HOUSE OF COMMONS

ORAL EVIDENCE

TAKEN BEFORE THE

JUSTICE COMMITTEE

PRICE COMPETITIVE TENDERING PROPOSALS IN THE GOVERNMENT'S TRANSFORMING LEGAL AID CONSULTATION

WEDNESDAY 3 JULY 2013

RT HON CHRIS GRAYLING MP, ELIZABETH GIBBY and HUGH BARRETT

Evidence heard in Public Questions 123 - 239

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Oral Evidence

Taken before the Justice Committee

on Wednesday 3 July 2013

Members present:

Sir Alan Beith (Chair)
Steve Brine
Jeremy Corbyn
Gareth Johnson
Mr Elfyn Llwyd
Seema Malhotra
Andy McDonald
Yasmin Qureshi
Graham Stringer

Examination of Witnesses

Witnesses: **Rt Hon Chris Grayling MP,** Lord Chancellor and Secretary of State for Justice, **Elizabeth Gibby,** Deputy Director of Legal Aid and Legal Services Policy, Ministry of Justice, and **Hugh Barrett,** Director of Legal Aid Commissioning and Strategy, Legal Aid Agency, gave evidence.

Chair: Welcome, Lord Chancellor, and we also welcome your colleagues. I shall ask them to identify themselves in a moment. First, we have to declare any interests there might be, and I shall start with Mr Brine.

Steve Brine: None.

Graham Stringer: None.

Yasmin Qureshi: As a former practising barrister, I used to receive legal aid funding.

Chair: None.

Mr Llwyd: I have done legally aided work in family and crime, as a solicitor and a barrister, but I do not do any at the moment.

Seema Malhotra: None.

Andy McDonald: I was in criminal practice nearly 25 years ago. In November I left a firm that still does criminal work, but I do not do any myself.

Jeremy Corbyn: None.

Gareth Johnson: I am a practising solicitor for a firm that is partly funded by legal aid.

Q123 Chair: Thank you. Lord Chancellor, can you tell us who your two colleagues are?

Chris Grayling: Do you want to introduce yourselves?

Elizabeth Gibby: My name is Elizabeth Gibby, and I am head of legal aid and legal services policy at the Ministry of Justice.

Hugh Barrett: My name is Hugh Barrett. I am the director of commissioning at the Legal Aid Agency.

Q124 Chair: Thank you very much. You wrote me a letter on Monday and the Law Society wrote me a letter, and these two letters taken together indicate that at least some constructive discussion is taking place. I asked you yesterday if you had heard from the Bar Council. Have you heard from it in the meantime?

Chris Grayling: I had a meeting yesterday afternoon with the Bar Council. I should say that the discussions with the Law Society have been constructive and have been going on for a number of weeks. We have had a series of meetings.

As I explained to you when we spoke, it was my intention to use the letters that I sent to you on Monday as a vehicle to make it clear that we had reached agreement—I won't say common ground—on a number of principles for discussion, that I accepted that we would move away from the issue of limiting choice, and that we would look again at the time frame for the changes. That will not necessarily change the time frame for financial change, but it may be that we can adjust the time frame for a new contractual framework in a way that makes it easier for practitioners to adapt to it. That is something that the Law Society had asked for, and I was very happy to open discussions with them about it. In return, they have said that they accept that we face a very large financial challenge, and they have also accepted the need for consolidation of their sector. They have submitted to us a very interesting proposal as a possible alternative model, which still contracts the marketplace, and we have said we will engage in constructive discussion with them about that.

I know that this is difficult for the solicitors' profession. It has always been an issue that, to my mind, was going to be a bigger challenge for the solicitors' profession, because we are asking it to go through significant change. I have had a number of constructive meetings with local committee members of the Law Society, with individual firms, and indeed with the Law Society nationally. I recognise the challenge that what we are doing presents to them, and we are genuinely keen to find a way of working through it that delivers change in the best possible way.

On the Bar front, I should be clear that the reaction from the Bar has been rather different—disappointingly so, because in one of the first decisions that I took the obvious choice was to go for one case, one fee. A number of my colleagues have argued that, and a number of my colleagues are still arguing that. I have taken the decision that we need to protect an independent Bar. I therefore chose not to go for one case, one fee, which in my view would have destroyed the independent Bar. I have to say that we have not had the same level of constructive response from the Bar as we have had from the solicitors' profession. I had a meeting with the Bar Council yesterday, and I hope very much that that changes, because it is in all of our interests to work this through in a way that does the best for the professions in the context of the fact that we cannot avoid tough financial decisions.

Q125 Chair: What is the objective of the process that you have now embarked on? Is it to achieve the savings that the Treasury require of you, or is it to make a fundamental change in the way that both professions are organised in respect of criminal practice, and legally aided practice in particular?

Chris Grayling: There are two levels of challenge here. One is that, like every other part of Government, we have to deliver financial savings. If you look across the range of what the Ministry of Justice does—I have no doubt that we will be talking about other areas in the months ahead—we have challenging savings to make in the courts area, which we will need to achieve through greater efficiencies, as well as looking at ways in which we can recover assets or contributions from those who have committed offences. Within the probation area

we are looking at generating savings, but also at reinvesting money in supervision of the under-12-month sentence group, because if we can start to bring down the reoffending rate among that group in particular, as well as among offenders more generally, that will ease pressure on the system and allow us to bring down costs in the future. Within the Prison Service, with the prison benchmarking that we are doing at the moment, we are also working to bring down costs as far as we can.

We have a financial challenge. It touches every part of the Department; it will touch the centre—the Department itself. Ultimately, Sir Alan, my first priority will have to be to meet the strictures that the Treasury puts upon us. I want to do that in a way that delivers change in a way that is sustainable. Some people have said to me, "Just cut fees," but I have a big concern about just cutting fees, and I am being told very clearly by many in the solicitors' profession that they are businesses that operate on tight margins, and that they cannot accept, or stay in business with, a tight cut in fees.

I do not have much room for manoeuvre, so what we need to do—I think we are going to have to do this across Government—is to see that there comes a point where financial change has to come with reform. That is the only way that you can deliver change, and deliver change financially, in a way that is sustainable. That is what we are looking to do with these changes. The reason that I am very open to discussions is that we want to get it right. I have to bring the cost down. I have no option but to bring the cost down, but I want to do so in a way that leaves a sustainable structure beyond, where we do not have advice deserts. My concern is that, if I just leave the market to sort itself out, we will run the risk of having blocks of the country where people opt out of delivering legal aid, and there is an advice desert.

Q126 Chair: That has happened already.

Chris Grayling: I need some kind of contractual mechanism to ensure that I can cover all parts of the country, and ensure that at the very least there is legal support for those who need it.

Q127 Chair: Is it a policy objective to move away from the very small businesses that provide a lot of these services and from an independent Bar, towards one in which very large firms take on numbers of barristers as salaried employees?

Chris Grayling: That second premise I do not buy. One of the arguments used about this is that the Bar will lose lots of work in-house. That is not something that I, as somebody who has been involved in running businesses, can comprehend. If you are going through tough times financially, if you have to tighten your margins and bring down costs, and if you have the option of keeping in-house salaried employees who you have to pay come rain or shine, or of having a team of expert freelancers—professionals upon whom you can draw to do the work when it is needed—it seems to me that the second option is rather more attractive than the first. Actually, tighter environments for solicitors are, in my view, likely to lead to more work for the Bar rather than less. I have sat with solicitors firms that say that, with these changes, they will be more inclined to use independent advocates than to use in-house staff.

There has never been a process of change in any walk of life or in any organisation where the people affected by change were not left very jumpy by it, but in my view this actually strengthens independent advocacy rather than weakening it. I can see no logic in those firms having expensive staff on their books when they do not need to.

Q128 Chair: We shall return to some of those points, but there is one other issue that I want to ask you about before opening up the questioning. You are placing upon your Department, in this area as in others, the responsibility to manage large contracts with nationwide application. The interpreters' contract was a shambles. The tagging contract is the

subject of an investigation, the prison market testing and bidding process has been halted by the investigation into tagging, and the Probation Service contract is the subject of fierce current controversy. You haven't got the capacity in the Department to manage contracts on this scale, have you?

Chris Grayling: I believe that we will do, and we will have to resource to make sure that we can for a temporary period, so that we do. We have to do this anyway. The three-year contracts come to an end next year, so we have to put something in place whatever happens. We have long debates about the other contracting issues, but one of the ironies of the arguments being used—the interpreters contract is the example most regularly raised—is that the problems with the interpreters contract arose from the fact that it was placed with a relatively small organisation that struggled to deliver, and it actually took the larger organisation to sort them out.

There is a myth here. These changes are not about somehow exposing the legal market to a handful of giants who will just take over everything. All I am seeking to do is to encourage firms to look at new ways of working together, or through alternative business structures. We now have the ability for firms to do multidisciplinary activities. I am not attempting to set a one-size-fits-all model from the centre. I am saying to the market simply that we need the confidence that, if we bring down costs as we have to, the organisations working with us will have the ability to deal with that. Otherwise, I would end up with advice deserts.

That is fundamentally what I am looking for. Do I have the comfort that the next round of contracts, when they are placed after 2014, will be with organisations that can sustain the work that they are committing to? It does not matter to me whether they are large, medium or small; what matters to me is that the service is sustainable.

Q129 Andy McDonald: Secretary of State, good morning. I am going back to the letters and the exchange of correspondence referred to earlier. For a long time many people have been saying that a choice of solicitor is absolutely fundamental to our system, and have been trying to impress that idea upon you. You have indicated that you are going to make changes to allow for a choice of solicitor. Can you explain your reasons for that change of heart?

