



Select Committee on the Constitution

Corrected oral evidence: Oral evidence session with the Lord Chancellor and Secretary of State for Justice

Wednesday 1 March 2017

10.30 am

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Members present: Lord Lang of Monkton (The Chairman); Lord Beith; Lord Brennan; Lord Hunt of Wirral; Lord Judge; Lord MacLennan of Rogart; Lord MacGregor of Pulham Market; Lord Morgan; Lord Norton of Louth.

Evidence Session No. 1

Heard in Public

Questions 1 - 14

Witness

I: Rt Hon Elizabeth Truss MP, Lord Chancellor and Secretary of State for Justice.

Examination of witness

Elizabeth Truss.

Q1 **The Chairman:** Lord Chancellor, welcome. We very much appreciate your coming to talk to us. We know how busy you are. We welcome the opportunity to speak to you and your predecessors on a regular basis. There are quite a lot of things we would like to cover over the time available to us. If I may, I will go straight in and start.

The Committee's view on the role of the Lord Chancellor has a special focus on the maintenance of the rule of law and upholding the independence of the judiciary, and, as we see it, a special responsibility within government for those areas to ensure that ministerial colleagues, for example, do not stray from that particular territory, as has happened occasionally in the past. Do you agree with that, or do you have a different view?

Elizabeth Truss: I completely agree with the view that the Lord Chancellor has a specific role in upholding and defending the independence of the judiciary and with respect to the rule of law. I see myself essentially as the custodian of the justice system in quite a broad way. As well as defence, it is about making sure that the rule of law and the role of the judiciary is widely understood; that the public are aware of how judges are appointed, and why it is important they are independent; and the fact that the judiciary is a branch of the state, and how it operates.

Since the 2005 Act there has been a significant separation of powers. I believe that to be a good thing, but at this juncture, although we have seen developments in the institution—I think the Supreme Court in particular has come of age as an institution, as we saw in the recent Article 50 case—I still feel there is not a wide enough understanding of the implications of the 2005 Act and the different role it has given to both the Lord Chancellor and Lord Chief Justice as well as the chairman of the Judicial Appointments Commission. There is more work to do in making that happen in reality and for it to be widely understood.

The Chairman: That is very helpful. Of course, all government Ministers have a responsibility to uphold the rule of law. Do the law officers have a particular level of responsibility over and above that? If so, how would you define the relationship between your view of your responsibilities and your view of theirs?

Elizabeth Truss: The law officers are legal experts who advise the Prime Minister and Cabinet on legal matters. They are also responsible for dealing with issues of contempt of court. My colleagues the Attorney-General and the Solicitor-General do that, whereas I see my role as more the custodian of the overall system, making sure that our justice system is sufficiently funded and that we have sufficient recruitment and retention of high-quality judges, which is vital to strengthening the independence of the judiciary. I see my role not as a legal adviser but rather a custodian of the systems.

Lord Judge: Would you mind expanding on what you have just told us about how you see the role of the Lord Chancellor developing? You say the Act has not worked itself out yet. How do you see it developing?

Elizabeth Truss: Of course, you are a great expert on this, having been Lord Chief Justice after the Act was put in place.

Lord Judge: That is why I am particularly interested in your view.

Elizabeth Truss: I am interested in your view of that as well for that reason. The senior judiciary has embarked, together with me, on an ambitious reform programme. We are reforming the way the courts operate and some aspects of judicial terms and conditions as part of the Prisons and Courts Bill. We are also seeing the Lord Chief Justice, as a result of the 2005 Act, taking on responsibility for management of the judiciary, which was previously the role of the Lord Chancellor. It seemed to me that the Lord Chancellor, as well as being Lord Speaker, had an incredible number of roles in managing the judiciary. The development I am talking about is connected with the work we are doing in the Prisons and Courts Bill to bring together the judiciary and what I have described as the judicial family, including magistrates, whom we very highly value, as well as judges across the country.

My feeling is that, hitherto, the senior judiciary has not necessarily had the support to carry out all that work. That is why we are looking at additional allowances for people in leadership roles in the judiciary and why the Lord Chief Justice, Lord Thomas, is looking at how better to manage human resources within the judiciary.

