The Right Honourable
Alex Chalk KC MP
Lord Chancellor & Secretary of State for Justice

Baroness Drake CBE
Chair of the Constitution Committee
House of Lords
London
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15 May 2024

Dear Baroness Drake,

FOLLOW-UP ON ORAL EVIDENCE SESSION WITH THE LORD CHANCELLOR ON 20 MARCH 2024

Thank you for your letter of 22 April in which you posed a number of questions by way of follow up to my evidence session on 20 March.

I have responded below to each of your questions in turn.

Family Courts can take the initiative in calling for a family group conference if they consider there has been insufficient work undertaken by the local authority to explore the family network. Is any data captured as to the frequency with which this occurs and the impact on outcomes for the child? If not, can consideration be given to gathering this data?

Data is not routinely collected on family group conferencing by HMCTS or the Department for Education (DfE). DfE has however commissioned Warrington Borough Council, through the Data and Digital Solutions Fund, to conduct research into existing barriers and potential solutions for collecting pre-proceedings data and will be testing the outputs of this research with local authorities and other system partners over the coming months to explore what a pre-proceedings data set could capture and how to collect it.

Is late exploration of family and friends as a potential alternative care option for children contributing to delays and backlogs in the family courts? Is the Government considering how early legal advice, for example through pilots, can support prospective kinship carers to understand their rights and options and so come forward earlier, preventing delays and potentially averting care proceedings?

Local authorities should involve family networks for early help, and at every point throughout the children's social care system. They should empower families by prioritising family-led solutions, working collaboratively with family networks to support birth parents to make and sustain positive changes, hopefully leading to de-escalation of need or no further involvement with statutory services. Whilst DfE does not prescribe a specific model, existing statutory guidance encourages local authorities to consider using family group decision making, such as family group conferences.

In Championing Kinship Care: The Kinship Strategy, DfE committed to partner with Foundations – What Works Centre for Children & Families and the sector to work towards every family being offered access to high-quality family group conferences at pre-proceedings stage and we will seek to monitor the success of

this. We will also explore using legislation to mandate the use of family group conferences at pre-proceedings in the future, alongside encouraging their use earlier in the system.

In 2023 we injected £13m into family legal aid per year through secondary legislation. This made a number of changes, including bringing Special Guardianship Orders (SGO) in private law proceedings into scope, which means that SGOs brought in private law proceedings are now within scope of legal aid so family, friends, or foster parents seeking to provide long-term care for children will be able to access free advice and representation to help them make that decision. We also broadened the evidence requirements for victims of domestic abuse applying for legal aid, making it easier for victims to evidence their claims.

In January 2024 we announced a further £12.2m pilot of Early Private Family Legal Advice (EFLA) in private family law proceedings, which will run for two years starting in September 2024, and which will assess the impact of early legal advice in the earlier resolution of child-arrangement cases. If kinship carers have parental responsibility, they may be eligible to access early legal advice available under the pilot.

By receiving early legal advice, it is hoped that parties will be more informed and have greater understanding of their rights and options. Where appropriate, it is anticipated that the provision of advice will encourage greater uptake of non-court dispute resolution services averting the need for private law proceedings. The pilot is currently being designed and affirmative secondary legislation to enable its commencement is scheduled to be laid before parliament in June.

How would you define the "rule of law" and, as Lord Chancellor, how do you interpret your constitutional relationship to it as set out in section 1 of the Constitutional Reform Act and your duty under your oath to "respect" it?

I would echo two points that Lord Falconer KC, now a member of the Committee, made about section 1 during passage of the Act. First, that the rule of law is not reducible to a legal rule. Second, that the rule of law in this country has been successful because of "a delicate and gradually evolved institutional balance based on a mixture of convention, practice and law" [HL Deb 7 December 2004 vol 667 c739].