Chris Grayling: I have done the radical thing of being a Government Minister who consulted on a set of proposals, listened to the responses and decided fairly early on that this was probably something that we needed to change. I waited for the consultation responses to come in, had a look at some of them and decided that I was of the same view. I decided that, to avoid uncertainty, it was better to make an early announcement than a late announcement, and got on with it. Isn't that what Governments are supposed to do?

Q130 Andy McDonald: Hurrah for that. You have also said that you have agreed to explore the proposals to consolidate the market in stages. Can you tell us what effect this is going to have on the proposed timetable? If you could be as reasonably precise as you can, with some markers, that would be helpful.

Chris Grayling: I can't really, at the moment. It is simply that, as I said, the Law Society have come to me and said, "Look, can we have more time to go through the contracting process?", and I have said, "I'm very happy to sit down with you and work through that." What I cannot really change, for obvious reasons, is the timetable of delivering reductions in costs to us, because I have to ensure that in the 2015-16 financial year—the subject of the most recent spending review—we as a Department are able to meet the targets for that year. We are now starting detailed talks on that with the Law Society; that is one of the messages that they gave us strongly in their response.

I am very open to adapting the process, but, to take you back to what I said before, I have two objectives: I have to meet the financial targets, and I want to leave a sustainable structure within which we have confidence that the organisations in place to deliver the service can do so.

Q131 Andy McDonald: So the timetable can take care of itself, but what you must address urgently is the money, and a bigger cut is coming immediately. Is that what you are saying?

Chris Grayling: I have to deliver a reduction in fees by the time that I am required to in order to deliver the budget timetable. We could do that alongside a more extended contracting process, as long as I was confident that that more extended contracting process took us to a point where we had a sustainable market. All that I am concerned about here is those two goals: I need to deliver a more cost-effective system, and I have to do it in a way that does not leave areas without cover. I need some form of contractual mechanism that enables me to be sure that, if somebody is arrested and taken to a police station, there is a lawyer in the area who can come over and sort them out. That has always been the prime driver of this, and I need to do it in a way that is sustainable contractually and delivers that service.

Q132 Andy McDonald: The model that you previously presented has been described as internally incoherent. Would it all unravel if you addressed the fundamental principle of choice? How does the rest of it still fit together if that element is removed?

Chris Grayling: I would point you to the diagram on page 66 of the consultation document, which sets out how the process works. This is something that I have been saying all the way through at the meetings that I have attended, including those with third parties—that the process, as we envisage it, is this. First, we need to understand that the organisations that put their names forward are capable of sustaining a service at a lower level. They have to be able to do that in order simply to get to the table. Then the key thing is: what is the quality of that service? Is it delivering a quality legal service? The price point was always there: okay, if I have two organisations that are able to deliver a quality service at a lower price, but one's bid is 1% lower than the other, I have a duty to secure value for the taxpayer, as you would expect. However, there has been a myth in circulation that quality is ignored in all of this, but there is a whacking great big box in the middle of page 66 that says "Quality".

Chair: We are going to come to that issue in due course.

Q133 Andy McDonald: In my area there will be six potential providers, and they are all to get an equal share. You have now introduced the principle that choice is important. If an accused chooses one firm, what is happening to the principle of equal shares?

Chris Grayling: What happens there is one of the reasons why I changed my mind. We put that in the document in the first place because we judged that in order to invest in scaling the business—two firms merging, for example—there would be a need to provide a guarantee of volumes. Yet one of the clear messages I got back from the solicitors' profession was that the choice issue was more important—"Why do you not simply leave competition in place, because the best will then flourish?"—and I accepted that argument.

Q134 Andy McDonald: The guarantee of equal shares of work has gone.

Chris Grayling: Yes. We could not do that: you cannot both provide a guarantee of a slice of the work and provide choice. That is something that the market has said to me: "Actually, the principle of choice is one that we regard as more important."

Q135 Andy McDonald: Finally, is it still the intention for any businesses that do come forward to be set at 17.5% below the current rate?

Chris Grayling: Our working plan is that the base line we need to achieve is a 17.5% reduction. I am not actually in a position where I need to get lots more than that. I am certainly not in the position of saying that, if somebody tips up with half a dozen law students and says that they can do it for half the price, we will give them a contract. I am definitely not going to do that. I want a quality service delivered by experienced and qualified solicitors and barristers—but, yes, I do need to achieve that level of saving.

Q136 Chair: In respect of the timetable, may I point out that the regulatory bodies for the Bar and for solicitors have, in response to questions from us, both indicated that it takes months at least to achieve the regulation compliance agreement that would be required for some of the alternative business structures that you envisage? You have to take that into account in the timetable.

Chris Grayling: That is an interesting point. Since you mentioned this to me, Sir Alan, I have checked. We have spoken to the Solicitors Regulation Authority, who say that they do not envisage there being a problem. I am not sure whether they have written to you separately to say that there is.

Q137 Chair: We can let you have the correspondence.

Chris Grayling: We will need to look into that. We have met them and discussed this, and they have said very clearly that they do not see an issue. We have obviously got a crossed wire, which we need to look at.

Q138 Gareth Johnson: May I pick up that point, Secretary of State? I am very pleased that you have retained the element of choice in the proposals. Did you come to that conclusion because you believed that the original proposal was unlawful, because you felt that it was unworkable, or for some other reason?

Chris Grayling: It was not anything to do with the lawful nature of it. The article 6 argument was used, but I have read article 6 and I am not at all convinced that the "unlawful" argument is right. It was just listening to the views of those who made representations and deciding that it was the right thing to do. The very clear message said, "Look, competition between firms based on choice is a good thing, and there are specialisms that we would not want to lose." I simply decided that it was the right thing to do.

I actually decided this a little while back, but you cannot make changes in mid-consultation. I had to go through the process of allowing the consultation to be completed, and looking at some of the responses to make sure that I got it right. It would have been irresponsible of me, and probably illegal, simply to take a decision without considering the issue, but I accelerated consideration of that issue post the end of the consultation, because my instinct was that it was the right thing to do.

Q139 Mr Llwyd: Good morning. What proportion of the proposed savings of £122 million that you seek to make from CPT are attributable to the model of competitive tendering, as opposed to the required 17.5% cut in bidders' rates?

Chris Grayling: The 17.5% cut delivers the savings. I had not been anticipating that we would generate significant savings beyond that. I thought that the price competitive element would be, as much as anything, a small differentiator between firms. As you know, it is clearly in the interests of the taxpayer if I can generate an extra 1% or 2% of savings, but that was not a prime purpose.

Q140 Mr Llwyd: Is the underlying intention of competitive tendering to change the long-term model of legal services provision, in part by reducing the number of firms?

Chris Grayling: It is about sustainability of service. What matters is that we have in each part of the country legal aid firms that are available to work with people who are accused of crimes. If there are none, that is a problem. We therefore seek to put in place a proper contractual mechanism that ensures that we have coverage, and that we have a mechanism to bring in new organisations if, for any reason, one of the existing organisations pulls out.

My concern was that, if we simply cut fees and left the market to sort itself out, we would get a fairly chaotic period in which some firms would survive and some would not, which would not be the case if we had a managed period of change over 18 months, which is what we are talking about from the start of the consultation. Please bear in mind that this is something that has been presaged for two or three years; it is not something that I conjured up as the new Secretary of State. It was always due to be consulted upon this autumn; I simply accelerated the process by six months. The Government originally announced in 2010 that they were going to follow this path. The previous Government, back in 2006, had set out a path towards competitive tendering in this area. This is not something that has come totally out of the blue. Indeed, one of the messages that I got from the Law Society and others is that this has been a bit of uncertainty hanging over the sector for a long time.

I looked at creating a managed process of change. We and the Law Society think that there are too many organisations out there to sustain the kind of financial challenges that we have. There will need to be some consolidation; what I am seeking is a sensible mechanism to achieve that and to make sure that we can sustain the service.

Q141 Mr Llwyd: The question is whether the mechanism is in fact sensible. Mr McDonald, my colleague, mentioned six providers in his area. For the whole of Wales we will be going down from about 460 providers to 21. That, I think, is highly irresponsible and ridiculous, and it is not going to work.

Chris Grayling: One of the things that I have said—I said it in the House yesterday—is that I have listened to the concerns of people in rural areas about whether we've got the numbers right. Of course, what matters is sustainability. You can have 460 providers today, but, if half of them cannot sustain a more challenging financial environment, I would not want to see a situation where parts of Wales had no access to legal aid support. I therefore hope, Mr Llwyd, that one of the things that you would want is for me to have a mechanism in place to ensure that your constituents have access to legal aid—and that is what I am seeking to do.

Q142 Mr Llwyd: Certainly, but I do not think that these proposals will do that. We will have to differ on that.

The consultation paper does not in fact say what will happen if a provider is unable to find sufficient or sufficiently qualified lawyers to fulfil its obligations. Unlike with the Olympics, the Army cannot be drafted in. What does the Ministry propose?

Chris Grayling: To be honest, a shortage of lawyers in this country is not one of the big challenges that we have. One of the areas that the Bar particularly, but both sides of the profession, need to look at is the number of people operating in the criminal legal aid field at the moment. One of the things that concerns me most in looking at the data that we have put forward—you will see the charts in the consultation document—is that the barristers at the lower end of the legal aid fee income scale are doing a relatively small number of cases. That is a real issue: a lot of people are struggling to get enough work to do. My big concern in all this is not the availability of lawyers.

Q143 Mr Llwyd: Very well. Apart from the brief mention of the possible effect of defendants representing themselves, the consultation paper and the assessments do not consider the position of victims of crime. Why is that?

Chris Grayling: I think that what victims of crime want is for the people who carried out those crimes to be tried fairly, prosecuted and when found guilty to be punished appropriately. We are doing a whole range of things to support victims. We have just published a draft victims code, and we will be moving ahead with the implementation of new victims rules shortly. We have appointed a new victims commissioner, who is bringing forward new ideas to us. Support for victims is a very important part of what we are doing, but the best thing we can do for the victims of crime is to have a proper justice system that deals effectively with the people who carried out the crimes in the first place.