My observation on the 2005 Act—I was not around at the time but you were—is that it was done in quite a hurry and some of the structures underlying it were not necessarily put in place. We are now putting those structures in place, but there is also work to do in educating wider society about how things have changed. If you like, the boss of the judiciary is now the Lord Chief Justice. He has responsibility for certain areas, whether it is judicial morale or career development and progression, and he needs the support and infrastructure to be able to do that. My job as Lord Chancellor is to make sure he has the financial resources and legislative back-up to be able to do that, and I am working very closely with him.

I think we have an excellent team of reforming senior judges in place at the moment. Lord Thomas and I launched our joint statement last autumn, but I still think there is a lot of work to do. When I speak to judges around the country, I am not sure everyone is completely aware of how things have changed as a result of the 2005 Act. There is still further work to do. One thing I am extremely concerned about as Lord Chancellor is judicial morale, recruitment and retention, because to have a strong, independent judiciary we need people who feel they are valued by the Government and society. If you look at the figures, they are not brilliant.

The Chairman: We will come to that with a later question, if we may. I do not want you to fire off all your ammunition too soon.

Q2 **Lord Judge:** May I return to one aspect of the changes following the Constitutional Reform Act? Of course, the Lord Chancellor is no longer head of the judiciary but continues to sit around the Cabinet table. What do you understand your own role to be in conveying the views of the judiciary to your Cabinet colleagues? Do you see it as your role?

Elizabeth Truss: I do see it as my role to convey to Cabinet the views and interests of the public with respect to the legal and judicial systems. That can be on a bilateral basis with other Cabinet Ministers as they interact with the judiciary, but it can also be on general issues. I talk regularly to my colleagues about this both in Cabinet and outside it, making sure that as an Executive we are defending the independence of the judiciary. Clearly, there are very big issues with Brexit, for example, and the role of the judiciary, and what we will see as we leave the auspices of the European Court of Justice. There will be large implications for the courts and judiciary in the UK. I think there will be increased scrutiny but also increased opportunity, and quite possibly more work, which is another thing I am looking at.

I see myself as conveying the views and interests of judicial independence to my Cabinet colleagues, defending the independence of the judiciary and making sure my Cabinet colleagues are doing that as well, but, at the same time, working with the judiciary on issues raised by the Cabinet. It works both ways. I would not describe myself as a go-between or an interlocutor between those two things.

Lord Judge: Do your Cabinet colleagues listen to you?

Elizabeth Truss: Yes.

The Chairman: Good answer.

Elizabeth Truss: If I could expand on that point, to make sure that we have a strong, independent judiciary, it is important to have adequate funding. In the Autumn Statement I secured additional funding for the department, including funding for the justice system reforms—the investment we are making in the courts of £1.3 billion—and the Prison Service, which is another important part of the justice system. We have serious issues in our prisons that we need to address, but I did not want to rob Peter to pay Paul. It was very important to secure that extra funding. I made a case to the Chancellor and Prime Minister to secure that extra funding and I did secure it, because I believe it is in the interests of the justice system and our country that we have a strong, independent judiciary and justice system. I am absolutely prepared, where it is in the interests of the rule of law and the system of justice, to make the case to my Cabinet colleagues.

The Chairman: I should explain in passing that some of our colleagues had terrible journeys in. The transport system has been much disrupted in places this morning. No discourtesy is intended by colleagues arriving

late.

Q3 Lord Hunt of Wirral: In view of the attacks on the judiciary by some in the media and some politicians, I greatly welcomed your opening remarks about the need to defend our independent judiciary. In asking my question, I should declare my interest as founder chairman of IPSO, the Independent Press Standards Organisation, before handing over to Sir Alan Moses. Across the world people respect and revere our independent legal profession and judiciary, so what more do you think you and we can do to raise the profile of this enormously valuable asset?

