HOUSE OF LORDS

Select Committee on the Constitution

Uncorrected oral evidence: Constitutional implications of Covid-19

Wednesday 22 July 2020

3 pm

Watch the meeting

Members present: Baroness Taylor of Bolton (The Chair); Lord Beith; Baroness Corston; Baroness Drake; Lord Dunlop; Lord Faulks; Baroness Fookes; Lord Hennessy of Nympsfield; Lord Howarth of Newport; Lord Howell of Guildford; Lord Sherbourne of Didsbury; Lord Wallace of Tankerness.

Evidence Session No. 11 Virtual Proceeding Questions 132 - 151

Witnesses

I: Rt Hon Robert Buckland MP, Lord Chancellor; Susan Acland-Hood, Chief Executive, HM Courts and Tribunals Service.

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Examination of witnesses

Robert Buckland and Susan Acland-Hood.

Q132 **The Chair:** This is the Select Committee on the Constitution in the House of Lords. We are conducting an inquiry into the constitutional implications of Covid-19 on our court system. Our witnesses this morning are the Lord Chancellor, the Rt Hon Robert Buckland MP, and chief executive of HM Courts and Tribunals Services Susan Acland-Hood. Good morning to you both. Welcome, and thank you for agreeing to come along this morning.

You will have seen that we have taken quite a bit of evidence on this issue already. We have heard of some of the problems and difficulties and some of the measures that have been taken to overcome those difficulties. We would like to start by asking you for your overall impression of remote proceedings in particular. We have heard that they can work in certain circumstances but not in others, and there are areas of very real concern, such as the availability of video links in prison. Perhaps you could start with that and then we will follow up on some of the other issues that have come to our attention.

Robert Buckland: Thank you to the Committee for inviting me to give evidence this morning. The first point to take on board is the scale and pace of change and the fact that the Covid pandemic compelled us to take very speedy action; the sort of action that frankly would probably not have happened had it not been for the demands of the lockdown. Having said that, the overall impression that certainly I have had of the scaling-up process is a positive one. It has not been without its glitches, and I am sure Susan can help to explain what they have been and how we have overcome them. Almost uniquely in jurisdictions across the world, we were able to keep the wheels of justice turning in a way that I do not think any of us could have foreseen at the beginning of this crisis.

The numbers of cases that were being heard were impressive. I followed this on a weekly basis. Obviously, the statistics are somewhat delayed because they need to be collated, but at one stage four out of every five cases were being heard remotely. I thought that was a huge testament not just to officials and HMCTS but to all the practitioners, and indeed to the judiciary, who had taken part.

I note the point you made about prison access. That has been a particular concern of mine. It is vital that we ensure that lawyers have access to prisoners. One of the benefits of the work that we did in prisons to scale up family contact virtually by having more telephones in cell and rolling out more video facilities was of course their being able to be used by prisoners for contact with their lawyers.

I have taken on board some of the concerns that have been raised. We have tried to address them in as many prisons as possible. Where HMPPS hears about particular issues, it tries to resolve them as quickly as possible. It is my view that an effective legal conference before any proceedings can help to shorten them, particularly in the context of a criminal trial, and it very much accords with the principles that a suspect

or somebody accused of a crime, or somebody who is a party to a case, should have access to legal advice in a secure way that accords with legal professional privilege.

Because we moved so quickly, assessing the overall impact of video or remote hearings on the interests of justice has, frankly, not been easy. However, we have ongoing research that we are keen to work with and learn from. The Civil Justice Council, the Nuffield Family Justice Observatory and the Legal Education Foundation are just some of the organisations that are carrying out research into the impact of remote hearings. While it would be foolish of me as we sit here today to say that we know everything about the impact of this, we are very committed to consistently and regularly refining our practices and trying to obtain as much learning as possible from this. Let us not forget, of course, that the ultimate decision whether to have a remote hearing or not rests with an independent judge, not with me. That is not only constitutionally right but practically sensible, bearing in mind some of the technical issues that have been encountered, which Susan might be able to help you with further if you wish to hear from her.

The Chair: Susan Acland-Hood, may we come to you for some initial impressions? I have to say I am somewhat surprised at the Lord Chancellor's statement that four out of five hearings have been held remotely. We have heard of very real problems in getting the data to substantiate any proper analysis. What is your view on that?

Susan Acland-Hood: First, on the question of data and management information, we have published our management information, which covers the weekly management information that we have been using to make sure that we know, as far as possible, exactly what is going on through the crisis. That is available on GOV.UK and it includes a count of hearing numbers. That shows that, at the height of the pandemic, close to 90% of the hearings taking place were taking place using either audio or audio technology. Those figures are publicly available and I am very happy to share them with the Committee further.

The Chair: That is of the hearings that were taking place, but a lot of hearings were not taking place.

Susan Acland-Hood: It is the count of hearings that were taking place that were using audio and video technology. The MI also looks at how much work was being done, because in some cases the types of cases that were capable of being heard do not match the typical spread of what would normally happen across the system. For example, during the period when we had suspended jury trials, we were still holding an extremely large number of hearings in the Crown Court. These covered sentencing appeals and preliminary hearings such as PTPHs. That allowed a very large number of cases to be resolved and disposed of, but of course the proportion of cases left that required a full jury trial grew over that period. You can see that in the statistics.

I would amplify everything the Lord Chancellor has said about the experience of using remote hearings. There are a couple of things I would draw out. The first is that we have learned a lot through this process. We moved very quickly, more quickly than we would normally move. There are massive advantages to that in that we were able to do some things that would not normally have been possible.

There were also some risks inherent in it. We have tried to be as fleet and as quick in the learning as we have been in the implementation. As the Lord Chancellor describes, as well as our own internal work to evaluate, which involves surveys of users and work with those involved in hearings that have taken place remotely, we and the judiciary have used some of that external research, including early work by the Family Justice Observatory, to keep adjusting the practice, guidance and advice given to judges about the types of cases that are most and least suitable to be heard remotely.

Secondly, we have tried to improve the technology and support that we are giving to judges for those remote hearings. Very early on we started by using what we had available to us. We did very large numbers of hearings using phone conferencing, and for very large numbers of those hearings we used BT MeetMe, which has the advantage of recording proceedings to the standard that is required in the court. The technology is already in relatively common use in the civil courts in particular, but we used it more widely. We also used Skype for Business. This was the video app that was available on judicial and staff laptops. We had to unlock access to it, which we did extremely quickly at the beginning of the pandemic. However, it is not the technology that you would necessarily say was the most suitable for remote hearings.

Since then we have been rolling out the cloud video platform, which is better video technology and is now rolled out entirely across the criminal courts. We have done something like 10,000 hearings on it during the course of the pandemic. That is now being rolled out in civil and family courts as well. It needed some adjustment in the civil and family courts to give us audio recordings of the standard required by the court. That helps us with quality, reliability and connections, and it allows much better connection in the criminal sphere to the fixed-line kit that is already in police stations and prisons.

Q133 **Lord Howarth of Newport:** The Lord Chancellor observed that the Covid-19 crisis has seen the acceleration of a trend towards more digitisation that was already in place, and new uses of technology within court processes and the wider system of justice. This is a major shift from the inherited pattern, and important constitutionally. Do you think the time has come to try to articulate the principles at stake? Should the Ministry of Justice consult on a charter of principles for rule of law, access to justice and technology?

Robert Buckland: That is a very thought-provoking question. It is one I have long pondered, even before my appointment to this office, having been part of the criminal justice system in particular for many years and

having conducted proceedings in Crown Courts and magistrates' courts across the country.

I have got used to doing things in the presence of others in the time-honoured way, and from that got a sense of the solemnity of the proceedings, the significance of giving evidence under oath or affirmation, and the overall importance of maintaining a solemn court process that is well understood by everybody who is physically in the building.

Of course, you can achieve that by symbols, and by the way in which the court is set out—where the judge sits, where the jury sits, where the witnesses sit or stand. However, seeing it in the flesh embodies and conveys strongly how the system has evolved, what the interests of justice really mean and what fairness of proceedings is all about.

