



Select Committee on the Constitution

Corrected oral evidence: Lord Chancellor and Secretary of State for Justice

Wednesday 1 May 2019

10.25 am

[Watch the meeting](#)

Members present: Baroness Taylor of Bolton (The Chairman); Lord Beith; Baroness Corston; Lord Hunt of Wirral; Lord Judge; Lord MacGregor of Pulham Market; Lord Norton of Louth; Lord Pannick; Lord Wallace of Tankerness.

Evidence Session No. 1

Heard in Public

Questions 1 - 17

Witness

I: Rt Hon David Gauke MP, Lord Chancellor and Secretary of State for Justice.

Examination of witness

Rt Hon David Gauke MP.

Q1 **The Chairman:** Welcome and thank you for your return visit. I think it is safe to say that we found our last evidence session with you very helpful and we appreciated your frankness about some of the problems your department is facing. Hopefully, we can have a similar kind of discussion today.

Inevitably, we will revisit some of the issues we talked about last year, so may we start with judicial staffing? We have been hearing reports that the recruitment of judges is still proving extremely difficult and could cause some quite long-term problems. We also heard that that problem could damage our international reputation. That exercises us, and we have heard quite a lot of concern about it. Could you start with that particular issue and perhaps update us on how you see the situation?

David Gauke MP: Thank you. It is a great pleasure to be back. It is relatively rare for Justice Secretaries to be able to return to this Committee. I am also always alarmed when I am accused of frankness, and I start to worry that I might have been indiscreet, but I will, I hope, take a similar approach today.

The first point to make on judicial recruitment is that I certainly consider it to be very important. Our judiciary is absolutely key to who we are as a country, and the quality and independence of the judiciary is at the heart of our constitution. It protects our rights. It is also key to our economy. The certainty and stability that is provided by a strong independent judiciary is vital across the piece and very important to our legal services sector, which contributes very significantly to our economy. So the first point to make is that this is important.

We are going through a period where we are recruiting large numbers of judges. There were about 1,000 last year and this year we expect to recruit 1,200. That is a significant challenge, because it is vital that we maintain quality. I work very closely with the Lord Chief Justice, Lord Kakkar and the Judicial Appointments Commission to ensure that we do everything we can to attract good-quality people to the judiciary.

There are a number of factors with regard to this. One is about judicial morale, which feeds in to both pay and pensions. We have had the SSRB report and we are looking very closely at that. I hope we can make progress in ensuring that we have an overall remuneration package that is attractive and demonstrates the value of the judiciary to this country.

There are also wider issues regarding working conditions and so on. We have seen changes because of financial constraints in recent years, but one of the important roles that I have is to be very clear about how highly we value the judiciary. It is key to what we are about as a country.

There are also some practical points, for example how we attract people from more diverse backgrounds. I have made a point, being a former

solicitor, of arguing that more solicitors should go into the judiciary, and it is a question of how we ensure the system accommodates that. We have taken steps with, for example, pre-application judicial education so that we can focus on attracting people from perhaps different backgrounds. There is work under way on mentoring for the High Court, for example.

There are a number of practical things that we should do and we are doing, as well as making the case for how important the judiciary is to us as a country.

Q2 The Chairman: Do you think that the pre-application judicial education programme is working? Are there enough people and enough people from diverse backgrounds in the pipeline, because unless you get people coming in to that pipeline you cannot feed upwards?

David Gauke MP: I agree with that. The pre-application judicial education programme was launched last week, so it is early days with regard to measuring that. Progress has been made on the diversity of the judiciary as a whole with regard to both gender and ethnic background, and on professional diversity. As I say, I am keen to encourage more solicitors to look at the judiciary in a way that perhaps has not happened in the past. PAJE has a role to play in encouraging those applicants to come forward.

There is plenty of talent out there, but we are not necessarily seeing the same flow of people from the traditional backgrounds, if you like, that we have seen in the past. A lot of silks, for example, are not moving into the judiciary as might have happened a generation or so ago. We need to address some of the issues that might be holding those QCs back from doing that, but we also need to ensure that we look at alternative sources, because the legal profession is thriving, there is a large legal profession there, the talent is there. But we need to ensure that more people consider the judiciary as a route forward.

The Chairman: We have a potential crisis if we do not get some movement quite quickly.

David Gauke MP: From the evidence produced by the SSRB, particularly at the High Court level but also at other tiers we are not getting necessarily the number of applicants that we would want. We are clearly short at the High Court at the moment, and that shortage is due to increase later this year when we will be short by 18. There is the risk of a bit of a vicious circle here, because that increases the workload, which can in itself make the experience of being a judge less attractive and so on.

I am very keen to address that. As I say, we have been looking very closely at what the SSRB says, not just its specific recommendations but, more importantly, the case that it makes, and I hope that we can make progress on that shortly.

The Chairman: We will follow up on some of those points as we go

along.

Q3 Lord Hunt of Wirral: Lord Chancellor, turning to age, I declare an interest not only as a fellow solicitor but as a solicitor still in full-time practice, although I am many years over the judicial retirement age.

Having heard Baroness Hale of Richmond telling us that raising the age to 72 would meet a lot of the concerns about ensuring that there is a sufficient number of high-quality judges, and probably would not introduce some of the management problems there might be in going back up to 75, do you agree that increasing the judicial retirement age to 72 might address some of the shortages on the Bench?