Elizabeth Truss: It is a hugely valuable asset. Our judiciary is independent, incorruptible and world renowned, and that is incredibly important. It is vital for our society and economy—it is the reason we have been such a successful commercial nation—that people know our contracts and English law are good. One of the reasons many contracts are signed in English law is the trust people have in our judiciary.

If one looks at the figures for public trust in our judiciary, they are very high. The judiciary is a very highly regarded profession; there is huge trust in judges. Speaking to individual judges, that is not necessarily reflected in the views of the judiciary itself. There is a question about how we make the judiciary feel valued. Lord Lang, you said you were coming to that question later.

The Chairman: Yes, on the numbers.

Elizabeth Truss: How we make the judiciary feel valued is very important. I have a role to play in talking about what the judiciary does, but I am not a judge. The result of the 2005 Act and separation of powers is that the Lord Chancellor is no longer the head of the judiciary. It is also important for the senior judiciary, the Lord Chief Justice and President of the Supreme Court, to talk in public about what they do. Of course they cannot talk about individual cases and get embroiled in political issues, but there is a very strong case for them talking about what they do widely right across the UK. I was very pleased recently that, on the launch of the Supreme Court competition, Lord Neuberger came out and talked in public. That is very important.

There is still a myth around the Kilmuir rules. Those rules about judges not being able to speak out in public were abolished in the 1980s and yet there is still sometimes a reticence to do so. In the modern age where everybody is subject to scrutiny, whether you are a captain of industry or church leader, it is important for that profession to talk about what it does. I spend a lot of time in various courts watching what judges do. Their capabilities are very impressive. I want the public to see more of that. That helps to strengthen the independence of the judiciary and rule of law. I still think there is a bit of demystifying to do. Yes, of course, judges cannot speak about their judgments, but some of the perception is that they cannot talk about other things as well, and that is not right.

Lord Hunt of Wirral: So they should speak out more.

Elizabeth Truss: I have actively encouraged the President of the Supreme Court to speak out about the Supreme Court competition, in particular to make sure we are attracting the widest variety of talent to that competition. That is incredibly important. Not just the senior judiciary but other judges should feel able to talk about what they do and explain it to the public. That will help to strengthen the independence of the judiciary and attract new people to become judges, which is also incredibly important, because one of the biggest threats to the independence of the judiciary is not having enough people coming forward to be judges. I have discussed this with Lord Thomas and Lord Karkar, and we are working on how to improve that.

Lord Brennan: You have spoken forcefully about preserving the morale of judges and emphasising their value, not just in our domestic society but internationally. Page 11 of your Ministry's strategy over the next 10 years very clearly states the importance of an independent judiciary so as to attract people to this country for legal services. We are going to have a stormy period perhaps with Brexit and the great repeal Bill building up this expanded legal service, yet a few months ago, in the *Daily Mail*, we had the headline "Enemies of the people" describing our Lord Chief Justice and those sitting with him. For many, that was simply abuse.

In performance of this strategy and in accordance with your views about morale and value, can we look forward to you and your Ministry robustly defending judges against that kind of abuse in future?

Elizabeth Truss: I will always speak out and say how important having an independent judiciary is. I have also said that the individuals involved in both cases—the High Court and the Supreme Court—are people of integrity and impartiality, and that is very important. Where perhaps I might respectfully disagree with some who have asked me to condemn what the press are writing, is that I think it is dangerous for a government Minister to say this is an acceptable headline and this is not. I am a huge believer in the independence of the judiciary; I am also a very strong believer in a free press and the value it has in our society.

In defending the judiciary, it is very important that I speak out about the valuable work it does. I want to work with the judiciary so that we have more from the judiciary explaining to the public the work that it does and the process of appointment, but I draw the line in saying what is acceptable for the press to print or not. For me, that goes too far.

The best way to respond to criticism and scrutiny is to make the positive case. The judiciary is hugely respected in this country. If you look at public opinion surveys, over 80% of people have strong trust in the judiciary. Those are figures any politician would kill for. If you look internationally, when we are talking about legal services or contracts, people have huge respect for the judiciary of this country.