Q144 Mr Llwyd: In October 2004, your Cabinet colleague the Attorney-General told *The Law Society Gazette*, "I cannot see that competitive tendering in criminal legal aid makes sense—legal aid contracts do not pay market rates. If firms want to win a competitive tender, the only way they will be able to undercut each other is by steps that could open them up to potential allegations of incompetence." Even in 2004 it was being said that legal aid rates were well below normal legal rates. Do you accept this criticism from a highly experienced lawyer and a highly experienced Cabinet member?

Chris Grayling: Let us be clear about two things. First, I discussed—and I did so before the consultation—these proposals extensively with the Attorney-General. Secondly, the world today is very different from the way it was in 2004. We face tough financial challenges today, which in 2004 we did not imagine would be ahead of us. The reality is that the whole public sector, including those areas funded by the public sector, has to adapt to tough and challenging changes, because that is the only way in which we can meet the financial challenges that this nation faces.

I would rather we did not have to be doing any of this. I certainly have no particular personal desire to be a Lord Chancellor sitting in front of this Committee talking about driving through changes of this kind. It is not my personal choice, but you have to deal with the world as it is, rather than how you would like it to be.

Q145 Mr Llwyd: I note that the Attorney-General has not made any public statement in support of your proposals.

Chris Grayling: I do not think that it is the Attorney-General's role to make public statements in support. All that I can say is that he has been extensively consulted. He has had involvement and continues to have involvement in discussing what we do. That is right and proper, but his position is not one in which I would expect him to be out making policy pronouncements.

Q146 Mr Llwyd: Fair enough. I have one final question. The Government's "Open Public Services" White Paper states, "it is not enough to pay someone to provide a service with the only recourse being that if they fail they will not be re-awarded the contract." Can you explain how the proposals for CPT are currently drafted to meet this aim?

Chris Grayling: If the "Open Public Services" White Paper was to a significant degree about choice, I think that I have just addressed the choice issue by accepting the arguments that have been put to me. That question has been rather superseded by events this week.

Q147 Mr Llwyd: With respect, it has not. If they fail in their duty, how will you know that, and how will you be able to act quickly in that regard?

Chris Grayling: If they fail in their duty, there are two or three mechanisms that would apply. There is a peer review process, which already exists but is not widely enough used yet. One of the things that has really surprised me in terms of quality—the quality issue is crucial here—followed from the fact that one of the arguments used against the proposals was that it will destroy quality, and that we will end up with cheap and cheerful, ineffective, under-qualified legal services. My response to that was to say, "That's not my intention, so why don't you, the professions, shape the quality standards that you would want me to apply in order to ensure that we maintain quality?" The Law Society is now doing that with us, but the Bar has said no. To me, that does not compute. People are saying, "You're going to destroy quality," and I say, "Okay, so you set the quality threshold so that I can't." If they then say no, how does that work?

Chair: We shall return to that point in a moment, but while we are still talking about the basic structure I want to turn to Mr Stringer.

Q148 Graham Stringer: What alternatives to competitive tendering did you consider?

Chris Grayling: I guess that the biggest was one case, one fee. A variety of options are set out in the document, but one case, one fee is the obvious one. Certainly I have had people within and around the Government saying to me, "You should go down this road." With one case, one fee, you can understand the logic. We have solicitor advocates and we have barristers. Why are we simply not paying a single block of money and allowing the solicitor to decide how to run the advocacy? It is the most cost-effective and the most administratively simple, and it makes blinding good sense—but I did not do it because I did not want to kill the Bar. I wish the Bar would recognise that.

Q149 Graham Stringer: Why did you not put that comparison and other comparisons in the impact assessments?

Chris Grayling: The comparison for one case, one fee?

Q150 Graham Stringer: You said that there were other alternatives.

Chris Grayling: There are other alternatives within there.

Q151 Graham Stringer: Why were they not in the impact assessments?

Chris Grayling: I am trying to find the right balance for the use of public funds. We have produced a perfectly sensible impact assessment that meets the requirements. How much extra officials' time do we want to spend producing longer and longer documents at a time when finances are under pressure and we are trying to do a lot of things at once?

Q152 Graham Stringer: That is a very strange answer. It is the nature of impact assessments to justify change, quantified against cost, against what is happening at the present time, and against the alternative proposals and other alternative proposals—so that is not a proper impact assessment.

Chris Grayling: Why would I want to do an extended—

Q153 Graham Stringer: Just let me finish. It is not a proper impact assessment if you do not put all those alternatives in, is it?

Chris Grayling: I am sorry, but I think that it would be a complete waste of public money for me to do an extended impact assessment on one case, one fee, when I thought that it would just destroy the Bar. That would not have been in the interests of the country, and I would not do it.

Q154 Graham Stringer: That is not my understanding of what impact assessments should be, even if you were to put that in. You say that you have no doubt whatsoever that firms will bid in the competitive tendering process. Why are you so optimistic?

Chris Grayling: Because they told me, and us, both on and off the record. At the moment the Legal Aid Agency is deluged with inquiries from law firms trying to get more statistical evidence about the marketplace as they consider their future, so I have no doubt at all that firms will bid.

Q155 Graham Stringer: Even though many of the smaller firms will have to merge or increase their size, and it will take time for them to get into a position where they can compete for a tender.

Chris Grayling: As I said very early on, if we start a process of contract renewal later this year, what we are not going to do is to say, "If you have not completed your move to the new world, you can't bid." That would be wrong; it would be irresponsible. What I have said is, "Look, as long as you set a path and you are explaining to us where you are going and how that is going to make this sustainable, that's fine. You will be able to bid." It is not a problem. This is meant to be an iterative process. It would not be workable if I simply said, "By November you've got to have merged your firm; it's all got to be done and dusted. Only then will you be able to bid." We are not doing that.

Q156 Graham Stringer: If your optimism is justified and you get through the first round of tendering and different firms win the tenders, it is likely, is it not, that some firms will go to the wall? They will be out of business. What analysis have you done to show that there will be sufficient competition for the second round of tendering?

Chris Grayling: There is no doubt. The Law Society itself has stated clearly that it believes that there needs to be consolidation in the market, and that it will come as a result of this. There has been extensive analysis of the profitability and the structures of law firms, as this has been discussed over the last two or three years. We believe that there will be plenty of bidders.

All the evidence that we have, and the feedback that we are getting from existing suppliers, is that there will be plenty of bidders. There will be some firms that cannot bid in their own right, but I am completely confident, given all the discussions that we have had. Bear in mind that the team and I have spoken to large numbers of firms, privately and publicly. There are a lot of people who, for obvious reasons, are saying publicly that they do not like these changes, and are campaigning for us to modify them, but who are privately making it absolutely clear that they will bid—and they are not in small numbers.

Q157 Graham Stringer: What work have you done to understand the profitability of firms, to show that they can take a 17.5% cut?

Chris Grayling: One the challenges is that I suspect—in fact I do not suspect, I know—that some firms, in their current form, will not be able to absorb a 17.5% cut. That is actually why we are doing this. If I simply applied the 17.5% cut across the board to all solicitors firms, the consequence would be an unmanaged transition. Some would opt out immediately; some would not be able to continue or would struggle to continue, or would struggle to deliver a proper service. The whole objective of this is to have a managed transition.

That is the nature of the discussion that we are having with the Law Society at the moment. We have brought forward a proposal for consultation that sets out what we believe is a managed transition. I said on day one, in the interview that I gave *The Times* and in the

comments that I made to the House, that if somebody has a better approach for delivering a managed transition, which achieves our goals of reducing the budget and ensuring that we have a sustainable sector thereafter, we are perfectly open to discussing that. That is why you have a consultation. We are now, as I say, engaging in conversation with the Law Society. We are looking at our own model in terms of the feedback that we have had, and we are looking at the ideas that the Law Society has put forward. I cannot anticipate that work today—you will understand why—but we will move shortly to bring forward alternative thoughts based on those discussions.

It might be helpful, Sir Alan, to say at this point that my intention is that we should have a second, shorter, phase of consultation in the early autumn, starting in September, so that we can coalesce some of the things that have been brought to us, see how they affect the model that we have put forward, and see whether there is a viable alternative in what the Law Society and others have put to us, so that we can consider all this and then move ahead. Despite all the criticisms that have been made about the length of consultation, in fact we will end up having consulted for a longer period than the 13 weeks that people have called for.

Q158 Chair: Will that consultation be on the basis of a revised set of proposals?

Chris Grayling: Yes. It will say, "We have now consulted and listened to everyone. We have looked at where our proposal needs to be modified, and we have looked at the alternatives." We are not going to start at the beginning all over again; we will simply say, "Right, based on the consultation, this is how we think things might be different"—to a smaller or greater degree; I am not judging whether there will be big changes or small changes. I have already made one, with the choice agenda, and I have said that I will look carefully at the rural areas issue. You would expect me to do that. We will bring back a set of finalised proposals in the autumn for final comments, for a shorter period of consultation. Then we will proceed with change.

Q159 Seema Malhotra: Secretary of State, may I continue the conversation you began about quality, the work that you are doing with the Law Society now, and how they are helping you to set standards? What process are you going through with them?

Chris Grayling: Let me start by saying that the most important judge of quality is the qualification. We have a good system of legal training in this country. If somebody is a qualified solicitor or a qualified barrister in the UK, in England and Wales, that brings a stamp of authority with it. Therefore, one of the clear issues of quality for me is whether firms are using qualified people in places where qualified people are needed. There are places where other parts of the legal profession can perform a service—paralegals, for example—but I want to know that, where qualified lawyers are required, qualified lawyers are available. There are also other elements to quality: there is sustainability of business and there is the way the business works.