That becomes more difficult, I readily accept, when one puts it all online. Here we are in little boxes all looking at each other, and there is a temptation perhaps to try to multi-task or perhaps not to focus fully on the matters at hand or fully appreciate that the person you are talking to is a judge, for example, or that the information you are giving is being recorded and is being given in a way that could be important evidence that will have repercussions, putting it neutrally. There is absolutely a place for us to try to incorporate all those considerations while embracing the opportunities that online justice gives us.

Thus far, if you are a litigant who is being given the option of online proceedings, there are information and hearing notices for court users, for example. They are focused very much on the needs of the user, to ensure that the user feels comfortable and able to access the technology. Of course, if there is a particular issue, the judiciary can change the method of that hearing and, indeed, allow further adjustments to be made to support litigants in person, or people with a disability who have a particular need to have those reasonable adjustments. Clearly, the public sector equality duty applies as much to remote hearings as it does to any other type of hearing.

Once we have assessed the full impact of Covid and the permanence or otherwise of some of the arrangements we have made, we probably need to proceed to see whether there is a space to develop a set of principles or guidance that could assist not just litigants in person but all users of the system in order to make sure that we get as much parity as possible between real live hearings and virtual hearings, to the extent that I would want there to be no difference.

I will end on this point. Of course, the concept of virtual or video link is nothing new to our courts. Some 30 years ago, special measures were introduced in the Crown Court to improve the evidence of children in particular and for other people with vulnerabilities. We have watched that process grow. I grew up in a generation of practitioners who were entirely used to video link, and I think that because of that experience we find it much more natural to expand that, to grow that, and to make that

increasingly the norm. In the Domestic Abuse Bill, which your Lordships will be considering in the autumn, you will see a further proposed expansion of the use of that remote technology, because we wish to ensure that the best possible evidence is obtained.

I will end on this note. We should not think of digitisation or remoteness as just a limitation. We should also remember that for very many people it is the best way, and sometimes the only way, in which they can access justice. I will end on that positive note.

The Chair: Lord Sherbourne, I think you particularly wanted to follow up on that aspect.

Q134 **Lord Sherbourne of Didsbury:** The Lord Chancellor will not be surprised that we heard in the course of our proceedings some compelling evidence that virtual proceedings have made it more difficult for people, particularly people who have poor digital skills, to access justice. The Lord Chief Justice talked about the problems people have when they have to have more than one device both to take part in the proceedings and to access their lawyer. The president of the Law Society was concerned that people were just not coming forward to access justice because they were so deterred by the problems. I would be grateful for your view on that.

Robert Buckland: I think it is right to say that all of us who are new to this technology will find it a challenge initially. That is why I am glad to note that HMCTS, and indeed the judges themselves, provides assistance and support. There is technical assistance. We have information and a phone line for court users if they need particular help with accessibility. If there are enduring problems, and it is clear to a judge or tribunal chair that the remote technology is not working in the interests of justice, they have the independent discretion to make that alteration and go for a real live hearing.

I think it is important to note, and it is a development of the answer I gave earlier, that there is no body of evidence—that I have seen anyway—with a really strong control sample or control group to tell us conclusively that remote justice is inferior or that there are insurmountable problems with it. I do not think that is right. The experience of thousands of us in the court system is we have readily got used to remote technology and have used it daily for many years. My belief, in a nutshell, is that we can overcome some of the glitches and improve our technology, while remembering that it is of course the court users who have to be front and centre of this, and that their interests are paramount.

Susan will come in in a moment. We have talked about the cloud video platform. That in itself has been transformative, because it brings together the different agencies in a way that we have never seen before. You might wish to hear further from Susan about that.

Lord Sherbourne of Didsbury: I would like to make one point first. The

Lord Chancellor talked, quite rightly, about the people who are familiar with remote technology, but these are the practitioners. My focus was on the people who are not used to court proceedings and do not have digital skills, how difficult it must be for them to operate, and whether it affects the way they perform and reduces their confidence to the extent that they do not even come forward.

Susan Acland-Hood: I am very happy to speak to that point, and to others. I wanted to go back briefly to the point about having a set of principles to underpin this. A set of principles was set out for the whole of the HMCTS reform programme by the then Lord Chancellor and Lord Chief Justice, which focuses on being fair, accessible and proportionate. It is very important to look at the history of the British justice system and the extent to which one of its strengths has been its ability to change and adapt as circumstances change, without wavering in its commitment to its enduring principles. I have said in the past that our processes do not need to be as old as our principles, and we can hold to those principles while finding new ways of doing things.

On the question about what is suitable for different people, where we think remote technologies of various kinds can bring active advantage to people in making justice more accessible, and where it might constitute a threat or a difficulty or a barrier, there is a distinction to be made between some of the planning that we were doing as part of the court reform programme before the pandemic and some of the things that we have had to do during the course of the pandemic, where other routes were simply not available.

One of the principles of the HMCTS reform programme has been that, wherever possible, we have been seeking to add new routes to access justice but not to force people to abandon existing routes if they are better. For example, we are offering new digital ways of initiating cases, submitting forms and so on, which many people find more accessible than old paper forms. For those who would rather fill in a paper form, we have said that we will not take it away for general members of the public.

We are adding a digital route, not subtracting a paper one. We will also try to make the paper form more accessible, more intelligible, simplify the language, and so on. We may scan it in to manage it digitally inside the Court Service so we can do it better. We are about adding routes, not taking them away. We would like to do something very similar using what we have learned about remote technology through this process, which is about adding routes that people can use where they are in the interests of justice.

Very importantly, it is a judicial decision as to what hearing mode is used, and the test used is that it must be in the interests of justice and the focus is on what is right for the user. At times during this crisis, we ended up with physical modes of hearing not being available to us in the way they would normally be. The test has been different, and not whether a remote hearing is better than a physical one but whether remote is better than not having a hearing for a period on a particular matter. We all need

to be conscious that the threshold has been slightly different during this period. Again, I do not think it is an unreasonable threshold to apply, particularly in some very sensitive family cases.

I know that the judges have been thinking very carefully, particularly during the height of the pandemic, about whether it would be better to hear the matter in a way they could, and give resolution, or whether putting it off was more damaging to the interests of parties. We are now at a stage where they are able to say, "If this needs to be heard physically, we can hear it physically". We are back with courts open and operating in the physical space.

In many cases, and this is happening across the family jurisdiction, we will have a hybrid hearing. We will allow lawyers and others to appear remotely because we know that they can manage that, but we might have the family in question physically present in court. This also allows us to manage social distancing more effectively. The point is that it can be better for some people and more difficult for others. We want to have all these different things available.

The final point I want to make is that we have learned some things that potentially pull against the assumptions that people might have made before the pandemic. One assumption I used to hear quite a lot before the pandemic was that if people had any sort of vulnerability, the video process would be worse for them. Our reflection is that it depends a lot on the person's vulnerability. For some people, for example people with autistic spectrum disorder, it can be less threatening and less difficult to give evidence by video than to be physically present.

We have made the whole of the SEN and disability tribunal remote. We did it very quickly, because it had some of the technology already in place as a result of reform. That is not necessarily a place that I would have taken video hearings before the pandemic. We did it, again, because ensuring that people can get decisions made is really important. The parents of children with disabilities who have been involved in those remote processes have started lobbying the president of that jurisdiction to say that they would like to retain remote hearings, and indeed for the tribunal to be a default remote tribunal, because it works better for them as the parents of disabled children. They find it easier, less threatening, more convenient and more manageable. We are learning where it works and where it does not, and we need to apply that learning in future.

The Chair: Lord Beith, I think that comes on to the area that you were particularly interested in.

Q135 **Lord Beith:** You have given us very interesting evidence about the difference between the two systems from a users' point of view, but Professor Genn outlined research which said that if you go to a tribunal and you opt for a paper hearing, your chances of succeeding are much lower than if you attend the hearing physically. How far do you think you can prevent such a difference arising between remote hearings and traditional court hearings?

Robert Buckland: To reiterate the point I made earlier, I have seen nothing yet seen that can conclusively point to the merits or demerits of either type of system. Therefore, I would caution against an overreliance on this type of information, however well-intentioned and even well-researched it might be at this stage.

