



HOUSES OF PARLIAMENT

Joint Committee on Human Rights

Oral evidence: Enforcing Human Rights, [HC 669](#)

Wednesday 23 May 2018

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Members present: Ms Harriet Harman (Chair); Fiona Bruce; Ms Karen Buck; Alex Burghart; Jeremy Lefroy; Baroness Hamwee; Baroness Lawrence of Clarendon; Baroness O’Cathain; Baroness Prosser; Lord Woolf.

Questions 67–83

Witness: **Rt Hon Mr David Gauke MP**, Lord Chancellor and Secretary of State for Justice. gave evidence.

Q67 **Chair:** Thank you very much indeed, David, for coming to give evidence to us in your new position. As you know, we are the Joint Committee on Human Rights, so we are half Lords and half Commons. We are the Human Rights Committee and we are looking at the question of people’s ability to enforce their human rights.

Could I start by asking you how you would characterise yourself on the human rights continuum? On the one hand, there are people who think it is an absolute pain in the neck that we are part of the European convention and we have a Human Rights Act, and that it is all politically correct nonsense.

Alex Burghart: You are pointing at me, Chair.

Chair: Sorry. On the other hand, there are people who feel that it is a vital constraint on what would otherwise be the abuse of state power and vital for the protection of individuals’ rights. Your 2015 manifesto promised to repeal the Human Rights Act, but the 2017 iteration says that that will not happen while Brexit is under way, and it commits to us remaining a signatory of the European convention for the duration of the next Parliament.

In your view, should there be a cloud hanging over our Human Rights Act and the European convention? How much are you a champion of these human rights mechanisms, or are you just gritting your teeth until such time as they can be done away with?

Mr David Gauke: The starting point is that protecting the rights of the individual from the power of the state and ensuring that we have the right balance so that individual liberty is protected is absolutely key. I am a strong believer in and advocate for the rule of law and an independent judiciary and in ensuring that the powers of the state are not untrammelled, because we should be governed by law.

Where there is debate is the degree to which these protections should be set out by legislation and conventions that are laid down and the degree to which it is for the independent judiciary to have a great amount of power to interpret them, or how much we believe that Parliament's traditional position can work perfectly adequately in providing those protections.

It is certainly right at the moment that we do not leave the European convention. It is right in this Parliament that that remains in place. We will have to return to that in future Parliaments, but in the particular circumstances, and given the changes that are ongoing with Brexit and so on, it is right that we close down that argument on the convention.

There is a debate to be had about the position of the Human Rights Act and the extent to which it is essential to those protections, but now is not the right time to have that debate. It is not part of my priority or my focus to prepare the ground for either its removal or its repeal. We have plenty to be getting on with, which is the Brexit process, which touches upon some of these issues. Fundamentally, we need to find the right way to protect the rights of the individual.

Chair: What is wrong with the European Convention on Human Rights that you could envisage us having to bring the sword down on it after this Parliament?

Mr David Gauke: We have had challenges in the past as a country where the interpretation of the European Convention on Human Rights has been too intrusive. An obvious issue is prisoner voting rights. That is an issue that Parliament is perfectly capable of taking a view on. I would say—and this flows from the Brighton declaration and from the Copenhagen declaration conference, which I attended a few weeks ago—that there is a greater sense of subsidiarity and a margin of appreciation for convention member states. If you look at the way the European Court of Human Rights has behaved in recent years, its focus has been much more on the issues that it should be on. The UK has a very good record in being able to defend itself. The convention is working much better than a few years ago.

Q68 **Fiona Bruce:** Thank you, Minister, for coming today. We have been told in evidence that around half the population, or even more, would not be able to access legal advice if they felt that their human rights had been breached and if they needed legal aid, because they would not be able to obtain it. I wondered what you thought of that.

I can set this in a bit of context. I understand that I do not have a conflict of interest here; my law firm has just given up undertaking legal aid work after 30 years, since we were founded. It is the last firm in our area of five firms to give up doing legal aid. Increasingly over the last decades, lawyers have said that they simply cannot make a living out of legal aid—this is not just solicitors; it is also barristers—because the hourly rates and the amount of unpaid administration that has to be done simply make it unsustainable. What you think about this, bearing in mind the impact this is now having on the equitable provision of legal aid across the whole country?

