

Justice Committee

Oral evidence: [The work of the Solicitor General](#),
HC 1837

Tuesday 2 April 2019

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Members present: Robert Neill (Chair); Bambos Charalambous; Robert Courts; Janet Daby; David Hanson; Gavin Newlands; Victoria Prentis; Ellie Reeves; Ms Marie Rimmer.

Questions 1 - 58

Witness

[I](#): Robert Buckland QC MP, Solicitor General.

Examination of witness

Witness: Robert Buckland.

Q1 **Chair:** Good morning and welcome, Solicitor General. This is the first time we have had the pleasure of your giving evidence to the Select Committee.

Robert Buckland: Thank you, Mr Neill. It is a pleasure to return to the Committee, of which I was a member for four years in the 2010 Parliament.

Chair: Indeed so; it is good to see you back. We have to deal with our formal declarations of interest, as you know, at the start of each session. I am a non-practising barrister and consultant to a law firm.

Robert Courts: I am a door tenant at 3 Paper Buildings.

Victoria Prentis: I am a non-practising barrister and married to a judge.

Bambos Charalambous: I am a non-practising solicitor.

Ellie Reeves: I am a non-practising barrister.

Q2 **Chair:** There are some non-lawyers here as well.

Solicitor General, we have heard recently from the Attorney General. Of course, you and he are the two Government Law Officers, with a number of roles. I would be interested if you could set out for us the way in which you and he divide the ministerial responsibilities and the particular functions that you have as Solicitor General, as opposed to the Attorney's work.

Robert Buckland: Thank you, Mr Neill. I suppose the Attorney General and I are the Morecambe and Wise of Government, in the sense that we are a partnership, and we are both perhaps not complete without the other. That very much applied to his predecessor Jeremy Wright, who was appointed on the same day as me back in July 2014, and with whom I enjoyed quite properly a very close working relationship. It has to be so because the 1997 Law Officers Act put on a statutory footing the indivisibility of the work of the Law Officers. In other words, I share exactly the same functions as the Attorney General and do the same body of work.

The convenience of having two Law Officers means that in times when there is perhaps a constituency conflict of interest he can conduct a particular case, or look at a case that clearly has a constituency conflict, and vice versa. It means that when Members of Parliament write in, and particularly if I write in, in my capacity as a constituency member, about the work of the Law Officers, I can write to him and he can deal with it independently. More importantly, the sheer volume of work means that two Law Officers are very necessary in order to carry out the considerable box work that we both have day to day.



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Q3 **Chair:** Do you both have the same authority, in effect, to deal with some of that box work?

Robert Buckland: Yes, we do. Prior to the 1997 Act, the Attorney had to give specific authority to the Solicitor to deputise. That was done away with, and it allows for a much more administratively efficient way of working. Obviously the Attorney attends Cabinet, and you have heard from him about his functions. I attend a number of Cabinet Committees and do other inter-ministerial work, but it is a pretty happy division of labour.

Q4 **Chair:** I won't inquire which one is the Morecambe figure and which is the Wise one.

Robert Buckland: I will leave the Committee to judge that. I wear glasses.

Q5 **Chair:** I am sure everybody is wise in this context.

That is very helpful. One of the particular areas I know you are both involved in is the superintendence role of the main prosecutorial bodies—the Crown Prosecution Service and the Serious Fraud Office. We have had the new directors of both of those organisations in to give evidence to us, as did the Attorney.

A lot of the discussion was about the framework agreement that has been put in place with those two bodies. There was some concern in the past that superintendence could historically have been a bit ad hoc, if I can put it that way. The intention, as I understand it, was to give it a rather more formal structure. Can you tell me what you think the practical differences are in the way that you, for example, deal with the Crown Prosecution Service, to start with, and then the SFO, as the superintending Minister with the new framework?

Robert Buckland: Yes. It was work that I started early last year. It was clear that the structure needed updating; I think the last memorandum was written in 2009. While the system of superintendence worked perfectly adequately—certainly in the years since I have been Solicitor General—it was felt that it needed updating and clarifying.

In particular, it needed clarification with regard to the operational independence of the DPP and the strategic oversight and accountability function of the Law Officers. A lot of careful preparation by me and officials, and indeed the work of, first of all, the SFO director, and the DPP, resulted in the new frameworks that I am sure you have all seen. In particular, it introduces the new concept of the strategic board. Strategic boards will exist for both organisations, which means there is much more of a formal framework within which particular strategic issues can be raised with Ministers by the DPP. We have already had meetings of both boards in respect of the SFO and the CPS.

I found the first meetings extremely useful in, for example, understanding concepts like the risk registers that exist for each office. It



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is important that as a Minister I understand how they are developed, and what that means, and the sheer communication between the two sides, so that they can anticipate what is likely to be an issue in Parliament and so that we can understand the issues affecting their day-to-day work as well as the longer-term issues that they are going to be concerned about, whether it is expenditure or indeed organisational structure.

Q6 Chair: Have any specific changes been made to enhance information flow, for example?

Robert Buckland: Yes, there have. The board itself is now a formalised way of allowing that better information flow. That is not to say that there were not regular meetings between the Law Officers and the heads of the SFO and CPS before, but having a more formalised structure means that communication is better.

In terms of media communication, there is greater co-operation and understanding of the challenges that can sometimes be faced by the Crown Prosecution Service. It might be on an individual case or more generally on issues that sometimes come into the public eye, most notably the disclosure issue that I know this Committee has been very concerned about in recent months.

Q7 Chair: That was the one issue I was going to raise with you on specifics, because we had concerns about the need for there to be clear leadership and drive on disclosure. What is your assessment as to the current position in relation to the new approach?

Robert Buckland: First of all, I have not had a formal chance to welcome the Committee's report on disclosure that was published last year. I think the Committee knows, certainly informally, that it is an issue I have long taken a deep and close personal interest in, to the extent that, prior to the unhappy revelations about those cases in late 2017, we had already started work proactively to deal with what I regarded as a long-term issue.