The truth is that we still do not know the full ramifications of this. Let us face it, before the pandemic, the use of remote technology was still very low. As Susan has reminded us, it was scaled up dramatically, but the number of cases being heard is only now coming back to a normal flow of cases per week. In the middle of this pandemic the number of cases in absolute terms was quite low. Therefore, I do not think we have the evidence base yet.

Lord Beith: Clearly you cannot have it. My question is whether your contribution to the guidance process, which the Lord Chief Justice leads, will be to seek to ensure that there is no disparity of the kind that there appears to be from the research between paper hearings and regular tribunal hearings in the comparison between remote hearings and physically present hearings.

Robert Buckland: I am confident there will not be, because I trust the individual members of the judiciary and the tribunals system to carefully assess the merits of each case and apply the interests of justice, as of course we trust them to do day in, day out. I know that individual judges will make merits-based assessments on the information they have before them and will not hesitate to order that a case is heard in a particular medium that is genuinely in the interests of the parties involved.

Susan's evidence about the SEN tribunal has been a revelation to me. As you know, Lord Beith, I have long taken an interest in SEN issues, and the fact that families are now saying, "This is better for us and better for the children we care for", tells us that there is not a remote bad/real life good divide here any more. The job of the Lord Chief Justice, the HMCTS and me together is to end that sense of binary difference between the two.

I think we can do it. I repeat the point I made about the Crown Court and how it has been a trailblazer in bringing together the virtual and real in a very acceptable way. I am confident that across the system we can increasingly do that. Returning to the status quo would be a massively missed opportunity here. Although Covid has sent us some really grave and dreadful challenges, the experience of technology in the courts is one that I want to be positive about and work positively to further improve.

The Chair: Susan, did you want to add anything there?

Susan Acland-Hood: Only to say that we are acutely aware that in evaluation work we are doing we need to do everything we can to ensure that we keep an eye on outcomes, as well as on people's perceptions of the process. It is not totally straightforward, because, of course, people's outcomes are affected by all sorts of different things.

Quite an interesting piece of Australian research looked at whether juries' assessment of someone's credibility, guilt and innocence were affected by appearing by video. It found that they were not particularly, but they were enormously affected by whether or not someone appeared in a secure dock. The jury tended to assume that if you were in a secure dock, it must be because you were a bit dangerous.

We need to do a huge amount of work to ensure that we are attending to, and understanding, confounding variables. There is an additional challenge with doing that using only the work that we have done during this pandemic, because, again, the number of things that have been different for people during the pandemic is so very large, and they are not confined to video.

We are looking hard at outcomes to see not only whether they are different but whether we can understand the differences. Again, there is some very interesting Israeli research on what happened when some of their road traffic cases were moved from in person to a paper process that did not allow the person to be seen. They found that the outcomes were different, but when they dug into it it was because there were significant gender-based disproportionalities in the sentences that were being given in the physically present process that were not present in the paper process. It is not just whether there is a difference but what that difference is and what it is telling us.

The Chair: Baroness Fookes has a question that perhaps would be best started with you, Susan Acland-Hood.

Q136 **Baroness Fookes:** I am particularly interested in how physical hearings are faring perhaps in hybrid form rather than remote. Are you satisfied that there is sufficient investment in guidance or support to ensure that physical proceedings go forward effectively?

Susan Acland-Hood: I am very strongly supported by the Lord Chancellor, by Ministers in the Ministry of Justice and by the judiciary in all that we are doing to ensure that we can hear as many physical hearings as possible. We were particularly grateful for the recently announced additional investment from the Treasury, which has helped us to equip more of our courtrooms.

There remain some significant challenges, which are more present in some jurisdictions than in others, with running physical hearings while we have social distancing in place. It sounds incredibly basic, but our courtrooms were not designed to keep everybody who needs to be in them 2 metres apart. That means that some of them are difficult to use in the way we would normally use them.

There is a huge amount of work going on. We have done a very good job and are confident that we are operating a safe estate, and that the way we are working is keeping people safe and secure. That has to be an enormously high priority for us. We have social distancing in place across the estate. We have people well separated, as well as good guidance and

good procedures for things such as hand sanitiser, handwashing and so on.

However, it means that we have taken some space out of use that we cannot use safely at the moment. This means rooms that are too small, and in some court buildings it is about how many rooms we can have in use and still keep people safe in the public areas. Even if the rooms themselves are theoretically big enough, if that involves having too many people in the public area for us to manage safely, we have to reduce the number of rooms in use.

We are now on what I think will be a continuing journey to find ways of bringing more and more of that space back into use safely. That involves physical measures such as adding Perspex and making use of the shift to 1-metre plus social distancing, which will involve more use of face masks, et cetera, in court. Again, that is not a straightforward business, because we want to ensure that people can speak, hear, understand and see in the way they normally would. I am not worried that I am lacking support and investment to do that. It is a challenging task that we have to keep working at and going at as hard as we possibly can.

Baroness Fookes: Do you have any estimate of the number of courts that are working normally compared with the total, to give some idea of the impact?

Susan Acland-Hood: It depends very much on which jurisdiction you are looking at. It also depends on whether you are looking at physical and remote or just at physical hearings. I have, as I say, a number of tribunals that are effectively working at normal capacity, but they have moved quite a lot of that work to be done remotely.

I have a particular challenge in the Crown Court in jury trials. Again, if you look at the published management information, as regards total disposals we are doing quite well because we are able to dispose of cases that do not require a full trial, in effect. However, fitting a jury and everybody else who needs to be there into some of our courtrooms is difficult. In other cases we have had to repurpose rooms used for jury retirements, because our jury retiring rooms are too small to be safely used. Some 54 of our Crown Courts have now restarted jury trials. Many of them are only hearing those jury trials in one courtroom at the moment. We have plans to expand that out into further courtrooms. The total capacity is not just the number of jury trials; it is also the number of other pieces of work that we can do.

Similarly, in the magistrates' court, we estimate that we can safely use around 70% of our normal physical capacity. Each week we are getting closer to fully using that 70%. Again, it takes a bit of time for people to get not just the patterns of which courtrooms are open and shut but the listing patterns in order to enable us to use them effectively through the day.

Again, particularly in the magistrates' court, we normally list extremely intensively. We list many more cases in a day than we will hear, because we know that some of them will fall on the day. That works by expecting very large numbers of people to sit in the waiting room while some cases resolve and others do not. Listing at that intensity is much more difficult than usual.

Baroness Fookes: Are you collecting this data fairly intensively as you go along? We have had suggestions that there is insufficient data to make real conclusions about what is happening.

Susan Acland-Hood: We are collecting the data intensively and, as I say, we are publishing our management information. In normal times we only have robust data on a monthly basis. Monthly has felt glacially slow during this pandemic. We moved quite quickly to weekly management information, and we are now publishing that. We publish it a bit in arrears so we can check it and ensure that it is right. I get information on the use of the courtrooms from my regional delivery directors. They feed me information. It has changed. We had an assessment of what was useable at 2 metres. We have just re-done that for 1-metre plus. We will re-do it each time we have changes in the external circumstances.

It is more challenging in some parts of what we do than others. In civil and family jurisdictions, it is much harder to give a total useable capacity number for each jurisdiction, because in practice there is a lot of fungibility in the way the county court works. There are lots of rooms that can be used for either civil or family work. The majority of the judges in family and civil sit in both jurisdictions. Working out our total capacity involves making a set of calculations about our assumptions on prioritisation decisions that in practice tend to be made at judge and court level between civil and family work. Some bits of this are harder to do than others, but we have an extremely regular and thorough assessment of the parameters.

The Chair: I think we will want to have more information, or as much as we can, about actual numbers. We will try to track that as best we can. Baroness Corston, you have a question which I think is probably for the Lord Chancellor.

Q137 **Baroness Corston:** Given that HMCTS plans to use pop-up courts, which I am sure you prefer to refer to as Blackstone courts, for dealing with non-custodial work, how soon can we expect these courts to be operational, and how many there will be? Can you be specific about which types of cases are likely to be heard?

Robert Buckland: They have had all sorts of names. Pop-up courts I quite like. We have referred to them as Nightingale courts because we wanted to draw an analogy with the incredible work on the Nightingale hospitals. As you will appreciate, and members of the Committee will appreciate, it is not just a question of identifying a room or set of rooms in another public building and turning up. There needs to be quite a network of support underneath that.

