss of a home. These are decisions that were made with the idea of prioritising. By and large, I think Ken Clarke got the right mix.

Q63 **Chair:** I understand that. You were making that point to some degree in the written statement when you announced it, but can I press you on this? In that statement, you said that the net cost of the courts system was £1.2 billion, but when you drill down, nearly all of it—86%—is the cost of the criminal court system. I have got that wrong because it is a fiddly figure, but virtually all of that net cost is crime, isn't it? Eighty six per cent. of civil and family is met by fee income, so only 14% of the net cost of civil and family falls upon the public purse.

Sir Oliver Heald: There is a difficulty in charging fees and expecting to recover money from people who are being prosecuted. It is not quite the same. Obviously, we make the impositions that Mr Chalk mentioned, but it is not really an area where I can see that defendants would want to pay for the use of the courts. Equally, we have our arrangements with the Crown Prosecution Service, but I think it is a more difficult area. That is why I said we are looking at it as a whole—courts and tribunals—rather than one particular area.



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Q64 **Chair:** But it goes a bit further than that, doesn't it? If we take out family and so on, where there is some remission, which obviously comes from the public purse, fee income exceeds expenditure on civil courts.

Sir Oliver Heald: Yes, it is an enhanced fee.

Q65 **Chair:** To go back to your principle, if I am litigating a civil dispute, why should I be subsidising the costs of prosecuting a burglar at Chelmsford Crown court? Should that not be a charge that legitimately falls on the state?

Sir Oliver Heald: At the time this was introduced, people argued that, but the Government's view was that it was right to have an overall system that paid for itself as much as was possible and reasonable, and enhanced fees were a way of achieving that. We take a very careful look at exactly what is happening in the civil courts and the exact level of the fees, but at the moment we are not thinking of increasing them. At one time, there was a thought that we might increase the fee to £20,000 and we are not doing that.

Q66 **Chair:** But somebody who, for whatever reason, chooses to litigate in the civil courts is subsidising the public good in prosecuting criminal offenders and seeing them convicted.

Sir Oliver Heald: They are subsidising the system to that extent.

Q67 **Chair:** Some might say it would perhaps be different if you were subsidising within each jurisdiction, or something of that kind. One could say that prosecuting crime is something society should fess up to and pay for itself because it is in society's interests.

Sir Oliver Heald: Some make that argument, but it is not the Government's view.

Q68 **Chair:** It is not one I am going to persuade you of today—

Sir Oliver Heald: You make that argument.

Chair: Or persuade the Treasury, which is more to the point. I understand.

Sir Oliver Heald: It is important that we should have the money to run our courts properly and modernise them—all the things we are doing.

Q69 **Chair:** I agree with you there. Going back to Mr Arkless's point, the average cost for an uncontested divorce—not all are uncontested—is £270, as we know. Whatever type of divorce, you have to pay a petition fee of £450, so a considerable chunk of people—the majority of divorces nowadays are uncontested—are paying more by way of the petition fee than it will ever cost the system to get them divorced. The majority of people are subsidising other parts of the system.



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Sir Oliver Heald: But that would be an argument for reducing the fees. We increased them, but they were already at a higher level than cost recovery.

Q70 **Chair:** I appreciate that the Ministry has a problem, but maybe a question for Government more generally is the extent to which it is appropriate to raise revenue in that way.

Sir Oliver Heald: The principle of managing public money is that you should try to recover the cost of the services the Government provide, but we make adjustments for remissions and exemptions and we try to help people. If points are made to us about the structure of fees we look at them, as we are doing on immigration fees.

Q71 **Chair:** I would like your comment on an observation made by the President of the Family Division, Sir James Munby. He talked about it being a divorce tax. That is right, isn't it? The Government, through the courts, have a monopoly on granting divorces. You cannot get a divorce anywhere else. If you want to end a marriage, the only way you can resolve it is by going to the court. If you want to resolve a commercial dispute you have options: you litigate through the courts, you mediate or you cut your losses in some other financial way. You have people over a barrel and you are charging them more than it costs.

Sir Oliver Heald: Of course, the actual divorce is a very small part of the costs involved in the overall family justice sector.

Chair: Of course.

Sir Oliver Heald: I do not think it could be argued that the Government are not trying very hard to provide what the family justice sector needs. On care cases, over recent years, we have managed to reduce the time a case takes from 52 weeks to roughly half that, because considerable resource has been put into the family courts. It is not entirely about unopposed divorces.

Q72 **Chair:** I understand. As a final shot from me, it might be more justifiable if the undefended divorcers, who do not have any ancillary work to speak of, were subsidising the more complex work within the family jurisdiction.

Sir Oliver Heald: In a sense they are.

Q73 **Chair:** You can see a logic to that, but it looks as if a lot of it is going towards the cost of crime.