As a result of that work, and indeed the work of the Attorney and me in publishing our disclosure report in November last year, the Crown Prosecution Service is already working on the national disclosure improvement plan. The second phase of that plan is being rolled out, and I am taking a very close personal involvement in it. I attended a meeting of the NDIP at CPS headquarters about two weeks ago in order to hear directly, not just from Max Hill but from Nick Ephgrave, the NPCC lead for disclosure, and other key members of both the police and the CPS around the table, looking hard and fast at what is being done locally to spread best practice. That is not just about prosecutors; it is also about the police.

I am happy to report that I got a real sense of partnership. There was no defensiveness in the room. There was much more of an acknowledgment of the problem and a willingness to try to tackle it as quickly as possible.



Q8 **Chair:** Do you think there is a greater confidence in the effectiveness of it among the judiciary now? Obviously, with more judicial management it is important work to—

Robert Buckland: Yes. I cannot speak for the judiciary, and I would not seek to do that. What I would say is that I understand some of the concerns that senior judiciary have about a potential explosion in reading and preparation work if, for example, they had to comb through the minutiae of unused material. That has never been the job of a judge. Having sat as a Crown court recorder myself on many criminal trials, it was not my job to sift through unused material, but it is important that the judiciary have a handle and a purchase on the conduct of disclosure from the time the case comes before them, whether it is a PTPH or other pre-trial hearings.

There is nothing worse than a judge attending a court for trial to find that suddenly there is a last-minute disclosure issue. It is every judge's nightmare because we have to think about witnesses and jurors who have come, and all the concomitant delay and expense that incurs. It is an entirely reasonable approach to ask for, and expect, vigorous case management, but that can only be done with the assistance of both the prosecution and the defence.

The idea that the defence has no role or responsibility for getting disclosure right is something we need to consign to the history books. Responsible defence advocates and lawyers—I was one for many years; I defended as much as I prosecuted—owe a duty to their client to get disclosure right. I have had experiences myself where disclosure has suddenly changed the whole complexion of a case and has, frankly, tipped the result in a different direction.

Clearly we all have a responsibility as criminal litigators. I have observed judges over many years dealing vigorously with directions. Most judges, rather than wading through the unused, would at least want to know what the issues are. They can then make appropriate orders to ensure that trial dates are met, and that witnesses and complainants are not kept waiting too long to give their important evidence.

Q9 **Chair:** In relation to your superintendence role, what do you and your Attorney propose in relation to any review of the fees paid by the prosecuting bodies to independent advocates they instruct? Among the issues raised around disclosure were the potential extra burdens on prosecutors and defenders in reading the unused, precisely to be able to assist the judge in a proper way.

Robert Buckland: Indeed. There are two points. First of all, with regard to prosecution fees, the CPS is itself conducting a review this year into its own system. It is frank and right to say that the long-term solution to that will have to be very much part of the spending review and the request that may be made by the Crown Prosecution Service. Perhaps we can talk about that at a slightly later stage.



Coming back to defence advocacy fees, I have long maintained, and I have said this at the Bar Council, which I attend regularly, that the modern criminal trial has evolved quite dramatically from the time when perhaps you and I, Mr Neill, were in full flight at the criminal Bar. Frankly, there was much more emphasis on oral evidence then and much less use of formal admission procedure, or indeed agreed evidence. There was much less sense of active case management from the court system.

Those days are gone. The modern criminal trial is very often a question of agreed evidence that is put before a jury. The real hard work has been done prior to trial. I accept the argument that many friends and colleagues of mine in the criminal defence community make to me: the real work is done on the review of unused material and the sift of material in order to make the judgments I have just talked about.

How the fee system can reflect that will be the key challenge. I very much hope that, in the review that is being conducted by my colleagues at the MOJ over the next 18 months or so, we can build into that review a fair reflection of the realities of modern criminal practice. I do not hold the brief for that. That is for the MOJ. As one of the leaders of the Bar, you can rest assured that I will make sure that both the Attorney's voice and my voice are heard in a constructive way so that we can create a fee system that truly reflects modern developments in criminal litigation.

Chair: That is very helpful. Thank you.

Q10 **Robert Courts:** Thank you for those comments, Mr Solicitor. I would like to move on to something different and talk about contempt of court and the action that you take there. I will ask you in a second about some of the more topical specific issues surrounding social media. To start off, could you tell us some of the principles that you apply when you are choosing to take action, and any trends you are identifying at the moment?

Robert Buckland: Mr Courts, thank you for asking that question. Contempt of court issues are one of the mainstays of the work of the Law Officers. Without my giving a tutorial, you know, together with other members of the Committee, that the law of contempt is not necessarily the most straightforward. There is what we know as common law contempt, which requires a particular intent. Then there is statutory contempt, which requires a substantial risk of serious prejudice to the proceedings. That is a high threshold and is not something that is easily met. It is something that I apply as a lawyer would, in my quasi-judicial role, when assessing contempt cases. It is something, however, that the Law Officers are not frightened to apply and use in appropriate cases.

There has been some misunderstanding, certainly in recent years, as to our role. It means that any court, any judge, district judge, circuit judge or judge of higher record can refer contempt issues to the Attorney General's office. Very often, we get letters from judges who are concerned about particular cases.



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There is sometimes a crossover into criminality. Let me give you an example, and here I am starting to bring social media into the equation. When we see cases where the identity of a complainant in a sexual case has been disclosed, that is a criminal offence contrary to the Sexual Offences (Amendment) Act 1992, which makes it a criminal offence to disclose the identity of a complainant in a sexual case. That is a police matter and it needs to be investigated and prosecuted. There are many cases where I can assure you that that is done.

When it comes to where we are with contempt on social media, you will of course be aware that the previous Attorney issued a call for evidence on social media and contempt of court back in 2017. I recently published a response to that. The evidence showed, happily, that there was no systemic undermining of the court process via contempt, in the sense that we were getting a sustained attack on the integrity of the court process, but it is something that, if unchecked, could quite easily grow. If we allow the proliferation of inappropriate comments or postings on social media websites to grow with impunity, we will be facing a situation where the integrity of the trial process could be undermined.