The way to protect independence in the long term is to make the positive case and rebut criticism by explaining to the public why the process is independent and how it works, rather than trying to say that people

should not be able to express that criticism, however unfounded it might be.

Q4 **Lord MacLennan of Rogart:** What is your input into the wider constitution? Are you interested in devolution, voting systems or Brexit? How do you feed in to that core of important subjects?

Elizabeth Truss: Yes, I am interested in all those things. I feed in specifically with respect to the judiciary and court system. The judiciary is an arm of the constitution of the state, so in that respect I consider myself part of those discussions with the Cabinet Office, which, overall, leads on the constitution. Of those three topics, Brexit is very much at the forefront at the moment, as well as devolution and the union. It is important to recognise that the Supreme Court is an institution of the United Kingdom, and that is another important aspect of our constitution. I am very much part of those discussions with other government departments.

Making sure that we have a good exit from the European Union and protect legal certainty and continuity is extremely important. We need to recognise that leaving the European Union is a major constitutional change and look at the role of the courts and judiciary in that respect, because at present the CJEU is the ultimate court of appeal. That will no longer be the case. We need to look at what the arrangements will be post leaving the EU. I am very much involved in all those discussions. As Lord Chancellor, I also talk to the judiciary and my Cabinet colleagues about those issues.

The Chairman: I should mention in passing that the Committee is engaged at the moment in an inquiry into the great repeal Bill and the implications.

Elizabeth Truss: I hope I have not got myself another invitation by saying that.

The Chairman: Now that you come to mention it—but there are issues there and we are trying to be helpful to the Government by publishing some thoughts on how the delegated legislation might be best handled.

Elizabeth Truss: I look forward to that with interest.

The Chairman: We very rarely comment on a Bill before it is published, but on this occasion we are doing so. We can see that you will be quite busy then as well.

Lord Beith: Can I turn for a moment to something that puzzled me when you implied that your quite proper defence of freedom of the press precluded you from saying some things in relation to what appears in newspapers in the course of defending the judiciary? It would of course be an inhibition of freedom of the press if you could stop the *Daily Mail* or some other paper from printing a headline, but if you turned round and said, "No, the Supreme Court judges are not enemies of the people; they are carrying out functions assigned to them by the constitution", that is

not an inhibition of the freedom of the press, is it?

Elizabeth Truss: I said that the Supreme Court judges are people of integrity carrying out their role; I have said that. But to comment or, as I was invited to do at the time, condemn what the press write would be the wrong approach for a government Minister.

Lord Beith: But if at some point newspapers, or fellow politicians for that matter, make statements about what a court is doing that do not take account of the court's constitutional role, is it not unavoidable that you have to explain what that constitutional role is?

Elizabeth Truss: It depends on the specific case. If you look at the history of this, there has been press comment on various court decisions. If it is a matter of contempt of court, it is for the Attorney-General to intervene, and if there are corrections to be made the Judicial Office's communications team can make those corrections.

As to the defence of the independence of the judiciary, it is my role to make the positive case and ensure that the Executive, in particular, are not criticising judicial decisions. Of course, there will be cases where the Government do not agree and take appeals forward, which is perfectly proper, but it is very important they are not attacking decisions made by the court.

The free press is very important, and there is a danger when government Ministers start saying things with the authority of the Government, which implicitly sits behind those Ministers. I think that is potentially dangerous, and I do not think that is the right route to go down in protecting the independence of the judiciary.

A good point was made by Lord MacLennan about morale. I do not know whether we will come to this subject, but I feel it is very important. That is where I see the issue in making sure we have a strong, independent judiciary for the future and deal with retention, recruitment, morale and the judiciary feeling valued. That is a better road to go down than trying to stop the press printing things.

Q5 **Lord Beith:** I do not think anyone is suggesting you should have that power. Turning to the powers that you do have following the changes that you described earlier, you have not yet had the opportunity to accept, reject or ask for reconsideration of recommendations for senior judicial appointments.

Elizabeth Truss: I have. I have approved the appointment of the Chancellor of the High Court.