Mr David Gauke: The first point is that we are undertaking a LASPO review of the changes to legal aid that occurred under the coalition Government. That review is looking at all the evidence. We are engaging with the stakeholders and considering and examining that evidence. The availability of legal aid and the impact it is having on individuals is clearly part of what we need to consider.

Access to justice is not just about legal aid. When it comes to how we can make the process of accessing justice easier, issues to do with how we can take away some of the complexities and delays and make it more user-friendly are very important. We have an ambitious courts and tribunals reform programme that means that certain things are easier and can be done for the greater convenience of the individual than before.

We are reviewing legal aid itself. We had to make changes because of the financial situation we were in. We still spend £1.6 billion a year on legal aid, but we are looking at that evidence. When it comes to access to justice, it is not just about how much we spend on legal aid.

Fiona Bruce: You are saying that you will be looking at some areas of the law in which legal aid is currently no longer available or is limited.

Mr David Gauke: We will be looking at some of the processes. Can things be done that make the process easier for the individual so that they do not have to wait for long periods of time, for example? Can they, for example, do more online to improve the process? For civil claims, for example, there are changes that are currently in the beta stage that improve the process.

On that point about access to justice, if you can bring the procedures into the modern day, that has to be to the advantage of people.

Q69 **Fiona Bruce:** Can I ask you about the procurement process for telephone gateway services in education and discrimination law? The department has just announced that it is cancelling the procurement process due to a lack of tenders. How are you proposing to ensure that legal aid will continue to be made available in those areas?

Mr David Gauke: We are engaging with the Department for Education on that particular point. It is also worth noting that subject to qualifying criteria you can get help from the CLA for problems with a range of issues. That support is available.

Q70 **Fiona Bruce:** Can I ask you about the Exceptional Case Funding scheme? It was intended to provide a human rights safety net and was expected to support about 700,000 cases a year. Last year, only about 638 cases were supported. Indeed, one of the key problems is that the cost of filling in the complex forms cannot be reclaimed from the Legal Aid Agency. We are informed that lawyers may have to spend up to two hours filling in these forms.

There is also a need to see the client, and often these cases are not straightforward or easy. A lawyer can spend virtually a morning on behalf of a potential client, at their own cost, simply to apply for this payment. Could the Government consider reviewing this and covering the cost of the application, which is a key ask that we have been informed of by those who are working in this field?

Mr David Gauke: The review that I mentioned a moment ago in respect of LASPO will include looking at exceptional funding and how that process works. I am conscious that the scheme has been contentious since its inception, which is one of the points that we are looking at. It continues to provide support for where legal aid would not normally be permitted.

Fiona Bruce: Theoretically, yes, but in practice that is not happening. That is what so many witnesses, even from law centres, are telling us. I remember volunteering in a law centre when I was a very young lawyer. Law centres are saying that they simply cannot cover their costs. Even charities cannot cover their costs for giving advice that is legally aided. This is quite a serious issue for those who need advice, particularly on human rights issues.

Mr David Gauke: About half of applications are granted. Applications have increased. In 2016-17, we received a total 1,879 applications. That is up from 1,344 in 2015-16, with the rate roughly being the same, around about half, slightly growing. Not every applicant is getting it, but about half of applicants are getting it. It is part of our LASPO review.

Q71 **Fiona Bruce:** Is there a possibility of linking legal aid with the welfare system in some way? Figures from the House of Commons Library show that 75% of people are not eligible for legal aid. Of the 25% who are, some still have to make a contribution. Many who are not eligible simply cannot afford access to legal advice, with ramifications: representation by individuals in person in the courts, and so forth.

In a country where we pride ourselves on a system of justice that is based on the rule of law, is it acceptable that individuals are being turned away? They are unable to access justice because of

this system. Changes made over decades have brought about this grave impasse.

