

Justice Committee

Oral evidence: [The work of the Attorney General](#),
HC 462

Tuesday 21 July 2020

Ordered by the House of Commons to be published on 21 July 2020.

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

Questions 1 - 94

Witness

I: Rt Hon. Suella Braverman QC MP, Attorney General for England and Wales and Advocate General for Northern Ireland.

Written evidence from witnesses:

– [Add names of witnesses and hyperlink to submissions]

Examination of witness

Witness: Rt Hon. Suella Braverman QC MP.

Q1 **Chair:** Good afternoon. Welcome to this meeting of the Justice Committee. I welcome especially the Attorney General; thank you, Attorney, for coming to give evidence today. Before we start, may we go through the formality of the declarations of interests? I am a non-practising barrister and consultant to a law firm.

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

Andy Slaughter: I am a non-practising barrister.

Rob Butler: Prior to my election, I was non-executive director of HM Prison and Probation Service and a magistrate member of the Sentencing Council.

Maria Eagle: I am a non-practising solicitor.

Q2 **Chair:** Attorney General, it is roughly six months since you took office. Were you surprised to get the job?

Suella Braverman: Yes, in short. I was surprised and hugely honoured. I think it is fair to say that my mum and dad shed a tear upon hearing the news. It is a huge honour to be appointed by the Prime Minister to serve as the Government's chief legal adviser, to serve in a Government in which I have huge confidence and by which I am inspired. I really feel there is a huge opportunity for us, as a Government, to coin the phrase, to "level up" and make meaningful, positive change for our nation.

Q3 **Chair:** It is a role that has been held by F.E. Smith, Carson and many others. When the Prime Minister offered you the job, did you feel you had sufficient seniority in the legal profession?

Suella Braverman: That is a fair point to ask. I had practised for 10 years at the Bar. I felt I had acquired quite a few grey hairs in that time, and quite a few battle scars.

I very much enjoyed my time at the Bar. I was a specialist in planning law and judicial review. Planning law is a great example of the tension between the state and the individual. I have fond memories of trekking all over the country and taking part in big planning inquiries, small planning inquiries and in town halls for residents associations, mainly for local authorities with developers. It was a great experience for me.

I served on the AG's panel of Treasury Counsel for five years, which opened my eyes to the realities of Government decision making. I represented mainly the Home Secretary in immigration cases, in the High Court and in the tribunal, a bit of work for the MOJ on prisoners and a random case for the DFT as well.



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I think that set me up well for the work I am involved in now. I am very glad that the shadow Attorney General, Lord Falconer, welcomed my appointment.

Q4 **Chair:** Indeed.

Given that you have had six months to get established in the post, what are your priorities? You must have thought about it. What do you want to do with the job?

Suella Braverman: Definitely. The role of AG is wide-ranging. You can come into contact with all Government Departments and all Government agendas. I would describe my priorities as threefold.

First, as is probably the case for every Minister right now, it is about supporting the Government in their response to covid. I am sure this will be an overarching feature of Government work for some time. I will not be an exclusion to or an exception from that. Whether that is in my advisory capacity or on the more policy-related aspect of supporting the criminal justice system as we emerge from covid, that will be a large piece of ongoing work.

Secondly, the Government are halfway through the transition period. We are working to secure a good free trade agreement with the EU as part of our new future. I am very supportive of that agenda and it is a priority for me.

Lastly, I am focused on three goals relating to my superintendence of the Crown Prosecution Service. First, I support cross-Government efforts to improve outcomes for victims of rape and sexual violence, which is acknowledged as a challenge by many organisations and the Government in terms of convictions and timely resolutions; secondly, reforming and updating the rules relating to disclosure and the handling of evidence in this digital age; and lastly, supporting the CPS to increase its resources and workforce. I am very glad that the CPS is happily on track to increase its number of prosecutors.

Q5 **Chair:** The Attorney is unique in a sense, as you are both a lawyer and a politician—even the Lord Chancellor does not have to be a lawyer anymore, although the current one is. When you are sitting in Cabinet as Attorney, which are you first—a lawyer or a politician?

Suella Braverman: That is a great question. I think the tension is running through this role most of the time. There are definitely certain areas where the AG occupies a quasi-judicial role. It is very clear that politics must stay out of any decision that you are making. There are other areas where your political nous and political antenna are very useful.

There is no straight answer to your question—I am both. I do feel I am occupying that dual role: law officer, abiding by the rule of law, being the custodian of legal advice, and being full and frank in the way every



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lawyer knows how to be, but also being mindful and aware of the political dimension.

- Q6 **Chair:** If push ever came to shove—it may never, but suppose it did—between the interests of party and the interests of the rule of law, where does your primary duty lie?

Suella Braverman: I think the rule of law, definitely. That was made very clear to me when I took my oath of allegiance and was sworn in as Attorney General. This is an ancient role, and that oath makes it very clear that every lawyer has that abiding duty at the forefront of their mind: their first duty is to the court. I am a practising barrister. I am a lawyer in this role, and therefore my first duty will always be to the truth and to the rule of law.

- Q7 **Chair:** You see yourself as bound by exactly the same standards and codes of conduct as any other practising members of the Bar in your work.

Finally, you share some of the burden of the work with the Solicitor General, who takes similar oaths, but a slightly longer one, as I recall. How do you split that up in practice between yourself and the Solicitor?

Suella Braverman: And of course there is the Advocate General for Scotland, Lord Keen. There are three Law Officers in the Department.

Chair: Mr MacAskill won't let us forget that.

Suella Braverman: We are a merry team. I generally attend Cabinet meetings. I have a standing invitation to attend Cabinet. I attend quite a few and take part in several Cabinet Sub-Committees—the National Security Council, the EU Strategy Committee and various Covid-related Cabinet sub-groups—and I provide advisory assistance to Government Departments.

The Solicitor General does the bulk of the casework, if you could describe it that way. A lot of the unduly lenient sentencing referrals come on to his desk and occasionally come on to mine if there is a conflict. He also supports in advisory work. On occasion, we have tag-teamed and done a duo, working on projects and matters together, which has been very enjoyable.

- Q8 **Chair:** You are right. In recent years the Solicitor has usually been the person who goes to court, mostly on ULS matters, with one or two exceptions. Do you envisage yourself appearing in court on behalf of the Government, as I think your predecessor but one certainly did?

Suella Braverman: I would really love to. I imagine that the occasion when the Attorney General does appear in court—we are probably in the midst of a crisis or there will be a very high-profile matter being resolved in the courts. That aside, I love being an advocate. I love putting on the wig and gown.



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Chair: That is helpful.

Q9 **Maria Eagle:** Minister, you are the Government's chief legal adviser and head of the Law Officers Department. Do you accept that this presents you with a particular responsibility to uphold the rule of law and protect the independence of the police and prosecutorial authorities from political interference?

Suella Braverman: I do. Yes, that is a great summary of the role of the Law Officer and the Attorney General. The statutory term is the superintendence of the CPS, but it does mean that the CPS is operationally independent of the Attorney General, or of any other Minister for that matter, and rightly so. That independence is fiercely guarded.

Q10 **Maria Eagle:** Do you agree that tweeting support for someone accused of being a lawbreaker in the middle of a police investigation—seemingly for political reasons and at the behest, it seems, of Tory Whips—undermines legal process and may be seen to compromise the independence of that process?

Suella Braverman: No. I think it is clear for anyone to see that I did not offer any legal view. I do not think a tweet of some 10 words can really be described as a legal opinion. I am sure the lawyers around this room are very familiar with what a legal opinion looks like and how long it often takes to read them.

I do not think there is any question that I offered a public legal view. As I said, I treat the independence of the CPS, operationally and in other ways, extremely seriously. There is no question of my having interfered with or influenced any decision made by the CPS or the police on that matter. Again, I think it was plain for anyone to see that my slightly banal-worded tweet was just a welcoming of the clarification.

Q11 **Maria Eagle:** With respect, Minister, this is not about whether you offered a legal opinion. The tweet that you sent, from somebody occupying your office, effectively appeared to exonerate this individual prior to any decision being made by the police about whether to charge an offence. If that is not the definition of political interference with due process, what is?

Suella Braverman: Well, I am not sure. We obviously have different ideas of what political interference is and I think, as I said, that a tweet of some 10 words can hardly be described as political interference. It was a welcoming of the clarification. It was in no means intended to be a legal view and I do not think it compromised a legal view. There is not much more I can say other than repeating myself on this matter. I think that is really all I have to say on the matter.

Q12 **Maria Eagle:** When the Member for Edinburgh South West asked the Lord Chancellor at Justice questions on 9 June why he had not joined in the general Cabinet-level tweetathon—which you did join in, in favour of



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a particular individual—he said: “The hon. and learned Lady will know that I refrain, in correspondence and, indeed, in statements or questions in the House, from talking about individual cases. I remind her and the House that, as Lord Chancellor, I will always act in a way that is consistent with the rule of law. The independence of the police and prosecutorial authorities has to be paramount, and that is something that I will absolutely uphold. My constitutional duties come first, and everybody within Government knows that full well.” That is what he said. Why did you not take the same approach, Minister, given your role in Government?