David Gauke MP: I think it might. There is quite a lot in what Baroness Hale has said in this area. I have not checked, but I suspect I may have been asked this question last year, and certainly when I have been asked this question in the past I have said that it is quite an evenly balanced debate.

One has to look very carefully at some of the issues to ensure that we still make progress on diversity, for example, but I am increasingly of the view that at 70 we are losing a lot of talent that is certainly more than capable of continuing to contribute to the judiciary. The nature of the role of a judge is one where experience and expertise count for a great deal, and in an environment where life expectancy has increased significantly—six years, I think, since 1993—there is a case for looking at this again. We would want to consult very carefully. We would need to think through the implications for the magistracy, where there are slightly different arguments, but there is an interesting debate to be had there.

There is a strong case to be made for moving to 72. It is not just about the existing judiciary and being able to get another couple of years out of them, but one wonders whether we might get more applicants who feel, “If I can go to 72, I could have a more worthwhile career. I could advance further”.

It is hard to model that and to be confident of that, but I very much hear those arguments. It is not for me, here and now, to announce a change of policy or a new approach to that, but I very much hear that argument and I would want to explore it further.

The Chairman: That is very reassuring. Good.

Q4 Lord Judge: Perhaps less reassuring is the topic—I am changing the topic now—of reductions in the budget which the ministry has had to undergo, certainly since about 2011-12 when I was a party to it. It is a simple question: do you have enough funding to provide the resources that the justice system requires to run it efficiently and effectively?

David Gauke MP: There is no doubt that our budget is tight. The 2015 spending review was very tight for the Ministry of Justice. It would be fair to say that, since then, the Treasury has recognised how tight the MoJ budget was, and in the 2016 Autumn Statement there was an additional £910 million for it.

I cannot help but noting that I was the Chief Secretary to the Treasury at the time, and it was possibly one of the wisest things I did in my 11 months in that post. It is worth pointing out that in 2018-19 we got an additional £1.2 billion in the supplementary estimates.

Lord Judge: Is the “we” the department as a whole or the justice element?

David Gauke MP: The department as a whole.

Lord Judge: How will that be divided?

David Gauke MP: I can certainly write to the Committee and set out how that additional expenditure has been divided across the department, and specifically where we have spent additional sums. Part of that additional money has, for example, gone into the legal aid system, because demand for legal aid has been greater than was anticipated. We have made some changes to the AGFS, and that has had to be funded. I know there is sometimes a concern that if there is any spare money or any additional resources it is always thrown at the prison system, but that is not the case here.

Lord Judge: The concern is not that there will be any spare money; there is no spare money. The question is how the department allocates between two completely conflicting demands on those funds.

David Gauke MP: As I say, perhaps the best thing to do is to write to the Committee with those details, but the point I want to make is that my belief is that we look fairly and reasonably to ensure that the MoJ’s resources are distributed in such a way as to ensure that we have a justice system and a prison and probation system that work as they need to.

Lord Judge: Using the word you used yourself, “tight”, where is the tightness going to pinch in the next couple of years in relation to the justice system?

David Gauke MP: I mentioned 2018-19 and the additional £1.2 billion in the supplementary estimates. We are hoping to make progress on the main estimates for 2019-20 in the near future. We have been working constructively with the Treasury, and as a department we have been making the case that we need to properly deliver what our department is required to deliver, and we need the resources to be able to do that. We will be able to say more on that in the near future.

After that, of course, we are into a spending review period, and my department is very much focused on ensuring that we have a medium-term and a long-term vision of where the department goes so that we can make the case to the Treasury that we have a settlement that is sustainable, that enables us to deliver what we have to deliver, and that looks to the future and potential savings that could be found through, for example, the use of technology, and that we are looking at the

immediate challenges for the department to ensure that we can properly function.

Lord Judge: When you are identifying the immediate challenges to the Treasury, which areas are you identifying?

David Gauke MP: Focusing on the justice side of things, the courts and tribunals and so on, there is the issue of the remuneration of the judiciary, which we have discussed already. We also face court maintenance issues, legal aid issues and ensuring that it can function in the way we need it to function, and issues of access to justice, et cetera, which no doubt we will turn to. Those are some of the issues that we are very much focused upon.

Q5 **Lord Judge:** Moving to something different, we are told there has been a delay of a year in the delivery of the HMCTS reform programme.

David Gauke MP: Yes.

Lord Judge: Why is that?

David Gauke MP: Part of this is practical and ensuring that we can get everything properly delivered, and part of it is about budgetary issues, but I would not want to overstate the significance of this delay. Users will see some of the digital services introduced a little later than previously planned, but the destination remains the same.

To give an example, projects in the civil, family and tribunal jurisdictions are now expected to finish on average nine months later than previously planned. That does not increase the overall budget. The impact on the financial benefits of the programme to the department is minor. We still believe that the programme will pay back its investment by the end of the 2024-25 financial year. These changes are such that we are taking a little longer to get to where we want to, but we are still on course to reach that destination.

Lord Judge: It sounds a silly question, and perhaps it is, but is the problem that you are not sufficiently financed to get your programme going to your timetable, or is there some other source of problem?