Mr David Gauke: The decisions that were made in respect of legal aid—spending on legal aid has been reduced over the last eight years or so—were made in the fiscal climate that we were in, and difficult choices had to be made about public expenditure. As I have said, we are reviewing how that operates. It is still an environment in which public spending has to be constrained, so I do not want to suggest anything to the contrary. The Exceptional Case Funding is, as it says, exceptional. These are exceptional cases, so one would not expect every application to be successful, but we will look at that and the evidence in relation to its operation.

Fiona Bruce: In closing, may I say that I am not just referring to the last eight years? This has been going on a long time. I fully accept that under the green form scheme two decades or more ago there were abuses that had to be addressed. We are all aware of the economic position of the country, but restrictions and limitations have been applied progressively over so many years not just to the amount of funding that is available for individuals to claim but to the areas of funding.

In the area of family life, for example, it is now very difficult to obtain legal aid unless there is domestic violence or there are children involved. There are many cases where vulnerable women cannot get legal aid and cannot, as I understand it, get an injunction when they need it. It is areas such as this, which impact on human rights and the right to a family life, where we are asking the Government to look again in relation to funding and its scope.

Mr David Gauke: That will be included in our review, but on your point I would just emphasise that legal aid is available in domestic abuse cases.

Q72 **Baroness Hamwee:** Can I ask you about inquests? We have taken this up with you previously and you have written to us saying that you are looking at how to make inquests less adversarial. You have already made the point about user-friendliness. Nobody would argue with that, but we have often heard from bereaved families that it feels like a very adversarial process to them. They feel outgunned, because the public authorities that are taking part in an inquest are invariably represented. They have made the point that there are ranks of lawyers each representing different authorities. It is something that has certainly impressed me. Is it possible to deal with it by reforming processes as you have suggested, or does it need looking at from the legal aid point of view as well?

Mr David Gauke: I am conscious that it is a contentious matter, and I too have met families who have raised concerns as to how it operates in some circumstances. Our objective should be to make this process less

adversarial. There are risks if more and more parties “lawyer up” and the end result becomes one that is particularly difficult for families because it becomes much more adversarial. The challenge as you make it is when public authorities are defended.

Baroness Hamwee: That is how it has been put to us.

Mr David Gauke: That raises issues about independent public advocates and so on. We will be setting out our victim strategy in the summer, which ties in with a number of these issues. We are reflecting on various issues that are relevant to victims, of which this is one. We will set out information on our strategy over the summer.

Baroness Hamwee: Can that be looked at alongside the review of legal aid, because they are not in completely separate pigeonholes, are they?

Mr David Gauke: They are not. We are on different timings. We will set out the victim strategy in the summer. Our review of LASPO will report before the end of the year, and it will be able to take into account where we have got to on the victim strategy.

Chair: Following up on Sally’s point, are you also considering how you get more fairness for families when they do not get legal aid, but public authorities—the council, the fire brigade, the ambulance, the school, the Prison Service or whoever—not only have counsel but leading counsel? Has anybody suggested to you that there should be a tariff on the public authorities whereby if they are going to have counsel they have to put aside a tenth of what they are paying for their own legal fees to pay for those who are affected by the decision?

That might have the effect of lessening the amount they spend as well as giving to people who otherwise sit there feeling, as Sally says, completely outgunned and excluded. If you are not going to stop them putting in leading counsel—sometimes you can have six leading counsel representing six authorities and a family on their own—have you thought about doing it that way as a sort of tithe?

Mr David Gauke: It is an interesting suggestion and one of the things that we can think about when we consider how we address that. You make the case for it succinctly and well. I see the benefits of it. That is one option that we can consider.

Karen Buck: I wanted to follow up on the issue of people who are litigants in person and so undefended in court. A report was leaked from your department very recently that looked in some detail at the implications of clients being unrepresented in court. I wondered whether as part of the LASPO review you were looking at the costs elsewhere in the system of litigants in person and people who were undefended, and what the human rights implications were, particularly of heavy outgunned defendants who are going unrepresented.

Mr David Gauke: I have been in post for coming up to five months, and this debate pre-dates that. One of the points that is often made is that there are costs that occur somewhere else in the system. Our challenge in engaging in the LASPO review is to look at the evidence on that and so on. It is perfectly fair to ask whether a false economy is being made here. That should be led by the evidence.