Q11 Robert Courts: Is that because it is inadvertent, and people do not realise the fact that a comment on social media has the same effect as a comment in traditional media?

Robert Buckland: Partially that is right. Some of it is inadvertent. Some of the cases I review—I am not going into individual ones—often bring the retort that they did not know they were doing anything wrong. However, having said that, it is pretty common knowledge among the general population that saying and doing things, and casting judgment about the merits of a case while it is ongoing, is not very sensible. I think that is generally understood. However, there is more work that we can all do to help spread that knowledge and, frankly, to help social media sites understand that when something is inappropriate it needs to be taken down very quickly if we are to maintain the integrity of the process.

Q12 Robert Courts: There are a couple of aspects, aren't there? There is the point of view of the social media companies, but what about warnings to juries? It has been a few years since I was actively doing criminal trials, but, when I was practising, there were warnings from judges to juries. Have those been toughened up in the last few years, and should they be?

Robert Buckland: You are absolutely right. The Judicial College, as you know, regularly updates the judges' handbook, the judicial handbook, which often forms the basis of what I call standard directions to juries. I was sitting as recently as 2014, and I would issue a regular direction to juries about the need to avoid research on the internet and the need to judge the case upon the evidence that they heard before them in court, as opposed to anything outside.

Those directions have been toughened up and elaborated on since 2014, and the Government introduced legislation back in 2014 to criminalise



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juror misconduct; for example, juror research on the internet is now a criminal offence. There are types of misconduct behaviour that can now be prosecuted. That is different from the days when it was merely a contempt of court.

I think that has been helpful because not only does it increase the tools available to the authorities to deal with wrongdoing but it reinforces, and helps to reinforce, the fact that we expect good behaviour from juries. Judges can say to juries, "If you do that, it is potentially a criminal offence, which will be investigated." That can only strengthen the ring, but, as I said, we need eternal vigilance of it. That is why I have taken certain steps to deal directly with the main social media platforms with regard to takedown.

Q13 Robert Courts: How responsible are they being? Are they engaging with you? Do you find that you are getting an active response? Are they appreciating the problem and taking action on it?

Robert Buckland: I am happy to say that Twitter, Facebook and Google all agreed to meet me. We had meetings last year, and they all agreed to provide a special point of contact for the Attorney General's office—a named person in the organisation whom my officials can get in touch with rapidly to make an observation or complaint and to get particular items taken down as quickly as possible.

I know it always feels a bit like "whack-a-mole" when it comes to the internet, but I am encouraged. The attitude of the platforms now, as opposed to several years ago, is changing, and changing for the better. I very much hope that the new system we have will improve the speed at which inappropriate postings are removed.

Q14 Robert Courts: That rapidity is key, isn't it? If I am counsel in a trial and notice something online, and I go in and see the judge the next morning with my opponent and explain what we have seen, how responsive are they, so that action can be taken there and then? In reality, it has to be there and then, or you are starting to imperil the trial, aren't you?

Robert Buckland: I entirely agree. There is nothing stopping the judge referring the matter directly to the Attorney General's office. If we know about it, we will do our best to act on it and help to ensure early takedown.

Q15 Robert Courts: I am confident that you would. My question is directed more to how responsive the social media companies are when you raise an issue with them.

Robert Buckland: The special point of contact system is still fairly new. I cannot give you any figures or information yet about its effectiveness. I will be monitoring it very closely in the weeks and months ahead to make sure that there is that step change.

Q16 Robert Courts: What sort of target are you looking for? Is it an



emergency number so that you have someone at the end of a phone there and then?

Robert Buckland: That's right. It is a named person we can contact quickly and build up a rapport with. That is vitally important. I do not just want a named person. I want somebody who knows the system and knows what is expected or asked of them if the Attorney General's office makes a complaint or a call about a particularly concerning post. That level of understanding is vital if we are to make it work. I am cautiously optimistic that progress can be made.

Q17 **Robert Courts:** Has it been rolled out throughout the judiciary and counsel as well, so that they are fully aware of the new project?

Robert Buckland: I am grateful to the president of the Queen's bench division, who is spearheading work that is being done by the judiciary to streamline and clarify guidelines to judges about contempt of court. I am not going to comment about particular cases.

What happens is this, and I have been there as a judge. You deal with everyday matters of procedure and admissibility because it is part of your bread and butter. Contempt does not happen that often. It is inevitable that a busy judge with a big list will be dealing with lots of cases, and contempt is not necessarily the first thing on their mind. They are to be somewhat forgiven if, at first blush, they are not as immediately gripped by the law and procedures as they are on other aspects of the criminal process.

Having said that, I think that with clearer guidance, and a revision to the guidance that exists, judges will be helped to be brought even more up to speed, so that they know the appropriate immediate response to be taken if they are faced with a question of contempt.

Q18 **Bambos Charalambous:** I declare that I am a vice-chair of the APPG on social media and young people's mental health and wellbeing. Earlier today, we launched a report into the harm that social media causes for young people.

The Health Minister spoke about the White Paper on online harms coming forward. Is there any indication at this stage as to how the White Paper might address the issues we have just heard about from Mr Courts? Do you have any views on that?

Robert Buckland: I do, Mr Charalambous, and thank you for raising it. We are expecting publication of it very soon. While I obviously cannot indicate to this Committee what may or may not be in that document, which is of course a DCMS lead, I can say that I think it will draw together a lot of the themes surrounding online harm into a much more cohesive plan, with a much more cohesive approach with regard to what we expect from social media companies in terms of their standards, their practice and what they need to be doing in order to take down harmful content.



