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HOUSE OF COMMONS

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TAKEN BEFORE

THE JOINT COMMITTEE ON HUMAN RIGHTS

# THE GOVERNMENT'S HUMAN RIGHTS POLICY

TUESDAY 12 FEBRUARY 2013

RT HON CHRIS GRAYLING MP

Evidence heard in Public Questions 1 - 25

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Members Present

Dr Hywel Francis MP (The Chairman)
Baroness Berridge
Mr Robert Buckland
Rehman Chishti
Lord Faulks
Simon Hughes
Baroness Kennedy of The Shaws
Lord Lester of Herne Hill
Baroness Lister of Burtersett
Mr Virendra Sharma
Sir Richard Shepherd

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**Examination of Witness**

**Rt Hon Chris Grayling MP**, Lord Chancellor and Secretary of State for Justice.

**Q1 The Chairman:** Good afternoon and welcome to this session on the Government's human rights policy. Minister, for the record, would you introduce yourself please?

***Chris Grayling***: I am Chris Grayling. I am Secretary for State for Justice and Lord Chancellor.

**The Chairman:** Thank you for that. At the outset, could I give you a very warm welcome to the Committee? This is the first time for you and the first time for us. We were very much encouraged by the way in which we had very fruitful—and indeed comradely—open discussions with your predecessor and I hope that will continue. Thank you for the introductory text that you sent us, which has been circulated and also has been made available to the public. We are now two and half years into the present Government. To what extent has the original coalition agreement's position on human rights been tested over the last two and a half years? Does the recent mid-term review mark any change at all in position?

***Chris Grayling:*** The provision in the coalition agreement was that we would set up the Equalities and Human Rights Commission to look at the whole issue of a Bill of Rights and whether it was appropriate to have such a measure in UK statute. As you know, that commission reported before Christmas, and we are digesting the findings of the commission. I do not think it is any great secret that there are differences of opinion in the coalition over human rights matters. It was a very comprehensive piece of work; there were a lot of thought-provoking contributions and some differences of opinion amongst those who took part. I view that document in the way that I view the in-development Balance of Competencies Review for the European Union. It is a document that can inform and help shape ideas. It does not necessarily give the coalition a blueprint for change that would command cross-Parliament support, but what it does do is inform very helpfully the debate and discussions that will take place both here and within the political parties. I am very grateful to all of those who took part in the process.

**The Chairman:** Do I take it from that answer that there has not been a shift from what we would call a focus on broad understanding of human rights to one of simply narrowing it down to core civil liberties and some equality issues?

***Chris Grayling:*** It is clear that the coalition Government's commitment is to remain a part of the Convention and the Convention system and to explore whether we have a case for bringing forward a Bill of Rights in this country. What is also clear is that there are differences of opinion between the coalition partners about the future of our relationship with that human rights framework, but that is part of a political debate that will have to await the next election. As far as the current Government is concerned, we remain committed to the work done by my predecessor at Brighton, and to the reform process that is taking place, albeit slowly, within the Court. We will continue to push for change within

the current paradigm and then we will debate the longer-term issues when it comes to the election.

**Q2 Baroness Lister of Burtersett:** As you are probably aware, we recently held a pre-appointment hearing with the new Chair of the Equality and Human Rights Commission, Baroness O'Neill of Bengarve. In her previous work, she has expressed some scepticism about socio-economic and cultural rights: whether they can be achieved and whether, indeed, they are properly rights at all. Conversely, our predecessor committee published a report emphasising the importance of socio-economic rights. Could you tell us your own view of such rights and their importance to the Government policy and administration?

***Chris Grayling:*** I do not believe it would be sensible for us to introduce such rights into UK law. We have to be realistic about the world in which we live. We live in a difficult, challenging, tough and competitive world. We also live in a world where there are many places where there are grotesque human rights abuses. We need to be a beacon of good practice in terms of human rights, but if we seek to add more and more and more rights to our legal framework, we may end up undermining our ability to provide a decent life for our citizens. That would be a mistake.

**Baroness Lister of Burtersett:** In what way would we undermine our ability to provide a decent life for our citizens if those rights are underpinning such a decent life, particularly for vulnerable citizens?