David Gauke MP: Obviously there are budgetary pressures, and there is also the point that it can sometimes take a little longer to deliver some of these things than one would hope. It is a combination of the two. Inevitably, as you go through this process some things get reordered, some things get reprioritised, and in truth it is not unhelpful in some areas for us to have a bit more time to ensure that the technology is working properly.

Q6 **Lord MacGregor of Pulham Market:** May I probe a little further on your current plans to change probate costs? To what extent has the delay to introduce higher probate charges affected the funding of your department and of the justice system?

David Gauke MP: We budgeted on the basis that we would have got our changes to the probate fees through. We had plans that were changed in 2017 and we have come forward with less ambitious plans to ensure that we can put that in place.

Our current plans do not raise the sums that we had originally envisaged. That still requires a vote in Parliament. I think we will be in a position to do that at some point, but with various other things going on at the moment we have not yet brought that forward.

Lord MacGregor of Pulham Market: The *Guardian* reported that this delay was as a result of Brexit. Is that right, and why?

David Gauke MP: I am not sure I would necessarily put it down to Brexit directly, but Parliament has seen quite a lot of contentious legislation and votes in recent weeks and months, and we are looking for another opportunity to come forward with this order when the time is right.

Lord MacGregor of Pulham Market: Is it appropriate that the users of the justice system, in this case those using probate services, must pay fees disproportionate to the service they are receiving to subsidise other parts of the justice system?

David Gauke MP: I think it is reasonable to use the fees system to fund the courts, and I believe that we are legally entitled to do that. There are parts of our courts system where we do not charge fees, for perfectly good reasons. I think that the degree to which there are fees in one part of the courts system that help to cross-subsidise other parts of the courts system is reasonable.

The measures that we have set out here are proportionate. Nobody is having to pay more than 0.5% of the estate's value, and in the circumstances this is a legitimate source of income for a courts system that needs support.

Q7 **Lord Pannick:** I declare an interest as a practising barrister, although not in the field of criminal law. I say that because I want to ask you about the threats by criminal barristers that they will not work for the Crown Prosecution Service by reason of the low level of fees that they receive for prosecuting.

You may have seen that the Criminal Bar Association chair Chris Henley QC said, "You can spend a whole day at court presenting a serious and complex case for £46.50. It is beyond ridiculous. Or spend hours preparing a difficult sex case trial for £55". It is beyond ridiculous, is it not?

David Gauke MP: As you will be aware, the Attorney-General and the Crown Prosecution Service lead on this particular area. I am aware that the CPS has begun work to review its prosecution fee schemes, with the aim of looking at options for reform so that we have something that is simple, fair, affordable and sustainable for the future.

In my view, rather than taking action and striking, criminal barristers should engage with the CPS review to ensure that we have something that is sustainable.

Lord Pannick: Presumably your department must take a position on this, given the damage to the legal system that would result if criminal barristers were to go on strike, and the general question that if you pay people at that low a level you are not going to attract into criminal law and the prosecution part of it people of high quality.

David Gauke MP: Of course, we work closely with the CPS and the Attorney-General. The other side of this is we have had our own issues with regards to criminal defence barristers and reforms to the AGFS, as I mentioned earlier, and we want to ensure that we have a system that is sustainable. I work closely with the Attorney-General, as I said, and I am very supportive of the review that the CPS is undertaking here.

We need to find a way that ensures that we have sufficient and high-quality representation on both sides, prosecution and defence, in a way that is sustainable for the taxpayer, and of course we contribute towards that. The point I am making is that the Attorney-General and the CPS have responsibility specifically for this.

Q8 Baroness Corston: The Legal Aid Agency has recently shown that parts of England and Wales have little or no provision for housing legal aid services. The Law Society went on to comment that, "Almost one-third of legal aid areas have one, and in some areas no, housing provider, including large areas such as Cornwall and Somerset. Two areas, Shropshire and Suffolk, have no provider at all".

Given that the counties named have very diverse rural populations and that the Government have already acknowledged that the current legal regime for tenants leaves a lot to be desired, how on earth do you expect these people to exercise such rights as they have if there is no provision?

David Gauke MP: The first point to make is when it comes to geographic provision, wherever you are in England and Wales, legal aid for housing remains available through a telephone service. The LAA recently tendered for new face-to-face housing contracts, and as of 31 March this year there is at least one provider offering housing and debt services in all but five procurement areas.

The LAA has also recently concluded a procurement process for services in two of these areas, which I think are due to commence today, but there are still some areas that are left and the LAA is considering its response on that.

More broadly, we undertook the LASPO review, which was a very extensive and open programme, and announced that we are launching a series of pilots offering support to people with social welfare problems such as housing, including expansion of early legal advice to determine the most effective solutions in future.

In addition to the civil legal advice telephone service, through which housing advice is available, we are investing £5 million in an innovation fund to help people access justice wherever they are in England and Wales. The area of housing legal aid services that you identified will clearly be a priority in that area.

Baroness Corston: My experience as a lawyer is that people like to speak to someone face to face, and you must know the size of Cornwall—I do not know much about the areas of Shropshire and Suffolk, but I know they are quite large—so how on earth do these people enforce their rights?

David Gauke MP: As I say, a telephone service is available. This is an area where I think it is right that we should pilot ways in which we can do this. All but five have some face-to-face service. For two of the remaining five, a new service should be commencing today, and as I say the LAA is considering how to secure provision in the remaining three areas.

