

Justice Committee

Oral evidence: [Legal Aid, Sentencing and Punishment of Offenders Act 2012](#), HC 2094

Wednesday 3 April 2019

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

Questions 1 - 55

Witness

[I](#): Rt Hon David Gauke MP, Lord Chancellor and Secretary of State for Justice.

Examination of witness

Witness: David Gauke.

Q1 **Chair:** Secretary of State, I am pleased to see you.

David Gauke: Mr Chairman, I am very pleased to see you.

Chair: Welcome, and thank you very much for coming to give evidence. We have to deal with the formal business of declarations of interest. 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 married to a judge.

Bambos Charalambous: I am a non-practising solicitor.

Ellie Reeves: I am a non-practising barrister.

David Gauke: I suppose I am a non-practising solicitor.

Chair: There are a few non-lawyers here as well.

Ms Marie Rimmer: I am a commoner.

Q2 **Chair:** A lot of things are happening. Can I start with LASPO? This is a key area where you have committed to a review. How far has that progressed, and what do you think are the basic changes we need to make?

David Gauke: In terms of the review we have done, my sense and the feedback I have had is that it has been a comprehensive, honest process. The Ministry of Justice has genuinely engaged with interested parties. We have sought out and brought through a lot of evidence as to where we need to go forward. Some of it is complex. We have announced a number of things we are doing, some of which require further work. It is not directly a LASPO point, but, for example, on the legal aid means-testing process we have started another review in that area.

What we have set out to do in a number of detailed changes and a programme of pilots is to try to find new ways to ensure that people get the legal support they need. In some cases, that is about earlier intervention; in some cases, it is about the use of new technology; and in some cases, there are changes in the process—for example, the exceptional cases funding process where we need to make some improvements in how it works. I think we have in place a process that is about making improvements and ensuring we improve access to justice.

Q3 **Chair:** You inherited the review. What do you think we would do differently now?

David Gauke: In terms of the review?



Q4 **Chair:** And the process going forward.

David Gauke: The process has been good. I appreciate that it has taken time, but it is a complex area and it is necessary to get it right. In particular, when we are looking at future reforms and spending public money, we need to make sure that we do so with good evidence. Let me give an illustration.

I am sympathetic to the case for early intervention—to get upstream as much as possible. There are particular areas where that case seems to be very strong, but it is largely anecdotal at the moment. We need to build the evidence, to ensure that in fact there is a good case for intervening early both to improve people's experience of the justice system and to get to the right outcomes for those individuals in a way that is good and fair for the taxpayer as well. We need the evidence to do that, and it is right that we seek that evidence.

Q5 **Chair:** There was an argument that perhaps some of the reforms were brought in at too great a speed, without matters being tested.

David Gauke: It is always sensible to go back and look at earlier reforms. Just because you say, with the benefit of hindsight, that you would do something differently does not necessarily undermine the original decisions. You make so many decisions that it is no disgrace for something to be tested later and you conclude that some changes are necessary.

Q6 **Chair:** The reason I ask is that in one area the review found that the reduction in legal aid spend on social welfare law exceeded what was anticipated in the impact assessments. Given the other variables and the complexity, what can we do to improve the data to make sure that we do not get into that sort of situation again?

David Gauke: That is an interesting area. Sometimes it is quite hard to get these predictions right. With social welfare law, there are a number of factors that might determine how much you end up spending. How much of it is about awareness, for example? There are issues of awareness. In this particular area, a lot of socioeconomic factors come into play that make it hard to determine what the use of it will be.

Social welfare law is a particular focus for us, and we need to be proactive. It is one of the areas where problems can cluster, and we want to do more there. It is a good illustration of where early legal advice might well be very beneficial, but we want to build up the evidence to find the best way of addressing that.

Q7 **Bambos Charalambous:** You have touched on the need for early legal advice and the need for evidence. You have plans in the review for piloting early legal advice and taking a holistic approach to the problem of clusters, but isn't there a danger that the evidence will arrive too late for the comprehensive spending review?