Lord Beith: Has that exercise given you any view about whether these are powers that you will engage in the sense of bringing about different outcomes, or is it your view that you are simply overseeing a process that generally should be expected to deliver the results without your having to change anything?

Elizabeth Truss: From what I have seen so far, I think the system works pretty well. In the case of the competitions that have just come up, I have met the panel in all three cases and talked about what I think is important for those roles as far as the issues we have just been discussing are concerned. That seems to have worked so far. I have been in the job for seven months, so I have not seen the fruition of that process, but it seems to me that it works pretty well. I would be hard put to suggest an alternative process that would be better.

Q6 **Lord Beith:** Do you intend to issue any guidance about matters to be taken into account by the selection commissions for the new Supreme Court appointments? You have the power to issue guidance, and a number of appointments are coming up, as you have mentioned. Are you going to issue any guidance, or is there any need for it?

Elizabeth Truss: So far, the approach I have taken is to meet the convened selection panel to say to it what I think is required of the holders of those posts and to have a discussion with the panel. We have been able to come to an agreement. The process for me has worked so far and I have not felt the need to issue that guidance.

Lord Beith: Is that perhaps about identifying particular skills or specialisms that might be required in the court?

Elizabeth Truss: Absolutely, and putting it in the context of what needs to be achieved, whether it is through court reform, improving the morale of the judiciary or taking the Supreme Court through Brexit and what that will mean; so absolutely.

Q7 **Lord Norton of Louth:** Following the Article 50 decision by the Supreme Court, one senior MP called for parliamentary hearings to hear the views of Supreme Court nominees, rather like the practice in the United States. Do you see any merit in that proposal, or do you think the last thing we should be doing is emulating the experience of America?

Elizabeth Truss: The situation in the US is very different because it has a written constitution, whereas we have a sovereign Parliament and a Supreme Court whose job it is to interpret legislation. I do not see it as an analogous situation and am not in favour of pre-selection hearings, because I fear they would lead us down a more political route. We have all seen the cogs in motion. I think that in the week of the Supreme Court judgment the public were able to see the types of questions the Supreme Court justices were asking. The legal process was very helpful in explaining what it is they do. To me, greater openness about the selection process and work of the Supreme Court, which I think is an exemplar—all its hearings are broadcast—is a better way of making sure the court is accountable to the public for what it does, but it is wrong to compare it with other countries that have written constitutions.

I have said that, post selection, it is important that senior Supreme Court justices appear before parliamentary Committees and talk to the media and public, but I think it would muddy the waters if we were to have questions about the political attitudes of the judiciary.

Q8 **Lord Judge:** Lord Chancellor, you have been dying to get to morale, numbers and recruitment.

Elizabeth Truss: Yes.

Lord Judge: We understand it is proving difficult to recruit judges. Can we just consider the High Court, which is the fulcrum of the system? We understand that, in 2014-15, only 10 of the 11 vacancies in the Family Division could be filled, and last year there were six vacancies left in the Queen's Bench Division and two in the Family Division. This year, there will be applications at any rate for the appointment of 15 judges to the Queen's Bench, five to the Family Division and five to the Chancery Division because of the collision of retirement ages. How are we going to fill the vacancies with people of the requisite calibre?

Elizabeth Truss: As you said, I have been dying to get to this topic. It is very high on my list and the list of the Lord Chief Justice and chairman of the Judicial Appointments Commission, from whom I believe you are to hear next. There are various problems and I will just unpack what they are.

One is that, although there has been a long-standing attempt to get more solicitors to apply for judicial positions, we have not been successful with them getting through the process. I know that you are speaking to Lord Kakkar next. One issue is the way the process has worked. Of course, we want excellence, but people with perhaps less courtroom experience might be disadvantaged compared with someone with courtroom experience, even though they are of equal judicial aptitude. He has been looking at the process about how better we make sure it is open to all the talents in the profession. Eighty per cent of the legal profession is made up of solicitors, and if very few of them are getting to the High Court Bench we are missing out on a lot of talent.