The Chairman: If it is looking to extend that provision, it is really acknowledging that not having the face-to-face provision that Baroness Corston is talking about is a problem.

David Gauke MP: As I say, we want the face-to-face provision to be available, but I also want to stress that the telephone service is also available everywhere.

Baroness Corston: The LASPO plan referred to the need for legal service providers, and these people are to rely on a telephone. Is that right?

David Gauke MP: We are not entirely reliant upon the telephone service. In the vast majority of the country, face-to-face provision is available. We are also piloting potential new ways—there is an innovation fund—in which support can be provided.

Q9 Lord Wallace of Tankerness: This question is related but is about the physical access to justice.

Research from the House of Commons Library suggests that half of magistrates' courts in England and Wales have closed since 2010 as well as there being closures in county courts, tribunal buildings, family courts and Crown Courts.

What assessment have you made of increased travel distances for court users, be it for people who want to vindicate their rights, defend their rights, or perhaps witnesses, and how far do you believe it is acceptable that people should travel, especially in areas where public transport is not always readily available?

David Gauke MP: When it comes to any court closure decision, we take into account potential journey times for court users. That is an important element of the evaluation that takes place, and we will only close a court if we are satisfied that effective access to justice will be maintained, including the fact that journeys to court will remain reasonable.

We have to get the balance right between ensuring that that access is there and recognising that a lot of courts might be significantly underutilised. Court closures have played a role for some time in making decisions about prioritisation, and the sale of surplus court buildings has been an important source of funding for court reforms—£124 million has been raised since the start of the programme—but I recognise that we have to maintain access to justice, and we will not close courts unless we are satisfied that this can be maintained.

Lord Wallace of Tankerness: You said, and I fully understand, that before you decide to close a court you look at the implications for travel. Given the number of courts that have closed, has your department done any retrospective work on what the impact has been on travel and how easily any difficulties have been overcome in respect of the courts that have been closed?

David Gauke MP: Last year we consulted on the principles that guide our decisions when proposing courts for closure. That is an opportunity to look at this in the round. We will soon publish our response, which strengthens and clarifies the principles regarding our assessment of travel for court users, and clearly in setting out our principles we take into account the experience that has been had over recent years.

Lord Wallace of Tankerness: Regarding the court estate, I think you said in answer to a question from Lord Judge that, in looking forward to the spending review, maintenance of the court estate is an important issue for you. What assessment have you made? We have heard concerns raised about the physical state of the court estate. What action are you taking to address that? Do you have an action plan?

David Gauke MP: Perhaps this is an example of the frankness which Baroness Taylor mentioned, but I am not going to deny that we could spend more money on court maintenance, and there is certainly opportunity to do that. At the last Budget, for example, we managed to acquire additional resources to be spent on court maintenance.

We work with the judiciary to assess the needs and opportunities here. Clearly it will be an issue for the next spending review as to how we ensure that our court estate is of adequate quality, and where we can we have sought to find resources to make improvements in our court estate.

Lord Wallace of Tankerness: Going back to your very first answer about recruitment to the judiciary, you mentioned working conditions. Have you had any evidence or any representations that the physical state of the courts is proving a disincentive for people to come forward?

David Gauke MP: Let me put it this way: it would certainly be wrong for me to say that, on my visits to courts, judges have not raised concerns about court maintenance from time to time. However, it can be quite hard to identify and isolate one particular factor.

Coming back to the issue of judicial recruitment, very often one has to look at these things in the round and the extent to which the judiciary feels valued. Working conditions are clearly part of it, but trying to isolate one factor and compare it with other factors is quite a hazardous task.

Lord Judge: May I just go back to the first part of your answer to Lord Wallace? Can you please reassure us that when your officials are working out the relative length of time needed for a journey to a court, they are basing it not on those who have cars but on those who are obliged to use public transport? I ask the question, because in parts of north Wales, say, there is very little public transport and people do not necessarily have access to cars. Can you give me that reassurance, or would you like to think about it?

David Gauke MP: We look at it in the round. We look at both cars and the provision of public transport. Certainly whenever we consult upon this, part of the evaluation will be the level of provision of public transport, buses, et cetera, as well as private cars. So yes, we do.

Lord Judge: Including the fact that public transport to some of the villages closes down at 3 pm or 3.15 pm when the court is sitting to 4.15 pm? Is that all taken into account?

David Gauke MP: I believe all that is taken into account when reaching decisions.

Lord Pannick: On the quality of the court estate, the evidence we have heard is not that courts need a lick of paint here and there, it is that many of our courts are in a dilapidated state, they are an embarrassment and they detract from the ability of the court staff, including the judges, to provide a public service. Do you accept that?

David Gauke MP: The point with the court estate is there are some places that could benefit from a lick of paint, but there are others where the issue is more fundamental and more substantial work is needed. We have to prioritise where our expenditure within the court maintenance budget goes. Could we spend more on court maintenance? Yes, we could.

Lord Pannick: Are you going to spend more?

David Gauke MP: That will be an issue for the next spending review.

Q10 **Lord Norton of Louth:** When the Lord Chief Justice was before us he told us that the two major IT outages that had affected the courts system this year had occurred because the systems were rather old and did not have much resilience, and that the contractors perhaps did not keep up to speed with everything that was going on. Clearly, outages on a significant scale impact the delivery of justice. Have you been able to put provisions in place that would prevent a recurrence?