David Gauke: It is a fair challenge. What we need to do in terms of the spending review is make sure that we are engaged with the Treasury at this point, recognising that the evidence might take us in a particular direction and that we should respond to that evidence. You are right that in an ideal world we would have the evidence as we went into the spending review. We are going to have to build up that evidence over the period ahead, but it is important that in our engagement with the Treasury we are highlighting where it might well take us.

Q8 **Bambos Charalambous:** If the pilots prove to be successful, will you be making the case that they should be rolled out more generally?

David Gauke: Yes, absolutely. The point of building the evidence is to have that case. Much of the argument, and what one hopes the evidence will show, is that this is a good use of public money and is both beneficial for the individuals involved directly and good value for money for the taxpayer. If the pilots point us in that particular direction, we have a very strong case to take to the Treasury that we should probably fund it.

Q9 **Bambos Charalambous:** How long will the pilots go on?

David Gauke: It is hard to put specific dates on it at this point. To some extent, it can vary because in some cases evidence might emerge quite quickly; in other cases, some of the pilots might take a bit of time. I am the first to acknowledge that a balance has to be struck; something that emerges late in the 2020s will not be terribly helpful, so that is not what we are talking about. I want to move as quickly as I can, but we need robust evidence.

Q10 **Bambos Charalambous:** I want to turn now to private family law cases. The review acknowledges that LASPO's objective of "discouraging unnecessary and adversarial litigation" has not been met in private family law cases. Given that litigants in person have, by definition, already decided to litigate, how will that objective be met by increasing funding for the litigants in person support strategy?

David Gauke: In what we want to do for funding for family law, for example, there is the obvious issue of the legal aid means test thresholds, so that work is under way. That will bring together data, evidence and expertise from across Government to assess what we need to do in that particular area. As I mentioned, we expect that review to be completed by the end of summer 2020. That is where we are going in that context. Again, we need to make sure that the evidence is there. We are making changes, for example, in guardianship orders, which we have announced. Again, that comes from the evidence we have seen from our review.

Q11 **Bambos Charalambous:** The problem is that, if you have two people arguing against each other and they are both unrepresented and have to comply with the court system and provide documentation to back up their cases, it is very difficult, and often the court or judge has to intervene. That takes time and costs money and causes delay. Do you have any



other proposals on how the number of litigants in person can be reduced?

David Gauke: We are increasing funding of the litigants in person support strategy to £3 million per annum. Litigants in person have always been part of our justice system, and it is right that we try to make our system as accessible as possible for people without representation. We are making changes through our court reform—for example, online divorce. That process is going very well. We have made changes to the system that are helping people to go through that process in a simpler way. It is not a discussion for today, but you will be aware that I am interested in wider divorce reform as well.

We need to make the process as simple as possible. Some of it is about the litigants in person support strategy, and some of it is about court reform. We need to make sure that there is practical support and information available for litigants in person, as well as affordable legal advice.

Q12 **Chair:** Is there perhaps an argument for looking at family law completely differently from other jurisdictions? We have an adversarial system in the way our legal world has grown up, but family came rather late to the scene as an area of jurisdiction. Should we be looking at that?

David Gauke: Those are interesting points. When I was first in this post, I remember reading a speech that James Munby had given about trying to make our system less adversarial, and more about problem-solving courts and what have you. There is an interesting debate to be had. In some cases, the nature of matters is inherently adversarial. I touched on divorce reform. I am keen to see whether there are ways in which we can make that process less adversarial. There is an interesting debate to be had, but I might be opening a can of worms if I say anything more than that.

Q13 **Chair:** It is one of those longer-term things that maybe we do not get a chance to think about when we are dealing with the day to day.

David Gauke: Yes.

Q14 **Ellie Reeves:** I want to turn to the telephone advice gateway. The review suggests that it has failed on many counts. There is low take-up for discrimination and debt cases, and there are low referral rates for specialist advice, less than 1% in some areas. There is also uncertainty about whether the service has saved any money. I know that the removal of the mandatory requirement is expected, but not until next year. Why is that?

David Gauke: Some of it is just the practicality of getting it done, as I understand it. For gateway telephone advice, we need to ensure that we have a balanced system whereby in some cases face-to-face advice is necessary, but in other cases support through other means will clearly be important. As to the timing, I think that is the point at which we think it is practical to do it.