I have been a bit puzzled by the slightly contradictory attitudes of parts of the legal profession to the issue of quality. There is a big battle at the moment within the Bar about the new quality assurance for advocacy. That is nothing to do with the Government or me, and it is nothing that I have a vested interest in one way or the other, but it has been a bit of a puzzle to me why on the one hand I get a message saying, "We're terrified that the work is going to be done by unqualified people who will be no good," but on the other hand there is resistance to a quality standard that will prevent work from being done by unqualified people who are no good. It is a bit of a puzzle in the context of me saying, about quality standards for this change, "If you think that, as a result of what we are doing, work will be handed over to people who are not equipped to do it—which is not my intention—then you set the quality standards"—

Q160 Seema Malhotra: May I interrupt you for a second, Secretary of State? There is a big difference between quality of service and how that is going to be received, the quality of advice, particularly to vulnerable people, and qualification. You can have the best qualification, but provide a very poor quality of service. Do you not think that there is a concern that, while you have been thinking about quality criteria, there does not seem to be a significantly developed view about what the standards of service will need to be in order to ensure that clients are receiving the best quality of service?

Chris Grayling: In terms of quality, the benchmark that exists at the moment, which was introduced a few years ago, was peer review. Peer review was supposed to have been applied to all the firms involved in criminal legal aid, but actually it is only about 10%. That is one avenue that we could follow.

Q161 Seema Malhotra: Peer review would take place primarily where there are red flag cases or a particular area of concern.

Chris Grayling: That is why one of the things that I have said to the two parts of the profession is, "Okay, if you are worried about quality, tell me the things we should do to judge quality. You can write the quality part of the contracting process if you want, because that gives us both comfort." As has been widely touted, I am not a lawyer, so let us get the lawyers to design the quality standard so that they are confident that the support provided to people in a difficult situation meets a quality standard.

Q162 Seema Malhotra: Is it true, though, that the Legal Services Commission, as was, reduced its use of peer review because of cost?

Chris Grayling: I shall refer that question to my colleague.

Hugh Barrett: Yes, it is. About two years ago, we moved down the number of peer reviews. As the Secretary of State said, at the moment roughly 10% of firms are peer reviewed. The proposal in the consultation documentation is that we move it to 100%. That would be a way of ensuring that we have high levels of delivered quality.

Q163 Seema Malhotra: What would be the increase in cost in order to deliver that, and how would that be achieved?

Hugh Barrett: It would cost, ballpark, a couple of million pounds extra a year, but as a guarantee of quality I think it would be seen as being a good value-for-money proposition.

Q164 Seema Malhotra: You would see it as being able to provide a guarantee of quality.

Hugh Barrett: It would be a much better system than a 10% sample, because you would be sampling 100% of firms.

Chris Grayling: As I say, my challenge to the whole profession is that I am perfectly willing to let them either reshape peer review or put an extra dimension in. I do not really see that I can do much more than that. If they are all worried that this is going to lead to completely ill-equipped and unqualified operators in this marketplace, they should write the standards so that it cannot happen. I am up for that.

Q165 Chair: I hope that the user of the service is getting some input into this process.

Chris Grayling: I am not sure that that is necessarily very easy to devise, but, if the Committee has a way for the user of the service to make recommendations on this, I am very

up for that. However, the choice decision that I have taken goes some way towards achieving that, because it restores the pressure on businesses to make sure that they are good.

Q166 Seema Malhotra: At the moment there is no process for feedback from the client. You think that £2 million extra for peer review will cover the shortfall in potential costs. How would you see an assessment of performance against quality standards taking place within this process? Would this be self-assessment by firms, as to whether they are meeting quality standards?

Chris Grayling: Are you talking about within the contracting process?

Q167 Seema Malhotra: Yes, and during delivery of service, when people have a contract.

Chris Grayling: During delivery of service, our current intention would be to use peer review, because that is the mechanism that is in place. As I said, if there are suggestions from anyone—from this Committee, for example—about how to strengthen that, I am very willing to consider them. I have said from the start that we need to be sure that we can continue to deliver a quality service.

Q168 Seema Malhotra: Okay, but from what you say, there seems to be quite a significant shortfall in terms of how that quality will be delivered, managed and—

Chris Grayling: Why?

Q169 Seema Malhotra: You are talking about a red flag system that would lead to peer review in 10% of cases, and you say that it will go to 100% with a £2 million budget. You are saying that at the moment there is no way in which you are building client voice into the system to get feedback. It seems that there will probably be a long time before people can be challenged on the quality of service that a firm is providing. Secretary of State, is your U-turn in relation to client choice possibly a reflection of concern about quality?

Chris Grayling: May I ask you a question? What do you mean by "U-turn"?

Chair: I think that we ask the questions.

Q170 Seema Malhotra: In terms of your letter, we know that there has been a U-turn in relation to client choice.

Chris Grayling: I take it that, if a Government Minister consults, listens and modifies proposals, that is a U-turn. Dare I ask—

Q171 Seema Malhotra: I am asking a simple question. Was a concern about quality—and any feedback in relation to that, which could be one of the reasons why somebody might want to change provider—at all a concern in your consideration of whether to bring in an element of choice?

Chris Grayling: One of the arguments that I listened to was that, if you allow choice, if you do not have a managed process of allocation of fees, it will put extra pressure on providers to make sure that they deliver a first-rate service. In terms of feedback from people who are charged with criminal offences, from their point of view there is a simple benchmark that they would tend to use: did they get off or not? We listened to the arguments on choice, and one of the arguments that influenced my decision was that it would drive up quality.

Chair: This Committee is not against U-turns. We quite often advocate them, and sometimes they take place.

Q172 Steve Brine: Very briefly, Lord Chancellor, following on from the mention of the U-turn, you said that you had asked the lawyers to design the quality standard. I am pleased to hear you say that there will be a further short consultation stage, possibly starting in September. Is there any part of you—this came up in our first evidence session—that is even mildly concerned that the profession is writing its own rules here? Is this not a little bit like the poacher writing the rules for the gamekeeper?

Chris Grayling: I do not think that it is. This is not a single organisation doing it for itself. The profession is a collection of different independent firms, which are competing with each other for business.

I regard the national bodies as being well able to say, "From our point of view, this represents an acceptable standard of service, and that doesn't." In a sense, given the difficult changes that we are asking the two parts of the profession to go through, it is better that they are seeking safeguards to prevent a diminution of quality. What I really want is improvement and cost reduction through more efficient ways of working. What I do not want is to chuck out all the experienced lawyers and use cheap and cheerful services.

Q173 Steve Brine: But is there not a logical consequence to that? With great respect to your team, one of the criticisms made of the consultation document is that it had the feel of being written by people who had not been within a country mile of practising anywhere near this profession. Does that not suggest that this kind of collegiate work with the profession, with it being involved in designing the quality standards, should have been the starting point, rather than a point at which we have arrived only now?

Chris Grayling: I do not accept that at all. First, this document has not been conjured out of nowhere. It has been discussed exhaustively. The whole principle of competitive tendering goes back to 2006. It was proposed by the current Government in 2010.

The mechanism that we are actually proposing—a cost reduction that we need the solicitors to be able to deal with, a quality test to make sure that they are delivering a quality service, and then, effectively, a tie-breaker based on price—is not rocket science. There was only one issue of dispute that was very obvious to me early on. I know that there is lots of controversy around the depth of the proposal, but the one thing that resonated with me early on was that perhaps we had not got the choice piece right. The rationale for taking that decision was entirely logical. If we are asking organisations to go through a big process of change, I thought that we needed to be able to offer some certainty about the amount of business that they would get. But they themselves came back and said, "Actually, the choice issue is more important. You should use it to drive competition and quality." I accepted that argument.

One thing that the MoJ is not short of is those who have been in practice as lawyers. I personally discussed the direction of travel with people I know in the legal world. We talked about this with senior figures privately before we did it. This was not conjured up out of thin air. It was not developed in isolation, in discussions with legal people; we talked to people quite extensively.

Q174 Yasmin Qureshi: Lord Chancellor, I want to explore with you the impact of some of the reforms that you are proposing on black and minority ethnic firms. We have received considerable evidence from different practitioners, solicitors and barristers, that the proposals would have a particular impact on BME firms, because by their nature they tend to be small firms, often one-person or two-person firms, and they may not be able to compete with the bigger firms. Are there any proposals or any way to protect those firms?

Chris Grayling: I simply do not accept that. I pay tribute to the BME business community in this country, which is among the most entrepreneurial, successful and effective

parts of the private sector in the UK. There are some really great success stories in the BME communities, and I simply do not accept that the BME communities are not as capable as any other part of our society. Probably they are more capable, given that entrepreneurial spirit, of rising to the challenge of delivering a new kind of business model, and delivering specialist services that are needed by parts of the BME community as well as more general services. I am absolutely confident that the BME communities have the entrepreneurial skills, the management skills, the business skills and the innovative skills to deal with these challenges just as well as anyone else.

Q175 Yasmin Qureshi: Lord Chancellor, I respectfully disagree. I attended a meeting of the Society of Asian Lawyers, composed of solicitors and barristers, about two weeks ago in the House. About 70 or 80 people turned up, and every one of them was complaining about this particular impact, and the fact that it would affect them more than any others. I have received letters from BME solicitors to the effect that they will be decimated as a result of this proposal. How come the practitioners are completely of the view that they will be decimated, whereas you seem quite confident that they will all survive?

Chris Grayling: Let me ask you a question. We do have an issue, which we fully accept, and which the Law Society fully accepts, because they are saying that there will have to be consolidation within this sector. Why should BME businesses be less capable of going through that than any other business? I just do not see why that should be the case. I know that it is difficult. It is difficult for all firms—for micro-firms and for the sector as a whole—and I have made no attempt to hide that, but I do not see why BME firms should face more of a challenge than anyone else.