For me, the rule of law is the essential underpinning of the liberties and democratic values that we all enjoy. It requires law that is clear and certain, with all equal under it, with the government also subject to it, and with access for all to independent and impartial justice. I see the maintenance of the rule of law as a collective effort, and I said when I was sworn in that we should all do what we can to leave it the stronger. That speaks to Lord Falconer's second point.

As to the relationship of the Lord Chancellor to the principle of the rule of law, it is of course the Law Officers who give the legal advice, but I do work closely with the Attorney General in scrutiny of proposals that raise matters to consider. I agree with the Committee that Lord Chancellors must have the clout and the strength of mind to be able to stand up for the principle and engage with their Cabinet colleagues as necessary.

Within my own Department, it is clear that my rule of law responsibilities tie in with my duties that relate to the judiciary, to the resourcing of the courts and tribunals, and to the justice system generally. I made the point when I appeared before the Committee that the rule of law also demands that the guilty are convicted and the innocent walk free, and that the public are able to see this and have confidence in the system.

Does the duty to respect the rule of law extend to international law?

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The principle of respect for international obligations is the cornerstone of a rules-based international order. The Government accepts that principle and firmly believes that the international rule of law underpins global prosperity and security and is in the interests of all nations including the United Kingdom.

I am proud to have spoken regularly – including at the G7 and recently in the United States – about the importance of the rules-based international system and the need to uphold it.

How should Parliamentary sovereignty be balanced with the rule of law in respect of international obligations?

I would disagree with the premise that this is a question of balance. It is, to me, a question of different roles, and there is no balance to be struck. I would observe that parliamentary sovereignty and the international rule of law generally work well together. There is no inherent conflict between them, and it is parliamentary democracies such as our own that are the backbone of the international rules-based system.

Is the Ministerial Code effective in ensuring ministerial compliance with international law and treaty obligations?

Through the Ministerial Code, all Ministers are required to consider their obligations against the overarching duty to comply with the law and to protect the integrity of public life. I note that in its report the Committee recommended spelling out in the Ministerial Code the obligation to respect international law, but I think that principle is understood well, and across Government. Ministers can also look to their officials and to the Law Officers for advice.

Ultimately, it is for Parliament to ensure compliance. The Prime Minister is the judge of the standards of behaviour expected of Ministers, and the Prime Minister must have the confidence of Parliament to be able to police the Code effectively.

How, in practice, do you fulfil your duty to uphold the independence of the judiciary?

I have sworn a duty in my oath to “defend” their independence, and when I appeared before the Committee I spoke about doing so publicly, as on the day of the Supreme Court’s Rwanda judgment, and about the importance of being able to act privately when there is otherwise a risk of escalating matters. The judiciary are held in high esteem internationally for their ability to make decisions without fear or favour. That ability is fundamental, and to be defended for its own sake, but it is also key to the day-to-day business of the courts and tribunals and to public trust in them.

Defending judges from abuse and from accusations of bias is not something I shoulder alone, and it is helpful that the longstanding principle of the independence of the judiciary from the executive was recognised in s.3 Constitutional Reform Act 2005, which placed a duty on all Ministers to “uphold” judicial independence. That applies too to officials working on relevant matters, which means that the principle runs far deeper than the Lord Chancellor’s stepping in when the integrity of judges is impugned, important though that is. The work of the Ministry of Justice – the way we engage with the judiciary and where we appreciate the constitutional boundaries lie – is therefore conducted with that principle clearly in mind.

I mentioned during my appearance what I have called the ‘conspiracy of romantic hopes’, the wishful view that everyone knows instinctively where the lines are drawn, and my thinking about how to counter this situation. The Committee’s report and its continuing work are valuable contributions to the collective effort to foster a wider appreciation of constitutional basics and how they underpin our democracy. For my part I

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have also raised with the Speaker my strong view that new MPs should receive specific training on this issue.

Thank you again for your letter and I hope that this additional information is helpful to the Committee in its ongoing work.

Yours sincerely,

RT HON ALEX CHALK KC MP

LORD CHANCELLOR AND SECRETARY OF STATE FOR JUSTICE

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