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- Q15 **Ellie Reeves:** Going back to the point about face-to-face advice, for many vulnerable people there could be language barriers, or they could have mental health difficulties. Having a conversation on the telephone can be quite difficult for them in getting their point across, and non-verbal communication is needed in order for them to explain their situation. What measures can be put in place, perhaps even in the interim, to support those people? A year seems a long time.

David Gauke: I take your point about the timing, but sometimes these things take longer than one would want ideally. I also take your point that sometimes face-to-face contact can work better than the telephone, but we have to strike a balance between what is practical and affordable and the timetable on which we can deliver it. That has driven the approach we have taken.

- Q16 **Ellie Reeves:** Once the mandatory requirement is removed for debt, discrimination and special educational needs, what will be the method of delivery in those areas?

David Gauke: We are looking at a range of approaches. We have to look at ways in which we can innovate and properly tailor the support that is necessary to the particular circumstances.

- Q17 **Ellie Reeves:** To move on to exceptional case funding, the impact assessment for the LASPO reforms estimated that there would be approximately 6,500 applications a year for exceptional funding, and it was estimated that 3,700 would be granted each year. In fact, in 2017-18, only 2,625 applications were received and 1,463 were granted, considerably less than the estimated figures. Do you think that shows a policy failure?

David Gauke: It certainly makes the case for reforms in the way we administer exceptional cases funding, and that is exactly what we are doing. We can make the process easier; we can simplify the forms. I think we can improve the timeliness of the process, and that matters.

It can be hard to make predictions as to what demand is going to be for exceptional case funding. There may be a number of factors. Some of it might be about awareness, but some of it might be about the process. That is why making the process as straightforward as possible is part of our legal support action plan. It will make a number of changes to improve the way the forms are set out and simplify them, and improve the timeliness of funding decisions.

- Q18 **Chair:** We have been talking a bit about legal aid, and we are going to come back to that. Sometimes, it is suggested to us that the problem in your Department is the way it is set up, in the sense that, essentially, the bulk of the spend goes on prisons and probation, and courts and legal aid are tagged on and are potentially poor relations.

David Gauke: That argument is made sometimes. When we were going through the allocations decisions last year, we had to make a number of



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difficult decisions. In truth, a number of difficult decisions had to be made on the prisons side as well, and probably, in that case, prisons bore the greater burden. It is a question of making a judgment as to what is right and what is necessary across the piece.

I am not sure that, if one looked at spending across the different parts of MOJ, one would necessarily conclude that things have been skewed in the direction of the Prison Service, for example, versus anything else. On the courts side of things, it is a process where we work very closely with the judiciary. I work very closely with the Lord Chief Justice in determining where spending should be. The truth is—it is no secret—that the Ministry of Justice has had to make a number of difficult spending decisions over recent years. Every part of the Ministry of Justice has had to find savings and efficiencies.

- Q19 **Chair:** You make the point that you have to work with the judiciary. You have a unique role among Cabinet Ministers because of the judicial oath you take as Lord Chancellor.

David Gauke: Indeed.

- Q20 **Chair:** You made it very clear when you took office that you regarded that as central to your function. What do you think is necessary to give you the resource to continue to achieve that objective?

David Gauke: You are right. There is a duty on me to ensure that our justice system gets the resources it needs. In our approach to resources, I hope that the relationship with the Treasury over the last 15 months or so has been strengthened, building on very good work by my predecessors, to ensure that we spend public money wisely and efficiently, and that, if we need to go to the Treasury and say we need additional resources, we do so on the basis of evidence having been built up and a record demonstrating that we spend public money sensibly.

You will be conscious that we made a fairly significant reserve claim for 2018-19. We are engaging very constructively with the Treasury for the future. I hope that will become clearer in future, but it is on the basis of demonstrating that we spend money wisely. To use a terrible phrase, it is not a question of shroud-waving; it is about making a strong case as to what we need to deliver a satisfactory justice system for the 21st century.

Chair: A key part of that is prison spending.

- Q21 **Victoria Prentis:** We are not expecting you, particularly after the day you had yesterday, formally to have digested our marvellous report.