We already provide funding to ensure that there is support for litigants in person, and we have done that for some time. There is also a strategy of providing structural support and information as well as routes to free or more affordable legal advice. Again, I come back to the point that the LASPO review is considering the evidence in this area.

Karen Buck: Is there a particular human rights implication, though, particularly in relation to defendants being unrepresented in some cases because they cannot get legal aid or could not consider the payments if they were?

Mr David Gauke: You are absolutely right that it is not just about the economies, although it is right to pick up the point as you made it, but about the human rights aspects. Access to justice is very important, as are human rights in this context. It is not just about the provision of legal aid, but that is part of it, and we will look at that.

Q73 **Lord Woolf:** You may have answered this question already in answer to Fiona's questions, but are you going to really look at scope, because scope is a black-and-white situation? It might be better to think of some other approach that does not mean that either you are in or you are out.

Mr David Gauke: I do not want to restrict the review one way or the other.

Lord Woolf: I hope you are not restricted from looking into scope.

Mr David Gauke: We are not.

Q74 **Lord Woolf:** Secondly, in situations such as inquests—tribunals outside the ordinary courts—if we cannot have equality of arms under the present approach, is there something to be said for there being a tribunal service with much greater emphasis placed on an advocate whose responsibility it is to see that all sides receive justice?

Mr David Gauke: This comes back to the position of the independent public advocates and so on, which we will say more about. We are actively considering these issues as part of our victim strategy.

Lord Woolf: I am pleased to hear that.

Q75 **Baroness Lawrence of Clarendon:** Do you accept the need for a fearless and independent legal profession, and what are the Government going to do to support this?

Mr David Gauke: Yes, I do. The rule of law is absolutely crucial to what we are about as a country, and an independent judiciary is absolutely

central to that. I see my role as Lord Chancellor as being a defender of the rule of law and a supporter of an independent judiciary. More widely, independent legal professions are part of the way our structure works, and, yes, I certainly believe that the legal profession should be independent.

Baroness Lawrence of Clarendon: As we have been discussing, there is still difficulty in people gaining access to this independent legal profession, because it comes down to finance and all the rest of it. Those are the issues that we are trying to deal with here. How do they get to the independent professional support that they need?

Mr David Gauke: Any Government have to be mindful of the costs to the taxpayer. Legal aid can never be unlimited, and there will always be issues as to where that border exists and what the scope and availability of legal aid will be. As Fiona has pointed out, there have been changes to that over a number of years. We are reviewing that as part of the LASPO review. We will never have a system where everyone, paid for by the taxpayer, will be able to access all the legal advice that they want. There will always be limits. We need to make sure that we have those limits right.

Chair: Can we take it that, supporting the rule of law and the independence of the legal profession as you do, you would be perfectly supportive of law firms that acted on behalf of claimants who were taking cases against different government departments? You would want to protect their right and not criticise them for taking cases, even if those cases were against the Ministry of Defence and in respect of serving soldiers. You would support the independent legal profession in taking claims.

Mr David Gauke: Taking a case in itself against the Government, including the MoD, is not grounds for criticism. That is not to say that there could not be some behaviour on the part of a law firm that is perfectly open to criticism. Simply taking a case is not grounds for criticism, but law firms are not above criticism.

Chair: Should you not be championing the ability of those who have a claim to take it to court with the support of a solicitors' firm, rather than just saying, "It's not grounds for criticism"? Is it not your job to do more than just not criticise but to defend their right to do that, so long as they are not breaching the solicitors disciplinary code or being vexatious, in which case other agencies will deal with them?

Mr David Gauke: There have been cases where it has been alleged, then subsequently found, that there have been breaches of the solicitors disciplinary code, and in those circumstances it is reasonable for Government to be critical, but it is not our job to interfere with that disciplinary process.

Chair: Thank you. That is what I was hoping for.

Q76 **Alex Burghart:** An independent judiciary is part of the cornerstone

of the British state. As Lord Chancellor, you have a particular role in defending the judiciary. Since you took over your post five months ago, what have you done in the pursuit of this duty?