Suella Braverman: I am at risk of repeating myself for the third time, so I am a bit conscious of what really is of merit here. The Lord Chancellor is responsible for his tweets; I am responsible for mine.

Maria Eagle: Thank you, Chair. That is all from me at the moment.

Q13 **Chair:** I suppose somebody might say the test is this: suppose a junior Crown prosecutor picked up the file in a case—any case—in which the Attorney had perhaps tweeted a comment even, not an opinion. Would it make it harder potentially for that Crown prosecutor to come to a view that might be different from that which might have been in the Attorney's tweet? Would you accept that is an issue that could—

Suella Braverman: My view of the events was that it was an attempt to politicise something unduly and I regretted that. I really have a lot of confidence in the expertise, professionalism and judgment of those on the frontline who are dealing with these matters and who are in full knowledge of the facts, whether it is the police or the prosecutors. I do not think that they would be influenced by a tweet that is in the form that I issued.

Q14 **Andy Slaughter:** Good afternoon. Forgive me, but we want to push a little further on this. My jaw did rather drop, cartoon style, when a few moments ago you said you did not offer a public legal view on this. If I may remind you, you said: “Protecting one’s family is what any good parent does. The @10DowningStreet statement clarifies the situation and it is wholly inappropriate to politicise it.”

The No. 10 Downing Street statement that you were “tweeting”, or part of it, said: “Mr Cummings believes he acted responsibly and legally.” You, as chief legal adviser, were endorsing that statement—supporting it—which said that Dominic Cummings had acted responsibly and legally. How can you therefore say that you are not offering a legal view?

Suella Braverman: Again, I am at risk of repeating myself. I do not believe my tweet constituted a legal opinion. It was a welcoming of the clarification and that was the purpose of the No. 10 statement. I was very disappointed that the matter was being politicised and I did not think that was appropriate. We are going to go round in circles and I do not think there is much to be gained from it.

Q15 **Andy Slaughter:** I am sure you would want to move on from this. You



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answered it in, if you like, the political heat of the moment. We are some weeks away from that now and we are trying to look at the legal status or implication of it. You are the Attorney General. You superintend the Crown Prosecution Service. You do have a locus in individual cases from time to time. You are the senior person in relation to the Bar. Everything that you say and do, including a tweet on social media—it does not matter what the length of it is—has implications in a way that those of even your Cabinet colleagues, and possibly the Lord Chancellor, do not.

Let me put it to you again. Do you now regret having endorsed that No. 10 statement that said Dominic Cummings acted legally at a time when it was perfectly possible that legal proceedings could have been taken against him?

Suella Braverman: I don't regret it. No.

Q16 **Andy Slaughter:** You think that was the right thing to do and you would do that again.

Suella Braverman: I don't regret tweeting in the way that I did.

Q17 **Andy Slaughter:** If we had another circumstance in regard to another colleague of yours, or simply somebody who you thought was in the right, where there was an issue as to the legality of something they had done, you would be happy to give your opinion through social media whether that was something responsible and legal.

Suella Braverman: I am not going to speculate on future tweets; I am only going to comment on past tweets, and even that seems a bit of overkill. I have made it clear that I was not offering a legal opinion. I do not regret tweeting in the way that I did. It was a welcoming of the clarification of what was a needless politicisation of an issue.

Q18 **Andy Slaughter:** Two more quick factual points. It certainly has been reported by respectable journalists—Sam Coates was one—that at Cabinet you also indicated that Dominic Cummings had broken no law. Is that right? The matter was discussed at Cabinet. Did you give that indication to Cabinet?

Suella Braverman: Surely you must know that you are asking a question that I cannot answer.

Chair: You cannot say or cannot confirm or deny what advice the Attorney General—

Andy Slaughter: You could say in theory. You could say theoretically whether you would—

Chair: I think probably we are getting to a stage where we cannot ask the Attorney to go beyond the—

Q19 **Andy Slaughter:** Let me ask one more question. We will move away. We are not getting any further on the legality of it.

Reputationally, there were a lot of people who commented, not all of



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them politicians. I want to read you one quote from Philippe Sands, who is one of the foremost jurists in the country. He said: "The absolute integrity of an attorney general is the prerequisite of a functioning democracy. When doubt is cast over the integrity of an attorney general, that person has to go. She"—that is you—"must have known that the possibility could not be excluded that Durham police would have been involved. She has completely extinguished with a single tweet her integrity. She's the adviser to the prime minister on matters of law and she therefore needs to be absolutely scrupulous to maintain an independent position on legal matters." What do you think when you read comments like that?

Suella Braverman: Obviously, I disagree with that. Again, I disagree with the proposition that you are making to me. I do not think it was a legal opinion in any sense of the word. I do not think it was outside the remit of what I can and cannot do or can and cannot say. I do not think that it breached any constitutional boundary. I do not regret what I did and I do not think there were any serious implications.

Q20 **Andy Slaughter:** You would do it again in similar circumstances.

Suella Braverman: I am not going to speculate on what I will or will not do.

Chair: I understand. You have been clear about that.

Q21 **Kenny MacAskill:** I think you mentioned briefly the Advocate General. Will you explain your role in reference to the Supreme Court from the Scottish and Welsh Parliaments.

Suella Braverman: Yes, thank you. The Law Officer's role in respect of devolution is, namely, to give legal advice to UK Government Departments on devolution matters and specifically in relation to our attendance at the Parliamentary Business Legislation Committee, PBL, where all Bills are discussed. In addition, we scrutinise all legislation produced by the devolved legislatures in accordance with our role in considering whether to refer to the Supreme Court legislation that we deem to be outside competence. That is termed as policing the boundaries of competence.

Chair: Thank you very much. Do you have any follow-up to that, Mr MacAskill? It looks as if you are happy with that answer. We are now going to move on to the Government's latest response to covid.

Q22 **Andy Slaughter:** I have just a couple of questions on the covid crisis. What role have you played in overseeing the Government's legislative response to covid-19?

Suella Braverman: It almost goes without saying, but the challenges presented by covid to the Government have been unprecedented, very complex and required a response at pace. There has been a cross-Government effort, led by many policy-owning Departments, many



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agencies, organisations, and the devolved Administrations, working under immense pressure to respond to the changing impacts of the coronavirus.

As I have just said, Law Officers sit on PBL and we work with other Departments on their legislative proposals in that forum. Again, I am afraid I will not be able to divulge too much detail about the substance of what I may have advised on or otherwise on that matter.

Q23 **Andy Slaughter:** I think we are more interested in the way in which it is done, because obviously it is a crisis and emergency. There had to be an instant response. We have had this interesting mixture of guidance and legislation. Do you want to explain how that works and whether you think that has worked well?

Suella Braverman: First of all, it gives me an opportunity to pay tribute to the Government Legal Department, another organisation that the Attorney General superintends. Many hundreds of Government lawyers installed in Government Departments have been at the coalface of the challenge of providing legal advice at pace in often difficult circumstances. I want to take this opportunity to thank them.

In terms of the framework, essentially, we have the Coronavirus Act, the overarching primary legislation. It is lengthy legislation—102 sections and 29 schedules, I think—covering a range of powers afforded to the Government, from virtual courts, to cancelling the elections, to school closures, and that really was the meaty legislation that was passed at pace. Under that, of course—

Q24 **Andy Slaughter:** I am sorry to interrupt, but I think we understand the parts of the jigsaw. We are asking whether they work, and the test is whether they are comprehensible to the public. Are they comprehensible to you? Do you know how many people you are allowed either under legislation or under guidance, or both, to have at your house at the moment?

Suella Braverman: I am just explaining the framework. We have the Act and I want to answer your question specifically as well.

Under the Act, we then have the regulations. These have been passed or introduced under the 1984 public health Act, which provides the legal basis, and that envisages the emergency procedures; it envisages a pandemic in hypothetical terms, and there is a swathe of regulations, as you will know, covering the issues that you have just referred to: the restrictions on individuals, notably different regulations between England, Wales, Scotland and Northern Ireland. We have the main regulations on the closure of businesses.

We have the regulations on gatherings. The only restriction the regulations now prescribe is a limit of 30 people on indoor or outdoor gatherings. They give the Secretary of State a power to restrict public access to particular places. There are regulations on face coverings on public transport, and on people coming from overseas and the 14-day



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quarantine and isolation. There are regulations on Leicester and local lockdowns. There were regulations made last week providing powers for local authorities to issue directions.

We have the body of more specific regulatory measures, and then we have guidance. As you will know, the guidance is meant to be a user-friendly gov.uk-sourced piece of information for members of the public; it is not legally enforceable. All that is legally enforceable is the Act and the regulations, but the guidance is there to assist people.