David Gauke: I confess I have not read every page.

- Q22 **Victoria Prentis:** But we wondered whether you had had a little look at it and what your initial impression was.



David Gauke: I have. If I may, I will make a couple of comments. It will come as no surprise to anybody on this Committee that I share the Committee's desire to ensure that we have a justice system that delivers rehabilitation effectively and adequately. In my view, it is important that we ensure that our prison system is decent, humane and safe. We have faced very high levels of violence in recent years, and we need to make sure that we address that, because it is very hard to put in place adequate levels of rehabilitation when people are worried about being beaten up and drugs are overly prevalent.

It is right that we get the basics right, and I strongly believe that that is necessary for safety and decency, but we also need to deliver on rehabilitation. We are making progress on that. Just this week, we have new education contracts in place. The education and employment strategy is very much a focus of mine; it is something I place great emphasis on. I want to deliver, as I know this Committee does, a justice system where people's lives are turned around, because that is the way we can reduce crime. Reduce reoffending, and you will reduce crime.

Q23 Victoria Prentis: In your speech on 18 February, you said there was a strong case for reducing shorter sentences. That is a major feature of our report and is the feature that was picked up this morning by the press, in so far as any of it has been yet. Do you think the Government would consider introducing legislation to that effect?

David Gauke: Yes, we are considering our options. No decisions have been made as yet, but I worry about the impact short sentences can have and the poor rehabilitation record of those who have been sentenced to short sentences. This is a complex matter and it will be necessary to look at particular offences, as to whether the arguments are as strong on rehabilitation, and whether there are perhaps different arguments on deterrence or public protection that come into play.

Q24 Victoria Prentis: The difficulty is that actual funding will have to be spent on robust alternatives, and real work will have to be done to make sure that there are good alternatives to prison.

David Gauke: I very much agree. It is important not to think that addressing the issue of short sentences is, for example, a huge money-saving opportunity. In the long term it might be, if it helps to reduce reoffending, but I completely agree with you that reducing short sentences needs to be viewed in the context of improving the alternatives. Community sentences that are robust and properly enforced are very important. It needs to be looked at as a package. I do not think one can overnight get rid of short sentences and then hope for the best. It needs to be viewed in that context.

Q25 Victoria Prentis: We feel very strongly about that, as you will see from the report. I think the Committee would press you for a timeframe. Do you have any ideas?



David Gauke: It depends on the particular routes one goes down. I stress that no decisions have been made, but if we were looking at a legislative route, given the approach I like to take, which is to be led by evidence, it would not happen overnight. Equally, going back to my earlier point, one needs to look at it at the same time as looking at alternative, community, sentences. We need to make sure that they are in place and robust.

I do not think it can be sorted by the end of the year; it will take some time, but I am very keen to use that time to continue to make the argument and, I hope, build a consensus, which is sustainable and long term, that the approach we take to our justice system should be led by the evidence and focused on reducing reoffending. If we can do that, there is a significant prize for society.

Q26 Victoria Prentis: You will certainly have the support of this Committee in that.

IPP prisoners remain, for this Committee, a very worrying part of our prison population. The numbers continue to fall, but two particular points worry us. First, we are left with a rump, if you like, that seems to be very difficult to deal with or to release. What steps are you taking to ensure that those cases can be looked at properly?

The second thing we are worried about is the very high number of recalls in that population. I think it is nearly 1,000, which is astonishing given the size of the population. Those are our two areas of concern about IPPs.

David Gauke: I do not want to depress the Committee further, but there is a distinct risk that the number of IPP prisoners will cease to fall because the level of recalls will exceed those being released. The difficulty, and a real challenge for the Parole Board, is that, as we get down to the hard core of those prisoners, they have to make an assessment as to public protection. The Parole Board will not release prisoners when they think there is significant risk to the public. They have to make those decisions on a case-by-case basis.

Q27 Victoria Prentis: Have they been given all the resources and ability to make those decisions as quickly as they are able to?