Likewise, in my view, we are not seeing enough talented women get to those senior positions. Again, we need to look at the process and the pipeline through the Bar and the solicitors' profession. This is published data from one of the last rounds. If you look at the rate, 34% of applicants to be High Court judges were solicitors. Only 9% of those were shortlisted and only 4% were successful. It could be that there is an issue of calibre or process. That is one of the things the Judicial Appointments Commission needs to look at. Are we disadvantaging people who are potential High Court-calibre applicants through the process?

Lord Judge: If I may interrupt you, the evidence of the Ministry of Justice to the Senior Salaries Review Body in December 2015 suggested that the level of judicial remuneration was a factor.

Elizabeth Truss: If you look at the judicial attitude survey, certainly remuneration comes out as the number one concern.

Lord Judge: And morale.

Elizabeth Truss: And morale. The proportion of the judiciary who feel they are valued by the Government, for example, was 2% in 2014 and 2% in 2016, so that is clearly very serious. The percentage of those who feel they are valued by the senior judiciary was 33% in 2014 and that had gone down to 27% in 2016.

My point about the Constitutional Reform Act is that we need to make sure that the real feelings of value the Government have for judges right across the country are understood and communicated properly and effectively. It is partly about salary, remuneration and pensions, and that is one of the reasons I have asked the Senior Salaries Review Body to conduct a major review of it. We need to look at that, but ultimately the judiciary is part of the public sector. A High Court judge is paid £180,000. That is a good salary as far as the public sector is concerned. I am willing to look at salaries. I have said that to the Senior Salaries Review Body, but we need to look beyond salaries.

We need to look at the conditions in courts. Are they pleasant places to work? On working practices, do judges have enough support? Some judges tell me they feel quite overwhelmed by the amount of work. Some judges are working in very difficult environments. In some of our Crown Courts 50% of all the matters they deal with are sexual cases. Of those, a large proportion involve child sex abuse. That is very difficult for those individuals. I want to make sure that those judges have the support they need to do that work.

One thing we are doing in the Prisons and Courts Bill is giving more support from case officers so that judges have to do less of the administrative work and more of their time is freed up. The figures I have shown you are pretty poor; they will not be turned round in a year; this is like turning round an oil tanker. One of the reasons we have set out the Ministry of Justice's strategy for the next 10 years is to look to the long term about how we genuinely shift this and make sure that judges feel valued and have a clear career path. Some of the work Lord Kakkar is doing is about making sure talented circuit judges have the opportunity to go up the ladder and there is more direct entry into the High Court, particularly for talented senior solicitors and academics. We are looking at all those things, but turning that around will be a slow process. I acknowledge that it is a difficult situation at the moment.

Q9 **Lord Hunt of Wirral:** What is turning round is the percentage of female judges, up from 23% in 2012 to 28% last year, so there is slow improvement there. As far as black, Asian and minority ethnic judges are concerned, the figures are about 6% for court judges and 10% for tribunal judges. What do you think are the barriers, and how will we overcome them?

Elizabeth Truss: There are barriers in the system for both ethnic minority as well as female judges. If you look at entry into the profession, it is much higher than going through the pipeline. Part of the answer to it has to be working with the professions themselves. I would add to your list social mobility, because we also see very few state

school-educated judges get through to a senior level. I think it is part and parcel of the same issue.

One of the things I am working on with the Law Society and organisations such as the City of London Law Society is a working group that looks at social mobility and the solicitors' profession. I am also talking about this with the Bar Council because we need to look systematically at every point in the process and what is potentially holding people back from progressing.

- Q10 Lord Brennan:** Legal aid, sentencing and punishment of offenders are matters of ever-present concern to the public. In 2012, the coalition Government passed an Act about it. The following year Lord McNally, then a Minister in your Ministry, said that, as is normal, there would be a post-legislative review within three to five years of Royal Assent. The five years are up in a couple of months. Can you tell us when the first legislative review is to be published? He also said that, quite apart from that, "the Ministry of Justice will carry out a variety of exercises to monitor the impact of the Act from now on"—in other words, to see whether improvements were being made. Can you tell us the results of that monitoring?