Q25 **Andy Slaughter:** I will just give one example I have been working on today and yesterday trying to help out my constituents. Guidance that was modified last Friday says it is against the law for gatherings of more than 30 people to take place in a private home. It says a meeting of 30 people indoors is allowed in permitted venues. It does not define what a permitted venue is. It then talks about what is permissible from 1 October, which is, for example, that exhibitions and conference centres can show small groups around facilities to enable Government-backed pilots. There is no definition of a Government pilot. It then says that from 1 October it is expected that all events of all types can take place, subject to another whole raft of regulations. How are people expected to find their way around that? Is that what you call user-friendly?

Suella Braverman: I think you underestimate the ability of the British people, actually. I think there has been a remarkable level of compliance and following of the rules. It has not been easy, I agree, because we have had an initial step of unprecedented restrictions, and then a gradual emergence from those and loosening of the restrictions, but I think the public information campaign in various media has been very effective at informing people.

That is borne out in the figures and the data, essentially. Generally, there has been very good compliance and following of the rules. Yes, of course there will be people who have questions. There will obviously be some concerns, but I think on the whole, generally speaking, the guidance has been pretty clear.

Andy Slaughter: I urge you to go back and have a look at that again. When the Health Secretary was asked in a statement yesterday why unlimited numbers of people were able to go into pubs, but only 30 people were allowed to go into an organised event, his response was, "Well, you have to socially distance in pubs." Of course, you have to do that at organised events. Indeed, there are codes to ensure it at events that there are not in pubs. If the Health Secretary does not understand how those regulations work, I suggest that possibly you are wrong about everybody understanding them.

Q26 **Chair:** That is probably a suggestion rather than another question. To be clear, we assume your Department has input into the drawing up of the guidance, or do you not?



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Suella Braverman: As you would imagine, we support Government Departments on their legislative proposals.

Q27 **Chair:** But it comes from the policy department, essentially.

Suella Braverman: Yes, it will be led by the various Departments. It would not originate from the AG.

Q28 **Maria Eagle:** I sat on an SI last week that was implementing regulations that had been announced about a fortnight beforehand. Between the announcement of the regulations that I sat on last week, and the scrutiny that Parliament was able to conduct of them, the Prime Minister had made a further two announcements making substantial changes to the law and the guidance and the regulations that were going to apply. We were being asked, as parliamentarians, to scrutinise regulations and rules that had been changed substantially twice between them being announced and our scrutinising them.

It is the very definition of a waste of time, I sometimes think, scrutinising something that has already been superseded twice. Do you think, Minister, that there has been a sufficient balance between the requirement and the necessity of parliamentary scrutiny of these regulations and the need to legislate quickly and make changes quickly?

Suella Braverman: It is a fair question to ask because, of course, as everyone knows, the Government were responding to an unprecedented emergency. It is very easy and quite tempting to look back with hindsight, three or four months later, and say, "We should have done that or we should have done that." In the moment when this complex threat was really at grave levels, the Government needed to move at pace, and one way they did that was passing the legislation, the initial Act. That went through Parliament quickly, but it was nevertheless debated and there was scrutiny by parliamentarians.

A review is injected into the process, into the Act, at various intervals. The next one for the Act is coming up in September. It obviously is subject to a deadline. It is a strictly time-limited piece of legislation and I think those are sufficient checks and balances given the circumstances. I think it was essential that the Government moved quickly, and there is always going to be a challenge in achieving speed over quality.

Q29 **Maria Eagle:** The SIs implement the changes in rules and regulations. Parliament last week, in the SI that I sat on, was scrutinising a set of regulations that had already been superseded twice by the announcements made by the Prime Minister. Do you really define it as scrutiny when the regulations have not only been superseded once but the subsequent regulations that have not been scrutinised by Parliament at all yet have been superseded again? Does that really count as parliamentary scrutiny, Minister?

Suella Braverman: The regulations have had to be made quickly. I think you understand, but I will make it clear. The regulations are a response



to changing scientific advice and changing decisions at the political level. We cannot plan when the scientists are going to assess the evidence in a different way. We cannot plan or predict a timescale on how the virus is spreading.

Scientists and the senior decision makers are responding in real time to the changing events and the facts, and rightly so, and that is why the message emerging from the Government is incremental. They were responsive to the changing events, which are unplanned by definition. It is because of that that we are getting the regulations changing in the way you describe.

It is not necessarily the most convenient way of doing things, but it is the reality of the situation within which we find ourselves. It is the best way to enable scrutiny—vital scrutiny that you are taking part in at the Committee level in Parliament—but also ensuring that there is easing of the restrictions or a change to the restrictions so that businesses can start opening their doors, schools can start opening and all our lives can slowly but lawfully get back to normal.

Maria Eagle: I don't want to flog a dead horse, but the fact is that there is no scrutiny of the regulations while those regulations are actually in force. The ones that I was dealing with have been superseded twice. It is not my definition of scrutiny, but I will leave it there, Chair.

Chair: It is a comment to the jury, perhaps; fair enough.

Q30 **Rob Butler:** Attorney General, we have seen the CPS and the police being very fleet of foot in implementing both the new laws and indeed the guidance that flowed from them, but we know there have been a few hiccups along the way, particularly with the interpretation of some of the regulations. Do you think sufficient clarify and guidance was provided to the CPS and the police, albeit with the benefit of hindsight?

Suella Braverman: Again, when you look back on things, we have the luxury of hindsight now, and it is easy to forget the complexity, the unknown, the level of challenge, the extent of the restrictions, and the urgency for measures to be put in place. On the whole, I think the CPS and the police have responded very well generally to the covid crisis.

In relation to the specific point you raise on charging decisions and interpretation of regulations and Acts, yes, there was some confusion at the beginning—the DPP, the CPS and various authorities admit that themselves—but they were relatively few in number compared with the correct number of decisions, and there has been a very effective response to those few errors. Additional guidance has been issued and commitment to review on a continual basis has been instigated.

Q31 **Rob Butler:** One of the main means used by the police to deal with the contraventions of the regulations was fixed penalty notices. Do you have up-to-date figures on fixed penalty notices issued and perhaps those that entered the court system?



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Suella Braverman: Yes, I do. You wrote to me previously about this very subject, and at the time of my response I was not in possession of the data, so I promised to provide it to you today. The NPCC, the college, have now provided these figures. From 29 April to 29 June 2020, the body responsible for administering fixed penalty notices at CRO has sent 15,591 fixed penalty letters. The breakdown is: in 6,298 cases, about 40%, payment has been made; in 197, about 1.3%, notices are being contested; in 2,996, approximately 19%, defendants have been issued with non-compliance letters having failed to pay within the 28-day limit. Those percentages do not add up to 100%, the sharp ones among you will note, because some letters remain where the outcome is not known.

Q32 **Rob Butler:** Do you know when we might have an update on those?

Suella Braverman: I am afraid I do not, but I can look into it and get back to you on it.

Rob Butler: That is all for now. I will come back later on the CPS.

Q33 **Paula Barker:** Prior to the covid crisis, we know that prosecution rates for domestic abuse had fallen by nearly a quarter, and, sadly, we know only too well that during lockdown domestic abuse has risen quite significantly. What is the CPS doing to improve the rate of prosecution of domestic abuse offences?

Suella Braverman: I have to say at the outset that domestic abuse cases are some of the worst out there. They are heinous crimes. The victims need as much support as the system can provide them with, and perpetrators must know that they will face justice and the Government take this very, very seriously. I was pleased to be able to attend the Prime Minister's hidden harms summit a few months ago, which focused on this very issue, when he heard from victims and frontline practitioners about the reality of what is happening.

There are two issues here. First, we have to be clear on the data, which is that, yes, there has been a noted rise in the number of calls to helplines. That has been reported in several forces. However, that is not necessarily reflected in the number of pre-charge receipts from the police to the CPS. That is for a few reasons. The data that we have from the CPS is not contemporaneous and does not reflect the Covid or post-Covid timescale. In the most recent CPS data, we have a fall, actually, in the number of pre-charge receipts relating to domestic abuse from the police to the CPS in the third quarter of 2019-20—so something needs to be examined there.

There has also been a notable rise in the police reporting of domestic abuse matters. The police have reported an 8% increase in domestic abuse incidents. What is interesting about that figure is that their reporting of domestic abuse incidents includes crime and non-crime, and, anecdotally, the police have reported a rise in non-crime domestic abuse incidents such as a parent not returning children in child custody or a



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verbal altercation where they might not necessarily proceed to qualify as criminal actions.

The point I am making is that it is possibly a little too early to say what the effect of covid has been on domestic abuse complaints in the criminal justice system.

Notwithstanding that, however—this is the second point I want to make—the CPS has implemented measures that do reflect the importance with which it treats such offences. The interim charging protocol issued by the CPS makes it clear that domestic abuse cases in which the suspect is in custody are to be defined as immediate; that is their highest priority of case and will receive the swiftest response. All other domestic abuse cases in which the suspect is not in custody are deemed to be high priority. The guidance is clear. Those cases must be given the highest priority after the immediate cases.