Mr David Gauke: First, it is to go out and make the case for why the rule of law and an independent judiciary are important. I have repeatedly stressed this point, whether it was in my acceptance speech—if that is the phrase—when I was sworn in as Lord Chancellor, in the evidence I gave to the Justice Committee of the House of Commons or the Constitution Committee of the House of Lords, or in the speeches I have given on other occasions, such as the Times Law Awards. I have repeatedly made the case for the rule of law and the independence of the judiciary. It is also a point that I have not hesitated to raise in Cabinet meetings. There may well be other circumstances in which I would be prepared to step in, such as if I considered that the independence of the judiciary was under threat or a level of abuse was being directed at the judiciary. I have repeatedly made the case that I would be prepared to step in to make the argument for it. That is the central point: to be that defender and that advocate.

Alex Burghart: We have read the comments that you made to the Justice Committee about wanting to publicly defend the judiciary, and you have put that on record.

Something came up when we had a very eminent panel of retired judges in front of us, including Lord Neuberger, Lord Williams and a third eminent retired judge.

Chair: Lord Thomas.

Alex Burghart: It was Lord Thomas. One of the things that we discussed was whether other Ministers, the Prime Minister in particular, should have the same formal duty that you would have to defend the independence of the judiciary. What do you think about that in principle?

Mr David Gauke: There is a responsibility on all Ministers to uphold the rule of law. The fact that there is a specific duty on a specific member of the Cabinet is helpful and strengthens it. There is a slight risk of dilution. Having served in her Cabinet for nearly two years, I would say that the Prime Minister is very conscious of the importance of the rule of law. It is a concept that she talks about a lot in public and in private. I am very much aware, and I have become more aware of it in the last five months, of the degree to which she is very focused on it.

With regard to particular duties, there is something to be said for having that specific duty for the Lord Chancellor to be there.

Alex Burghart: I personally believe that the current Prime Minister has that sense of responsibility towards the judiciary, but one never knows who is going to be Prime Minister in the future.

Mr David Gauke: That is true.

Alex Burghart: With that sort of thing in mind, we wondered whether a review the Ministerial Code and some reference to the importance of judicial independence might be included there. Would that be helpful?

Mr David Gauke: I can see the argument. There is a duty under Section 3 of the Constitutional Reform Act that applies to all Ministers. Certainly, I was conscious of that before I was Lord Chancellor, as a Minister for nearly eight years in other departments. There is that specific responsibility on the Lord Chancellor, and in a way—perhaps this is making the case, and I should declare a vested interest here—it might diminish the role and status of the Lord Chancellor to some extent if everyone had that same duty. The risk then is that nobody feels that it is their specific responsibility to make the case.

Chair: Would it not enhance the standing and responsibility of the Lord Chancellor if you, as Lord Chancellor, put into the Ministerial Code that your other colleagues should not undermine the judiciary? You are there to promote and positively support the independence of the judiciary, but the other Ministers should not be undermining the independence of the judiciary. Perhaps we could just suggest that that would be very reassuring to the judiciary; they would know that the obligation was on all Ministers not to do anything that would undermine the judiciary and that that is in the Ministerial Code.

Mr David Gauke: Let me take that away as a suggestion. That point has not been raised directly with me by current or previous members of the judiciary. I do not know if it is about to be.

Chair: It might be about to be raised with you by this Committee in our report, so stand ready for it.

Mr David Gauke: I will stand ready for it.

Q77 **Baroness Hamwee:** I want to ask about the Government's role in making the case for human rights. Can you say something about what the Government's role should be in the public discourse on human rights and informing people about their rights? Do the Government do enough?

Mr David Gauke: Yes, we do. One cannot necessarily split human rights off from the wider question about the rule of law and so on; they are intimately linked. We uphold the law, and that includes the Human Rights Act.

In terms of the civic debate, it is not just about what the Government do but what all of us as parliamentarians do. The issue of human rights continues to be prominent. We uphold the operation of the European Convention on Human Rights.

Baroness Hamwee: When the media—we think particularly the print media—lays into Article 8, again, should the Government

stand back, because it is a matter for freedom of expression and debate?