Q176 Yasmin Qureshi: They tend to be much smaller. They often tend to be one-man or one-woman organisations, so for them to be able to achieve some of the economies of scale that the bigger firms can achieve is a problem. The majority of them are one-person firms. That is why they have more difficulties. The other problem, of course, is that if they go out of business the number of people from ethnic minority backgrounds in the judiciary is going to be reduced considerably as well.

Chris Grayling: I do not think these changes are going to lead to the sudden disappearance of large numbers of criminal legal aid lawyers. It may mean that people are working in bigger firms or in partnership groups that share back offices, but the solicitors who are currently working in those 1,600 firms doing legal aid work week in, week out are not going to disappear in a puff of smoke. Very likely they will end up, in many cases, working in a different environment, but that does not mean that we are not going to have highly qualified BME solicitors and barristers. It is desirable that we should have that, and it is desirable that we should encourage it, but I do not think that BME firms should have more fear than any other group of the changing landscape of criminal legal aid litigation.

You talk about Asian lawyers, but frankly, without the Asian business community in this country at the moment our economy would be in a much poorer place, and I am confident that they will adapt to change as well as everybody else.

Q177 Yasmin Qureshi: I do not disagree that the Asian community and ethnic minority community make a very good contribution to our country. The point is that, in terms of the legal profession and small businesses, their view is that they will feel an unusually high impact. They tend to be right in the centre of the community. A lot of people go to them because of linguistic or cultural difficulties, and people who can understand them can act far better for them. I do not say that others cannot understand them, but on the whole if you can speak the language of your client you are more likely to understand where they are coming

from. That is one of the problems that will happen. I am not saying that they are all going to go out of business—I do not think anyone is saying that—but the number of them who will be able to practise on the high street is going to be diminished a lot more than perhaps other businesses will.

Chris Grayling: Those points are valid. They are perfectly good reasons why I think I have taken the right decision on choice. However, the difference between having five sole practitioner firms in a town and having one firm with five partners delivering support is not going to remove from the individual the opportunity to go to somebody who speaks their language and understands the cultural issues and challenges.

One of the other issues is whether we have enough firms in the structure to deal with the issue of conflicts in cases. In the estimates that we have done we have looked at the case mix and the number of providers in our plans, and 99.95% of cases within a single criminal justice area are covered. Exceptionally, and very rarely, we might need to have a firm outside an area covering a big trial with multiple defendants. Actually, that can often happen now anyway, because you can end up in a big multiple trial with solicitors based some way away—but of course, in those situations the solicitor comes to the accused rather than the other way around.

Chair: We are now going to turn to other minority issues, with Mr Llwyd.

Q178 Mr Llwyd: Yes—although there are two of us on the Committee who speak Welsh, so we are not that small a minority.

May I tell you, Secretary of State, that in large parts of Wales, the Welsh language is the language of administration, of business and indeed of the law? Do you have a Welsh language policy in the MoJ?

Chris Grayling: Yes: the Welsh language issue is dealt with very straightforwardly. It is the law. In the same way, we have not set out in this document clear plans for how Welsh would be provided, because it is a legal requirement to do that. It is just a given.

Q179 Mr Llwyd: I am sorry, but I do not accept that. The fact that the consultation paper makes no reference at all to the Welsh language is, first of all, a breach of your own policy, so possibly unlawful. Secondly, it is offensive to many people in Wales who speak Welsh and English. To finesse it by saying, "Of course it is a requirement, so we didn't mention it"—well, I don't buy that.

Chris Grayling: I do not want to have an argument about it, but the need to provide Welsh language services in Wales in the public sector generally is a given. It has to happen; it is a matter of routine, and it should happen. Welsh is the second language, or the first language, in Wales, depending on where you come from and your time of birth. We have an obligation in the Courts Service, the legal aid system, the prison system, including the prison that we will shortly start in north Wales, and in the probation system, to be able to speak Welsh. That is a given; it will always be the case. It is not something out of the ordinary, because it is routine.

Q180 Mr Llwyd: The first point, Minister, is that I was disappointed, as were many others, that there was no mention of the language in the competitive tendering paperwork. You say that that is because it is a general legal requirement. I say, "Sorry, but that excuse does not wash." The reason why I say that is that, when I and others complained about the consultation paper not making any mention of it and being in English only, suddenly a Welsh language version was produced from thin air. If your excuse now is true, it would be true in that instance as well, so I am sorry, but I do not believe what you are saying.

Chris Grayling: That is your prerogative, but I regard the delivery of services in Welsh in Wales as an absolute sine qua non.

Q181 Mr Llwyd: Do you not see that there is a problem concerning the numerous firms in north Wales, west Wales, mid-Wales and south Wales that provide these services to those who require them? Again, you should be in favour of choice, I am sure. The scenario is that mega-firms from heaven knows where—it might be Eddie Stobart, or whoever—will come in, have a race to the bottom, and provide basic minimum cover. That is really what they are going to be doing; otherwise they would not be able to run it financially. Many of us in Wales, whatever our first language may be, are very concerned that there will be no provision for Welsh language clients, and there are many of them.

Last week we had a solicitor from north Wales—from Caernarfon, in fact—who said that the day before he gave evidence he had met nine people as a duty solicitor in the Caernarfon magistrates court. I think he said that there were nine who wanted Welsh language provision, three who wanted their trials to be conducted through the medium of Welsh, and so on. This is a big issue, which has been sidelined.

Chris Grayling: I simply do not accept your premise of big firms coming into Wales and driving things down to the lowest common denominator. As I have been saying all the way through this discussion, we need to deliver a quality service. I am not going to accept bids from organisations that cannot deliver a quality service.

I think that you are doing down the legal firms in Wales, which I believe will respond to this. I do not see why Wales is not able to deliver a quality legal service, in a different business model and at a price that we can afford to pay, to deliver a Welsh language service and high-quality legal services to individuals. I am absolutely certain that the Welsh profession will rise to the challenge, and that we will have Welsh lawyers providing legal aid services to Welsh accused people, in Welsh or in English as appropriate.

Chair: Mr Brine, we are now moving on to procurement areas.

Q182 Steve Brine: Under the proposal for procurement areas, Lord Chancellor, it would be possible, would it not, for a defendant who lives, say, 50 yards from a criminal legal aid solicitor to be allocated a solicitor 50 miles away? Do I understand that correctly?

Chris Grayling: Of course, the solicitor in such cases comes to the individual. With a system of choice, the person will have the freedom to go to the solicitor 50 yards away. We have addressed that and given the individual the choice; if they choose to go to someone who is 50 miles away, because there is particular expertise, given the change that I announced earlier in the week they will be free to do so.

Q183 Steve Brine: Going back to the point raised by Mr McDonald earlier, and following on from the potential unravelling of the proposals as a result of the acceptance of choice—for the record, I do not think that that is a U-turn; you are right to say that it is the result of listening—will providers be able to tender for work only in the area that they are providing for, or can they cross boundaries? Does that have to change as well? I would suggest that it probably does.

Chris Grayling: Self-evidently, if we are going to have free choice, an individual can theoretically choose a solicitor from another part of the country. However, in making the changes we will have to look at what we do about duty slots. One of the areas about which we are in discussion with the Law Society is the allocation of duty slots in police stations, because in that mechanism we will need to be able to guarantee coverage. The means of allocating duty slots is something that we are now looking at quite carefully.

Q184 Steve Brine: I want to ask about one of the responses to the consultation that has been copied to us—as have a lot of them, I might add. Obviously I am a Hampshire MP, as you know, and one respondent asked how providers who win tenders for the Hampshire area, which covers the Isle of Wight, will be able to provide a full service, including 24-hour police station cover, when the ferries from the mainland to the Isle of Wight do not run on a 24-hour basis. Does that mean that one of the providers for Hampshire—it says on page 52 of the document that there will be nine of them—must be an island firm?

Chris Grayling: One of the things that have come through in the consultation is a strong representation from our good friend and colleague Mr Andrew Turner, from the Isle of Wight, who has asked us to look at the Isle of Wight as a special case. That is something that we will consider carefully, but the means of ensuring that, most immediately, somebody has access to a lawyer in a police station, will be how we allocate and manage the duty slots. Given the change of choice, that is something that we are looking at carefully.

Q185 Steve Brine: You mentioned at the start your concern about coverage deserts; that was good to hear. This was mentioned in the Back-Bench debate last Thursday, which I am sure you have read, and yesterday in Justice questions. Concern is being expressed about what happens when the firms in some areas dry up—to continue with the desert terminology. I take on board the argument that the firms that are part of the contract in the proposed new procurement areas can subcontract to the smaller firms, but when those smaller firms have dried up the bigger ones cannot subcontract to them. You cannot reinvent them once they are gone. What happens about that?

The other concern that I have, which I raised in the Back-Bench debate last Thursday, is this. Does it not put us, and the taxpayers we represent, in a rather difficult position, in that the providers in those procurement areas will hold a pretty stacked pack of cards when it comes to reassessment and the re-judgment of the contract down the line? Does the document consider that? Have you considered that?

Chris Grayling: I am not sure that I quite understand that last point.

Q186 Steve Brine: Take the point on deserts first.

Chris Grayling: The whole point about deserts, and the reason why we are doing this, is as follows. The easy option would be just to say that we are cutting fees by 17.5%, full stop, end of story. A few people have said, "Why don't you do that?" The answer is that you then have an unmanaged process of transition. The danger in that case is that in parts of the country the right steps are not taken to amalgamate shared costs and bring down costs in a deliverable way, and we end up simply with an absence of provision altogether.