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I gave evidence last week to the Home Affairs Select Committee about takedown in the context of terrorism, and how the need for rapid takedown has never been more pressing. I am not going to start getting into a debate about whether we will go down what I will call the German path, with which a lot of members of the Committee will be familiar, but I can say that I am confident that the White Paper will represent a real step forward in making it clear that social media companies, like all of us, have a social responsibility and a responsibility to the society in which we all live.

While the internet and social media have been incredibly empowering for all of us, they are also potentially extremely harmful to people who might have vulnerabilities, particularly children and young people. As a parent of teenagers myself, I am on the frontline. Therefore, it matters to me hugely that we get this right. I am confident that the direction of travel we take will be one that will find support from a wide cross-section of opinion in the Commons.

Q19 Bambos Charalambous: To go back to the discussions you have had with the social media companies about contempt and content, are you confident that they will be able to take it down quickly enough so that it does not linger online for a long period of time? We had the situation where the Christchurch shootings were being livestreamed on social media for about half an hour while they were going on. The concern I have is about whether we will be able to get to the social media companies quickly enough, as soon as we are made aware of a contempt or some other issue that would have an impact on court proceedings.

Robert Buckland: There is a mixture in the governmental approach with regard to whether it is regulation or some form of system and practical measures. That is why I thought I could not wait for the online harms White Paper; I wanted to publish something that was part of what I regard as a very practical nuts and bolts approach to the problem. We need to establish direct relationships with the companies that have the power to deal with this, although we have to understand that the proliferation of the internet and the way it works does not make it easy for some of the companies to deal with the problems. I mentioned “whack-a-mole”, and frankly it is sometimes like that. A combination of the practical and the strategic is the only way we are really going to nail it.

Q20 Bambos Charalambous: On the flip side is educating the public about what is and is not a contempt of court. What steps are you taking to try to educate the public? People have grown up with social media now and they do not necessarily know whether what they are doing is contempt or not.

Robert Buckland: That is right. We have now set up a gov.uk page, linked to my Department, about contempt. It will be an easy-to-go-to guide about the dos and don'ts, with further signposting as well. It will be



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something that is written in human being as opposed to legalese, and that members of the public can easily access.

Q21 **Chair:** Do the Government have a timeframe for the production of the online harms White Paper?

Robert Buckland: I can say this, Mr Neill; it will not be in due course. It will not be today, but it will be very soon.

Q22 **Chair:** And you have taken those actions yourself anyway in advance.

Robert Buckland: Yes.

Q23 **Ellie Reeves:** You have set out your long-term vision for public legal education as helping to "create a country where everyone, and every group, is able to access justice." What progress has the public legal education panel made in promoting access to justice?

Robert Buckland: Thank you, Ms Reeves, for that question. As you aver, PLE has been one of my main passions since I became Solicitor General. Why is that? Because I believe that the need to inform and empower citizens with regard to the law has never been greater. The rule of law, if it is to mean something, is not about the rule of lawyers. It is about all of us feeling confident and secure that we live in a rules-based system, and that we have rights and responsibilities; and rights that can be enforced.

I have set up, as you referred to, a committee under my leadership. We have already met quite a number of times through the last two years. I have a wider committee that looks at a body of work, and a smaller strategic group to help set the course of action. Late last year, my committee launched its statement of goals. That was as a result of a lot of work done by its members. We have a wide range of membership, from the academic and teaching sector right through to the charity sector. I think most of you know of the Young Citizens charity. They are very much involved, as are the CAB. We also have representatives from the MOJ on my committee to bring a cross-governmental approach.

We have launched our vision statement. I think you have probably seen it. It is a seven-point statement that is more than just motherhood and apple pie. It is about getting evidence on which to base our work. What we have done since then is to look at, and try to map and chart, what the need is and what the provision is. We have subdivided PLE into two types. There is what I call just-in-time PLE, which is last-minute intervention that can give people, even at the door of the court, information and support to deal with a particular problem that they are facing, and what I call just-in-case PLE, which is much longer-term work that can be done in the community. A natural environment for that is schools. I have taken part in probably half a dozen sessions in schools, delivering a Young Citizens course on things as diverse as social media and other aspects of the law to key stage 4 students. That is done with lawyers who volunteer their time.



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I will just pause there for a moment. The voluntary input of lawyers is often overlooked. While there is a lot of great work going on in the pro bono sector, for a lot of lawyers it might be more convenient for them to give an hour or two every month to go into a local school and talk about practice, not theory. What really struck me was a session I went to at a school in Ealing in west London. We started to talk about music apps on a mobile phone and asked, "Who owns your app? What do you do if you download music and then send it on to somebody? Are you breaking the law? Are you doing something that perhaps could get you into trouble with your contract?" I tell you; they were interested because it was relevant to their daily lives. Once you make something relevant to a young person's life, you've got them.

We hear the phrase "teachable moment" so much. I saw a teachable moment there. Genuinely, my enthusiasm was rekindled even more, if it could be, for the need for us to reach out—not just to young people, but to people in the community—and deliver messages about the law. It reinforces my point that, if it is some sort of temple guarded jealously by lawyers and a holy grail that can only be accessed by those who understand the language, frankly we are failing. That is not a rule of law country that I want to live in.

Q24 Ellie Reeves: Thanks for that. It sounds very positive. Are there plans to extend it beyond schools? For example, prisons might be an area where that sort of education would be useful, and maybe also something at the local library. Are there plans to extend it beyond schools?

Robert Buckland: I am very interested in scaling up, as I call it. I keep recruiting more people to the committee. At the risk of making it too large, I want to see as many enthusiasts as possible come on board.

Recently I have recruited my Inn of Court. I am a Master of the Bench at Inner Temple. I am proud to say that my Inn has the best record for outreach of all of the four Inns of Court. Forgive me, Mr Neill; you are a member of Middle, but we will skirt over that.

Chair: It is something for me to take away, Mr Solicitor.