David Gauke: Yes, I think they have. For example, additional resources became available at the time of the autumn Budget for the Parole Board, so I think they have the resources they need. The Parole Board has a very difficult job and they need to make decisions on the basis of the evidence in front of them. That is what they are doing, but if their judgment—it is a very difficult judgment to make—is that an IPP prisoner would present a risk to society, I am not going to be critical of them for refusing to release such a prisoner.

Q28 Victoria Prentis: Do you think sufficient resources are available to support IPP prisoners after release? That might in itself reassure the Parole Board but would also, one would hope, reduce the number of



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recalls.

David Gauke: That is something we constantly have to look at to see whether more can be done in that area, but I am not particularly aware that it is the constraint in this case. At one point, I asked for some anonymised examples of the type of people who are not being released. It is very much not my decision, but when those anonymised examples are presented, you can see why the Parole Board was reluctant to release some of those individuals, even though they might have been significantly beyond tariff.

Q29 **Chair:** Isn't the real answer to grasp the nettle, as Lord Thomas of Cwmgiedd, the former Lord Chief Justice, suggested, and change the law, and re-sentence all the current IPP prisoners to determinate sentences in accordance with what would be the normal practice now, rather than having this hangover in the system?

David Gauke: There is certainly a respectable argument for that. Let's see what progress we can continue to make. We all have to face the fact that many if not all of these cases are difficult, and there is a significant risk to the public. Much though my approach is very much focused on rehabilitation and so on, I also place significant store on protecting the public.

Q30 **Chair:** Absolutely. Many of us might say that determinate sentences might be quite substantial, but they might be a more open and honest way of dealing with the matter than the half-life of the IPP.

David Gauke: I can see that argument. I do not think anyone can be terribly comfortable with where we are. I accept that.

Q31 **David Hanson:** The Minister of State, Rory Stewart, sent us a very helpful letter on 1 April regarding Birmingham Prison. He indicated in that letter that the cost settlement from G4S was £9.9 million. Is that the total cost to the Ministry?

David Gauke: That is our assessment of the fair cost to us in stepping in at Birmingham. We believe we are being properly compensated for stepping in with regard to Birmingham.

Q32 **David Hanson:** The £9.9 million covers the entire cost to the Ministry for the failure of Birmingham Prison and taking it over.

David Gauke: It covers the cost of our stepping in with regard to Birmingham. I think the answer is yes. Obviously, we now take up some costs in running Birmingham, but that is the step-in cost.

Q33 **Chair:** While we are dealing with this side of the Department's work, can I put one other point to you? You said you wanted to work on the basis of evidence. The evidence is that Transforming Rehabilitation has been a complete failure, hasn't it?

David Gauke: Clearly, it has not delivered in the way we wanted. Last summer, I set out that I was going to make changes and bring those



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contracts to an end early. There was additional funding, for example, on the through the gate processes. We set out our proposal and consulted on it, and we have been looking very closely at the responses. We have also been looking very closely at what the NAO and Dame Glenys Stacey have said. Tomorrow, I am meeting the chief executives of the CRCs to discuss this further. I am reflecting very carefully on the balance between the public sector, the private sector and the voluntary sector in delivering probation services.

Q34 David Hanson: Following up my first question, I want to deal with the cost of Working Links and Interserve collapsing, the cost of taking over those projects, plus the costs of repairing the damage that the chief inspector of probation and the National Audit Office referred to. What is your total estimate of those costs to the Ministry of Justice?

David Gauke: The first point is that, as you have just heard, I am willing to acknowledge that there are things in the current probation set-up that are not satisfactory and adequate, and we will have to make changes. In terms of the criticism that this is costing the Exchequer lots more money than was anticipated, I do not think that is right at all. We are spending considerably less on probation and the CRCs than was anticipated. That is not to say that everything is all fine with the system; it is not.

Q35 David Hanson: That is because there are fewer people being referred to CRCs, so the cost was not transferred and spent accordingly.

David Gauke: It is also because the CRCs were paid by results and they have not delivered the results we wanted, but the expenditure on CRCs is less than we had anticipated. What has in truth been happening is that the shareholders of the CRCs have been subsidising the probation service, so it is not good for them, but the system is not good for us.

Q36 David Hanson: Is it possible to supply the Committee with a balance sheet of costs incurred by the MOJ and payments made to CRCs, and your costs and estimates of what the Transforming Rehabilitation repair work will be?