That is a very strong statement in reflection of the importance that domestic abuse rightly occupies in the CPS operation.

Domestic abuse cases will also continue to be afforded a higher priority as social distancing restrictions are eased, and that has been reinforced in published guidance for judges about listing in the magistrates court issued by the senior presiding judge on 14 April. Those are two concrete measures that underline the importance of dealing with domestic abuse.

Lastly, I would say that I am very proud that this Government have now delivered the Domestic Abuse Bill in the Commons. That is a landmark piece of legislation and, I believe, a game changer for victims of domestic abuse. That will go far in ameliorating the position of victims as they go through the criminal justice system.

Q34 Paula Barker: You said the CPS data is not contemporaneous. If it cannot get correct and specific data, how is it going to improve the rate of prosecution?

Suella Braverman: This is about collection of data. We have data that is up to date to the third quarter of 2019-20, which predates covid. That, to my mind, is up-to-date data. It is just not relevant to your question on the link between covid and domestic abuse, and it will take some time for that data to filter through the system. I am confident that, once it has been exposed, the CPS and the police will examine it, and it is already taking the issue very seriously.

Q35 Paula Barker: I mentioned the increase during the covid lockdown. The other part of the question was that the prosecution rate prior to the lockdown had actually fallen by almost a quarter. What do you think the reason for that is, and how can we ensure that we get improvements in the rates of prosecution? I understand what you are saying about it being a high priority, but actions speak louder than words, and for any victim of domestic abuse, whether it be male or female, it is a really difficult place



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to be in and they have to have confidence that, if they do report, the full force of the law will be used to support them.

Suella Braverman: I agree with the sentiment underlying your question. I think there is an issue there of providing more support for witnesses. We need to address the withdrawal rates by delivering a high quality of service for victims, and I know that the domestic abuse best practice framework seeks to address that issue head on. We need to ensure that there is the support of an independent domestic abuse adviser—an IDVA—for those at highest risk. We need to ensure that they are properly trained. We need to ensure that they have access to the right service, special measures and pre-trial court visits. The CPS has developed troubleshooting guidance for the police and prosecutors, which incorporates best practice to better enable it to support victims through the criminal justice process.

I think you highlight an important point. We do need to ensure that victims do not fall away through the process; that they do not lose confidence that it has not dragged on for far too long; and that they feel adequately supported. Can we do more? Of course we can, but there is a huge amount of effort going on in this regard already.

Paula Barker: Thank you.

Q36 **James Daly:** I want to ask two questions in respect of domestic violence based on my own experience of the courts. The first relates to the point raised by Ms Barker. I would like your comments on the charging standards of the CPS regarding domestic violence offences. In my experience and yours of the court system, domestic violence cases tend to involve only two people together in an enclosed space. There tends not to be a great deal of other evidence; in some cases there is, but in many cases there is not. In many cases I dealt with there was no medical evidence, or anything like that. I wonder whether the charging threshold of the CPS is set at a level whereby some complaints, which are quite unique to a number of offences that are classed as domestic violence, unfortunately fall under that standard, and whether for domestic violence cases we should look at the charging threshold and how the CPS invokes it.

Suella Braverman: I think that question could be asked about a whole range of issues. It throws up so many questions that hopefully we will get a chance to talk about, like evidence and how we handle that evidence through the process. There is a real challenge in getting the right evidence that has been fairly acquired and is valuable to the court in a trial.

Q37 **James Daly:** Before we go into that, one of the characteristics of domestic violence cases is that at the low end of the seriousness spectrum it is one person's word against another. With the charging threshold, certainly at the moment it would appear you are very unlikely to be charged on the basis of one person's word against another.



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Personally, I do not think that is correct. An assessment should be made of the credibility of the complainant rather than whether you can get over that barrier. Do you agree with that, or does it need further investigation?

Suella Braverman: The CPS will apply the full code test. It will assess the evidence. Is there a realistic prospect of a conviction? It will look at the evidence. This question has been raised in the context of rape. There has been an assertion that the threshold test has been raised and that that is why there are fewer charges and prosecutions by the CPS. That assertion has been rejected. There was a recent High Court challenge where essentially that was refuted by the court. The inspectorate's report has also found that in 98% of cases the right decision is made.

Q38 **Chair:** To be clear, that is Her Majesty's Crown Prosecution Service Inspectorate.

Suella Braverman: Yes, exactly. You are asking whether the threshold test is right.

Q39 **James Daly:** I am saying that is one of the explanations for the difference between the reports of domestic violence and the actual matters being prosecuted through the courts.

Suella Braverman: There is a public interest test to apply, and that will be a decision for practitioners on the ground. There is a whole range of complex reasons why victims or complainants will fall away from the process. Some of them should lie at the door of governmental organisations: the prosecuting authorities, the police and those in charge of trying to secure a just outcome. Some of those reasons are on the other side as well. There are lots of reasons why people might not pursue their complaints.

Chair: I understand. I am keen that we return to issues around rape and serious sexual offences later, but I would like to wrap up the issues around the covid-19 situation and the rest of the system that is within your responsibility before we move on to some other specifics, because I know we do not have an infinite period of time.

Mr Slaughter is going to come back to some of the broader aspects of the criminal justice system and covid, and then we will go into some of the other specifics.

Q40 **Andy Slaughter:** When the Lord Chancellor was in front of us a few weeks ago he seemed quite gung-ho about introducing proposals to curtail trial by jury. He said there would need to be legislation before the summer recess, which obviously has not happened. Have you now abandoned that as one of the methods of tackling the backlog of cases?

Suella Braverman: The Lord Chancellor and I regularly discuss the ways to deal with this backlog, and it is going to be a feature of our work going forward. There are lots of options on the table, but it is clear that the



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right to trial by jury is not going to be compromised and will remain intact.

- Q41 **Andy Slaughter:** That is reassuring, if that is what we are being told today about either-way offences being tried by magistrates. Therefore, it is the Government's view that at the moment, given the response to the current crisis, they are not going to adopt that.

Suella Braverman: That is my understanding.

- Q42 **Andy Slaughter:** Going back to other methods of reducing the backlog, we have heard about extra hours, extra sitting days and more courts. Ten Nightingale courts have been announced this week. Will you bring us up to date in relation to all those measures? While the 10 courts are welcome, we are aware that almost 300 courts have closed over the past 10 years. Other courts that have been closed could be looked at. Certainly, 10 do not seem enough to get on top of the backlog.

What are your plans for more courts? Hammersmith court has been sold but is still sitting there empty after two years. I am speaking against its demolition tonight at the planning committee. There must be other examples of courts you can use. That seems a very sensible course, so how much more are you doing on that?

What are you doing about sitting days, which the Committee is also going to look at? More controversially, are you thinking of extra hours? Quite a lot of lawyers think they work pretty long hours at the moment with preparation and after-court work. How do you see that very substantial backlog, even before covid, being tackled?

Suella Braverman: There is a lot in that question and you may need to remind me of the things you asked. I was very pleased to hear the Lord Chancellor's announcement of what he calls the Nightingale courts—I like to call them Blackstone courts—and that is a big step forward in increasing court capacity as we deal with the backlog going forward.

A lot of progress has been made to ensure that cases can flow through the system despite the covid prevention measures. I have mentioned the interim protocol. I also have to mention the digital capabilities that have been harnessed in thousands of cases and have made a real inroad. I think that overall England and Wales have performed relatively well compared with other countries. We did not have a wholesale shutdown of all our courts during the pandemic like other countries did. Some courts did close and we had to stop new jury trials. They resumed in May, far sooner than other countries resumed their jury trials. There has been some good progress so far.

Lots of proposals are on the table. The Nightingale courts are a welcome step in increasing the capacity. The funding announced by the MOJ, in rebuilding the court estate, renovating our courtrooms, building more court cells, ensuring that more courtrooms have digital capability and refurbishing many courts, represents the biggest investment in our courts



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in 20 years. I think there is some really good news in Government commitment to increasing capacity and rebuilding our ability to deal with this backlog.

Lastly, on digital innovations there has been increased use of video links and cloud video platform. There has been remarkable uptake of the use of video technology. I had the pleasure of zooming into a hearing in the magistrates court in Bristol. It was very interesting to see how it is done pretty much remotely. The judge was in the courtroom; the defence lawyer was in the room; the defendant was in the custody suite in the police station with a police officer; the prosecutor was zooming in from his home, as far as I could tell; and counsel zoomed in from another location. It was a really innovative way of delivering justice in these circumstances.

- Q43 **Andy Slaughter:** The Crown court backlog in April just gone was 40,500 cases, up from 33,700 the year before. That is a huge backlog. I appreciate all the things you have said, but it does not sound like a strategy that is going to address that. Do we not need more courts, not just an extra 10? We need the existing courts to be used better and more judges. Do you have a coherent strategy whereby the 40,000 will be 35,000, then 30,000 and 25,000 over set periods of time?