Elizabeth Truss: We are committed to reviewing LASPO within the timetable, so this will start very shortly. We will be presenting a report to the Select Committee this summer on elements of LASPO. On the specific issue of legal aid, one of the points about the Prisons and Courts Bill is that it will change the way the system works. More things will be done online; there will be a more streamlined process. We will need fewer lawyers to help people navigate through the system, and, I suggest, more and early legal support and legal education, as well as more support in areas like representation, because at the moment a lot of legal effort is being spent navigating through a cumbersome and complex system.

We are reviewing legal aid this year and the results of the LASPO Bill, and that will be presented to the Justice Select Committee, but we are also working on a new Green Paper on legal support in the new system that will be more online, with virtual hearings and more efficiency in areas such as family justice. How do we do legal support in a better way? I am not saying there will be lots more money for legal support, but we can spend the current budget better by making sure that we are providing people with early legal help rather than it going through the system. We do not want simply to redo legal aid according to the system we have had before. We are designing a new system and want to look at a new legal support mechanism around that system. We have already been in discussions with the legal profession about its involvement in that work and thinking differently about how we can do it. It is very important.

- Q11 Lord Morgan:** I apologise for coming in late. A journey that normally would take half an hour took two hours. On legal aid, what you have said is very helpful, and we are awaiting a government review of the way it arises. Pending that, there have been criticisms from within the legal

profession as to the legal aid arrangements being socially inequitable and unfair to poorer people. The Bar Council is one body that has been outspoken on that. Have you felt it appropriate to make any response to those criticisms?

Elizabeth Truss: We are reviewing the legal aid changes and will be saying more about that in April. We are looking at their impact. As I said, we need to look at how we support people through the new system. The legal aid changes we have made needed to be made in my view—I remember speaking in the debate at the time—but now we are moving to a different way of doing things. We need to look at legal support in a different way. We need to improve legal education and people's understanding of the law, which I think would be very helpful. I am concerned about the issue of litigants in person and how better to help people taking cases to court. I think we can do much more in areas such as online triage to enable people to get a better service. I want to look at how we create a new system of legal support around a modern justice system that makes sure everybody has access to justice.

One thing that I think will be particularly helpful is that, with greater ability to do things online, more civil cases will be taken forward and more people will be able to resolve disputes that they have not hitherto been able to do because the system is so complicated. I think the simpler system will see more people being able to resolve their disputes, which is a good thing.

Lord Morgan: Is there any indication that that is having an effect? If so, it would be very welcome.

Elizabeth Truss: It has not been implemented yet; it is part of the Prisons and Courts Bill, but having a system that people can easily access online will improve access to justice.

Lord Judge: May I go back to the point you made about those entering the profession from disadvantaged financial backgrounds? How will we attract into the professions those from disadvantaged financial backgrounds when the legal aid system does not give them a living if they do crime or family work?

Elizabeth Truss: We need to attract people from disadvantaged backgrounds into all areas of the law, whether it is civil, administrative, crime or family law. All those things are important. We have a Green Paper on how we redesign the family justice system coming up, because I do not think we are doing things early enough. There are a lot of disputes in family law that could be dealt with better if they were resolved earlier. Likewise, as a big fan of the family drug and alcohol courts, I think there are big opportunities for us to intervene in families earlier in difficult situations better to protect children and support families.

The way I see it is that our redesigned system will cut out a lot of wasted money we are spending in helping people navigate a very complicated process and, instead, will make sure that lawyers will be used to best

effect, giving expert legal advice and representation. I hope that ensures we attract more people into the profession and those incomes are sustainable. It is very important to a healthy justice system that people are able to earn a good living working as a lawyer. It is a relatively unique situation where people start in private practice, but one of the places we want them to end up is in the judiciary, which is a public service. So, yes, it is in our interests to make sure that is the case.

- Q12 Lord MacLennan of Rogart:** Can you say where we stand on the Bill of Rights? You gave evidence to the Commons Justice Select Committee saying that you planned to repeal the Human Rights Act but not withdraw from the ECHR. More recently, the Government have indicated that the Bill of Rights has been delayed until after Brexit. Where do we stand now in this Parliament?