In my judgment, through all this we need a mechanism that ensures that, at the very least, when people are arrested and taken to a police station there is a duty solicitor—somebody based in the area—who has the ability to come in and provide legally aided advice to that person. That is the reason that we are going for a contracting framework. The whole point about the contract structure is not that it creates advice deserts but that it prevents them. In an unmanaged transition we would have no guarantees whatever about the availability of support, and I would have no mechanisms in place to simply replace. If we have a contracted structure and somebody goes bust, disappears or pulls out, there is a mechanism available to move to replace them quickly.

Q187 Chair: Do you recognise that that problem exists already, and that what you are now proposing has to address the fact that, in a number of areas, the number of solicitors doing criminal legal aid work is very small? In the town of Berwick-upon-Tweed there are only two firms doing criminal legal aid work; you have to go 40 or 50 miles to find another

firm that you could bring in. There are only two firms resident in the area. There are other remote communities like that around the country. The pressure on criminal legal aid lawyers under the present system has driven us to that point. We cannot afford to make it worse.

Chris Grayling: Yes, Sir Alan, but the whole point is that, if I bring down costs, which I must, the danger is that that process accelerates, and I have no mechanism to sort it out. Most fundamentally, at the very least I have an obligation to ensure that, if somebody is arrested and taken to a police station, we know that there is somebody who will be there to go and provide them with legal advice. That person can subsequently choose to go wherever they want to go in terms of solicitors, given the change that I have made, but we need to be sure that there is somebody there to give them legal advice. At the moment, there is no mechanism to do that. If we push through further changes and reductions in cost, which we have to, without any kind of structure in place to ensure that we can guarantee that coverage, there is a danger that that problem will become more acute.

Q188 Steve Brine: The point is still that you cannot guarantee that coverage if the providers that you would turn to—if somebody becomes insolvent, for instance—have disappeared, because they have dried up. That is the concern that keeps being expressed.

Chris Grayling: Yes, but the essence of the discussion that we are having with the Law Society, which they accept, is that their sector has not changed as it should have done. One of the things that they are saying is that it has not changed as it should because for the past seven years, going back to 2006, there has been a doubt about what the future held.

If we do not have a sector on a sustainable footing and we are forced to drive through change, we will have less certainty that anyone will be around to step in. It will be different if we have a sector with fewer, stronger, organisations—it is a business sector, and people like to expand and grow their businesses; we know that there are stronger organisations around. I do not mean giant organisations; that is all a complete myth. It has been frustrating to see the way in which people have focused in on a small number of giant national brands, in which I have no interest in all of this. I am simply looking to get medium-sized decent law firms, delivering a service at a price that we can afford, around the country. The acceptance from the Law Society is that some consolidation will have to take place to achieve that.

Q189 Steve Brine: Yes. I shall now try to make my second point more eloquently, as I clearly failed the first time.

If there are fewer, stronger, organisations, are you confident that there will be enough of a market to create a vibrant, competitive marketplace when it comes to re-contracting the companies working in the proposed procurement areas?

Chris Grayling: Yes, I am. Actually, the sector itself is going through a huge amount of change, with alternative business structures being set up. You are now looking towards multidisciplinary professional firms, with more stronger firms. Their opportunities to look to expand will be much greater, frankly, than those of the one-man or two-man, one-woman or two-woman, or one-partner or two-partner firms would ever be. I think that you will end up with a more vibrant, more competitive marketplace, and certainly not with one that is dominated by half a dozen giants.

Q190 Gareth Johnson: Secretary of State, may I move on to your proposals to amalgamate the fees awarded where a defendant pleads guilty or where there is a late guilty plea—otherwise known as cracked trial—or a short trial? Your proposal, as I understand it, is to have just one fee. Whether someone has a two-day trial, pleads guilty or has a cracked trial, they will get one fee based on the cracked fee model that exists at the moment.

Do you accept that there are at least dangers here, and that undue influence will be placed upon a defendant to plead guilty because clearly, under your proposals, there are financial incentives to have someone pleading guilty at an early stage rather than going through a short trial?

Chris Grayling: As a steward of taxpayers' funds I want people who are guilty to plead guilty as early as possible, but I do not for a second believe that the high professional standards in our legal profession would allow any lawyer to try to persuade someone who was not guilty to plead guilty.

Q191 Gareth Johnson: With the best will in the world, Secretary of State, and contrary to some people's opinions, lawyers are human beings.

Chair: We shall assume that for the moment, anyway.

Gareth Johnson: Assuming that lawyers are human beings, there is a great danger, is there not, that they could turn up at a courthouse and say to themselves, "You'll get the same amount of pay if you are there for one hour, with that person pleading guilty, as you'll get if you are there for two days with that individual"? Surely there is a huge danger of that human being saying to the defendant, "Look, do you want to plead guilty to this?" Even if that is just a small element of lawyers, who are perhaps not as professional as they should be, do you not accept that under these proposals, where there will be less kicking around in fees, and less money in the system, a huge pressure will be placed upon the lawyer, who is trying to pay their mortgage and trying to make ends meet, to say to their client, "Look, if you can plead guilty, if there is a way you want to plead guilty to this, let's facilitate that"?

Chris Grayling: I struggle to accept that, I am afraid. It is in all of our interests if someone who is guilty pleads guilty early. They get a shorter sentence, it costs the system less money, and it takes less time. It is by far the best option. But I simply do not believe that we are going to get into a situation where people who are innocent are being coerced into pleading guilty by lawyers for financial reasons. I just do not believe that those standards exist in the legal profession.

Q192 Gareth Johnson: Under the current system, as you are aware, you get paid for the work that you do. Quite rightly, the defendant gets a discount in their sentence if they plead guilty at an early stage. That is absolutely right, and no one is arguing against that happening. However, what we do not have in the system at the moment is a financial interest for the lawyer in having their client pleading guilty, and being there for an hour rather than two days. Surely common sense says that there is a danger of undue influence upon that defendant to plead guilty, when otherwise they should not be doing so.

Q193 Chair: Or of the defendant believing that their lawyer is persuading them into a course of action because he has a financial interest in it.

Chris Grayling: You could equally well look at it the other way around and argue, which I do not, that the lawyer has a vested interest in persuading the individual not to plead guilty so that they go to trial, with the additional financial benefit of a trial.

When it comes to a guilty plea decision, I do not accept that individual lawyers will put pressure on somebody who is not guilty to plead guilty. I want lawyers to be putting pressure on those who are guilty to plead guilty early, because that is in all of our interests. I do not want, and I would expect, an individual—I regard the professional standards of the legal profession as being much higher than that—to try to persuade somebody who is not guilty to plead guilty.

Q194 Gareth Johnson: We could explore that further, but we are under time pressure. I have just one further question. I understand, Secretary of State, that no impact assessment has been carried out on the impact that these proposals would have on the victims of crime. Is that the case, or has an impact assessment been carried out on the consequences of these proposals for victims of crime, particularly vulnerable victims?

Chris Grayling: I am not immediately sure that I understand directly why such an impact assessment would have been produced. We are talking about victims of crime, and what those victims need is for people to be convicted when they are guilty, so that victims have some degree of closure.

Q195 Gareth Johnson: The whole point of the criminal justice system is to protect the victims of crime.

Chris Grayling: It is.

Q196 Gareth Johnson: So surely an impact assessment would have been carried out on the consequences of these proposals for vulnerable victims of crime, would it not?

Chris Grayling: I am not entirely sure that I understand where the consequences are that would lead to a need for that.

Q197 Chair: To take one example, we might have more self-represented offenders confronting the victims of their crimes.

Chris Grayling: I have to say, Sir Alan, that, looking at the changes that we are bringing forward, I do not think that that is going to be the case. In the kind of serious case that you are talking about, the accused will still have—and would always have had—access to a barrister of choice, selected by their solicitor as being most suited to represent them in court. I do not really believe that we are likely to see more self-represented individuals than we do at the moment. The prime concern of somebody accused of a serious crime will be to get themselves found not guilty. To do that they will seek legal advice, particularly where legal advice is made available by the taxpayer, as it will be.

Chair: Thank you. There is a significant area that we have not talked about so far, which perhaps has not featured sufficiently in the public discussion about these proposals. That is their impact in the civil area. We are going to look at some aspects of that, and we start with Mr Corbyn.

Q198 Jeremy Corbyn: I want to move on to the question of prisons and prisoners. Do you accept that putting somebody in prison is an enormous responsibility? There is a duty of care on the Prison Service and the Ministry to ensure that they are okay. Thirdly, prisoners have the right to make complaints and, if necessary, take a case to court if they feel that they have been badly treated in prison.

Chris Grayling: I suspect, Mr Corbyn, that this is an area where there is an ideological difference between us. I am absolutely of the view that somebody in prison should have the right to legal aid when it is a matter relating to their sentence and the length of time that they will spend in prison. When it is a matter relating to the conditions in the prison, or the choice of prison in which they are detained, we have a prison complaints system and a prisons ombudsman. To my mind, that is the route that we should follow. I do not believe that prisoners in jail should have the right to access legal aid to debate which prison they are put in.

Q199 Jeremy Corbyn: I shall quote Her Majesty's chief inspector of prisons to you. He stated that "inspection evidence is that the internal prisoner complaints system cannot be

entirely relied on to consistently resolve prisoner complaints and concerns in a fair way." There are many examples where prisoners have been able to take a case to court through legal aid, or get resolution through legal aid support without going to court, because the internal prison system did not work, and their complaints were not taken seriously because the governor was not interested. Do you not accept that prisoners have rights to have their complaints properly dealt with?

Chris Grayling: That is why we have a prisons ombudsman. I do not believe that they should be able to take those complaints to court, unless it is a matter relating to the amount of time that they are going to spend in prison. As I say, I suspect that this is simply an ideological difference between us. I do not agree.

Q200 Jeremy Corbyn: It might be an ideological difference, but you have a duty of responsibility to ensure that prisoners can exercise their rights. You are trying to save £4 million on prison law. Is this ideological or practical?