Robert Buckland: Yes, exactly. If you could follow our lead that would be marvellous, Mr Neill. Our record on outreach is the best, and the Inn is looking at scaling up online presence as well, offering accessible, digital modules that can then be delivered to the hard-to-reach groups. I absolutely agree about prisons. Part of rehabilitation has to be PLE. Libraries are another source of potential.

What we have agreed very recently as a committee is to look at scale-up. Rather than trying to dwell on what we are doing, I want to move apace. Some of the internet modules that are being developed by the Inner Temple and others will be the way forward, perhaps to reach rural establishments and rural schools where lawyers cannot get to, and in a way that is wholly revolutionary when it comes to spreading PLE.



Q25 Ellie Reeves: One criticism is that it could end up being a substitute for legal aid or face-to-face advice with a lawyer when that is needed. That is a concern I would have. What balance do you see between the two things?

Robert Buckland: It is a fair point. I emphasise again that I do not see this as a substitute for legal aid. In fact, it is slightly different from pro bono work; PLE is about something wider than meeting a problem when it comes. It is all about preventive work. It is all about making sure that the young family who, for whatever reason, have not fully understood the contract they have signed do not get into problems when it comes to litigation. It is all about the young person signing a mobile phone contract and knowing just that little bit more about some of the pitfalls of signing a direct debit that can be increased without their knowledge, for example. It is trying to make adjustments that mean when young people come out of education they are a bit better equipped to avert some of the risks that can lead to them falling into trouble, either with the criminal law or indeed with civil law itself.

I take your point. It is not a substitute. It is a supplement designed to try to refresh those parts of the community that, frankly, the law has not reached.

Chair: I will make sure that the Master Treasurer at Middle Temple has a look at the transcript of this exchange.

Victoria Prentis: Possibly, there are things that the Justice Select Committee could do to help, Mr Chairman.

Chair: That is a very fair point.

Robert Buckland: I would welcome that.

Q26 Victoria Prentis: Moving the topic to modern slavery, there was a report in December 2017 from the CPS inspectorate that was quite damning. It found that there was an "inconsistent approach with no clear overarching lead at local level" and called for a much clearer "framework for leadership." The Work and Pensions Select Committee did a report last year and identified "a shocking lack of awareness and co-ordination in the front-line services dealing with modern slavery." What more has been done to ensure a more joined-up approach for the CPS?

Robert Buckland: Thank you, Ms Prentis, for raising that point. It is an important illustration of the challenge we get sometimes. In this place, we pass legislation that is groundbreaking and world-leading, as the 2015 Act was, and I was proud to play a small part in it. Then there is how it works on the ground.

What I would say is that I think there is actually a sign of real progress with regard to the way the CPS deals with this scourge. One of the most important aspects of tackling and prosecuting modern day slavery is early investigative advice—the CPS getting in at the beginning of an



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investigation and helping to advise and shape the course that is taken by those who are investigating.

In the year 2017-18, there was a dramatic increase in the number of cases where that advice was provided to the police.

Q27 **Victoria Prentis:** Early advice?

Robert Buckland: Early investigative advice. It was an increase of over 100% in the number of cases where that advice was being given.

Q28 **Victoria Prentis:** Do you think that was as a direct result of the criticism or just because there is more modern slavery being found?

Robert Buckland: A bit of both. The benefit of the inspectorate, with whom I work very closely, is that an ongoing inspection will often lead to a spur to action. By the time a report is published, we already see progress being made to address some of the issues raised. That is why the inspection regime is so important. That is why, as a result of many reports, I now call in senior members of the CPS to discuss what they are going to do to deal with the criticisms that are made. That is part of the superintendence role that I have and is something I have developed in the last few years.

Coming back to where we are with modern slavery, to give you some real figures and the latest that I have available, the number of offences recorded by the police in the year to September 2018 was 4,270, which represented a 51% increase compared with the previous year. There is, as you rightly suspect, quite a dramatic increase. The number by which there was a referral and then a decision to charge increased in 2017-18 by about a quarter, and is up to 239 suspects now. Charges were brought in the same year in over 77% of those cases.

However, the referrals are uneven. We are getting three quarters of referrals from just eight police areas. They are the metropolitan areas where you would expect a greater concentration of modern day slavery, but we all know that it is happening in county towns, and in even smaller settlements, right across the country.

Q29 **Victoria Prentis:** What are you doing to co-ordinate it further?

Robert Buckland: We are doing more work on face-to-face training. During the last year, 16 national mandatory face-to-face courses were delivered for prosecutors by the CPS, in particular looking at understanding the need for support to vulnerable victims and early investigative advice. What we are trying to do is spread best practice by as much training as possible so that we get consistency of approach.

Q30 **Victoria Prentis:** Is there work going on with the Home Office to look at how we tackle international modern slavery?

Robert Buckland: Yes, indeed. At the moment the system by which we work is the JIT—the joint investigative teams—internationally. The CPS is



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taking part in 24 live JITs at the moment, the highest of all EU member states for human trafficking. We are initiating more JITs than any other member state. That goes back to the Prime Minister's call at UNGA—the United Nations General Assembly—in 2017 to take action to deal with modern slavery.

I feel very strongly that, as a rules-based country and a country that believes in the rule of law, we have a particular leadership role to play. That is why I was deeply encouraged by the support that we received at UNGA for this. That is the reason for our success in arguing that the UN global goal target of 8.7 was achieved. It is all about ending modern slavery.

That will mean nothing unless we do something here and abroad to tackle it. While I accept that there is still a long way to go, as a result of the Act of Parliament and the work that is being done, we are getting towards that goal.

Q31 Chair: That is very helpful and leads me on to a question that Mr Hanson is going to pick up in a moment. One of the things that the DPP emphasised in relation to modern slavery was the importance in successful prosecutions of working “across borders at speed to exchange intelligence, evidence and provide other assistance.” What would the impact be of a no-deal Brexit on our ability to work in that area?

Robert Buckland: Immediately, Mr Neill, we would lose the European arrest warrant, which is the most rapid form of surrender that we can achieve of suspects between member states. We would have to revert to the 1957 convention, which, although it gives us a structure for extradition, raises all sorts of questions of delay and, frankly, potential denial of justice.