Suella Braverman: HMCTS has published its courts recovery plan, which is very comprehensive, wide-ranging and includes a lot of the proposals, legislative and non-legislative. That includes the things I have mentioned, like pop-up courts, more tech on the frontline and extending the sitting day. I know there is controversy around that among some practitioners. I think it would be welcome. We have a very big backlog and we need to take radical steps. Tweaks around the edges will not do. If we are to get serious about getting the flow up and reducing delays in the system, we need to take big steps forward. Speaking from my experience as a barrister, I would have jumped at the chance for any work, especially in the early days, regardless of the time it was being held and the location.

- Q44 **Chair:** There is a lot we need to get through. I understand the point. Is there a little bit of misunderstanding around some of this? Some people talk about extended days. Are we talking about the court sitting longer hours to deal with the same case, or a shift system where the courtroom is in operation with a judge, jury and lawyers dealing with Case A, they swap over, and the late shift comes on and does Case B? Of those, what exactly is proposed?

Suella Braverman: All of it is still in flux. I have to say this is very much a matter for the Lord Chancellor and judiciary. I do not want to tread on any terrain that is not for me to speak to. I do not think I can say more, but there is still a lot of flexibility on this issue and discussions are ongoing.

- Q45 **Andy Slaughter:** The last area, to which I think you were just coming at the end of your answer, is the motivation of the legal profession. I am



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sure it is motivated to go out and do more work, because legal aid rates have not gone up for 25 years while inflation has gone up by 60% over the same period. We have heard about public sector pay increases today. Will that include increases in legal aid rates, and are you pushing for that as head of the Bar?

Suella Braverman: I want to take this opportunity to thank all the legal practitioners out there for their remarkable response to the pandemic: barristers, solicitors, publicly funded or otherwise, legal clerks and legal executives. Everybody in the industry, cleaners in the courts and judiciary, has done a heroic job in responding creatively and positively to the crisis and worked very well together.

The Legal Aid Agency has introduced a range of measures designed to help to support legal aid provision during the period. The Ministry of Justice is keeping the situation under review, but there are lots of options in the pipeline.

Q46 **Andy Slaughter:** Are there any plans at all even under consideration to increase legal aid rates?

Suella Braverman: I am not able to comment. It is not for me to predict where the funding is coming from, or when it is going to come, but I am very glad that the Legal Aid Agency was able to provide support in relaxing the rules, increasing accessibility and payment for those who are directly affected.

Andy Slaughter: There have been some measures, and we are familiar with them. Are there any further proposals?

Chair: The problem is that it is not the Attorney General's responsibility; it is the responsibility of the Ministry of Justice.

Andy Slaughter: I am sure that as head of the CPS and leader of the Bar the Attorney can assist.

Q47 **Chair:** Perhaps the Attorney can help us. As Mr Slaughter points out, the fees paid to prosecuting counsel are your responsibility. Are there plans to uplift that and, as far as you are aware, would that be mirrored by an increase in legal aid rates for defence advocates? Tell us about your area of responsibility.

Suella Braverman: On legal aid, you will know that there is a review, which again is an MOJ lead. Any outcomes will be where the answers to your questions will lie.

In terms of payments to prosecutors, the Bar Council itself would pay tribute to the CPS's response to prosecuting lawyers in relation to the measures introduced into funding for them. A wide range of measures was delivered that enabled settlement of all outstanding fee claims in concluded cases; for very high-cost cases the stage lengths were reduced to increase the frequency of payment; there was payment of all



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outstanding main hearing and related fees up to that point in ongoing cases, where possible; there was revision of the hardship payment threshold to make it easier to claim; there was the introduction of the upfront £500 covid fixed fee payable immediately upon request; there was revised guidance relating to the payment of cases resolved after PTPH; and there was the introduction of an upfront daily refresher fee in respect of section 28 hearings.

There was a wide range of measures provided to support those on the prosecuting side. Are there plans for more? I am afraid I cannot answer that.

- Q48 **James Daly:** I have a very quick question about your responsibilities, not those of others. In my view, the role of the CPS in assisting with the backlog is efficiency in dealing with charging decisions. I go back to what I was talking about. As somebody who appeared in the courts for 16 years, a recurring theme was the slow nature of charging decisions by the CPS holding up the system. The backlog is not only within the court system; it is within release under investigation. We have had evidence from a number of eminent professionals. I do not believe that has been given sufficiently serious consideration, because people are remaining on release under investigation for 12 to 18 months.

It is a big issue. I would not expect you to deal with it now—other colleagues want to come in—but will you take this away and write to the Committee about how the CPS is addressing the backlog in release under investigation and how charging decisions can be speeded up to enable the throughflow of casework into the courts?

Suella Braverman: Yes. That issue has been acknowledged as a matter of concern. The inspectorate has noted that release under investigation needs to be looked at and I think there is an exploration to be made on that subject.

- Q49 **Chair:** Perhaps you could keep us updated on how that is progressing.

Suella Braverman: Yes.

Chair: We said we would return to the important issue of rape and serious sexual offences, and it is convenient to do so now. Then I will turn to some other matters. I want to fit in other Members who may have to leave at some point.

- Q50 **Paula Barker:** At the start of this session you stated that your priority is to improve outcomes for victims of rape and sexual violence. You will have heard that recently the Victims' Commissioner has written that we are effectively witnessing the decriminalisation of rape due to the significant decline in the number of rape and sexual assault prosecutions in recent years. Why has the number of prosecutions fallen, and what is the CPS doing to address this?



Suella Braverman: I share your concern that the number of rape and serious sexual offence cases reaching court has fallen over recent years. When you compare the number of complaints with the number of convictions there is a big gap. The reasons for that are complex and wide-ranging and relate to the whole system. My analysis is that there is a drop-off at every stage, whether it is someone complaining to the police, or when the police refer to the CPS there is a drop-off there; there is a drop-off at the point of prosecution and at the point of trial and conviction.

A whole-system response is needed. That is why a cross-Government review has been set up to understand exactly what is happening at every stage of the process. I have to say at the outset that it would be unfair to point the finger at any one player. I also have to say that these are horrific and devastating crimes, and in no way do I want to minimise the impact they have on the victims involved. It is vital that they are handled correctly.

However, I do refute the proposition by the Victims' Commissioner, who does a remarkable job in advocating energetically for victims, that rape has been decriminalised. I know that both the police and the CPS continue to take these cases very seriously. Rape and serious sexual offence cases are among the most challenging to prosecute. All cases are dealt with by specialist lawyers. They are trained in understanding victim vulnerabilities and the impact of rape, as well as all the complex issues that are raised, such as consent myths and stereotypes.

The substantive reason I disagree with the Victims' Commissioner's conclusion is that the data to which she refers is not the most recent available on this subject. The most recent CPS data release, which was published in April of this year, shows that there has been an uptick in the charge rate for rape-flagged cases, with 54.7% of legal decisions resulting in a charge compared with 48.2% in the year ending March 2019. I am confident that that trend will continue in the next data release, due to be published at the end of July, and that will show the full picture for the year 2019-20.

Is there more to be done? Of course there is. These are very complex and sensitive issues. I know the CPS is taking this very seriously, as reflected by its specific 2025 strategy on rape that it is in the process of developing with the police. I am confident that there will be improvement, but it will take a cross-system effort.

Q51 **Paula Barker:** Do you have a view about a recent figure that suggests 41% of reports were dropped because the complainant did not support the actions called for by either the police or prosecutors to build a case to bring charges? I know that some campaigners have likened it to a digital strip search. We talk about mobile phones, and so on. Do you have any views on that?



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Suella Braverman: It is essential that victims have the confidence to come forward and report these crimes. The police and CPS continue to work with victims groups and the Information Commissioner's Office to ensure their approach offers the necessary balance between reasonable lines of inquiry, which is the requirement in these matters, and the victim's privacy. That is the ultimate dilemma in these matters.

We will, hopefully, get to disclosure. The disclosure guidelines will, hopefully, go far in striking the right balance of respecting the victim's privacy on the one hand and enabling the fair trial of the defendant on the other. We need to get that balance right. It is a delicate one to strike, but it is vitally important because we do not want victims to feel put off by the system or feel they will have their privacy unduly or unreasonably violated.

There has been a lot of comment on this. The ICO report, the decision of Lord Justice Fulford in the Court of Appeal and your report on disclosure are all matters that I hope we will come to, but they are all grappling with the issue of striking the right balance, and it is an ongoing exercise.

Q52 **Paula Barker:** To go back to the annual report of the Victims' Commissioner, she criticised the Government's end-to-end rape review that began in March of last year. My understanding is that it is nowhere near completion yet. When can we expect that review to be finalised and its recommendations published?

Suella Braverman: Work is ongoing on that end-to-end review and it is an important piece of work. It is right that we do not rush it and compromise the quality of the outcome.