Staffing will always be an issue. Susan and the HMCTS are working very hard to ensure that we have the necessary staff to help to support the work of these new courts. It is also about ensuring that we have the secure technology that can enable the judiciary and the staff to access all the HMCTS networks. Of course, that is essential if these courts are to work well and if the records that they keep are to be immediately accessible on the system.

With all those caveats, the work that we are seeing has been very impressive indeed. I announced the detail of the first 10 Nightingale courts on Sunday. They are 10 court centres across the country. They are in a variety of places and they will do a variety of work. For example, the one I am very familiar with is Swansea council chambers, which many years ago used to be used as a Crown Court. That will be able to hear criminal proceedings. Prospero House in London will be able to hear larger criminal proceedings as well. I will not presume to say what the other courts at Telford and Stevenage, for example, will be doing. I can give an example in Leeds of where civil trial work and business and property work will be done.

I am trying to show that there will be quite a variety of different types of court and tribunal work, rather than an assumption that all these new courts will just be doing criminal cases. The added restraint on criminal proceedings is that very often you need custodial facilities, safe dock facilities and cell facilities. There is a natural limitation on how far we can go on that. I am grateful that the Treasury has been extremely co-operative, as Susan has alluded to. The first tranche of those sites is fully funded in agreement with it. Those costs will allow us to stand those courts up right to the end of the financial year, which is a really good stable basis.

However, it does not stop there. We continue to work not just with the Treasury but with other more local agencies to identify more sites. My ambition is to create more Nightingale courts as we go into the autumn. I do not have a specific target or number in mind. It seems that quite a few dozen of these courtrooms will be necessary. I say courtrooms, because there may well be buildings that are doing other types of public work or other business where we can have a room set aside and used as part of the Nightingale courts project.

We need to be very flexible and open minded, and listen to what we are being told locally as to what could work and what could be suitable. The importance here is for us to be flexible, to identify where the constraints are currently in the system, and to provide the appropriate accommodation that can deal with particular needs.

I have given you a few examples. For corporate crime, which has bigger cases, often with many defendants, it is very difficult to get that into some of our courtrooms, and it is very important to find that larger space—I would describe it as warehouse space, but you know what I mean. There might be pressure in another area, such as family courts, where you need smaller chambers-style rooms that create a more

appropriate environment for the parties. It is a bold agenda and one that we are developing as quickly as possible. It is very much part of the recovery programme that we published information about at the beginning of this month.

The Chair: Lord Wallace, you had a different aspect you wanted to cover.

Q138 **Lord Wallace of Tankerness:** Some of the evidence we have heard from the profession has given us some concern about the impact on the profession. We are aware of a Civil Justice Council report that found that: "The high rate of adjournments brought about by the pandemic was raised repeatedly as a concern by professional court users. Responses from the Bar provided data to illustrate the impact of adjournments on the profession, with responses from several circuit leaders characterising the threat posed by the loss of income engendered by the crisis as existential".

There were other concerns about the impact of home working arrangements on professionals with caring responsibilities, and a suggestion that the impact, particularly on women and carers, should be monitored. What representations have you received from the profession? What assessment are you making of the impact on solicitors and barristers, and what steps are you taking to address it? Are there any long-term consequences of this?

Robert Buckland: Thank you very much indeed for that question. The Committee will be glad to know that throughout this crisis I have regularly engaged with the professions, through the Law Society, and indeed the Bar Council, and other constituent representative bodies within those professions—for example, the Criminal Bar Association and the Family Law Bar Association. I need to hear from practitioners as to the realities of what is facing them. There is no doubt that the challenges, particularly for those who conduct legal aid proceedings, are significant. We have been told about problems at individual firm and chambers level. We have already taken a number of initiatives to support practitioners in civil, family and legal aid practice.

We obviously have the general position whereby the Treasury provided initiatives such as the bounce-back loan, the Covid interruption loan and the self-employed income support scheme. More than that, we have introduced particular things targeted at the professional. For example, we are changing the hardship regulations so that practitioners who work on Crown Court cases are now able to claim hardship payments for £450-worth of work being done rather than the £5,000 threshold that applied before the crisis. We ensured that the evidential requirements were modulated in a sensible way to allow those payments to be made.

We have also encouraged legal firms to use existing avenues, for example early payment schemes, which exist within the legal aid regime for work that has already been done, because cash flow—I know this from my own experience as a practitioner—is a significant factor when it

comes to everyday legal practice. We are also increasing the number of applications for payments on account that can be submitted for any work within a 12-month period. From last week, civil providers can now submit a maximum of four applications, instead of just two, within any 12-month period.

Other work is going on. There is the criminal legal aid review. Consultation on part 1 has now finished. I want to get on with making progress on implementing that, which will, I think, include aspects of remuneration for criminal lawyers. There is also the work that we are currently doing on further targeted support for legal aid firms and barristers, particularly those who have just come into the profession, who are particularly exposed to this, and people who have returned to the profession. I am using those two categories, because very often they do not have the detailed accounts and financial information that are very much a prerequisite of many of the schemes that we have talked about. I am still working on that. I work daily on that issue. We are engaging closely with the Treasury. I very much hope I can make an announcement as soon as possible to provide further relief for hard-pressed practitioners.

The Chair: Lord Faulks, on the very important area of backlogs.

Q139 **Lord Faulks:** I am sure both of you are only too well aware of the backlogs. We have heard from a number of different witnesses on this and there have been reports about them. There is no easy solution, as I am sure we all understand, to reducing these backlogs. The Criminal Bar Association's representatives were very firm about where the blame lay.

One thing they told us was that there was already a very considerable backlog before the pandemic struck and then there was a restriction on what you could do. We heard from the Lord Chief Justice about the ever-increasing numbers month by month that will continue. This is particularly I suppose, but not exclusively, the case with jury trials and all the problems they create as regards the infrastructure in the court system. What plans are there to deal with this backlog? What backlogs do you think are acceptable in a highly reputable system of justice as we have?

Robert Buckland: I am grateful for the context you have provided, because it is right for me to try to deal both with the issue of the pre-existing case load and the case load that we now have as a result of Covid. The pre-existing case load stood at about 39,000 cases in the Crown Court in the last week that we can say was genuinely pre the crisis. That is not an historic high. In 2014, for example, the outstanding case load in the Crown Court was 55,000. We have had periods in our system when we have had a significantly larger number of cases.

There was always an issue about the allocation of sitting days in the Crown Court. The representative bodies expressed concern last year that insufficient sitting days were allocated then. This year we had already

taken action to increase those sitting days, and the number would have been thousands more than the number agreed the year before.

Putting Covid to one side, with the increase that I had already announced and was planning to implement, we would have seen that case load being managed quite effectively during the financial year. However, Covid has hit. That has changed things, as I readily accept. Therefore, the challenge now is not to worry about sitting days. To quote the Lord Chief Justice, it is a question of all hands to the pumps, and the physical capacity of the courts, to deal with the current case load. We have a very different set of challenges.

I accept that quite a significant number of the nearly 42,000 cases that we now have will be resolved only by way of trial. Of course, that is a quantitatively different challenge from the cases that can be resolved by way of plea, sentence, et cetera. That is why all the different measures—the Nightingale court initiative, the question of how we can perhaps manage lists more efficiently, how we stagger lists, for example, together with the increased reliance on technology—will be how we manage this case load over the next year or so. It is important to draw a distinction between what was happening pre Covid and the challenge we face now.

I can assure the Committee, and indeed people listening, that there is no hidden agenda here—mine, the Lord Chief Justice's, or anybody's in the system—to try to do justice on the cheap. We want to ensure that every case is dealt with fairly, justly and appropriately, but we are also very conscious that there are real lives at stake here. There are complainants and witnesses. They often wait a long time to give their evidence. I think of that every day.

That is why I am determined to use whatever measures I can, together with the help of the judiciary, to manage this case load in a way that these figures come to what we regard as normal positions rather than ones that keep on getting larger because of this crisis, and because of any perception that somehow there will not be enough sitting days in the year ahead.