There are issues about the domestic legislation of other EU member states—for example, a nationality bar—which of course can often be a real obstacle to swift extradition. In short, it would severely hamper the ability of the UK criminal justice authorities to bring people to book for crimes that have been committed.

Q32 David Hanson: I googled the European arrest warrant this morning. Just yesterday, there were comments from the deputy chief constable of Northern Ireland, who said on 28 March: “It is going to be slower without it. It is going to be clunkier without it. It is likely to be more bureaucratic. It will have a negative impact and”—this is the point I put to you, Mr Solicitor—“we do look forward to getting some clarity.” In the event of a no-deal Brexit, which is only a week on Thursday/Friday, what is the clarity?

Robert Buckland: Mr Hanson, you know my strong view about a no deal and you know my strong view in favour of a withdrawal agreement. A withdrawal agreement gives us that clarity. It is in all of our hands, with



the greatest of respect. Everybody on this Committee and elsewhere understands that the withdrawal agreement offers that certainty.

I accept that there are issues about the future relationship. However, I would pray in aid the future relationship document, which is very ambitious and positive about the need to replicate a structure that allows early surrender of suspects both to and from the United Kingdom to other EU member states.

Q33 David Hanson: But that is an aspiration.

Robert Buckland: Inevitably it was going to be. As you know, I think we are all probably depressingly familiar with the structure. The political declaration was never going to be a legally binding document, because the structure of the negotiation meant that we had to conclude the withdrawal agreement before starting formal legal negotiations for the future relationship. That was always going to be the case.

What is important in the future relationship political declaration is that we have those important commitments. They are commitments that could have been objected to by the EU but were not. If you remember, article 184 of the withdrawal agreement puts an obligation on the parties to use best endeavours and to act in good faith to negotiate a settlement that is in line with the political declaration. It does not have to be absolutely in accordance with everything in the declaration, because the declaration, as a political document, will naturally see evolution. That is why I do not buy the argument put by some of my more Eurosceptic friends that somehow the political declaration is going to be the final destination of all of this.

The content of that declaration is important, in the sense that we have a joint aspiration on both sides to achieve the level of co-operation that you and I recognise the EAW, and indeed the exchange of criminal information system, give us.

Q34 David Hanson: What about Eurojust? A cursory look at the website of Eurojust says that it is a European organisation. The three top things on its website today are halting drug smugglers, acting on child pornography and stopping foreign terrorist fighters travelling. Again, will we opt in to that? Can you give an assurance that we will be opting in to it? What happens on 12 April in the event of a no-deal Brexit?

Robert Buckland: I will answer those questions backwards. First of all, if there is a no deal, we will have a shadow desk at The Hague working separately from but in close communication with our colleagues in Eurojust. To give you an illustration of the amount of work we do, in 2017 we took part in 82 Eurojust co-ordination meetings, the second highest behind Germany. We were the requesting case in 82 cases and the subject of a request in 290. We were involved in at least a quarter of the joint investigative teams supported by Eurojust.



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That is important stuff, Mr Hanson, and I absolutely buy your point. We will have that arrangement with them, but it is my view that any future relationship must and should involve a high degree of not just co-operation but integration with the work of Eurojust. As I have said to you, I am not going to repeat the point about the importance of the legal negotiation, but the aspiration—shared, by the way, with the EU—is a very clear one.

Q35 David Hanson: I understand and accept that, but I want to be quite clear about what preparation is in place in the event of no deal for 12 April, which is a week away. What happens? Whether or not you or I, or anybody else, votes for the Prime Minister's proposals, there is a clear vision that it may or may not happen. What are the preparations now for 12 April to ensure that we have access to halting drug smuggling, acting on child pornography and stopping foreign terrorist fighters going abroad, which are the top three things on the Eurojust website today?

Robert Buckland: As I have said to you, Mr Hanson, the shadowing operation will commence. Also, importantly, we have worked with other member states with regard to particular—

Q36 David Hanson: What does shadowing mean?

Robert Buckland: It means that we will have a desk in The Hague that will be officially separate from, but in very close communication with, our colleagues.

Q37 David Hanson: On this desk in The Hague, if information comes in to the other desk in The Hague that is part of Eurojust, about drug smuggling, child pornography or foreign terrorist fighters, what is the relationship between that desk and your desk on 13 April?

Robert Buckland: As I have said to you, it is not a substitute for the formal membership of Eurojust, but—

Q38 David Hanson: What is the relationship between that desk and your desk on 13 April?

Robert Buckland: There is a communications relationship between the two, so there will be an awareness. More than awareness, there will be work that will carry on. We have ongoing work already.

Q39 David Hanson: What is the legal basis of that desk passing information to your desk on 13 April?

Robert Buckland: It is based upon co-operation. I accept the point that you make: no deal does not give us the legal certainty that I think is desirable. I have made my views very clear about this, and very strongly, and in other contexts as well.

Q40 David Hanson: I appreciate that. I understand and support your views on this. I understand where you are coming from. I am just trying to get an understanding not of where you are coming from but where Mr or Mrs



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Criminal are coming from when information is given by that desk to your shadow desk, and they find themselves in a court the following week. What is the legal basis of your having that information or of them passing it to you?

Robert Buckland: It is a proper point. I assure you and the Committee that quite a lot of case-by-case work has been done. Let us take Ireland, for example. Existing European arrest warrants will fall if we leave with no deal. There therefore needs to be urgent logistical work to make sure that any suspects are held in a lawful way and dealt with by due process by, for example, the Irish courts. That work has been done. There is a clear contingency plan to deal with that. We have been working very hard to make sure that the sort of denials of justice and the potential evasions of justice that you quite rightly raise are reduced to a minimum or eliminated.