There are already considerable amounts of data on this subject. The 2019 inspectorate's report was helpful to some degree in informing us of what is happening on this issue. That concluded that 98% of cases in this area were properly charged. There has been a real commitment to ensure that another inspection takes place in the light of the criticisms of the previous report, and we want to ensure that we emerge with concrete conclusions and recommendations as soon as possible.

Q53 **Paula Barker:** I appreciate that you want to get it right; the victims of rape and sexual assault will also want the Government to get it right, but it has been well over a year, so when can we expect the report to be concluded and the recommendations published?

Suella Braverman: I cannot give a firm date. It is fair to say that covid has delayed some of the vital work that was scheduled in the joint inspection due to take place on this issue, but I am told we will be in a position to see some recommendations on that later this year.

Q54 **Richard Burgon:** Attorney General, let us look at years 2016-17 to 2018-19. The latest report from the Victims' Commissioner shows that the number of rape cases prosecuted by the CPS fell by more than half between 2016-17 and 2018-19. In his evidence to this Committee last



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year, your predecessor conceded that the CPS had suffered a 30% drop in funding and a significant reduction in staff. Austerity and cuts to staffing have played a role in the declining number of rape cases prosecuted by the CPS, have they not?

Suella Braverman: It is true to say there have been funding cuts in the past. However, I am very pleased that the CPS received £85 million from the Government last year. That has been aimed at increasing the number of prosecutors and enabling the CPS to upskill on disclosure and develop its capabilities on rape and serious sexual offences, such as those we are talking about now.

That is a real injection of resource that will make a difference. That is already being put to good use and diverted to the frontline. The CPS is becoming a real beacon of excellence when it comes to dealing with these issues. I had a virtual meeting with a regional CPS team in the east midlands and was very impressed to see how prosecutors there are dealing on a practical basis with some of these cases, which are very complex, sensitive and difficult. In particular, I was very interested in the consent coalition that has been established there. That is a real innovation in looking at the issues behind consent and increasing training, know-how, specialism and collaboration. That is an example of the best practice we are seeing in the CPS on this subject.

Q55 **Richard Burgon:** In relation to the point you make about the £85 million of new funding, that returns less than the 30% cut between 2010 and 2019. I think the FDA's response said that quite clearly. To return to the theme that you cannot do justice on the cheap, in 2011 the CPS had over 7,700 full-time equivalent staff. The figures in the last annual report from the CPS show that in March 2019 there were just over 5,500, so there were 7,700 full-time equivalent staff in CPS in 2011 and 5,500 in 2019.

Therefore, the loss of over 2,000 CPS staff under austerity has left the CPS less able effectively to prosecute serious sexual offences, including rape, has it not? It cannot be credibly argued that the CPS has been left more capable effectively to prosecute after such a significant cut in full-time equivalent staff doing very important work in our justice sector.

Suella Braverman: As I said, I do not dispute that there were cuts at the beginning of the coalition in 2010-11 and subsequently. I am, however, very pleased that we have seen a reversal in that with the £85 million last year, but we also have to remember that it is not always just about the money; it is also about outcomes, and that is what counts for victims at the end of the day. In that period of time, notwithstanding funding issues, we have seen that conviction rates of the CPS have either stayed about the same or slightly increased. We have seen staff engagement go up.

This is not a failing organisation. Day and night literally thousands of judgments are made on prosecutions that are borne out in our courts. I had the privilege of meeting the CPS Direct team, which operates 24



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hours a day, seven days a week. That team of prosecutors stationed all over the country is making decisions in real time about offences as they occur in the middle of the night. Therefore, specialist legal advice can be provided in the moment. That is an exceptional service of which we should be very proud.

It has managed its resources exceptionally well and has continued to successfully prosecute hundreds or thousands of cases a year. I think I am correct in saying that, according to the most recent data, its conviction rate is about 86%. Let us look at the outcomes for victims overall. When you look at it in those terms, I think the CPS has delivered a very effective service.

- Q56 **Richard Burgon:** You say that outcomes for victims need to be the test we apply, which of course is crucial, but I finish on the point I made at the opening of my questions. The latest report from the Victims' Commissioner shows that the number of rape cases prosecuted by the CPS fell by more than half between 2016-17 and 2018-19. That is one of the reasons the Victims' Commissioner has written that we are effectively witnessing the decriminalisation of rape, and that needs to change swiftly.

Suella Braverman: In response, as I mentioned earlier, we have to look at the most up-to-date data, which shows that there has been an increase in the charging rate. We also need to look at it as a whole-system issue, not just the fault, if I can use that word, of the CPS; and we also need to recognise that there are other issues that are relevant to this matter, such as disclosure and the handling of evidence.

- Q57 **Chair:** I want to come on to disclosure. Obviously, disclosure features very prominently in some of the issues that have arisen in relation to rape and sexual offences. I understand that. There are also wider disclosure concerns that arise in a raft of other criminal cases, but you mentioned this in the context of rape and serious sexual offences. How positive has the feedback been on the changes to the guidelines? Are you monitoring the feedback from victims groups, victims themselves, or witnesses who are interviewed by the police, to see how effective that is in meeting the balance, to which you referred, between a fair trial on the one hand and proper treatment and appropriate privacy for alleged victims on the other?

Suella Braverman: Thank you for raising this. This is an important priority of mine. There has been a lot of work on the subject that far predates my appointment to this role. My predecessor did a lot on this as well. Whether it starts with the report by the inspectorate in 2017, the Committee's 2018 report on disclosure and other instances, such as the national disclosure improvement plan and phase one and phase two lines of work, they have all been very effective in understanding more about this issue and trying to implement the changes that we rightly need.



Your 2018 report on this subject was very informative, concluding that there needed to be a shift in culture towards viewing disclosure as a core duty, not just an administrative add-on; there had to be better technology to review the volume of material collected by the police; and there needed to be clearer guidance on handling sensitive material. In many of those regards my guidelines will build on those recommendations, and I am very grateful for the contribution that your report has made to this very important subject.

We are getting a very good response to the changes. The consultation closes on 22 July. We have been engaging with a wide range of practitioners. I have zoomed into one of the engagement events. That has been very useful. We are getting a clearer idea of their feedback. The general view is that this is a positive step towards the culture change we are all seeking.

There have been concerns about the extra resourcing requirements for investigators due to the higher volume of material that the rebuttable presumption in the guidelines could bring, but overall in victim engagement sessions, for example, the fact that their data will be treated with sensitivity has been welcomed.

I am continuing to review the feedback. We need the culture change and specific guidance on digital material and earlier engagement, and I believe the rebuttable presumption will go far in assisting practitioners.

Q58 Chair: That is helpful. One specific area where there has been a change, in consequence of a court judgment, is in relation to discontinuing digital data extraction consent forms. That was obviously part of the issues considered in how to get a correct balance to make sure that all the material is there. What is the position as far as that is concerned, and what is the implication of it for disclosure practice?

Suella Braverman: You are referring to the ICO report.

Chair: Yes.

Suella Braverman: As you know, that concluded that mobile phone data extraction was disproportionate, excessive and inconsistent. I welcome the report and recognise the importance of the complexity of protecting victims' and complainants' data. I am committed to working alongside criminal justice partners and the ICO to ensure this can be done in a way that is proportionate and both protects privacy and secures justice with safeguards in place to maintain trust and avoid unnecessary intrusion.

The guidelines will seek to provide further guidance on how to balance the right to a fair trial with the right to privacy. As I said, it is a delicate balance. We need to avoid an unjustified intrusion into any privacy rights. As Lord Justice Fulford put it, we have to prevent fishing expeditions sought by parties, but at the same time we need to make sure that the



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personal information of witnesses is pursued only if it is reasonable in the context of the case and is done obviously in accordance with the law.

I feel that we will find an appropriate balance to strike, and I am very grateful for the recommendations from the ICO.

Q59 **Chair:** I am particularly interested in the consent forms, which were a matter of some controversy. There was an announcement last week that they are to be discontinued. If they are to be discontinued, how are you going to ensure there is a process that acts as an audit trail to show that that balancing exercise has been considered by the investigator?

Suella Braverman: It will be necessary to ensure that the consent of the victim is acquired and is properly provided. The form that takes is, obviously, the area for discussion. The way in which that consent is acquired and the way in which the reasonable lines of inquiry are carried out will need to be forged as we go through this consultation on the guidelines.

Q60 **Chair:** I want to press you a little bit. If there are question marks about the validity of the consent, or whether consent was properly given, you can see the risk that brings—perhaps a challenge to the admissibility of evidence, and so on. It has to be high priority, does it not, to find a replacement system for these forms that meets the balance?

Suella Braverman: Yes.

Q61 **Chair:** How much urgency have you stressed in that regard?

Suella Braverman: In response to the Bater-James decision, where the forms were challenged, again, partners are going away and working on it. They are trying to come up with something that addresses all the concerns that have been raised and meets the need for an indication or reassurance to the parties that disclosing or acquiring this evidence is lawful.

Q62 **Chair:** And of course it must be in the context of your guidelines.

Suella Braverman: Yes.