Q140 **Baroness Drake:** When the suspension of house possession proceedings ceases, we will face a backlog and a group of vulnerable people with a lack of access to legal advice and support, because of what is happening in the high-street solicitors, and because the charities do not have the resources to provide the sort of support that they previously did due to their own experiences in the pandemic. What are the plans for managing this when that suspension is removed?

Susan Acland-Hood: A judiciary-led working group has been set up to look specifically at possession resumption and how we will manage that, with HMCTS staff and other practitioners. We are also working extremely closely with local authorities, which have a particularly strong interest in possession cases.

We are looking at a range of things that we can do. We are looking at what additional support we can give to people in advance. We are also looking at the triage that we can provide in the system. We know that for some people who have put a case into the system during this period, another resolution will have been reached during this time. We want to ensure that we can identify those and focus the time and attention that we have.

We are looking at different ways of hearing the possession cases. They are another piece of the system where traditionally we run quite intensively listed possession days, and that may be harder to do. We are looking to some extent at whether there may be technological ways in which we can help, although we think that for some of the people involved in possession hearings, remote hearings are not such a good option. We are looking cautiously at that.

We are also looking, with the judiciary, at potentially having focused places and judges and ways in which we can do what might be described in other circumstances as blitz work on possessions. I am conscious that the working group is still doing its work, and I can describe what they are looking at, but other things may well emerge as it completes its work on the plans for possession resumption.

The Chair: May we move on to juries? Lord Howell will start the questions.

Q141 **Lord Howell of Guildford:** Susan Acland-Hood was talking earlier about cases that require a full jury trial. What assessment have our witnesses made of the implications of reducing the size of juries and replacing juries in some cases with judges and with magistrates?

Robert Buckland: As the Committee probably knows, we have discussed very openly the potential options legislatively to further deal with the impact of Covid. I have tried to encourage a mature discussion about it, but I must advise the Committee that my background is entirely in the jury system. I spent virtually every day of my professional life addressing jurors for the best part of 20 years, so I have had more opportunity than most of my predecessors to observe at close quarters the ways of the jury system, the pluses, and yes, some of the minuses.

It is my honest assessment, based on all those years of experience, that we must preserve the jury system. For all its idiosyncrasies and illogicality, it works to bring groups of members of the public together at random to pass judgment on the acts or omissions of fellow citizens. It is an old system, but just because it is old does not mean that it does not work. Therefore, I start very much from that firm base of an absolute commitment to the right to trial by jury for cases on indictment, and indeed, cases that can be heard either way in the Crown Court.

Having said that, Covid presented particular challenges, and I would have made far too cosy a set of assumptions if I had ignored the realities of

social distancing and the likely effect not just on the health of jurors but on their sense of safety coming into the court as a result of a summons.

Susan has referred to the vast amount of work that has been going on within the courts to make them safe. It is great to hear that dozens of court centres are now conducting cases safely with juries of 12 people. That is a massive compliment to everybody in the service. However, this pandemic is of uncertain duration and of uncertain quality or characteristics. While at the moment the trajectories seem favourable overall, we have to guard against any further rises in contagion. Therefore, it would be wrong of me to sit here at the end of July and wholly rule out any legislative options.

Having said that, those who have bothered to observe my thoughts and public expressions over the last few months will have noted that from the outset I aired the possibility of what I call wartime juries—that is, reduced numbers of jurors rather than a departure from the principle, for example to a judge and two magistrates. The retention of the jury principle is more important to me than anything else. That is why I am prepared to look at jury size where we have nine jurors, with a minimum of seven, replicating the rules about majority verdicts on juries of 12. I can see that measure reducing the need for larger jury panels in court and the need for as many people to assemble to be selected by ballot.

The concept of a judge and two magistrates needed to be discussed and aired. Frankly, it is not an option that I would seek to pursue. There are other complications and ramifications of it that we all need to consider carefully. If we are to move swiftly to deal with the pandemic and its consequences, any legislation would clearly have to be dealt with at a somewhat more rapid pace than mature and detailed reflection would allow.

Therefore, I am instinctively very cautious about all this, and I would not embark upon any legislative change unless I was convinced there was an operational case. As things stand, we will pursue non-legislative options, such as the ones that you have heard about today. Whether it is courts, powers, existing capacity, it is all about practical operation now rather than focusing on legislative change.

Lord Faulks: Lord Chancellor, I well understand your experience and, if I may say so, your strong, almost emotional attachment to the jury system.

Robert Buckland: Yes.

Lord Faulks: However, we have wartime or semi-wartime conditions here. One thing I have a little difficulty in understanding is this: if a defendant themselves, properly advised, would like to have their case tried by a judge and magistrates, or a judge alone, because they want to get their case over with rather than remain on remand, perhaps even in custody, or on bail subject to conditions, why is that a problem? We know from the Criminal Bar Association that its members are wholly against

that. On the other hand, we are not entirely concerned with members of the profession; we are concerned with individuals who are affected by the system of justice. Are you really set against this?

Robert Buckland: Like you, Lord Faulks, I look beyond the professions to the accused person, and indeed to the process itself. We have to establish that the measures we take with regard to Covid will have a widescale effect on improving the capacity of the courts. Frankly, I am not convinced, at first blush, that giving a defendant a right to elect a judge only will yield that many results.

My experience tends to be somewhat opposite to that. It is that where defendants are given a choice they elect trial by jury rather than trial by a magistrate or a judge. Even if there might be a select few defendants who would want to take the decision the other way, I do not think the numbers that that would yield would make any real difference to the challenge we face.

The principle that underlines my thinking is that I would make a change to the jury system only if I thought it would yield significant capacity improvement. Otherwise, there would be no point in tampering with the very important principle that lies at the heart of our justice system.

Q142 **Lord Faulks:** The question of sitting hours of courts has been raised. We heard very firmly from the chair of the Criminal Bar Association that she was strongly against that, and so were her members. I have also read from the chair of the Bar Council that the Bar Council is against this. Of course, both of them are representative bodies, given the change in the way the legal profession is regulated. However, I think I read that you said recently that you were considering increased sitting hours to get rid of this very real backlog, which you have absolutely acknowledged. You have already told this Committee about the number of different ways in which you hope to deal with it. Surely this is one way.

The Chair: I could see Susan Acland-Hood nodding as you were speaking, so, perhaps, she would like to come in there.

Susan Acland-Hood: I do not want to stop the Lord Chancellor coming in.

The Chair: I am sure you will not. I am sure he will have his say.

Susan Acland-Hood: When we set out our plan of action earlier this month, we said very clearly that we thought we needed to look at using more intensively the court buildings that can safely be used. That includes extending the hours for which a court building is used.

From the point of view of the practitioners, and indeed of witnesses and others coming into the system, their hours should not be extended. In other words, we are not expecting anyone to work extremely long whole days in court. It is the hours of the court buildings that we want to extend. We would look at staggering sitting times or arranging things such that individual cases are of normal length but we are able to use the

court building perhaps for two sittings a day, or in the magistrates' court to look at mornings, afternoons and evenings.

We are working through that, again through a set of judiciary-led groups in each jurisdiction, by looking at the patterns that will work most effectively. We have already started in the magistrates' court, which traditionally sits on Saturday anyway to hear overnight remand cases. We have started listing more matters into the Saturday court. It is what we have done in the past when we have had particular issues with types of cases. We are listing many more traffic matters, for example, into Saturday courts. We are looking for other opportunities to do that.

The Magistrates' Association recently surveyed its members about their appetite for evening and weekend sittings. The majority of magistrates have said they would be very happy to sit in the evenings or on Saturdays to help us to clear backlogs. We are also looking at patterns in the Crown Court. We are acutely conscious that this raises challenges for the profession, but it also speaks to the point you raised earlier about the professions needing to have a flow of work coming through to ensure that they remain solvent. Although you are completely right that the representative bodies are not enormous fans of this plan, I think there is work that we can do with the profession to get to a place where we can make this a pragmatic emergency solution to use while we have these backlogs to address.

Robert Buckland: First, I assure the Committee, and indeed anybody watching or listening, that any alterations to hours will be Covid related. It is not some attempt to permanently move the dial or change the way in which the courts work. It is very important to get that on the record.