David Gauke: We can certainly provide you with as much detail as we possibly can, but we would also want to compare that with the anticipated costs of the CRC system. What we will find is that we are spending significantly less than we had anticipated when Transforming Rehabilitation was introduced.

Q37 David Hanson: Is it possible to wrap that up with the response to the Justice Committee's report of June last year that you promised to provide by October last year? As I recall, it is now April this year.

David Gauke: I want to respond to that report when we have determined how we are going to respond to the consultation to the reforms I set out last summer, and how we want to take that forward. It would be sensible for me to respond to the Select Committee, and it is not my usual custom to delay a response, but, given that we are looking



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carefully at our options, it is right that we reach a conclusion before we respond to the Select Committee.

Q38 David Hanson: The cynic in me would ask why you promised to deliver it in January this year—in October—when obviously there had been major changes and some consideration by the MOJ. Surely, it is now time to produce the Government's response to the recommendations in the report we produced.

David Gauke: The right thing for me to do is to take into account the evidence that has been presented to us as to the way forward and reach a conclusion on that. Once I have reached a conclusion, I can give a more helpful response to the Select Committee. Were I to provide a response at this point, I would be very limited in what I think I could say.

Q39 David Hanson: Just between us, when is that likely to be?

David Gauke: Just between us, I hope we will be able to say something in the not too distant future.

Q40 Chair: Well, that's faster than in due course, isn't it?

David Gauke: It is faster than in due course. It will be much earlier than in due course.

Chair: We come back to the balance you have to have in the Department between the prison and probation side and the justice issues in the broader sense. You have been keen to ensure that there is proper access to justice, and some of our earlier questions were about how you make that a reality, rather than its being, in the famous phrase, like the Ritz hotel. We are now going to ask questions about the way people can access the system, some of the changes to eligibility and so on.

Q41 Robert Courts: I want to ask you, Secretary of State, about eligibility for civil and family legal aid. When we take those together, there have been savings of about £10 million per year, but evidence to the review suggests that the means-testing threshold is deterring applications from people with modest incomes. Should you now be looking at a more ambitious date for the review you are undertaking?

David Gauke: As I mentioned earlier, we expect to complete by summer 2020 the review that we are undertaking. Your question was about trying to bring that forward to a more ambitious date, but we think that is a realistic and sensible timetable given that it is a new area. It was not something we looked at as part of our LASPO review, because, essentially, the means-testing of legal aid and the thresholds were not part of LASPO as such. We need to look at that and at the wider eligibility criteria. It is necessary to bring data, expertise and evidence from across Government to assess the effectiveness with which the current means-testing arrangements appropriately protect access to justice. I think the timetable is the right one; it enables us to bring all the evidence together and reach a conclusion based on robust evidence.



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Q42 Robert Courts: But it takes you outside the spending review window, doesn't it?

David Gauke: It does, but it is a similar point to one of my earlier answers. Clearly, in our engagement with the Treasury in working out our spending review assessment, we need to take contingencies such as that into account. It is not unheard of for Government Departments, when entering a spending review, to say to the Treasury, "Here is a review we are undertaking. It will not be completed in time for the spending review, but we need to focus on what the potential risks might be from a public spending point of view," and set out a spending review assessment that takes into account the potential eventualities and the upside and downside risks to budgetary pressures.

Q43 Ms Marie Rimmer: The review found that the number of legal aid providers has dropped by 32% overall, that 73 local authorities have no specialist immigration provider and 161 have no housing provider. There was also evidence of an ageing workforce, and providers facing difficulties with recruitment and retention. What does your Department intend to do to improve the sustainability of the market?

David Gauke: The first point to make is that every person should have access to legal advice when they need it. That is why the Legal Aid Agency keeps availability under constant review and takes urgent action when it has concerns. It is worth pointing out that there are now more officers offering legal aid services than under the previous contracts.

In addition to the civil legal advice telephone service, we are establishing a £5 million innovation fund, which I may have touched on earlier, to help provide people with access to legal support wherever they are in England and Wales. The Legal Aid Agency monitors duty solicitor coverage on an ongoing basis and, where issues are identified, it takes action to ensure that there is ongoing availability of criminal legal aid advice for the public.