Q63 **Chair:** One recommendation in our report in 2018 was that you update the guidelines on a regular basis, at defined intervals. Is that going to happen?

Suella Braverman: That was one of the recommendations in your report, and I agree with that recommendation. As you set out in your report, we want to avoid the scenario whereby the incumbent occupant of the role says, "This isn't something that I'm responsible for—it was my predecessor or my predecessor before that." If we can update them regularly, we will have an evolving document as the technology and challenges evolve, but we will also have a clear line of responsibility.

Q64 **Chair:** Can you help with the timeframe for when those updates will be?



Suella Braverman: I cannot, I am afraid.

Q65 **Chair:** You say that it should be done regularly, but do you have any idea what regularly means in this context?

Suella Braverman: I can get back to you, but I do not want to commit. I would like it to be something that is not onerous but is helpful to those on the receiving end. We do not want to create a situation where rules or guidance are always changing, but we also want it to be a document that is relevant. What that timeline should look like, I do not want to say right now.

Q66 **Chair:** Are you talking to practitioners about that?

Suella Braverman: It has definitely come up in consultations, yes.

Q67 **Chair:** When do you think you will be able to come to a decision?

Suella Braverman: On the guidelines?

Q68 **Chair:** On how you propose to deal with the regularity or otherwise of updates.

Suella Braverman: Now that the consultation is closing—

Q69 **Chair:** Obviously, once you have that.

Suella Braverman: Yes, that will take us some time—I hope not too long. It has been in the pipeline for some time, and we had to extend the consultation. I would hope that it will be, definitely, before the end of this year. I would like to think that in the autumn or so we would be able to clarify that issue.

Q70 **Dr Mullan:** Thanks for coming. I wanted to touch on the work of the SFO. Previous Committees have covered the way in which the inspector general sits somewhat apart from the wider role of the Attorney General. I would like confidence that the scrutiny of the functioning of the body, which is more about delivery on the ground, is sufficient. Could you give us a quick summary of how you scrutinise the work of the SFO in your office?

Suella Braverman: Yes. The role that I technically occupy is one of superintendence; that is the term to describe this role of sponsorship and scrutiny. We have a refreshed framework agreement, which clarifies the relationship between the SFO and AGO and which was published in January 2019. In practical terms, how that looks or works is by holding the director to account for running the organisation and the discharge of its functions. I chair a regular ministerial board for the SFO, with the Solicitor General, where we challenge the SFO, the director and senior team, on performance and strategy and on their plans. That is a very candid forum, and a very effective one for scrutiny.

Q71 **Dr Mullan:** Thank you. One area that I wanted to look at was the confiscation of criminal assets. One challenge for scrutiny is that the



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statistical bulletin that covers that does not really distinguish between different contributions from different agencies, so you would not be able to see what contributions the SFO or the NCA make. Do you get a breakdown of the SFO's contribution to that and, if not, could we work to get it into the public domain and have as part of public scrutiny?

Suella Braverman: Yes, there is a breakdown from the SFO of its recoveries in proceeds of crime. Overall, it continues to perform well in that regard. It has a specialist division relating solely to proceeds of crime casework, including restraint, confiscation, civil recovery, money laundering and prosecutions. In 2018-19, over £10.1 million in orders—that is confiscation, civil recovery and cash forfeiture—was obtained, and almost £8.5 million was recovered. In 2019-20, over £13 million in orders was obtained and over £7 million has been recovered.

Q72 **Dr Mullan:** A Government-wide statistical bulletin has been asked for to increase transparency in this area. I feel that it could do with being a bit more transparent, if that could be broken down.

Suella Braverman: Noted.

Dr Mullan: This is a really positive area. You have covered some of the figures from the SFO, but other agencies are contributing. There are probably not many areas of Government that get such a return on the pound for the taxpayer. I know that the Home Office leads on the asset recovery action plan. Again, because of that division of responsibilities, do you feel that your Department is sufficiently integrated into the action plan and that you get to contribute to it? How do you particularly hold the SFO to account to contribute to the desire to increase further the money that we are getting back from criminals?

Suella Braverman: That is an interesting issue that you highlight. I feel that there is quite extensive coverage when it comes to the AGO's oversight of the SFO. Yes, there are varying responsibilities when it comes to the wide umbrella of economic crime. As well as the Home Office, you could also name HMRC, which has a prosecuting authority for this kind of offending. The SFO is responsible and reports to me solely on its prosecutions, and not those of other agencies. Whether that should be consolidated in one place is an interesting question.

Q73 **Dr Mullan:** Perhaps you could write to us about that.

Suella Braverman: Yes.

Q74 **Chair:** You talked about superintendence arrangements for the SFO. In relation to the Crown Prosecution Service, your predecessor set up a CPS board, which he chaired. Are you continuing with that arrangement?

Suella Braverman: Yes. We have the CPS ministerial board as well, which meets on a regular basis and is the formal forum for challenge, discussion and scrutiny.

Q75 **Chair:** What influence do you think you are properly able to bring to the



Crown Prosecution Service in relation to things like staffing, training and culture, given its operational independence? Have you managed to do that without treading on the toes of the DPP's independence?

Suella Braverman: That is a great question, and probably one that arises in many contexts. How I see my role of superintendence and sponsorship is to ask the fair questions—all questions. Often I have in my mind a constituent or a member of the public. I try to think what the average man in the pub would think about this report, these conclusions or this data. With the Solicitor General, I probe and challenge, and that process forces a response that is qualitative and robust.

Q76 **Chair:** Come the spending round, it is you who they look to as the Minister who is going to go in to bat for their budgets.

Suella Braverman: Yes. You will be aware that, as the AG, I am responsible as the liaison between the CPS and Treasury. There will be many discussions on the horizon about funding settlements, and I shall do all I can to support the CPS in its requests.

Q77 **Maria Eagle:** Minister, as part of our inquiry on private prosecutions, we have heard strong anecdotal evidence that the number of private prosecutions is increasing. One of the main reasons cited to us has been the limited resources of the police to investigate and of the CPS to prosecute complex financial and commercial crimes. As far as you are aware, is it right that private prosecutions are going up in this way? Do you have any figures that you can give to us of the quantity of private prosecutions? Do you think that it is right that such serious offences should be prosecuted by private bodies and individuals?

Suella Braverman: I have some data that says that in the period 2019-20 manual records indicate that the CPS received 51 private prosecution referrals. Of the 51 referrals, the CPS decided to take over 32 private prosecutions and, of those 32, 30 were taken over and discontinued, and two were taken over and continued. For 15 cases, the CPS decided not to take over the private prosecution and, in four cases, no outcome was recorded.¹

Q78 **Maria Eagle:** That is interesting, where there are specific referrals, but do you have any information systems or ways of knowing how many other private prosecutions are actually going on? Do you collect data of how many other private prosecutions are actually going on that are not in the end referred to you, or do you just have data on those that are

¹ Correction by the Witness: An initial review indicated the CPS had received 51 referrals, however, further investigation of our manual figures indicated that 49 private prosecution referrals have been received for the period 2019-2020. Of the 49 referrals, the CPS decided to take over 32 private prosecutions. Of these 32 cases, 29 were taken over and discontinued and three were taken over and continued. For 17 cases, the CPS decided not to take over the private prosecution.



referred?

Suella Braverman: That is all the data I have, but I can definitely try to find the data to which you refer. If I can find it, I shall definitely send it to you.

- Q79 **Maria Eagle:** Thank you. We would be interested, although you may find that there is not any other data, I suspect. But it is certainly worth you having a look. Do you think it is right that private prosecutions of really complex financial and commercial crimes are appropriate and that serious offences like that should be prosecuted in this way, not by the state but in private prosecutions?

Suella Braverman: I know that this Committee is carrying out an examination of whether there are sufficient safeguards to limit the likelihood of injustices resulting from private prosecutions brought by organisations that act as the investigator and prosecutor but also the victim of the offence, and I am aware of the background of the casework to that.

Essentially, there is a clear and appropriate role for the CPS in respect of private prosecutions; that role is consistent with Parliament, preserving the right of persons to bring private prosecutions. The CPS becomes involved only if the case is drawn to its attention and it will intervene to stop the case only if its own test for prosecution is not met. I consider that to be an appropriate balance.

- Q80 **Maria Eagle:** Do you think there is a case for the CPS, your Department and you, in your role as Attorney General, to play a more active role in supervising private prosecutions, to ensure that this right to bring a private prosecution is not being misused?

Suella Braverman: While I have a role in respect of public prosecutions, with the CPS and SFO, I have no statutory role in respect of private prosecutions. I am not sure that it is very clear how such a role could be undertaken by an Attorney General in practice or in principle, honestly. In practice, there are a variety of prosecutors, from individuals to organisations, who are by their nature all individual. In principle, Parliament has preserved an individual right that may be inconsistent with oversight by a Minister.