Having said that, there is clearly a strong case for looking carefully at how work is managed in the Crown Court. I do not want to leave the Committee with the impression that somehow all we want to do is open the court at 8 o'clock in the morning and close it 12 hours later, and expect a whole panoply of court users and professionals to come in or to sit there all day.

Nothing could be further from the truth. We have to remember that this is not only about effective listing and trial management, which is for the judges, but safety, too. There is a good safety case for ensuring that we create a system whereby we are not expecting everybody to come at once and that we stagger the attendance of people through the working day. That is good for court users and for professionals. As Susan has alluded to, we are very alive to the fact that any change can have an effect on the working patterns of those involved. We absolutely want to ensure that that is fully understood.

With regard to listing practices, sufficient notice and planning ahead, all those things will accommodate some of the particular needs of the professionals as well.

I will end on this note. While the professionals are absolutely important, and I was one of them for many years, it is not just about them; it is about the court users, the witnesses and the people who want to access justice. As Lord Chancellor, I have to think of everybody, and I would be failing in my duty if I did not do that.

Q143 **Lord Dunlop:** May I come back to the issue of data collection? Susan has mentioned a couple of times the weekly published management information. I think it is fair to say that a number of our previous witnesses have expressed concern about the depth and quality of the data available. Could you expand on how good the data currently is and, on the basis that no system is ever perfect, what you think could be improved?

I have a very quick second question. Dr Natalie Byrom told us she was involved in producing a data strategy for the Courts Service. Do you intend to act on her recommendations, and when can we expect a response to her report?

Susan Acland-Hood: You are quite right that we have data quality challenges in several places. Many of those are inherent in some of the old legacy systems that we have been operating. Part of the court reform programme is about giving us better-based data that will allow us to support better-quality research and evaluation of everything that goes on in the court system, and to drive performance in the system much more effectively, because we will be able to pinpoint the places in the system where things are difficult.

By and large, our data is strongest in the criminal jurisdictions. It is less strong in civil, partly for some of the reasons I have already outlined, and partly because essentially the case management system that we use captures only quite limited details about people and their cases. It does not, for example, collect protected characteristics information. It does not catch very much detail about what the case is about, which makes it quite difficult to control for other factors when looking at it.

We are seeking to address these things in the new systems. Partly in response to Natalie's report, we have a protocol for ensuring that we are capturing that protected characteristics information about individuals in the reformed services. In the last month we have put that into the first reformed service, in probate, so we can catch that and analyse on the back of it. We are extremely grateful for the work that Natalie did on the report that she wrote for us. We will accept its recommendations. You will see a response to that shortly. It is imminent.

Q144 **Baroness Drake:** May I build on Lord Dunlop's question? Lord Chancellor, in one of your comments in response to a question earlier—excuse me if this is not word perfect—you expressed the view that we have not had sound samples that would provide the robust evidence as to where virtual hearings work and where they do not. That came through clearly in the evidence that we received. Hearing that there will soon be a response to Dr Byrom's report is welcome.

I have a specific question. It is quite time-critical because, as the Lord Chief Justice has said, this is probably the biggest pilot project the justice system has had. This is a short-term to medium-term challenge to make the best of the data that is out there. What action are you intending to take to publish a data strategy for the justice system so that that strategy is clear and visible publicly? Where do you see the priority as to the quality of the data that should be collected?

Robert Buckland: Thank you very much indeed for that question. As Susan knows, the issue of data has been very much on my mind for quite a period, because obviously the better the data, the better the operations, and indeed the policy. Increased technology and the way matters can be entered on to the digital record now means that we have greater opportunities to have more detailed information about cases, and indeed about the way they progress, and some of the different reasons why cases do not make that progress. Very often it is not just about the raw data. It is about the why.

Sometimes data does not answer those questions. While I am a firm believer in improving, integrating and standardising the data—and yes, I think we should be keeping a very firm focus on publication, and the need to make it accessible—there will still be questions that we need to ask of each other as to why certain practices have developed, why certain trends are being seen and why there have been certain problems. We have, so far, some reliable information about some of the online changes that we have made. I am thinking here about online money claims and other types of digital claim. Over 300,000 people have used that type of new service, and the user satisfaction surveys are consistently over 80%. We have some information that shows that it is already proving more user friendly and more accessible.

There is no doubt that the Covid pilot, for want of a better phrase, has thrown out myriad different scenarios which we need to fully understand. Building on what Susan has said with regard to Dr Byrom, as we said we will readily adopt her recommendations. From there, we can start to outline what our case and our strategy will be. I think Susan wants to come in on this, because she is a data—I was going to say geek. I am sure she will forgive me if I use that word, because I am a geek as well—a self-confessed one.

Susan Acland-Hood: Thank you very much. I usually describe myself as a data nerd. The point about ensuring that we have a clear data strategy is well made. We have a data governance authority in HMCTS and we have been doing a lot of work on our data architecture and the principles that sit underneath that as part of the reform. We have also been doing some work with the judiciary, because there are a number of dimensions to this question. There is the question of what we collect and hold and how we collect and hold it, and how the data architecture allows us to link data together. Much of the insight that starts to help us to answer the Lord Chancellor's "why" challenge comes from intelligently linking data and then being able to remove the confounding factors that I talked about earlier.

There is also a fundamental question about how data is shared and what uses we allow it to be put to, which takes us into some quite fundamental constitutional territory. The judiciary has also been doing some work on these questions with us over the last year, looking in particular at uses of judicial data and looking to set some principles around that.

It is a very timely question. The Byrom report invites us to set out more on this. It is the right moment to be thinking about it. I am also conscious that the spending review is coming up and there is a lot of work going on across government on how we appropriately and intelligently link datasets together. There are huge opportunities there.

We also need to ensure that we are cognisant of the consequences—I do not quite want to use the word risks—of making joins between sets of data, in that we look those squarely in the face and think about them carefully. There is a huge amount to do in this space but a lot of opportunity.

Very specifically on the point about video and the pandemic, as I mentioned earlier we are doing our own piece of internal evaluative work using case markers, survey data, case sampling and some in-depth interviews with users, judges and professionals to understand the experience. We will use that as best we can to get a fix. We will certainly get good intelligence from that about the process, how well it has worked and how people have experienced it. We will do our very best to get good intelligence on outcomes out of that.

The one caution I would add is that it is the biggest pilot we have ever seen, but it does not have a very good control group, so it is very hard to totally disentangle the bizarre circumstances of the pandemic, which have affected nearly everyone involved in nearly every activity, from the things that relate specifically to having a video hearing. We will do our very best to do that, but we face a challenge in disentangling those factors.

Q145 **Lord Dunlop:** I have a general question about the court reform programme. Obviously completion of that programme has been pushed back to 2023. Could you update us on progress? What changes might we expect to see to that programme that build on the lessons learned from the pandemic?

Robert Buckland: I will start very briefly and Susan can come in. As you know, it is a £1 billion programme. It has been devised with the full involvement of the judiciary, so it is a genuinely jointly owned programme that is already yielding results on wi-fi connectivity, for example, and all the nuts and bolts things that are essential if all the warm words about technology will work.

I have already mentioned some of the benefits of the online services and the figures that we are seeing now of people starting to use them. Covid has been a chance for us to jump and bounce forward. One of the challenges for us is that although we have been able to use emergency

legislation of both Houses, scrutinised in quick order, to allow some of the changes to be made, longer-term legislative changes will be necessary.

Your Lordships debated the Courts and Tribunals (Online Procedure) Bill in the previous Parliament. Frankly, at the moment it is difficult, with Covid and parliamentary time, to find a vehicle to deal with those particular reforms, although of course I remain extremely keen on them. Even without immediate legislative change, we have proved already that there is a huge amount that we can do practically. Susan can give us a fuller update.

Susan Acland-Hood: We have continued to make good progress in HMCTS reform over the year. We have launched two new services into public beta in the spring: family public law and immigration and asylum. As with the online money claims and divorce and probate services, and the social security service already launched, that lets people initiate cases digitally, and helps them to move through the system in a digital way. Both in family public law and immigration asylum, unlike in the first tranche it starts in effect to give us fully digital working in the courtroom. Again, we are seeing take-up grow in total across all our reform services. We have had well over half a million users, and as the Lord Chancellor says the satisfaction rates remain extremely high.