Chris Grayling: It is ideological. I do not think that prisoners should be able to go to court to debate which prison they are sent to. That should be a matter for the people who detain them. We have an ombudsman service that they can refer to if they have a legitimate complaint, which can make appropriate rulings, but I think that is as far as we should go.

Q201 Jeremy Corbyn: What other things could they not take to court?

Chris Grayling: The matters to be taken to court should be limited to the whole issue of the length of time that they are in prison. That is a perfectly legitimate reason for a convicted offender to have access to legal aid in order to seek a ruling from a court. That, to my mind, is the only area in which they should be able to do that.

Q202 Jeremy Corbyn: They have no rights other than to challenge the length of sentence. Is that what you are saying?

Chris Grayling: I am saying that the taxpayer should not be paying legal aid for prisoners to go to court to debate which prison the Prison Service has decided to detain them in, what the conditions are in their cell, or whatever.

Q203 Jeremy Corbyn: You have already answered that point, but there are cases where a prisoner may claim ill treatment, violence and so on.

Chris Grayling: A small number of treatment cases still come through, but more cases are about which prison people are sent to—and I am afraid that I do not think that that should happen.

Q204 Chair: If somebody has suffered significant neglect in respect of a medical condition while in prison, for example, or has been put in conditions that are totally unreasonable and would not have been imposed in most other prisons, are there not circumstances where, as has happened in the past, these are proper matters to come before a court, as part of the ability of the courts to safeguard how prisons function?

Chris Grayling: I think that these are matters for an ombudsman. We have seen the area of prison law expand dramatically. It has more than doubled in the last few years, with the amount of money that is being spent on legal aid for prison law. In my view, it now covers areas that it should not. Those who end up in our prisons should rightly have a route of complaint, which they do through the internal complaints service and through the ombudsman, but I do not believe that the taxpayer should be paying for them to go to court.

Q205 Jeremy Corbyn: Do you believe that in cases of inappropriate treatment in a mother and baby unit, or the denial of access to a mother and baby unit, or when prisoners have mental health difficulties and may need help and support and representation, such people do not have a right for their case ultimately to go to court, if they feel that they are not getting their concerns addressed by the prison ombudsman? Surely that is a right that every other citizen has.

Chris Grayling: That is why we have prison visitors, a prison complaints system, independent monitoring boards and a prisons ombudsman—to make sure that those safeguards are in place. I do not believe that it is appropriate for us then, on top of that, to be paying for legal aid for those cases to go to court.

Q206 Yasmin Qureshi: Lord Chancellor, I know that you say this is an ideological difference, and you have said that you think that prisoners are going to court because they want to change the prisons they are living in—but I think you will find that very few, or hardly any, cases go to court on the basis that someone should be in prison A as opposed to prison B. Most of the cases that end up going to the courts are those of people who have been abused physically or mentally, have not been looked after properly or have been neglected, or have had their mental health issues affected. That is the type of case in which people have committed suicide.

In some prisons, like Feltham young offenders institution, you must be aware of the level of abuse that takes place of young people by other inmates, and sometimes by prison officers who fail to take account of their vulnerability and need for protection. Unless there is recourse to the court, all those people who are being abused and treated badly in the Prison Service—I am not talking about a prison regime that makes them get up at 7 or 8 o'clock in the morning and do some work, but about real abuse of prisoners that takes place in prison—will not be able to go to court at all, simply because they happen to be incarcerated.

Chris Grayling: A huge amount of effort is made within the prison system to try to protect those who are vulnerable and those where there is a risk of harm.

Q207 Yasmin Qureshi: I am sorry, but that is not right. I can tell from my experience of 20-odd years in practising criminal law, and having come across clients who have had problems in prison, that the internal prison complaints system is just not working.

Q208 Chair: The Secretary of State has given us his view very clearly. I just want to explore one point. Is it your position that the Legal Aid Agency and its predecessor, which have allowed 11 cases to be the subject of legal aid since 2010, is not applying a stringent enough test?

Chris Grayling: The 11 treatment cases are really only a small part of the change. The big change is that we are actually moving into a middle block. There are really three groups of cases. There have been treatment cases, cases that are more about categorisation of detention, and cases about length of sentence. We are saying that for the first two of those legal aid will not be available, but for the third it will be.

Q209 Chair: What is wrong with a system where a stringent test is applied and only a very limited number of cases are granted legal aid in the categories that you want to exclude altogether?

Chris Grayling: The numbers in the middle section are rather bigger, but it is a question of principle. I do not believe that people in our prisons should be able to get legal aid to go to court. We have an inspectorate, we have independent monitoring boards, we have—

Q210 Chair: We are familiar with all those organisations. They come to see us regularly.

Chris Grayling: They are there to safeguard against—

Chair: Your answers on this subject have the benefit of being absolutely clear, although many people might disagree with them.

Let us move on to another important area, the residence test.

Q211 Steve Brine: The residence test was very much the focus of the debate last Thursday, but only in the opening speech by the sponsor of the debate. We then moved on, me included, to talk about the choice agenda. Do you accept that the 12-month continuous residence test will have a serious effect on a range of vulnerable people? Let me qualify that by asking you this. How will the rights of victims of domestic violence and, in an immigration context, trafficking victims be protected if there is a 12-month residence requirement?

Chris Grayling: The important thing to bear in mind is that the residence requirement excludes asylum seekers, so assume that it excludes people who are seeking refugee status—and it should, because this country has always been a welcoming refuge for people who are genuine refugees seeking that status. I am not at all convinced, however, that we should be providing legal aid to, for example, failed asylum seekers. What we sought to do was to find a balance. We are going to have to do this across Government, and there is overwhelming public desire for it.

People cannot simply expect to be able to come to the UK and access public services free and without condition in all circumstances. We are going to see a whole range of tightening up. Today we have heard announcements on the health service and more charging for people coming into the country. My personal view, in the case of legal aid, is that you should have spent some time in this country and contributed to the country before you can access legal aid in civil cases. In criminal cases it is different. In criminal cases we have an obligation, for somebody who comes here and commits an offence, even if it is only 24 hours after they have arrived here, to provide them with a lawyer to defend them in court.

My judgment on these proposals is that there are a number of caveats around them: we have an obligation to provide exceptional funding in cases linked to international agreements; and inquest funding has always been treated as exceptional funding. The tragic case of Jean Charles de Menezes has been cited, but that would not have been covered by these changes because inquest funding has always been provided on an exceptional basis, and that will continue. A trafficking victim who seeks refugee status would be covered by the provisions on refugee status. I think that we have to set the bar somewhere and say that there are limits to how far we are willing to allow people simply to come to the country and access publicly funded support very quickly. That is what the residence test is all about.

Q212 Steve Brine: But it would exclude, for instance, all children under 12 months from receiving legal aid, because clearly they could not—

Chris Grayling: The one issue that I would indicate today that I am going to look at again is that of children under 12 months. It is an area that has been mentioned to me by figures in the judiciary. That is the one area that I will look at again, but, as for the overall principle, I stand firmly behind it.

Q213 Steve Brine: That is very welcome news, and I think that a lot of people will hear that loud and clear.

In the arguments on LASPO—the Legal Aid, Sentencing and Punishment of Offenders Bill—in the other place, exceptional funding was the compromise, if you like, that was worked out. Is that to be completely redrafted? It is relatively new, but are the

exceptional funding provisions to be redrafted already? If so, who will decide who comes under exceptional funding?

Chris Grayling: At the moment that is decided by the Legal Aid Agency, and that will continue to be so. For example, for a case linked to a UN convention that we were part of, it would have to be decided within the Legal Aid Agency.

Q214 Steve Brine: As to who is a deserving domestic violence victim or who is not, for instance.

Chris Grayling: Or who is eligible under the agreement.

Q215 Steve Brine: That is another piece of work that will have to be done.

Chris Grayling: That is always there; that has been there from the start. We clearly have an obligation to fulfil international treaty requirements, and in a very small number of cases we may have to act in order to fulfil international agreements.

Chair: I turn to Yasmin Qureshi for a quick point before going on to one other aspect.

Q216 Yasmin Qureshi: On the residency test I am glad to see that you will review the issue of 12-month babies, but what about some of the other cases—for example the Gurkhas, or the people in Guantanamo Bay, who would obviously, under these proposals, not be able to bring cases to court? Often these are cases of a citizen against the state, and the state is quite often doing wrong things. Effectively, under the new proposals, that challenge of the state by a citizen can no longer happen, can it?

Chris Grayling: You have to draw a line somewhere. We face tough financial times, and there are limits to how much the state can do for all people in all circumstances, but what I am trying to do is to draw sensible lines.

Q217 Yasmin Qureshi: Are you saying, for example, that we should not have any sympathy for the Guantanamo Bay people or make any provision for those people to challenge in the courts here what has happened to them? Given the level of abuse that they have had, and the abuse that the people have had in Iraq, are you really telling us, as a civilised society and as a state responsible for engaging in wars in these countries, that we can find billions of pounds to spend in Iraq and other places but we cannot afford to give a little bit of money for people affected by abuses to be able to challenge that in our courts?

Chris Grayling: I do not believe that the British taxpayer should be expected to pay for Iraqi citizens to sue the British Government.

Chair: We now move on to another area, with Mr Corbyn.

Q218 Jeremy Corbyn: Do you accept that judicial review is quite an important right that citizens have in order to hold public authorities to account?

Chris Grayling: Yes, I do, and we intend to retain judicial review as a way for individuals and others to hold public bodies to account. However, I am also very much of the view that judicial review is not the creature it was originally intended to be. It has expanded in numbers beyond where it was originally intended to be, and it is often used as a PR tool rather than a serious legal tool. Too many cases are being brought before the courts by individuals and law firms that are simply rejected at that point, which have been funded by the taxpayer. I think we need a tighter system that protects judicial review as it was originally intended to be, and not what it has become.