In our review of criminal legal aid, we will be carefully considering the sustainability of the criminal legal aid market, including recruitment, retention and career progression within the defence professions, and the diversity of the workforce.

Q44 Ms Marie Rimmer: Are you content that your Department is taking on board the fragility of the legal aid market?

David Gauke: I think we are. In the role that the Legal Aid Agency takes and in our review of the criminal legal aid position, we are considering very carefully the sustainability of the criminal legal aid market.

Q45 Ms Marie Rimmer: The not-for-profit advice sector is facing huge demands for its services, but it has had significant reductions in its income, including loss of local authority funding. How do you propose to address that problem?



David Gauke: The use of the innovation fund may prove to be significant. There are opportunities that technology can bring, and innovation may be able to help us in some of those areas. The opportunity to pilot new approaches is very important.

Q46 **Ms Marie Rimmer:** Can we take a look at your action plans? One of them is about inquests. There have been increasing calls for public funding for bereaved families in inquests where the state has representation, to ensure equality of arms. While we welcome your promise to improve guidance and the application process for exceptional funding, is it enough to create a level playing field in all inquest hearings of that type?

David Gauke: The first point I would make on inquests is that I am very keen to ensure that they continue to be, essentially, inquisitorial processes rather than adversarial processes. The Chair asked about this earlier in the context of family cases. There is a lot to be said for an inquisitorial system here, and I would not want to change that.

In protecting the interests of bereaved families, which is a really important point—we all share that view—we should not forget the importance of the role of the coroner. The coroner has significant responsibility to protect the interests of bereaved families, and we are doing more to improve guidance and support for coroners and the necessary training for coroners so that they are able to do that.

I am conscious that there are cases where the issue of equality of arms is raised. We are engaging with other Government Departments to see what can be done when, for example, there is significant taxpayer support for some of the witnesses. How do we ensure that bereaved families are not put at a disadvantage? There is engagement; it is still early work in that particular area, but it is right that we look at that.

We must remember that there are ways in which we can be sympathetic to and supportive of bereaved families without ending up with an arms race of who has the most lawyers, the most expensive lawyers and so on. There will be problems with the system if we end up going down that route.

Q47 **Ms Marie Rimmer:** You propose to consult on allowing the legal help waiver to be backdated, which seems like a straightforward policy decision. How quickly will the consultation take place?

David Gauke: Our evidence from the review of legal aid for inquests was that the current position on backdating funding, which is permitted for representation but not for legal help, caused operational difficulties. Without legislative power to backdate the legal help waiver, lawyers explained that families were often forced to pay privately in the early stages of the inquest process, so that solicitors could carry out work such as disclosing materials ahead of any pre-inquest review hearing. We have, therefore, proposed changing the regulations so that, if a legal help



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means-tested waiver is granted, it will enable legal aid funding, with all such payments backdated to the date of the application, for all inquests. We hope to be able to do that by the end of the year.

Q48 Chair: Are you satisfied with the way the coronial system operates overall?

David Gauke: As a whole, I think it works well. I made a visit to the Hertfordshire coroner's court in Hatfield a few weeks ago. It was interesting to get that experience. There are some high-profile, challenging cases. We need to make sure that the system is supportive of bereaved families, and by and large it is successful. I am very keen to keep it focused on getting to the truth. There is sometimes a perception that the role of coroners is to apportion blame. That is not really the purpose; it is to get to the truth, and I think it does that pretty well.

Q49 Chair: Historically, coroners tended to be medically qualified people rather than lawyers. Is the nature of the work that comes before them now changing into something where legal issues are raised much, much more? When we recruit and deploy coroners, do we need to think about what inquest is appropriate for someone with a technical as opposed to perhaps a legal background, to prevent precisely what you describe?

David Gauke: As you say, historically that has been the case. There has perhaps been a move towards a background of legal experience. Either way, it is important that we provide the support, training and guidance necessary, so that, whether you come from a legal background or a medical background, you are well placed and are sufficiently an all-rounder to be able to address both types of issue.