Mr David Gauke: We have a vibrant and free press, which is also part of our system. The press holds government to account. It holds us all to account. These are points that should be open for public debate. It is part of our public debate as to how the balance between rights of different parties can operate. I come back to the point I made at the beginning: that the rights of individuals are important, and we believe in a system that protects those rights.

Baroness Hamwee: Is this something that your Ministry discusses with the Department for Education? One of the suggestions made to us has been about the place of human rights information in the schools curriculum.

Mr David Gauke: I confess that I have not had that conversation with Damian Hinds. I am not sure I have ever been in a governmental post where somebody has not suggested that we need to do more in the curriculum, whether on financial education, the tax system, how the benefits system works and so on. I am conscious that the curriculum is quite crowded as it is. The Department for Education holds the ring on it, but I have not had that conversation with the Secretary of State for Education.

Q78 **Karen Buck:** We have heard from the Equality and Human Rights Commission, and had evidence from Scotland and Northern Ireland, about the pressures on the budget. The Equality and Human Rights Commission's budget has fallen by around 70% since 2010. Your department is not responsible for that.

Do you feel that a human rights agency that has had budget cuts on that scale will be able to do the job that we require of it on the human rights enforcement side?

Mr David Gauke: We believe that it can do its job. Its original budget was unrealistically high. As I understand it, there were changes to its responsibilities in 2013. I also understand that it has always delivered an underspend with the budgets that it has.

Karen Buck: Maybe not an underspend of 70%.

Mr David Gauke: No, I am not suggesting that, but in the last year it delivered an underspend of £500,000, if I remember correctly. We believe that it can continue to do the job that it is tasked to do.

Karen Buck: In evidence from the agency, we have had illustrations of cases with purely human rights implications that it cannot take forward, partly because the enforcement powers are much stronger on the equalities side than on the human rights side. There could also be a resources element to that. Is it a cause for regret that purely human rights cases cannot be taken forward? These will be cases where there is no legal aid either, so there is no

testing of human rights implications in the way that we would possibly all like to see.

Mr David Gauke: First, it is not part of my responsibilities, as you say. Secondly, we as a Government believe that we will continue to provide sufficient funds to enable it to fulfil its statutory duty. It can fulfil its duties, but there is a tailored review that gives us the opportunity to consider what it can do, review the powers available to the Commission, and see whether that remains appropriate. Penny Mordaunt, who very recently took over responsibility for this area, may be better placed to discuss this in detail. We believe that it has the financial support to undertake its core functions.

Karen Buck: In human rights terms, would it be good to see the Equality and Human Rights Commission be able to undertake investigations into possible breaches of the Act, which it cannot do at the moment?

Mr David Gauke: I come back to the tailored review and seeing whether it is well placed to deliver its statutory obligations. That Cabinet Office review is under way and gives us an opportunity to assess whether it can do what it needs to do.

Karen Buck: Have you had any discussions with the Department for Education about this?

Mr David Gauke: I do not believe I have. You say the Department for Education. This falls within the scope of the Government Equalities Office, which falls within the responsibility of the Minister for Women and Equalities, Penny Mordaunt, who is the DfID Secretary. I have not had a conversation with her on this particular issue.

Karen Buck: In principle, do you feel that the commission would benefit from greater independence from government? Is its relationship with government as it should be, or would they be able to hold government to account more effectively with greater independence?

Mr David Gauke: From my experience, which admittedly is limited, given the time I have been in post, I have no particular concerns about its independence, but, again, the tailored review gives an opportunity to look at that specific issue.

Chair: The tailored review is going to look at lots of specific issues. You have said that you think they have enough funds. It is formally accountable not to you but to the Minister for Women and Equalities, but it is the Equality and Human Rights Commission and you are responsible for human rights. You are early into the job, but you have been around and about. Do you think that the Equality and Human Rights Commission is doing a cracking job, an all right job or not a great job on human rights?

Mr David Gauke: As far as I am aware—as you say, I have not been in post that long and it is not part of the Ministry of Justice’s responsibilities—the commission is performing its duties in the way we

would hope and expect it to. The review gives us an opportunity to assess that more fully.