Sir Oliver Heald: In a sense they are subsidising the system, which includes a very substantial sector of family law, particularly in the public field of law.

Q74 **Keith Vaz:** Since you have taken over this portfolio, have you been able to visit an immigration tribunal and observe the way in which it operates?

Sir Oliver Heald: Not since I have done this job. I have been to quite a few courts, and I will make sure I visit one. I have been visiting problem-



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solving courts a good deal. Part of my role is to look at our existing arrangements. I have visited family courts and criminal courts of various kinds, but I will make sure I go. Of course, I have visited them in the past, but I will make sure I do so in this job.

Q75 Mr Hanson: The former Member for Ipswich sponsored legislation that had tax transparency as a key proposal. It might be worth while if, on the invoices for divorce costs, the Government printed the cost, plus the actual cost to the Government so that members of the public know exactly how much they are contributing to Government coffers.

Sir Oliver Heald: It is not something I have considered, but thank you.

Alex Chalk: I think Mr Hanson's tongue is planted firmly in his cheek, Minister.

Mr Hanson: I think it is in the interests of general transparency. Government policy is that we have openness and transparency. In this case, people are being divorced through no fault of their own, as the Chair has said—

Chair: Take it as a Christmas suggestion.

Sir Oliver Heald: Thank you very much for that.

Q76 Chair: You have been very helpful to us. I am grateful to you, Sir Oliver, for having fielded a number of the issues you inherited—I am very conscious of that. When you talked about immigration and asylum fees, you said you would look at them alongside other tribunal fees in the wider context of funding of the system overall. To be clear about it, when you are looking at that is it the level of fees across the whole system, or are you looking at immigration and tribunal fees in the context of the whole system? You can see the difference.

Sir Oliver Heald: We decided to look at immigration and asylum fees in the context of the others, but it may well be that particular fee levels come to our attention. For example, I have put the tax tribunal fees on hold while we do this. We are taking stock, if you like, right across the tribunal sector, and I have made sure that we do not introduce anything in that sector while we do it.

Chair: I am very grateful for that openness about your willingness to review the matter, and that is very helpful. If there are no more questions—

Philip Davies: I have a question.

Chair: Mr Davies, of course. It wouldn't be complete without you.

Q77 Philip Davies: This is a tenuous link, but it is linked. Sir Oliver, you tried to give the impression of the Government being very fiscally responsible, which I am certainly in favour of, as I am sure most people are, but it slightly flies in the face of the fact that in December 2011 the



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Government closed down my local court, Keighley magistrates court, which is based in Bingley, and have been paying, as I understand it, about £5,000 a month just to leave it lying idle and still have not sold it. I am not entirely sure how much you plan on getting for it, but by my reckoning you have already sunk about £300,000 in just keeping it closed, and you will get to the point—you may have passed it already—where you will not even get what you have spent keeping it closed. Why don't you just auction it off and get what you can for it, rather than spending £5,000 a month keeping a building empty that you clearly are unable to sell? Why not auction it off and cut your losses? That is what you would do if it was your property. You would not spend more keeping it closed than you would ever realise, so why don't the Government do that with their buildings?

Sir Oliver Heald: If we think about the estate as a whole, we have a significant number of properties which we hope to sell. Giving the impression that we are in a fire sale is, I am told, not helpful. The answer to your question is that we are taking a different approach from that which you describe. That would be suitable perhaps for an individual, but if you have an estate where you are trying to sell a significant number of properties, I am told by professional property people that that is not the right approach.

Q78 **Philip Davies:** Can I advise you to change your professional property people and get something for the site, rather than sinking good money after bad, and bring it into use for the local economy?

Sir Oliver Heald: I appreciate the fact that you are mentioning a particular court, and I will look at it.

Philip Davies: I am sure it cannot be the only one.

Sir Oliver Heald: I will look at the situation in Keighley, but if we were just to auction off everything we wanted to sell, I am told we would get less money than we would by following the approach we are taking. I will look at Keighley and write to the Committee if there is anything I can add.

Q79 **Chair:** I assume the MOJ uses external property advisers.

Sir Oliver Heald: We do both; we have an internal and external team.

Chair: You are going to write, and that is very helpful. Thank you, Sir Oliver. In the spirit of Christmas and Mr Hanson's tongue-in-cheek suggestion, I suggest we do not adopt the advice of a former Member for Ipswich, well known to both you and I, Sir Oliver, who in his maiden speech said that some people had described his constituency as "the Wigan of the south." The tongue in cheek was not appreciated by the people of Ipswich, according to his electoral fortunes thereafter.

Philip Davies: Or the people of Wigan.

Chair: Probably not. We will not upset either on that one. Thank you very



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much for your evidence; it is much appreciated. I wish you and your officials, who have been sitting very patiently behind you, and those who have been following our proceedings a happy Christmas.