Q50 Chair: You talk about equality of arms, which is a fair point. The obvious area where that arises is in criminal legal aid, isn't it? The state takes a decision to bring charges against a person. Common decency suggests that individuals ought to have sufficient equality of arms to be able to defend themselves and test the case against them, because of the burden of proof. Are you satisfied that where we are in legal aid meets that?

David Gauke: As you well know, it has been a year when there has been quite a lot of focus on the issues with AGFS and so on. In my view, we are not going to return to a previous era in criminal legal aid in terms of the rates and so on. To be candid with you, we are seeing the consequences of that. Far fewer cases are brought and that has caused some strain for defence barristers, for example; there is less work than there was.

We have gone through a long period of time when fees have been very constrained, indeed reduced. In my time in office, we have increased some of those fees, particularly for the junior Bar. We are trying to work very constructively with the criminal Bar and the Bar Council to make sure that we have a sustainable system. I agree with you. On a number of occasions, I have acknowledged the very important work that the criminal Bar does to ensure that we have a proper justice system.



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Q51 **Chair:** The review of criminal legal aid has been launched, and we all welcome that. You are planning to have it done by the end of 2020. Are we likely to stick to that, or can we do it sooner?

David Gauke: It is going to require a lot of work. I am conscious of those who say that one should bring it to a conclusion earlier, but I want to do something that is evidence-based and sustainable, so we will continue to work on that timetable.

Q52 **Chair:** You are a former Treasury Minister. One of the things you will need to do, if the review goes in any particular direction, is to have discussions with the Treasury about what is built into the spending review to make allowance for that.

David Gauke: It is a similar point to the two other examples we have had this morning. We need to make sure that we have a settlement with the Treasury in the next spending review that does not leave us with an undeliverable budget, so that we have an endless cycle of going back to the Treasury seeking reserve claims for certain things, some of which are unpredictable and some of which may have been predictable and happen, and we cannot deliver them within the budget set out. I want to make sure that we have a settlement with the Treasury that ensures taxpayers' money is spent wisely but is sustainable.

Q53 **Chair:** One of the things you inherited as Lord Chancellor and Secretary of State is a tendency for the Department to have to return capital and almost swap it for revenue, in simple terms. We can understand that at one level, but isn't there a massive need for a capital injection simply for the maintenance of the fabric of the courts, many of which are in pretty poor condition?

David Gauke: It is true that there is a maintenance backlog. In the Budget last autumn, we were able to find additional resources from the Treasury to take some steps to deal with that. We have invested more in the past year or so in the maintenance of courts, but I recognise that there is still more that we need to do, and there is a challenge in those terms.

Q54 **Chair:** What about investment in the judiciary, the people who man the courts? Are you concerned about what seems to be—albeit slightly improving at the moment—a real difficulty in recruitment and attracting the right quality?

David Gauke: We have had the recommendations of the Senior Salaries Review Body, which we continue to consider. Part of our national brand, and what is important about this country, is the fact that we have an outstanding, well-respected and independent judiciary, and we need to make sure that we continue to attract highly capable people to the judiciary. That is important to us both to protect individual liberties and on economic grounds. We attract a lot of international litigation to this country because our judiciary is so well regarded.



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We need to make sure that we attract high-quality people to the judiciary. For example, the fact that if you listed a commercial case in the High Court now it might not be dealt with until October 2020 means that, where litigants have a choice, they may go elsewhere. We need to attract high-quality people to the judiciary. It is not just about remuneration, but, clearly, we need to ensure that the overall package attracts high-quality people. As you know, there is a shortage in the High Court, and we are seeing some evidence of that at lower levels as well.

Q55 Chair: You make the point that the judiciary is well respected. Is it well respected enough by politicians and the media?

David Gauke: I do not think it could ever be over-respected. It is important that we recognise more widely the importance of the judiciary as a bulwark of the rule of law and central to what we should be as a nation where the rule of law is highly respected and the judiciary are held in high regard. I see it as part of my role to make that case, as I hope I have done consistently since I have been in post, and the stronger the consensus we can build behind that, the better.

Chair: Lord Chancellor, thank you very much for your time and your evidence. It is much appreciated.