Q79 **Baroness Lawrence of Clarendon:** Last week, we heard evidence from members of the Windrush generation who were wrongfully detained. Was this a breach of their human rights, and, if so, why were they not better protected?

Mr David Gauke: The first thing to say—and I have said this publicly before—is that what happened with the Windrush case is clearly unacceptable and the system has not worked as it should have done. We all feel a sense that we have to get this right and understand precisely what has happened. Sajid Javid, as the new Home Secretary, is very much engaged in that.

The first point to make is that this has not worked as it should have done. We need to understand why not. We have processes in place to try to address this to make sure that people's cases are being properly addressed. I know that the Home Office is working extremely hard to ensure that that happens.

Baroness Lawrence of Clarendon: Would you say that their human rights were protected? This is about human rights.

Mr David Gauke: We are getting a proper and full understanding of what has happened. The Home Secretary gave evidence to the Home Affairs Committee last week. He made clear that there have been some deportations—up to 63—that may be as a consequence of that. We need to understand properly what has happened in those cases. That begs questions about their fundamental human rights.

Baroness Lawrence of Clarendon: There was something a few weeks ago on the news. A mother went to a funeral and was not allowed to come back. It took her daughter 10 years to support her to get back into the country. That is definitely against her human rights. Nobody thought about her. If all this had not come to light, someone like her would still be in Jamaica unable to gain entry back into this country.

Mr David Gauke: Absolutely. It is clearly a human rights issue. I accept that. We need to understand what has happened in individual cases and precisely what the circumstances were. If there are people who are entitled to be in this country who were not able to return to this country, or people entitled to be in this country who were deported, that clearly raises significant issues.

Q80 **Chair:** The Home Secretary is doing a major review on this, because he is responsible for detention. You are responsible for human rights, and the deprivation of liberty, which is what detention is, is a major human rights issue. We heard from two witnesses who had been detained. That was a human rights issue. They also did not have a chance to challenge that detention. They did not get legal aid. They did not get the possibility of an

appearance in court or an appeal.

Will you join the Home Secretary's review to make sure that the issues of protecting people's human rights and people's access to independent legal advice to protect their human rights is included as part of this review?

Mr David Gauke: We will do everything that we can to support the Home Office in the review that it is undertaking to ensure that the rights of individuals are protected. We have talked about compensation for those whose rights have not been respected in the past.

I would make one point, possibly in anticipation of the next question. The Home Office is endeavouring to ensure that those affected can get through the system adequately, and that their position can be regularised and so on in such a way that legal advice will not be necessary for those individuals, because it wants to make it as easy and as simple as possible, and we all want that to happen.

Chair: We have asked the Home Secretary to give our two witnesses from the Windrush generation a copy of their Home Office files so that we can see the processes of decision-making and the grounds on which they were based. It might also be a good idea for you and your department to look at them, because then you can see whether you think they are compliant with human rights. Certainly the outcome did not appear to be. Then you can look into what the Home Office is doing and see whether or not it is compliant with human rights. We will perhaps send you a copy of those files when the Home Secretary sends them to the Windrush generation witnesses we had before us, they send them to us and we send them to you.

Mr David Gauke: Please do.

Baroness Hamwee: Can we be assured that you will keep other human rights, not just the right not to be detained illegally, on your list in connection with this affair? The right to family life is clearly engaged in this saga.

Mr David Gauke: Yes. We recognise that we need to have a proper understanding of precisely what happened, and there is still much work to be undertaken for this.

Q81 **Lord Woolf:** I have a question that time may not permit. Perhaps I can put it very briefly to you, because it is something that you will be conscious of. Unless our courts and judiciary work as well as they have in the past, which involves recruiting judges of the highest calibre, the whole of our ability to protect human rights will be prejudiced. I am sure that is a matter you will take into account when you are doing your review.

Mr David Gauke: Indeed, and you are not the first current or former member of the judiciary to make a similar point to me.

Chair: Fortunately, when they were recruiting Harry, it was a very high-calibre level and a very high bar at that point. We know what we are aiming for on that.