Q146 **Lord Beith:** Lord Chancellor, you will clearly need legislation to underpin the court modernisation programme. Bearing in mind the fate of the online procedure Bill, which was pretty awful and lost repeatedly, is it not time that your department got a decent slot to do the necessary legislation?

Robert Buckland: I alluded to this in my previous answer. As you know, you debated the CTOP Bill in the previous Parliament. At the moment, Covid has helped to throw an extra spanner in the works as regards legislation. We already have a very crowded programme. As you know, there are a number of Bills that my department has been leading on. You have been busily sending us some of the Bills, and the Commons is now sending you even more of them. I think there is at least one coming to you this week for debate in the autumn.

To cut to the quick, at the moment the pressures are very high. I will keep on making the case, either finding space for the Bill itself or as part of a bigger vehicle to make the changes. I reiterate the point that legislative change is important, but we should not use that as a brake upon all the other practical initiatives that Susan has just been talking about.

Lord Beith: On another point, the whole of the pandemic has involved total confusion between what is the law and what is instructions, advice, remonstrance, government ideas about what is a good thing for people to do. Do you see it as part of your role as Lord Chancellor to ensure that Ministers understand what is the law, and what is capable of being enforced by the police, and what is perfectly proper guidance and encouragement given to people to behave in a socially responsible way?

Once you start confusing these things, we get close to government by decree. Do you think you have a role in this, and have you exercised it?

Robert Buckland: I do. I am grateful for that question, and you will be glad to know that I was pressed on it by the Joint Committee on Human Rights at a much earlier stage during the pandemic. What I said to them, and I think it is important to note, is that the primary legislation was drafted around the Covid restrictions, for example—what people know as the lockdown restrictions—because the primary legislation pointed to the ability of the Executive to create orders that met particular needs. The needs were identified in a list of items in the statute that was agreed by both Houses of Parliament and passed into law. That was a very important way of doing it, because we created a framework of hard and fast law within which individual guidance could be created. As you say, the guidance was just that. It was guidance and it suggested and advised ways in which the needs that had been set out in primary legislation could be met.

Understanding the two-stage process was very much part of what I wanted to try to do in explaining the framework more widely. In the main, although this affected the whole population—let us not forget that we were talking about a quick application in days to apply to 65 million people—the incidences where we had that ambiguity and concern, and frankly the number of cases that had to be corrected through the appeals system, were mercifully few.

It illustrated the legal system working well to address any miscarriages, and to ensure that the law was applied not just in accordance with the rule of law but in a sensitive way by police officers understanding the individual cases that they might encounter. The overall experience has been acceptable, but we can learn from some of the obvious mistakes that were made, particularly early on in the crisis.

Susan Acland-Hood: There have been three impacts from Covid-19. The first, crudely, is that it has proved the case for reform. The parts of the system where we had reformed services in operation, and where we could operate digitally, have been much more pandemic-proof than other parts of the system. We have been able to continue with people working from home and to continue to offer our services. We have seen that work very well indeed in the places where we have digital services working already. It has been much more challenging in places where the service is physical and paper based.

Secondly, it has speeded us up in certain areas. The Lord Chancellor has talked about that. The reason is obvious. It has not just been video. There are other places where we have accelerated moves, for example to increase our ability to do mediation in the civil court and to route people through to it.

Thirdly, in certain aspects it has also slowed us down. In the criminal part of the system, for example, we will shortly be ready to put in the common platform. This is the system that joins us, the police and the

CPS to move cases through the court, and, quite critically, puts the Crown Court and the magistrates' court on to a single system, so that people no longer have to manage things between those two jurisdictions in manual ways. We should have been ready to start that in our early-adopter courts more or less now.

The development work has gone very well and has stayed on track, but we have to think very carefully about how much change we put into courts where people are managing a huge amount of other difference and difficulty at the moment. We are having to think really hard about how we put those systems in. Once they are in they will help and we will be able to move more quickly and do more, but we have to help people over the hump of change at a difficult time. Effectively, that means that we will be doing that a little later, at the end of the summer, rather than the beginning of the summer, to give us the planning and preparation time, for example.

Q147 **Baroness Drake:** Lord Chancellor, we have spent a lot of time this morning on the problems and challenges occurring in the court system and seen how the pandemic has shone a strong light on the existing problems as well as added to them. Do the Ministry of Justice and HMCTS have, or will they get, sufficient resources to deliver the required improvements to the court system?

Robert Buckland: Members of the Committee will be glad to know that as a result of the Chancellor's and the Prime Minister's most recent announcements about the capital investment and the infrastructure agenda that we are keen to advance—the "build, build, build" agenda—we have seen the biggest increase in the overall figure for court maintenance in 20 years.

The figure of £142 million that is being injected into the system in the coming financial year is on top of the existing court maintenance budget. Some of that £142 million will be used specifically for technology, but we are glad to say that the rest of it will be used to help to improve the efficiency of things such as heating systems, renewing roofs and repairing leaks.

It will deal with some of the issues that have long caused concern to court users across the country. While I do not pretend that I will be able to solve all the problems of maintenance with this significant rise, it is, I think, a very important indication of the Government's commitment and belief that justice matters. That means that the places in which justice is administered have to be maintained, consistent with the continuing constraints that will exist when it comes to the cost of Covid and our recovery from it.

We are boosting that capital investment. It comes on top of a settlement last year for the MoJ that represented a 4.9% increase in its revenue budget—one of the largest increases for many a year. We are going into the spending review. You have heard Susan refer to that already. We want to make a really good case evidentially for the need for further

investment. Together with the £1 billion court modernisation programme, we are now in a place where we can, with greater confidence, start to address some of the challenges that we are all familiar with in the system. The short answer is yes, we are going in the right direction.

Q148 **Lord Howarth of Newport:** Perhaps we can turn, Lord Chancellor, to your assessment of the adequacy of the legal aid budget. When the Legal Aid, Sentencing and Punishment of Offenders Act was brought in in 2012-13, the Ministry of Justice said that its aim was to target legal aid on those who needed it most.

In the event, the cuts in the legal aid budget were something like three times what the MoJ had stated it was aiming for previously. In the year following LASPO, the number of cases in which legal aid was granted fell by nearly half. Since 2013, half of law centres and not-for-profit services have closed. Among the people who have ceased to be eligible for legal aid are disabled people, carers, people with mental health impairment, people who have been sexually exploited, people living in sub-standard accommodation. I could go on. The legal aid budget has remained tightly screwed down.

Aside from the misery and injustice that it seems to me this has caused, there is a constitutional aspect. I will quote Lord Reed of Allermuir in the Unison judgment speaking of access to justice. He said, "Without such access, laws are liable to become a dead letter, the work done by Parliament may be rendered nugatory, and the democratic election of Members of Parliament may become a meaningless charade".

Are you worried that in this history since 2013 the principle of equality before the law has been violated? In light of the oath you swore as Lord Chancellor, to respect the rule of law and secure the resources needed to enable the courts to function, what is your ambition in relation to legal aid?

Robert Buckland: I will resist giving a very lengthy answer. There is much I could say about the historic development of legal aid since the 1949 Act. At one point, certainly in the 1980s, legal aid was available in some form or another to over 80% of the public. That system was clearly not going to be sustainable, to be absolutely frank.

What we saw after that, particularly under the Labour Government of 1997, was quite a drastic change to the eligibility of legal aid. Civil legal aid was effectively ended by the Access to Justice Act 1999, so LASPO was the latest in a long line of retreat from the overall provision of legal aid in a wide range of different types of case. Of course, LASPO came against the background of public spending measures that had to be taken by all government departments. We know the history here, particularly of the Ministry of Justice. I am not here to make party political points—that would be inappropriate—but you know the background.

It was important at that stage for us to ask ourselves questions about the ambit of legal aid. However, what we should be doing now is setting out an intellectual case for its importance, relevance and application in a

civilised society where we believe in the rule of law. It is my fundamental belief that where individuals face a loss of liberty, a loss of livelihood or fundamental change and detriment to their lives as a result of actions by the state, legal aid in some form should be available. That should be the general principle. There will perhaps be exceptions to that, and there will be some anomalies, because this is a big system and we are trying to cater for many different scenarios. Having that as a general principle is probably where we need to start from.