David Gauke MP: The first thing to do is to acknowledge that we faced some serious difficulties. We had three separate incidents that caused disruption. An internal post-incident review is currently being conducted,

which I hope will allow us to get a better understanding of what happened and prevent such a thing happening again. That review will assess the next steps and costs, and prioritise what possible steps we can take to mitigate the risks of similar failures happening in the future. I accept that it is an important point.

It might be helpful to the Committee to make the point that to help spot service issues earlier, new software has been introduced that provides improved reporting of incidents. There is also a recommendation that the department should conduct a thorough review of the existing legacy systems and consider further action in respect of those that are at risk of failing.

I also want to make the point that these outages were nothing to do with the court modernisation programme. The disruption was in the existing MoJ network.

Lord Norton of Louth: How much progress have you made on the point you are making there? Part of it, as you say, is putting provision in place to prevent it happening again, but part of the point that was being made is of course that the system itself is rather old. You touched on reviewing whether you could introduce a better and more resilient system. Has there been much progress on that?

David Gauke MP: The review is ongoing. Clearly we need to be able to spot these difficulties as quickly as possible; better still, prevent these difficulties arising in the first place.

To some extent, the court modernisation programme does not provide an entire solution but helps us to move in the right direction. The resilience of the department's IT is clearly an important issue for the functioning of the justice system. It is worth pointing out that some of the concerns that were raised about this—there are stories about prisoners being released, et cetera—were not true, but clearly these were significant instances and incidents, and we need to ensure that we are in a resilient position in future.

Q11 **Lord Beith:** It seems almost too long ago to remember that the 2017 Queen's Speech in this still continuing Session said that legislation would be introduced to modernise the courts system. Of course, what we got was half a loaf, approximately, in the Court and Tribunals (Judiciary and Functions of Staff) Act 2018. How much else of the aborted 2016-17 Prisons and Courts Bill, in your view, still needs to be brought forward, how much else in the way of primary legislation in this area needs to be brought forward, and how urgent is it to bring it forward?

David Gauke MP: To continue the analogy of half a loaf, I can offer some good news in the way of a few more slices, which is the Courts and Tribunals (Online Procedure) Bill, which will be introduced in your House this afternoon and published tomorrow. This creates an online procedure rules committee to oversee the modernisation of the courts programme

and ensure that the digital services are fit for purpose, so we are making more progress on that.

It is true that there is quite a lot that we can do on court reform without necessarily having all the legislation in place, but I am keen to get as much of the legislation in place, and in any event it is a simpler and more straightforward process as we get more elements of the old Bill put into effect. We have already had one Bill and another Bill is on the way, and if we can find opportunities for further legislation in this area that would be ideal from my perspective.

Lord Beith: When you say you want to find opportunities, that must mean there is something that you want to introduce by way of further primary legislation.

David Gauke MP: I do not want the best to be the enemy of the good. We can largely do most of what we want to do without too much by way of primary legislation, but additional primary legislation is helpful. That is why I am pleased that can make progress with the online procedures Bill. There might still be aspects of criminal procedures where primary legislation would be helpful. We can probably meet most of the objectives without necessarily having primary legislation, but primary legislation, as I say, would be a simpler and more straightforward way of progressing. We need to find the parliamentary time and opportunity to do that, but certainly my department stands ready to make further progress as and when the opportunity arises.

The Chairman: There seems to be some scope for better use of parliamentary time at the moment, if I may say so.

Lord Wallace of Tankerness: I was just going to ask about that. Regarding your own departmental planning, do you expect the online procedure Bill that you are talking about to be a carry-over Bill or to be completed in this session?

David Gauke MP: I think we can progress it pretty quickly, so I hope we can get it done in this Session, but that might depend on wider issues that are above my pay grade.

Lord Wallace of Tankerness: That is why I asked the question.

David Gauke MP: I thought it might be.

The Chairman: I thought you might have given us a clue as to what was being proposed there, but we will wait and see.

Q12 **Lord Judge:** On the assumption that this may be above your pay grade, may we turn to the question of a consolidation statute for sentencing?

Last year you suggested to us that progress could be made. Only a couple of weeks ago in the House of Commons—I think I am quoting you correctly—you said, “There is cross-party support on the matter, and I hope we can make progress in the not-too-distant future”. The Law

Commission has delivered two draft Bills to deliver a new Sentencing Code. What is the blockage for this particular consolidating legislation?

David Gauke MP: The first thing I should say is that one announcement on legislation is my limit for today.

Lord Judge: Why has it taken so long to get round to this particular piece of legislation, which would save a fortune in costs and a whole lot of wrong decisions?

David Gauke MP: I am very keen to make progress on this. I think there is support behind it. There are still one or two issues that need to be addressed that I hope we can make progress on in the very near future. They are technical points that I will not necessarily go into now, but again I very much hope that we can make progress in the near future on this, because I completely take your point that a consolidation Bill of this sort would be of significant benefit to the judiciary in sentencing and clarification of the position, so I hope we can do that before very much longer.

Lord Judge: When you are arguing with other departments, could you ask them or get one of your assistants to look up a case called *Slocombe* to reveal some of the shocking results of the shambles that we have in our sentencing legislation?

David Gauke MP: We will certainly look at the *Slocombe* case.

Lord Judge: In other words, I am assuming, and I am sure we all are, that you are converted. You have to convert others.