Q219 Jeremy Corbyn: The power exists for a judge deciding upon an application for permission for judicial review to identify a case as "totally without merit." Would not relying

on the judge making that decision meet your concerns better than ministerial interference to decide what should or should not be a judicial review?

Chris Grayling: The basic problem at the moment is that, of the 1,800 or so cases that come to a judge, almost half are rejected, and we are paying for those cases to be brought. At the end of the day, if a lawyer is advising a client that the case is good enough to get through and to go to judicial review, should that lawyer not have some risk on the table with that judgment? At the point when the case would be brought before the court, and whether or not the judge decides to allow it to go forward, should we as taxpayers automatically pay for it?

My view is that, if it is a bona fide case that goes through properly, the lawyers involved will be paid, and legal aid will be paid as it is now—but if a case is too weak but a lawyer who writes a good letter gets approval from an unqualified person in the Legal Aid Agency, and the judge then says that that is simply not the case, should we as taxpayers be picking up the bill for that? There seems to me to be a very obvious and simple test. If the judge says, "Yes, this is something that needs serious consideration," we will pay the bill. If he does not, we will not.

Q220 Jeremy Corbyn: How do you get to the situation where the judge can make that decision if you deny legal aid to anyone wanting to make an application in the first place? You have already said that less than half the cases are rejected by the judge, which means that over half are accepted.

Chris Grayling: In that case the lawyer will be paid. It puts a bit more of an onus on the lawyers involved to make sure that the cases that come forward are strong ones.

Q221 Jeremy Corbyn: How will they get there if there is no money to be paid for individuals to take a case?

Chris Grayling: I would expect the lawyers to be working on the understanding that if they are confident enough in their case it will get through, and they will be paid on that basis. I am not going to guarantee them payment for failure.

Q222 Jeremy Corbyn: Will you be monitoring this, if and when the proposal ever comes in?

Chris Grayling: Yes. We will look quite carefully at the impact, but I hope and believe that it will lead to fewer cases being rejected. Actually, that is what we want. We want judicial review to be a system whereby people bring genuine cases that are given proper consideration. I do not want judicial review to be, in my view, devalued by a large number of cases that should not have been brought. We have seen that in many areas.

In an immigration case last autumn, the judge was scathing about the use of judicial review to keep on coming back. We are tightening the rules around immigration, but you see these things going round and round, and in too many cases judicial review is not used for the genuine purpose of challenging a decision—a substantial decision—by a public body. Often, it is used as a delaying tactic or as a public relations tool, and those are the bits that we have to get rid of.

Jeremy Corbyn: You will have received many representations on this subject, and that is what I want to ask you about. We heard a very strange answer from you yesterday—

Chair: We are still on judicial review. If you are moving on to another point, I want to hear Seema Malhotra on judicial review first, if I may.

Jeremy Corbyn: I shall come back to that.

Q223 Seema Malhotra: Secretary of State, may I ask whether you believe that your proposed changes to civil legal aid for judicial review raise any constitutional issues and require scrutiny from a constitutional perspective?

Chris Grayling: I do not think so, because I am not planning to get rid of judicial review. I want it to be used for serious purposes.

Q224 Seema Malhotra: Do you think that there could be, even if it is unintended, a cumulative effect whereby one of the key mechanisms for protecting, or for providing a constitutional safeguard, against the misuse of executive power could be reduced in any way?

Chris Grayling: When judicial review was first introduced 40-odd years ago, I do not believe that the people who designed it ever intended it to be used as a technical delaying tactic, which is what it is sometimes. Those bringing judicial review will find a nuance in a consultation document or a bit of a policy platform that is not 100% right, and will go to court to try to get a consultation re-carried out or whatever—on a technicality. Judicial review should be used to challenge material decisions taken by a public body that are materially wrong. That should be its purpose; it should not be used for campaigning purposes.

Q225 Seema Malhotra: Are you aware that the Constitution Committee of the House of Lords has drawn this conclusion, saying that it agrees that the Government's proposal raises constitutional issues and that they require scrutiny from a constitutional perspective?

Chris Grayling: I would be very surprised if the Constitution Committee of the House of Lords did not want to investigate constitutional matters, and it will no doubt do so, but we do not intend to remove judicial review. We do not intend to change the fundamental purpose of judicial review, but we do intend to achieve a situation where judicial review is used for the purposes it was intended to be used for.

Q226 Seema Malhotra: I take it, then, that you would disagree with the conclusion reached by the Constitution Committee.

Chris Grayling: I do not believe that anything that we have proposed so far on judicial review, or indeed anything that we are likely to propose, will have a significant constitutional impact. What we are trying to do is to leave judicial review in its core constitutional role, which is to challenge public bodies where they do things materially wrong. It is not there, and was never designed to be there, to delay or to grandstand, but that is often what it is used for.

Q227 Chair: You rather give the impression that some of the successful judicial review cases are ones that you would regard as inappropriate for judicial review.

Chris Grayling: No, it is more some of the unsuccessful cases.

Q228 Chair: I am thinking of the successful cases where the Government's consultation process has erred in some way, rather fitting your earlier description.

Chris Grayling: Okay, in that particular situation. To my mind, a judicial review challenge should be all about whether, if something had been done differently or had been known differently, it would have made a material difference to the decision making of that public body. If it would have done, it is right and proper that it should be looked at again. Often, cases are built around a nuance, where it would have made very little difference or no difference to what the public body would have done, and the case has been brought for delaying purposes or because the body bringing the case wants to make a political or campaigning point. That is really what I want to see off.

Q229 Jeremy Corbyn: You gave a very strange answer yesterday about the consultation process. There have been a lot of replies to the consultation process, despite it being very short. Many of the people that have written in by e-mail have been told that their e-mails have been deleted. You said yesterday that none had been deleted, but that if any had, people should send them again. Will you publish a list of everyone that has made submissions, and will you publish the submissions that they have sent?

Chris Grayling: Let's be clear about the position. I am sorry if my answer confused. The position is that no consultation responses have been deleted. There may have been a software error, we think, possibly because of automated responses between e-mails, which we often get in the House. If I e-mail Sir Alan, I may well get a response saying, "Thank you very much for your message to Sir Alan Beith, MP for Berwick." It may well be that my e-mail then bounces back to him.

Q230 Chair: Oh no; you would have got a substantive reply from me.

Chris Grayling: There are automated responses, and we think that in the to-ing and fro-ing of automated responses an error message appeared that should not have done. It was a software error, and we are looking at why that has happened and getting it investigated. We will obviously make contact with anybody that we can identify who has received that e-mail to reassure them, but let me give a clear assurance that no responses have actually been deleted, and all responses are going to be considered.

Q231 Jeremy Corbyn: Will all responses be published?

Chris Grayling: It has never been the practice for all responses to be published. What we will do is publish a summary of all the responses in due course.

Q232 Jeremy Corbyn: In the absence of a receipt, how do individuals know whether their submission has been considered or not?

Chris Grayling: We have checked on the software front. Bear in mind that we log responses when they come in, and no responses have been deleted. We have gone through the software side of this and checked with our IT people, and no responses have been deleted. It is an unfortunate error message that has got into circulation, we think due to the to-ings and fro-ings of automatic e-mail responses, but I assure the Committee that no responses have been deleted.

Jeremy Corbyn: You cannot blame people for being a bit confused and a bit suspicious when the only reply they get is that their e-mail has been deleted.

Q233 Chair: Not only that, but the reply said that the email "has been deleted without being read."

Chris Grayling: I am not pretending that this is ideal, but I can say to the Committee that we have checked and that no responses have been deleted.

Q234 Jeremy Corbyn: What would your advice be to somebody who has had such an e-mail, saying that their message has been deleted unread?

Chris Grayling: My advice to them would be that they should be reassured that it has not been deleted unread.

Q235 Jeremy Corbyn: It is the opposite of what they were told.

Chris Grayling: It is an error message that should not have been generated. It was a software error, and it should not have happened. I apologise to them for the fact that they

received that message, but I would reassure them that their e-mail has not actually been deleted.

Q236 Jeremy Corbyn: Will they now get a message saying that it has been received and is being read?

Chris Grayling: Where we can identify people who have had that message, we are following it up to make sure that they are aware that that is the situation.

Q237 Jeremy Corbyn: If they contact you on receipt of that message, will a proper reply be sent that is the truth, and not the opposite of the truth?

Chris Grayling: They will, of course, be told the truth, but I say to the Committee that the truth is now that all responses have been received and are being read.

Q238 Chair: Thank you for the time that you have given us this morning, and for the clarity of your answers, even those answers that caused us to raise our eyebrows. We will engage with you in the process that you have described to us. That is welcome to us, because if we had been looking at the original timetable, the one that was first suggested for bringing the original proposals into place, we would have been making it clear to you that we did not see how that could be achieved. A different process is now taking place, including a new consultation document of some kind. Did you say it would be released in September?

Chris Grayling: Yes, I would expect to have a short consultation starting at the beginning of September. We would set out our finalised proposals, or at most a couple of options for those finalised proposals. We would do a short consultation on those and then move ahead with change.

Q239 Chair: A short consultation presumably means that it will be over before Christmas, does it?

Chris Grayling: Yes, it will be something like four to six weeks. That would still mean, Sir Alan, that the overall period of consultation will be longer than the 13 weeks that was called for previously. It seemed more sensible to do it that way, because it enables us to digest the first responses, to coalesce any common issues—such as the choice issue, where I took the early decision that it was something that we should change. We can then set out pretty clearly where we have got to, having listened to everyone, and be able to get any nuances where people come back and say, "Yes, but that bit still does not work because…" Then we can press ahead.

Chair: Thank you very much indeed, and thanks to your colleagues. The Committee now needs to continue in private session.