Baroness O'Cathain: I have a very simple question. I know nothing at all about the law, really, but when people find themselves in a position where they are up against a legal profession that is so clever in getting around things, what sort of assistance do you give people who are told that they have to face this inquisition in court? Is there a handbook or any training? You take people off the streets and set them up against all these big brains. The people who are detained should be told how the whole process is going to unfold. That is a human right, is it not? Does that happen automatically, or do they just go in without any indication of what is going to happen to them?

Mr David Gauke: For those who are unrepresented—litigants in person—we have a strategy that involves providing practical support and information, as well as routes to free or more affordable legal advice. There is that assistance. We have also done more to train the judiciary by equipping them to support unrepresented parties in court. We try to address that. It is a point that is put to us. Concerns are raised about it, and, as I said, we have a strategy in place to try to address it.

Q82 **Jeremy Lefroy:** This question is only tangentially related, but in a funny sort of way it is very important when it comes to access to justice. It has been brought to my attention by local coroners that post-mortems are taking far too long. For many people, their one experience of the legal or paralegal system is in a post-mortem for their loved ones. This is already a difficult set of circumstances. When it takes weeks and weeks for that to be conducted, and the coroners are getting to the state where they are crying out because of the lack of pathologists willing to undertake these post-mortems, we begin to have a serious situation that clearly affects our constituents. Are you sighted of this problem? Do you have any initial response? Is your department looking at this?

Mr David Gauke: Yes, it is relevant. The coroner is a judicial position. Their local budgets are set by the local authority. There have been some high-profile and contentious issues in respect of the operation of coroners. Partly because this is a localised, devolved issue, you will find different coroners with different levels of resource, and that plays into issues of timeliness. That is very often an issue that local authorities have to address, because if it is about resources they have to consider some of the support that they can provide.

Jeremy Lefroy: I am getting the impression from what I hear that it is a national concern. It may be a devolved issue, but there is a national concern that there is this problem, not just in my local authority. Given that you have national responsibility, even if it is second-hand, is this something that you can look at, because it is

becoming a serious issue? I am told that this is not just simply about local resources. It is about the national availability of expertise and the willingness of those with expertise to do this absolutely fundamental job that is of great concern to people whose loved ones have passed away.

Mr David Gauke: My impression is that some of these issues have been particularly acute in particular places and less of an issue in other places. We have a chief coroner in place now. Let me take that away.

Q83 **Karen Buck:** Going back once again to those who are undefended in court and are therefore litigants in person, we know from the social security system that if you are represented at tribunal your prospects of success are dramatically higher. What evaluation is going on in the department to establish what the outcomes are for those who are undefended, those who are litigants in person?

I know this will be difficult, because to some extent people representing themselves in court may not necessarily always have a case that is as robust as those who are represented, but it must be possible to consider some evaluation that looks at those outcomes. Is that being done?

Mr David Gauke: You raise a fair point about whether we can get robust statistics in this area, because we might not be comparing like with like. Again, let me take that away.

Karen Buck: Would you be nice enough to write to the Committee when you have had a chance to discuss it?

Mr David Gauke: Yes, I will happily do that. These are the types of issues that we are giving consideration to, and indeed seeking evidence for. Not all the evidence will be in our own hands, but it will always be part of our LASPO review.

Fiona Bruce: This is a very short comment. I am not expecting an answer. I would like to think you are aware of the impact on the morale and indeed the dignity of part of the solicitors' profession, certainly, and probably the Bar, at the very low remuneration that can be obtained if you do legal aid work. The only way some lawyers can undertake it is by being subsidised by colleagues. That is not necessarily a good relationship to have in a solicitors' practice.

It is further compounded by what I have seen over the last few years, which is the increasing aspiration on the part of young lawyers—I have the impression that it comes from their period in training in educational establishments rather than in training-contract time—of aspiring to work for a City firm. That is the epitome of success for someone entering the profession in their early years. It is very important that we ensure that we uphold the

dignity of those who want to work at the coalface of serving often the most vulnerable in our society.

Mr David Gauke: I accept that point, and it is valuable and important work. I would be the first to acknowledge that.

Chair: Thank you very much indeed for coming and answering our questions. We are very grateful to you.

Mr David Gauke: Thank you very much.