David Gauke MP: Yes, but I almost take issue when you describe it as arguing with other departments. We are having constructive discussions.

Lord Judge: I withdraw the word: when you are discussing it.

David Gauke MP: We are having constructive discussions, but there is a technical point that needs to be addressed. My sense from the conversations I have had with, for example, my House of Commons shadow is that there is cross-party support for this, so I hope we can address this in the very near future.

The Chairman: I trust you understand why there is so much frustration about this particular issue, because it seems to be a win-win situation in which everybody thinks that this should be done and the Bill is ready. It has been promised for quite some time.

David Gauke MP: I completely understand that frustration and I hope we can address it. The frustration is not just on your side of the table.

Lord Pannick: Is there some issue of principle here or is it a matter of parliamentary time?

David Gauke MP: It is not a principle point. We need to ensure that we have that consensus across the House, which I think we have. There is a

particular point, which I will not dwell on today, that we need to overcome, and I think we will be able to progress this. It is then a matter of finding parliamentary time, but as I say I hope we will be able to find that parliamentary time before too much longer.

Lord Beith: Is it an issue of what can be included in a consolidation Bill or a Law Commission Bill and what might not be appropriate for a Law Commission Bill?

David Gauke MP: No, I do not think it is that. We need to ensure that we do not have any issues with the retrospective nature of this that could cause any difficulties and that we are on firm ground on that. That is a point that we need to ensure we are comfortable with, and assuming that we are across government I hope we can progress pretty quickly.

Q13 **Lord Beith:** On a different sentencing issue, which I would not expect to be covered by this Bill, you have explained your ambition to get rid of custodial sentences of less than six months. What impact do you think this will have, and how far have you progressed with ensuring that there are sufficient and robust alternative sentences in place to enable and encourage the judiciary to support and go along with such a scheme?

David Gauke MP: That is an important point. For this to work we need to improve the confidence of sentencers in non-custodial sentences that they are sufficiently robust, properly enforced and so on. That is an important part of this.

My view on short sentences is that this is a policy that will only work if we address it in a methodical, pragmatic and long-term way. I think that means that I need to build a consensus behind this approach. Ensuring that we have strong alternatives to custody is a key part of that consensus. We would need to work closely with magistrates on the role of the magistrates were we to make these changes.

What drives my view on this is that it is not principally about reducing the prison population, although it will have an impact on the prison population; it is principally about reducing reoffending.

The evidence suggests that the short custodial sentences are ineffective when it comes to reducing reoffending, and that, if anything, people go in, and if they lose their job, they might lose their home, they might weaken their family links, and they come out of prison more likely to offend. There is a very strong case for looking at this further, but I entirely agree with your emphasis about robust community sentences. Only with that will this properly work.

Lord Beith: Is it not quite important to get around government a sense that spending taxpayers' money lavishly on a disposal that is known to be ineffective cannot really be defended?

David Gauke MP: That is a good point. Looking forward to the spending review, I made the point in a speech I delivered to Reform in February that I would rather see our resources directed towards probation and

effective community sentences than towards prisoners, to the extent that we can direct those resources in such a way over a longer period, because that is much better value for the taxpayer and much more likely to reduce reoffending than just locking people up for a short period hoping that that will teach them a lesson, because the evidence suggests that that is not working.

Baroness Corston: I have gone on record as saying that I think that sentences of less than six months are counterproductive. Two things arise from this. One is the knowledge of and the confidence in alternative provision by judges and magistrates. I am astonished by the number of very senior judges who do not know that there are 81 women's centres in the country that could be used as an alternative disposal, when we know going there works because it turns their lives around. I can say that in relation to women, and I hope that your department will continue to support those women's centres in the community. However, given the car crash of Transforming Rehabilitation, how do you expect the current probation system to be able to cope?

David Gauke MP: First, you raise an important point about ensuring that sentencers are aware of the alternatives. One of the difficulties that we have, and many of my predecessors have made this point, is ensuring that the information is put there in front of judges and magistrates and there is proper communication of it. We have to accept, again being frank, that at the moment there is a lot of concern among judges and magistrates that the alternatives to custody are not working as they should, and we need to work very hard to turn that round.

You mention the female offender strategy, and your work in this area, if I may say so, has been very influential and has led the way to a change of approach to finding a non-custodial approach. The importance of women's centres is significant in this area.

I have already said that we are going to need to bring the Transforming Rehabilitation contracts to an end earlier. There are some good aspects of Transforming Rehabilitation, and I believe that the private and voluntary sectors have important roles to play in this area, but I announced last July that we were not happy with how TR was working and we were going to bring those contracts to an end.

We have consulted very widely on the way forward and are considering the responses to that consultation very carefully, and I hope to set out my response to that in the near future.

Q14 **Baroness Corston:** It has recently been reported that from 2013 to mid-2018, 2,666 prison staff were disciplined, 960 of them in relation to bringing drugs and mobile phones into prison. We know that your department has suffered cuts of 50% since 2010, and I know that a lot of experienced prison officers lost their jobs to be replaced by people who had not been able to build up the emotional intelligence and life skills necessary to deal with people who are often very difficult. What is your response to this issue?

David Gauke MP: The first point to make is that it is important to recognise that the vast majority of prison officers do not engage in any nefarious activity. We all recognise that and it is a huge frustration to them that a very small minority, one way or another, find themselves conducting activity that is completely unacceptable. We need to ensure that we address that seriously. I may say a little more about this in the near future.