In the realm of criminal work, clearly the liberty of the individual is a matter of fundamental importance. Legal aid has not been available in criminal cases where that is not at stake. Frankly, that has been the case since the Widgery rules back in the 1960s.

On the other side of things is the dilemma that in many private disputes legal aid was habitually available. With respect to the importance of private disputes to the individuals concerned, I do not think legal aid has a role to play there. Where it gets difficult is in the crossover between what ostensibly might appear to be a private dispute where there is a strong public interest emerging, such as sexual abuse, domestic abuse—all the issues that we rightly take a very strong line on. It is in understanding where the boundary could lie that I need to focus my attention in the years ahead. In short, I cannot promise, and it would be wrong of me to say, that somehow the provisions of LASPO will be rolled back. They will not.

What we can do within that space, through vehicles such as the LASPO review and indeed the work that we are doing on early legal support, is to refine and improve the way we improve access for people without the wherewithal to pursue dispute resolution. It does not always have to be litigation. Sometimes early interventions made by local organisations can prevent problems from escalating to legal disputes in the first place. It is in that area of work where Alex Chalk, the junior Minister, and I are focused on early legal support and assistance. We already have £5 million set aside for this work, and we will continue to focus on that aspect of support. Indeed, we will develop that alongside our proposals for the reform of the criminal legal aid provision system.

I mentioned part 1 of the criminal legal aid review. Part 2 will be launched shortly. Of course, that will deal with the issue of ensuring that we have criminal legal aid providers out there providing that vital advice to people at the police station and beyond. This issue is always on my mind, but it is important that we put it into its full historical context when talking about the development of legal aid.

Q149 **Lord Hennessy of Nympsfield:** Lord Chancellor, what do you think are the indispensable ingredients of an independent judiciary? When you sit at the Cabinet table, do you think you are their representative and their very incarnation? What are the key ones that you would resign over if they were transgressed?

Robert Buckland: That is a really good short question, Lord Hennessy. I took two oaths as Lord Chancellor. I took an operational oath that deals with resources and our Secretary of State. I also took an oath as Lord Chancellor that has not changed. It is my role in Cabinet to be the constitutional guardian of the independence of the judiciary. I take it incredibly seriously. I demonstrated it during the Prorogation crisis. I will not hesitate to demonstrate it at every appropriate moment.

There is a distinction to be drawn between vigorous and lively debate about the merits of individual judgments and personal unwarranted attacks on the personality of judges. Where attacks of that personal nature are made, I will not hesitate to intervene. Judges, like us all, live in a democratic society, but they are independent. They are also independent of each other as well as of us, so understanding that but maintaining the balance between their independence and what sometimes creeps into the dialogue as a rule of lawyers, rather than a rule of law, is where I need to be.

No judges I know see themselves as guardians of the flame and living in some sort of temple where nothing they say or do can ever be criticised. That would be unhelpful, frankly, for lively scrutiny of the rule of law. At the same time, because their judgments are their public pronouncements, they cannot answer back when they are subjected to personal, unwarranted and personality-based abuse. That is where my job comes in. In Cabinet, I think that strengthens my position as Lord Chancellor, and allows everybody to be under no illusion that where I adjudge the rule of law to have been seriously called into question by the acts or behaviour of people in our society, I will call it out.

Q150 **Lord Faulks:** Lord Chancellor, you have very obviously and clearly maintained your real priority about the independence of the judiciary and, unlike at least one of your predecessors, you have gone on the record to do that. I am sure we all appreciate that.

I want to ask you about the rather ticklish and delicate situation of the role of our judiciary as the final court of appeal in Hong Kong, in the light of the Chinese legislation and the possibility—I stress possibility—that it might have to adjudicate in some way on that. How did you feel as the protector of the independence of the judiciary about its further involvement?

Robert Buckland: It is a matter that has engaged my close interest and, frankly, my concern over the last several weeks and months as we have watched this particular situation develop. Let us not forget that the overall governance of the court of final appeal in Hong Kong has that international flavour that includes UK judges. Our very own President of the Supreme Court, Lord Reed, serves as a judge in that tribunal, as does his immediate predecessor. The words that he expressed very recently were entirely right. I absolutely associate myself with them and support them utterly. In other words, the appropriateness of the judges on that court to continue serving in Hong Kong must depend on a very simple

test: is that service still compatible with judicial independence and the rule of law?

I am watching extremely carefully to see how the national security law that has been passed by the Chinese will be implemented in practice. We have some cause to be cautiously optimistic. Chief Justice Ma's statement on 2 July was helpful. He clearly reaffirmed the principles of judicial independence and stated that judges will be designated to hear cases from the existing judiciary only on the basis of their judicial and professional qualities.

Clearly, there ought therefore to be independence under the rule of law. However, we have to be very ready to take action. That is why the Foreign Secretary's statement on Monday, which set out, with my full support, the serious violation of China's international obligation which the new national security law in Hong Kong represents, shows that the court of public opinion is watching how China will behave. The canary in the mine is the court. If the court cannot hold in its current composition, clearly the situation will have gone from bad to worse. I will not hesitate to stand very firmly with Lord Reed and the other judges to support the rule of law internationally, as well as nationally.

Lord Howell of Guildford: I am sure that what the Lord Chancellor has said is right, but would it not be a more positive approach—and I have heard some voices suggest that our judges should stand down or consider their position—to urge our very distinguished judges and authorities to liaise, as they do with the judges in the judiciary in other countries, with the judiciary and law-makers in Beijing, and try to cast more light on the extent to which the new national security provisions impact on the basic law and whether they are being implemented and administered in accordance with international standards? Would that not be the right way forward?

Robert Buckland: Lord Howell, that is an eminently reasonable point. I think you can be reassured that at the judicial level that engagement continues. Officials remain in touch with each other, and the judges themselves remain in touch with each other, and with Chief Justice Ma. That level of engagement is very important, because, remember, Lord Reed has been very measured in his comments. He has not indicated any particular course of action. It is important that the Chinese know that we are watching very intently and very carefully. It is up to them now which way they wish turn.

While that principle of engagement is absolutely important, and it will continue, it is right for us to be clear—I have described the relationship as needing to be honest and direct—when it comes to what we think are the important boundaries here that ought not to be crossed, bearing in mind the particular status of the Special Administrative Region and the continuing importance, to my mind, of the joint declaration and the basic law.

Q151 **Baroness Fookes:** I want to ask about the proposals for a constitution,

democracy and rights commission. Is this going forward at all? I have to say that if it were to sink without a trace, I would be a very happy bunny.

Robert Buckland: It will not sink. I can tell you that. In fact, work continues on aspects of reform. Covid has of course been a factor, but it has not prevented my officials and me from working very carefully on what the ambit of that review might be, and the form it will take.

I can assure your Lordships that we will keep you fully abreast of developments. I want to ensure that Covid does not cause undue delay. I want there to be a meaningful and independent review of aspects of our constitution. We talked in our manifesto about the Human Rights Act and the need for it to be updated. That will be looked at very carefully and independently. I want there to be a very meaningful and careful review of judicial review itself by independent academics and practitioners.

In other words, I am not here to grab cheap headlines. I am here to try to do a fairly mature and deep piece of work to ensure that we are happy with the structures that we have. While the principles for example of judicial review are enduring and important, we need to ensure that we are not sleepwalking into a US-style system. I have issued warnings about the US-style approach to the constitution many times in the past, and I reiterate them today. I do not want to see our judges in a position whereby we are echoing some of the more unfortunate practices of the United States Congress. That would be wholly unfortunate.

However, we can and must do things to make the necessary plumbing adjustments to our great unwritten constitution. That is why I commend the approach which the manifesto took. I will be stewarding it over the next few months and years in a way that I hope will stimulate mature and reasoned debate of the type that we have so often had the benefit of from your Lordships in the past.

The Chair: We would certainly be very interested to take that further with you. We should say thank you to you and to Susan, who is now offline, for giving us evidence today. We have our normal annual session with you outwith Covid, even though we have touched on some of those issues this morning, and we look forward to talking to you again. Thank you for the time that you have given us this morning.