Elizabeth Truss: As I have said, Brexit is a huge constitutional change for this country. I think it would be wrong to try to put two constitutional changes through at the same time. The Bill of Rights remains a manifesto commitment. We remain committed to staying in the ECHR, but we will not be proceeding until we have been through the Brexit process and seen what the new constitutional landscape looks like, because at the moment there are various issues that need to be sorted out before we do that. My focus is on making sure the constitutional reforms that affect the judiciary as part of Brexit are done correctly, and that is what I am working on.

Lord MacLennan of Rogart: What do you advocate yourself in the way of development of the Bill of Rights?

Elizabeth Truss: We have a manifesto commitment to repeal the Human Rights Act and replace it with a British Bill of Rights that better reflects the tradition of liberties and rights in this country. Once we are through the Brexit process, we will bring forward a consultation detailing that. I cannot go into details on it at this stage.

- Q13 Lord Norton of Louth:** I was a member of the Joint Committee on the Draft Voting Eligibility (Prisoners) Bill. Some years have now passed since we reported, and we still have not had a government response. Will there be a substantive government response? Are the Government thinking seriously about prisoner voting rights?

Elizabeth Truss: We are considering this issue. We have made clear that there is no realistic prospect of bringing forward legislation to amend the Representation of the People Act 1983 and Parliament lifting the current ban on prisoner voting in the foreseeable future, but my colleague Sir Oliver Heald has been to Strasbourg to discuss this. The Council of Europe's Committee of Ministers will be reviewing this again in December 2017. It is a complicated issue. My colleague Sir Oliver Heald has been working on this, but, in my view, there is no realistic prospect of Parliament overturning its previous vote.

Lord Norton of Louth: What do you see beyond December once Oliver Heald has had the meeting? If we project ahead, what do you think will

come from that given what you have just said?

Elizabeth Truss: As I have said, it is a complicated issue. We are looking at various aspects of it, but we are not bringing forward primary legislation.

Lord Norton of Louth: When you say it is a complicated issue, it is politically problematic. I am not sure that the issue itself is particularly complicated, is it?

Elizabeth Truss: My colleague Oliver has been having some quite detailed discussions on the subject. As far as I am concerned, it is complicated, but the principle remains the same.

Lord Norton of Louth: But the complication, if you like, is negotiating a political minefield because, on the one hand, you have the Hirst judgment, but then you have the view of the House of Commons expressed through a declaratory Motion, and that is where you have the conflict, is it not?

Elizabeth Truss: I think there are some issues to work through on that.

Q14 **The Chairman:** We have time for one final question. Were you as surprised as I was to discover that you had responsibility for fixing a rather important discount rate?

Elizabeth Truss: It was brought to my attention that I had that responsibility. There are issues about the way in which the discount rate is set on an ad hoc basis. That is why I am going to be consulting soon on reviewing that process and looking at which body makes that decision, whether it should be an independent one and whether there should be a regular review process. It is important we consider that.

The Chairman: May I say that you have been extremely helpful and informative to us?

Elizabeth Truss: May I mention one more thing, Lord Lang?

The Chairman: Yes, of course.

Elizabeth Truss: There is one thing I did not mention that is quite important. I have sent the Committee a copy of the Ministry of Justice's strategy, which I hope outlines to people how I see the role of the Lord Chancellor fitting with the role of Secretary of State for Justice.

The other thing I will be doing is appointing a new director of the judiciary within my organisation to work closely with the Judicial Office and Judicial Appointments Commission. I feel that we need more senior fire power on this issue. Of course, the current director responsible for that is also responsible for Brexit, so he has quite a full plate. The issues we have been discussing today are extremely important, and I want to make sure that the department has significant resources focused on them so we can do proper analysis and understand what we need to do to

make sure we have strength in numbers in our judiciary. That is a big focus for me.

The Chairman: Thank you very much. It was very helpful to have that document and hear you elaborate it. This has been a very useful session, so we are very grateful to you. Thank you very much for coming.

Elizabeth Truss: Thank you.