Q41 **David Hanson:** Finally on that point, if I happen to be a criminal in court on 14 April, and I have been put in court through information at some point across those two desks, are you saying that you will guarantee that there is no legal basis on which I can evade justice on the basis of the lack of a relationship between Eurojust and the British Government?

Robert Buckland: If anybody is being held, we will need to comply with due process—the law applicable at the time. That may need to involve re-arrest and adoption of the fresh procedure. I believe that the work that is being done on a case-by-case basis minimises the risk of individuals fleeing the jurisdiction or evading justice in a way that you and I would find unacceptable.

Q42 **David Hanson:** How many extra staff are working on that as a result of a no-deal Brexit?

Robert Buckland: We have had extra funding for the Law Officers' Departments. We have received and are receiving £3 million this year. The CPS is receiving £2.1 million of that money. That then involves the engagement of extra staff—more staff—to deal with some of the logistical problems you raised.

Q43 **Chair:** I suppose the argument will be twofold. You might have to make arrangements for those who are detained. Information is perhaps passed through the shadow desk, but do we have certainty that, if that results in charges, a defendant might not then be able to argue against the admissibility of material that was obtained through that process?

Victoria Prentis: And extradition.

Chair: And, I assume, thereafter.

David Hanson: I am not a lawyer and I was thinking about that.

Robert Buckland: I have already made the point about the difficulty of falling back on the 1957 convention. Mr Hanson's observations, quoting a senior police officer, are ones that I entirely agree with.



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Q44 **Chair:** There have been reports in the press about a letter from Sir Mark Sedwill, the national security adviser, talking about enormous pressures being put upon the judicial and legal systems, and the country being less safe in consequence.

Robert Buckland: That is right. Obviously, the MOJ and my Department have been working together to make sure that contingencies are planned for. That has been the case for many months now. That involves HMCTS as well as the MOJ itself. It is a situation that I think we all need to avoid. It is in all our hands to avoid no deal. I will say until I am blue in the face that as a Parliament we need to agree something quickly to end the uncertainty.

Chair: I understand. I do not think members would dissent.

Q45 **Gavin Newlands:** Mr Hanson has already prosecuted at length the argument about Mr and Mrs Criminal, so I only have one question to raise. At this point in the crisis, it is important that the messages on the repercussions of no deal or not are not mixed between various Departments like your own and DExEU. In answer to the question about the lack of a European arrest warrant, you said it will hamper the ability to bring people to justice swiftly, and it is not a formal substitute for Eurojust membership.

A couple of weeks ago, the Under-Secretary of State for Exiting the European Union said that our contingency plans around no European arrest warrant post no deal "are largely tried and tested mechanisms which we already use for co-operating with many non-EU countries, including making more use of Interpol and Council of Europe conventions. They are not like-for-like replacements, but they would not result in a reduction of mutual capability." Not only do his last two points contradict each other, but they completely contradict what you have said. Have you any idea what he is talking about?

Robert Buckland: I haven't seen precisely what my colleague said, but he makes the correct observation that in large parts of the world we do not have the particular surrender mechanisms that we enjoy with other EU member states. I accept that point entirely.

I will simply say this. Because we are geographically near Europe, there will be a higher amount of work to be done. There are more people who might be just beyond the jurisdiction, in another EU member state. Yes, I accept that we live in a world where we can travel with speed to remote corners but it is a fact of life that we are going to have more people in Europe.

To take modern day slavery, I do not want to start singling out countries, but we have done a lot of work in Romania, for example, which is an EU member state. I will give you another example of a case that I got involved with in terms of an unduly lenient sentence. The defendant had British nationality but she was dual nationality Nigerian. She was trafficking women to work as sex workers in Germany. That was a case



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we prosecuted here in the UK. I was very proud of that. It goes back to the point that Ms Prentis made about us being world leaders, and it is also about the borderless nature of some of these crimes.

My point is that, while my colleague is absolutely right to talk about the wider international position, it is a fact of life that we are on the continent of Europe. Get over it.

Q46 Gavin Newlands: Notwithstanding that answer, and I do not want to put you into an awkward position, is it fair to say that he was just plain wrong when he said that it would not result in a reduction of mutual capability, going by the answers you have already given the Committee?

Robert Buckland: We can define what “mutual capability” means but I think—

Q47 Gavin Newlands: We can dance on the head of a pin.

Robert Buckland: I do not want to do that, Mr Newlands. You and I did the Investigatory Powers Bill together and we well remember that particular course of debate.

There are practical obstacles that law enforcement agencies have outlined. I do not disagree with them. I accept that there will be mutual co-operation and that we will work together; I have talked about the Eurojust arrangement. We know each other well and the personalities work with each other well.

It is a suboptimal outcome. A no deal is deeply suboptimal when it comes to criminal justice. It is deeply suboptimal, full stop.

Q48 David Hanson: Have we yet settled on a contribution figure in the event of us opting in to Eurojust and the European arrest warrant, for our contribution to the organisations?

Robert Buckland: I have not seen any figure, Mr Hanson. That is not to say that one does not exist. I am more than happy to take that away and come back to the Committee with any more information.

Q49 David Hanson: We have to pay a membership fee to the club, presumably.

Robert Buckland: I think that follows, yes. I am sorry that I do not have that precision here. Forgive me; I will try to obtain that information for the Committee.

Q50 Chair: Of course, to negotiate that you need some sort of transition period, otherwise you will have a gap.

Robert Buckland: Yes. I will end on this note with regard to no deal. The idea that no deal does not involve payment of money is for the birds. We have public international law obligations. The idea that somehow we will end up scot-free without paying a penny is, I am afraid, wholly misplaced.



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Q51 **Chair:** Understood. We are probably ad idem, as lawyers might say.

As a final point on your domestic responsibilities, may I go back to a matter you referred to? You referred to the unduly lenient sentence scheme—the ULS—which is an area where you take a particular lead on behalf of the Law Officers.

Robert Buckland: Yes.

Q52 **Chair:** The Government said it was something where there has been some success. How much of your time does it take up? I get the sense that it is quite a major piece of your work.