On the point you make about prison officer numbers and experience, we saw a significant decrease in prison officer numbers after 2010, but in recent years, since the Autumn Statement of 2016 when the Treasury wisely invested more into the Prison Service, we have seen a significant increase in prison officer numbers—4,500 or so since then, the highest number since March 2012. Day by day, week by week, month by month, those prison officers are gaining more experience.

We need to ensure that the training and support is there so that those prison officers can be as effective as possible and that we do not allow inexperienced prison officers to be manipulated by what can very often be quite sophisticated criminal gangs who entrap prison officers, sometimes by asking them to do something that is a breach of the rules but might be entirely well intentioned, such as posting a letter.

Once a prison officer has broken that rule, it will hang over them and can be used to manipulate them. The next thing you know, it is a slightly more serious transgression that is being required, so it builds up until somebody, who has entered the Prison Service with the best of intentions, finds themselves being manipulated and blackmailed into smuggling drugs into prison, making the job of their fellow prison officers much harder.

We need to ensure that we stop that happening through various means. I want to ensure that we are as effective as possible in doing that.

Q15 **Lord Norton of Louth:** We are the Select Committee on the Constitution, and part of our terms of reference is to keep the operation of the constitution under review, so naturally we are quite exercised by who in government has the responsibility for keeping under review the operation of the constitution. We pursued it with you last time, and you told us then that while the Chancellor of the Duchy of Lancaster has central responsibility for the constitution within government, the Lord Chancellor has a particular contribution to make on constitutional matters.

How do you see your contribution and how co-ordinated are the Government in reviewing the constitution given the pressures they are presently facing?

David Gauke MP: Regarding the constitution, my particular role is about the independence of the judiciary and the rule of law. Rightly, all Ministers have responsibilities in this area, but there is a particular responsibility on the Lord Chancellor to stand up for the judiciary and the

rule of law. I take that seriously and I hope in the last 16 months or so I have acted in accordance with that requirement.

As you say, the Chancellor of the Duchy of Lancaster has overarching responsibility for the constitution. He is well placed in his role within government. He is often described as the effective Deputy Prime Minister. He chairs a vast number of government committees and is very heavily involved in the Brexit process. The current incumbent has the advantage of being a former Lord Chancellor himself, and I think David Lidington is a hugely capable and effective Minister.

In my view, the constitution is in the safest possible hands, but as I say my role is specifically about the rule of law and the independence of the judiciary.

Lord Norton of Louth: Yes. From what you are saying you see that as a discrete role, in a sense, and that is your responsibility, so you intervene as necessary and you are there to protect and to promote. That is your particular role, and there are others in government with their particular, sometimes discrete, roles, with David Lidington having overall responsibility. At the same time, he is busy, as you say, chairing quite a lot of Cabinet committees, and they are not all dealing with constitutional issues.

Is there scope within government to think about the constitution as a constitution—to stand back and think about where it is going rather than just looking at its discrete parts?

David Gauke MP: As I say, the Chancellor of the Duchy of Lancaster is well placed to do that. Very obviously, a huge amount of the Government's time and focus is on Brexit, and has been for the last year, which in itself has very significant constitutional consequences. But the fact that such a senior Minister who is at the heart of everything the Government are doing has that particular responsibility is no bad thing, given the importance of the constitution.

Lord Norton of Louth: Indeed, but would it feed into the Cabinet standing back and discussing the constitution? As you say, Brexit is a major constitutional issue, but of course it has consequences for our constitution in other respects than specifically withdrawing, because that affects the constitution as a whole. Does the Cabinet ever get an opportunity to stand back or discuss where our constitution is going?

David Gauke MP: I think it would be fair to say that there has been no such discussion outside the context of Brexit in my time in Cabinet, but it would also be fair to say that rarely does a discussion go by in the context of Brexit where the constitutional implications, particularly the implications for the United Kingdom in the event of some of the outcomes that remain possible at this point, are not discussed.

Lord Beith: Could I pick up a point from that, which is the withdrawal agreement Bill? We have not been given the opportunity to look at it, and

if we had it it might have enabled us to anticipate any difficulties of a constitutional nature that it might create. Clearly it has a lot of implications for how the law operates and all the complexities of having retained European law.

Can we be confident that you and your department have spent quite a lot of time working through drafts of this Bill, which obviously cannot be in its final form because there is no agreement, but much of what will need to be in it is perfectly well known to government? Have you gone through it with a fine-toothed comb?

David Gauke MP: This operates at a couple of levels. There are the legal implications of the withdrawal agreement, and we have also gone through a political declaration and so on. There are significant implications for the legal system and, indeed, legal services. The Ministry of Justice has been very heavily involved in that process. As Justice Secretary, I have been attending European Councils. I thought I had attended my last European Council, but there are potentially more to come, and I am very much making the case to my European counterparts about where we want to get to, for example in civil and judicial co-operation, which is important to us as a country, as indeed it is to European Union countries.

A big part of what I have had to do in the past year or so has been focused on how our departure has impacts for the legal system.