There is rightly a focus on safeguards in place that is specific to particular organisations. In relation to large organisations, rather than oversight by the Attorney General, it may begin with what safeguards the organisation itself has—for instance, whether it permits itself a dual investigative and prosecutorial function, as some organisations do, or if the Prosecution of Offences Act 1985 were to be amended to require the CPS to have conduct of all proceedings instituted by a particular body.

That is a question, really, for the organisation and its department. My concern is the role of the CPS in its proper review of requests to take over private prosecutions; the CPS can take over cases that do not meet



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the test for prosecution and will be supported by me in doing so, even if that case was brought by a large organisation.

- Q81 **Maria Eagle:** You are aware that our inquiry was prompted by the Criminal Cases Review Commission's referral of the 47 cases prosecuted by the Post Office to the courts for appeal. Obviously, we are not talking about any individual cases, but it is clear that it was prosecuting a very high number of cases. Do you think that the Attorney General's Office should play a wider role and have some role in ordering inspections or creating regulation for private or public bodies that are conducting large numbers of private prosecutions? Do you think that there is a role for your powers to be extended to cover circumstances like that?

Suella Braverman: If I am honest, no, I do not think that there should be a greater role for the AG in private prosecutions. I think that Parliament has preserved the right of private prosecutions in general and, therefore, it is not clear that a role for the Government's legal adviser is appropriate. The check and balance on private prosecutions is the right of the CPS to take over a private prosecution that does not meet the code test and also the court in deciding whether to issue a summons in the first place. My role of superintendence of the CPS is to ensure that it continues to make robust decisions on private prosecutions when asked to do so. For instance, if the CPS concludes that a prosecution brought by an organisation should be stopped, whichever that organisation is, it does so.

- Q82 **Maria Eagle:** That is an interesting answer. Perhaps you are not aware as a Department—you probably would not have been aware, but perhaps you can tell us if you were—of the number of cases that the Post Office, for example, was prosecuting. It was a very high number. If you are aware only of those that are actually referred, there is a lot going on that you do not know about, is there not, Minister?

Suella Braverman: I am not sure about that. As I said, I am aware of the background to your inquiry, which is the Post Office as a private prosecutor that brought proceedings, but this has been proscribed by Parliament. It is a right afforded to organisations and individuals. There are sufficient checks and balances and scrutiny in the system. My view is that that is probably appropriate for now.

- Q83 **Maria Eagle:** So you are satisfied that there are sufficient checks and balances and that no more checks and balances are required.

Suella Braverman: That would be a question for your inquiry, and I look forward to reading your report. There are safeguards, as I have set out quite extensively, injected into the system at various stages, and lots of questions can be asked at various stages. Yes, as I have set out, there are safeguards that are incorporated already.

- Q84 **Maria Eagle:** Private prosecutors are not obliged to comply with the requirement set out in the Criminal Procedure and Investigations Act 1996 code of practice to pursue all reasonable lines of inquiry when



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conducting investigations. Should private prosecutors be subject to the same legal requirements when conducting investigations as those that apply to the police?

Suella Braverman: I can definitely see where you are coming from, in raising your question. Various issues are brought up by imposing that duty. It is an interesting question. I think we need to preserve the right in the form that it is currently available. Whether there should be similar duties and similar tests, I am not sure at the moment, if I am honest—I am not convinced.

Maria Eagle: Certainly, Minister, those are interesting answers, and no doubt you will be able to read our report in due course. Chair, that will do from me.

Q85 **Chair:** You are responsible for the unduly lenient sentencing scheme. You told me that the Solicitor General takes a lot of the cases to court, but obviously the pair of you jointly, under your aegis, make the decisions when they are referred to you. Do you have an overall policy, beyond the statutory scheme and the scheme on the basis of Lord Lane's judgment in *Edwards*, the Attorney General's reference? What is your basic policy in deciding whether to refer?

Suella Braverman: The unduly lenient scheme remains an important mechanism to rectify errors in sentencing and ensure that justice is done in individual cases. In the vast majority of cases, judges get it right when it comes to sentencing. The ULS allows prosecutors, victims, family members and the public to seek a review of the sentences in the most serious cases, which they consider to be unduly lenient—and, notably, the word "unduly" is used.

The ULS statistics came out just last week, and they are very welcome news, in terms of the numbers of sentences securing good outcomes. Essentially, this is a scheme kept under constant review of the offences covered by it.

Q86 **Chair:** You will continue to review offences. Are there any immediate plans to extend the scope of the scheme?

Suella Braverman: Not immediate but, as you will know, the sentencing White Paper is due to be issued later this year. I am sure that, if there are plans, it will be covered in that.

Chair: We can look for it there, if you decide to do it.

Suella Braverman: Yes.

Q87 **Chair:** There was a particular point your predecessor said he would take away when he appeared before us. At the moment, there is a 28-day time limit for referring a sentence to you. There have been arguments in the House that if a victim, for reasons of no fault of theirs, is unable to comply with that time limit, it can be unfair. Equally, as your predecessor pointed out, there has to be some finality and certainty for the sentenced



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person. Are you planning to look at that 28-day limit? Your predecessor said that he would take it away and consider it.

Suella Braverman: I am afraid that I have to disappoint you, because the Government do not have any plans to do so.

Chair: I am neutral on this question.

Suella Braverman: Great, so there is no disappointment then. The Government have no plans to extend the 28-day time limit for a referral under the scheme. As I said, it is under review. The 28-day time limit reflects similar constraints on defendants appealing against conviction or sentence, but it is stricter, to ensure certainty about whether a person will be more severely punished or not. So there are no plans for now.

Q88 **Chair:** Fair enough. Finally, we have two constitutional things to cover. What is your role going to be on the royal commission on criminal justice? Are you the ministerial lead, is it the Lord Chancellor, or is it a joint thing with the Cabinet Office? Who is driving it, and what is your role as the Government's principal legal adviser and the person who superintends the criminal prosecution process?

Suella Braverman: This is a manifesto commitment that we are determined to get up and running to get to grips with some of the really difficult issues facing the criminal justice system. The commission will be independent of government, but it will be supported by a team of officials, including legal and analytic specialists, to ensure that it can take forward this important work. To date, my officials have been working closely with officials from the Ministry of Justice, the Home Office and the CPS to consider what the scope and remit might be. The work is still under way and we will let the Committee know in due course.

Q89 **Chair:** There is a lot of speculation that we might know the details of the commission and who is on it very soon.

Suella Braverman: I hope so as well. That is all I can say, unfortunately. I am not at liberty to talk about who or when; the membership has not been finalised yet, but it will be, and I think that there will be a good representation of practitioners from relevant parts of the criminal justice system and they will provide the broad insight that we need to resolve the question.

Q90 **Chair:** Is there going to be any consideration, for example, of looking at other prosecution models, such as in Scotland, a very close neighbouring jurisdiction, with a greater power to direct in serious offences? There might be some movement in that model. Is that within its scope?

Suella Braverman: I would like to hope so, because there is a lot we can learn from other jurisdictions, whether in the United Kingdom or further afield. There is best practice all over the world, and many jurisdictions have similar legal frameworks to ours and similar law



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enforcement agencies as well, from which we can really draw some useful lessons.

Q91 **Chair:** Do you envisage a timeframe for the commission's work, or is it open-ended?

Suella Braverman: Again, that is in the process of being finalised.

Q92 **Chair:** Do you expect that there may be an announcement on whether it is time limited or not?

Suella Braverman: You are very persistent. No, I am afraid that there is not. Famously, royal commissions can take several years.

Chair: Precisely, yes.

Suella Braverman: They are large bodies of work, and rightly so, because they need to be in depth and to carry the credibility that is rightly afforded to a royal commission. However, this Government are ambitious and keen to get on with delivering on their manifesto commitments. I cannot provide a timeline, but I would like to hope that it was swifter rather than a more delayed process.

Q93 **Kenny MacAskill:** Can you update us on the setting up of the proposed constitutional and rights commission and, separate from that and that commission, whether there are any plans to update the Human Rights Act?

Suella Braverman: Thank you for raising this issue. Again, it is another manifesto commitment and, again, I am afraid that I am going to have to disappoint you. A lot of work has been engaged in planning this and setting terms of reference, as well as in populating the commission and the panel, and an announcement will be made, no doubt by the Lord Chancellor, in due course.

Q94 **Chair:** Do you think that the review of the ECHR is separate from that broader constitutional work?

Suella Braverman: We have committed to updating the Human Rights Act. We are clear that we remain committed to the ECHR, but the manifesto is right in reflecting the concern that the HRA needs to be changed or modified in some way to reflect a better balance of rights and responsibilities. The recognition of the protection of rights is fundamental as part of our values as the UK, and our human rights framework offers a comprehensive and well-established set of protections within a clear constitutional and legal framework. It is all part of the same exercise, essentially. The update of the HRA will be part of this broader piece of work.

Chair: Thank you very much, Attorney, for your time and evidence. We have covered a lot of ground and some important topics, and it is appreciated. I hope to see you before the Committee again before too long.