Robert Buckland: A lot, Mr Neill. Barely a day goes by without me considering one, two, three or maybe more specific cases under the unduly lenient sentence scheme. It is now in its 31st year. It was launched in 1989 under my predecessors. I think Sir Patrick Mayhew was then Attorney General.

It is a scheme that has been expanded over the years to include a wide range of serious criminal offences. I do not yet have the 2018 statistics, I'm afraid, but since 2010 the number of cases actually sent in and considered by my office has moved up from 342 to 1,066 in 2018.

Q53 **Chair:** That is per annum.

Robert Buckland: Yes. There were 943 referrals in 2017, of which 596 were offences that fell within the scheme. Each was considered personally either by me or the Attorney General. In 2017, we referred 173 cases to the Court of Appeal, of which 137 were increased. There were a further four sentences that the Court of Appeal agreed were unduly lenient but for particular factual reasons they did not increase the sentence. That is a very small proportion of the 80,000 Crown court cases that are heard each year. I want to give the Committee reassurance that there is not some widespread failure by the judiciary to apply the guidelines and the law properly. The ULS scheme is an important safety valve that allows either the Attorney or me to ask the Court of Appeal for their view as to whether a sentence falls within the very high threshold that we apply of undue lenience.

To reinforce the importance of the scheme to the Law Officers, I regularly appear myself in the Court of Appeal as counsel to present cases to their Lordships. In my time as SG, I have presented just shy of 40 cases, which I think is a modern record, but it is a role that I hold extremely important. It is one that I believe increases the credibility of the scheme and shows the judiciary that I am prepared to put my mouth where my money is.

Q54 **Chair:** I imagine there has had to be an increase in resourcing.

Robert Buckland: Yes, there has. I pay tribute to my team, who work extremely hard on ULSs. We have a very small team in the AGO. In total, we have only 49 personnel, of whom about 40 are lawyers. All of my



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teams work hard, but sometimes the criminal justice team have to work at great speed because there is an absolute deadline of 28 days within which a reference has to be made. There is no discretion for an extension of that time.

For example, yesterday I had to deal with a very urgent ULS that had come in on the day of expiry. That meant that I had to be personally briefed by my team. My making the decision whether or not to refer was part of that exercise.

Q55 Chair: The Attorney suggested to us that he might be open to an extension in some circumstances of the 28-day limit. I do not know to what extent that has been progressed, or what the parameters are around that.

Robert Buckland: We have to be careful there. When it comes to the other side—the appeal side and the right of appeal—a defendant has 28 days within which he or she can appeal a conviction or sentence. There is therefore complete balance between the two sides.

I am not in favour of an increase. What I encourage judges to use is the slip rule, which allows judges to correct an error of law that has been made. Unfortunately, that is a consequence of the labyrinthine criminal justice legislation that I wrestle with as a practitioner and a judge. The slip rule has a 56-day limit, so it is double the length, but that allows judges to correct errors and often deals with cases in a way that avoids the need to make a reference.

Q56 Chair: The complexity is such that it has led the Law Commission to talk about a codification of sentencing law. I think such a Bill exists and has been drafted.

Robert Buckland: It has, and I am extremely supportive of it. It would be a simple piece of legislation that would introduce a sentencing code. Parliament would still be involved of course, as it has to be in sentencing law, but it would allow quicker and easier changes and alterations to be made to what have become, I am afraid, some of the most complex areas of any type of litigation, whether civil or criminal.

Another function of the ULS scheme is that sometimes the Court of Appeal lays down a guideline to clarify the law of sentencing where there is ambiguity or lack of clarity. That has happened in a number of cases that I have conducted. I conducted an 18-handed firearms and ammunition conspiracy case that became a guideline case for very serious conspiracies involving the use of firearms. That was back in 2017; it is a reported case.

Another case I was involved with set out guidelines for terrorism offences. Do you remember the concept of “noble cause” terrorism? That was rejected, rightly, by the Court of Appeal. It has since been supplanted by Sentencing Council guidelines on terrorism, but it was an



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important advance in the law of sentencing. That was a case presided over by the then Lord Chief Justice, Lord Thomas.

Q57 Chair: I understand that. The only other thing I was going to ask about ULS was this. Absent such a code in a complex system—sometimes there will be a need to refer to it, perhaps for public confidence in the system; you and I know that the Court of Appeal is very rigorous in the approach it adopts—there is a suggestion from some commentators and some lawyers that there is a danger of politicisation of the system.

Members of Parliament can be petitioned or lobbied by constituents to refer something. In a sense, you have to be a filter. You have a quasi-judicial role, rather than simply doing something that may be popular to someone on one's own side or when a national newspaper creates a hue and cry about a sentence. How do you balance that?

Robert Buckland: If the Law Officers acted on the basis of what would be popular, we would be betraying our duties as Law Officers, and betraying the function of the scheme. We are not there to be popular. We are there to apply the law. Therefore, the decisions that the Attorney and I make are more than quasi-judicial; they are legal decisions. They are based on a clear analysis of the law and a reference to the guideline.

You will be glad to know, Mr Neill, that both in my office here and in my office at the AGO I have a full selection of guidelines to which I regularly refer. My background as a sentencer in the Crown court has equipped me reasonably well, I think, to deal with the day-to-day workload that the ULS scheme imposes upon both me and the Attorney.

Q58 Chair: It seems to me that there is an argument for making sure that there are people with a legal background in these political posts.

Robert Buckland: It is absolutely essential. Can I defend the role of the Law Officers? It is an unusual role. It looks idiosyncratic. It looks odd, frankly, to some people, but it works. We, and our presence in the Commons in particular, help to spread the influence of the rule of law, embed the rule of law at the heart of decision making and, I would like to think, embody the importance of upholding the rule of law, not just within the work of Government but throughout our wider society.

Chair: Mr Solicitor, thank you very much indeed for your time and for your evidence. It is much appreciated. It is always good to see you. This session is concluded.