Q16 Lord MacGregor of Pulham Market: Following up on that, I understand you were a judge on the recent Times Law Awards and that the essay winner argued that Brexit presented opportunities to bring in business from the rule of law and end austerity for the courts and legal aid. I have not had a chance to read this essay, but these are interesting, and perhaps in some ways surprising, points. To what extent do you agree with these conclusions?

David Gauke MP: The first thing I should say is that the view of the judging panel of which I was a part—and there were some distinguished members on the judging panel—that this was the best essay does not necessarily mean that every member of the panel endorsed every line of the essay. It is a good essay and it throws up some interesting points. It would be fair to say that, of the various essays that we judged, it was at the more optimistic end of the spectrum.

In essence—to some extent this is consistent with what the essay says—legal services and our judicial system will be very important in future. We need to ensure that the UK continues to attract business here, that our legal services sector continues to flourish and to be extremely successful, and that we can do that in a post-Brexit world.

The essay itself makes one or two points about opportunities that might flow from Brexit, but, frankly, regardless of Brexit, the point is that the UK has a very strong judiciary, a very well-regarded legal services sector and a certain stability and security, if you like, which is part of what we

are about, and we need to take advantage of those attributes to ensure that we can continue to flourish in future and attract international business here.

I often make the point that as a trainee solicitor I remember doing a shipping arbitration case where none of the parties—Lord Hunt will have some familiarity with these types of cases—had very much to do with the UK at all. It was just that the contracts were under English law and the English jurisdiction. As a consequence, there was quite a lot of high-paid business coming our way, and we need to ensure that we can continue to do that. We need to ensure that Brexit is not a closing off from the outside world, which would be disastrous for our legal services sector and our wider economy.

Lord Hunt of Wirral: Remembering what you told us on 9 May last year, you said that in government you have a role to promote our great legal services, and you gave examples—Kazakhstan, where you had a team, and China—of where you were doing that. Do you want to bring us up to date with what has happened recently?

David Gauke MP: We are very much continuing with that. One particular aspect I would highlight is law tech, where there is a great opportunity. The UK seems to be at the forefront of making use of law tech: the ability to deliver legal services through greater use of technology, at a higher quality, and with better value for the client. I have been encouraged by a lot of the work that has been undertaken by some of the leading City law firms and elsewhere. I have seen it as one of the roles of the department to encourage and highlight that and to demonstrate that the UK is at the forefront of this.

The more I see of some of the work that is ongoing—this is principally private sector-led, although we can certainly be advocates of the work that is happening—the more encouraged I am about the opportunities. It means that the nature of legal services will change. The role of the trainee solicitor is already very different today from when I was doing it, and I dare say possibly even more so than when you were an articulated clerk, Lord Hunt. But we need to embrace those changes, and I think there is significant opportunity for us. I very much see my role as highlighting that we have outstanding legal services in this country and that we continually have to look outwards, because it is the international nature of those legal services that will be the big opportunity for us in the years ahead.

Lord Wallace of Tankerness: When you are promoting legal services, do you also promote the fact that there is another jurisdiction in the United Kingdom and that it is not all London-centric?

David Gauke MP: My ministerial colleague Lord Keen is perhaps most actively involved in this process, so the fact that we are a United Kingdom with different jurisdictions does not get missed. Absolutely, we make that point. It is important to recognise that legal services are a national process and a big part of our economy. Depending on how you

look at it, they contribute £25 billion to £30 billion to our economy, which by any standards is a significant contribution.

Q17 The Chairman: It is indeed. We have covered quite a lot of issues this morning, many of them repeat issues from last year. If in the next spending round you were to get a windfall into your department, what would be your priority spend or your priority bid, given the complexity of so many of the difficulties regarding judicial recruitment, the state of courts and all the other issues we have touched on?

David Gauke MP: It is a fair question to ask, but my instincts are rather cautious as to whether I can necessarily give an answer at this point. We are doing a lot of work at the moment in preparing for the spending review and looking at what we need to do.

Let me put this way: it is important to use a spending review to be strategic and to work out the destination that we need to get to. Technology will be hugely important here, and it is a question of how we deliver for the courts and justice system and the prison and probation service high-quality services and good value for money for the taxpayer.

Technology plays a role. Earlier, Lord Beith asked about non-custodial sentences, and there is a place for technology. We have made progress. It has been slow, but we are now making progress on GPS tagging, for example. That provides significant opportunities for the criminal justice system. We are trialling it out. I can tell you, Lord Chairman, that I am wearing a GPS tag as we speak.

The Chairman: I hope you are not giving them to the Committee to wear.

David Gauke MP: I am certainly not sharing this information with the Whips. I have been trying it out for the past 20 hours or so. GPS tagging might be used to a greater extent, and there are other areas where technology can play a role. This does not answer your question directly, but we need to look at the long-term destination. A spending review should build into that, but we also need to look at some of the immediate challenges that we have with our justice system.

We have to ensure that we have the advocates, judges and buildings that we need, prisons that function properly and are decent and humane, and a probation system that can help to reduce reoffending. I have run through a list. It is not a detailed spending review bid, but we are trying to ensure that we have a bid that looks at the short, medium and long term and that there is some consistent thread so that in addressing our short-term needs we also look at where the department should be, not necessarily in three years' time but in five, 10, 15 years' time. That is what we are trying to get to.

The Chairman: We wish you well with your bid, because we are concerned about the delivery of justice and some of the potential long-term consequences. Thank you very much for coming along this morning and for answering our questions.