***Chris Grayling:*** We live in a competitive world where if we are going to provide jobs for every citizen where we possibly can, if we are going to provide support for our welfare state, and if we are going to provide support for our public services, we also have to operate in a world where we are up against intense competition from large emerging economies like China and India and there are limits to which the state can provide everything for everyone.

That is why we have to be very careful not to make a legal requirement of doing everything for everyone and in the end finding we can do nothing for a lot of people.

**Simon Hughes:** Lord Chancellor, I hear what you are saying about socio-economic rights. Coming back to the other side of the equation, which is civil and political rights, are you and your department fully signed-up to the part of the coalition agreement that not only agreed to set up the commission that you have alluded to, but made clear that it was to build on—and the words are important—all our obligations under the European Convention on Human Rights and ensure these rights continue to be enshrined in British law? Are you signed up to all the current rights that are currently in the Convention and applicable in UK law as ones that should continue to be ones that we are obliged to follow?

***Chris Grayling***: If you look at it this way, in terms of building on the rights, hardly a week goes past without a new judgment that extends the jurisdiction, the jurisprudence and the rights encompassed in the jurisprudence of the European Court of Human Rights. As Lord Chancellor, I defend the right of the judges in Strasbourg to take the decisions that they do. It is also a matter for the United Kingdom in the future to decide the degree to which it wants to continue to accept the level of jurisprudence and the level of involvement by the European Court in this country. With my political hat on, I have made it clear that my belief is that we need to curtail the role of the European Court of Human Rights in the United Kingdom, but as a Minister in the coalition Government that is committed under the coalition agreement to maintaining those rights, I will do the job that I am there to do. I will uphold those rights and I will participate in the processes set out in Brighton unless, and until, a time arises when, at a general election, my party wins a majority on a mandate to do something differently.

**Q3 Baroness Berridge:** Secretary for State, dealing domestically, why was the Government Equalities Office moved from the Home Office to DCMS? Why does the

Ministry of Justice not retain ownership of that area? We now have Helen Grant and Jo Swinson as Equalities Ministers answerable to different departments, and Human Rights Ministers are also shared. Does that represent a mainstreaming of human rights and equality? What is the rationale behind that ministerial and departmental architecture?

***Chris Grayling:*** That is a question you will have to put to the Prime Minister because he was the one who took the decision to do it. The fact that you have a voice for equalities in a number of different places in Government ensures that we do the right thing by those people who need the protection of equalities legislation and active participation in Government in pursuing equality matters. It is particularly important, for example in areas like race, that we have an open, fair society that treats every citizen in this country as equals regardless of race, colour or creed. I see it as the role of every Government department to seek to ensure that that is the case. I am not sure that it is a problem of having a voice for equalities issues across Government.

**Baroness Berridge:** You would say that is more of a mainstreaming. I know it was not your decision, but are you aware of any of the rationale behind those changes?

***Chris Grayling:*** I have not had that conversation with the Prime Minister, but I think you should see it more as a mainstreaming than a side-lining.

**Q4 Lord Lester of Herne Hill:** Lord Chancellor, as you probably know, I am sitting between two other Members of the commission on a Bill of Rights. The three of us had some differences of view but I was part of the majority in the commission. You probably also know that our terms of reference made it clear that we were not to weaken existing protection but to look at ways of strengthening protection. I assume that you are signed up to that.

***Chris Grayling:*** The policy of the Government is, very clearly, to remain within the Human Rights Convention framework and the remit of the commission was to do exactly as you

described. I would not buy into the next Parliament but I will fulfil my obligations to the coalition agreement as Secretary of State. Equally, I will continue to express my view that the jurisprudence of the European Court has gone too far and that there is a real, pressing need for reform and to bring forward ideas from a party-political point of view that might take us down that road.

**Lord Lester of Herne Hill:** I understand that, but are there any weaknesses in the mechanism of the Human Rights Act itself that you are concerned about? Leave aside altogether your views about the European Court. Insofar as the mechanisms that Parliament enacted in 1998, are there weaknesses that you would like to see dealt with?

***Chris Grayling:*** The questions are more profound than that. My personal view, and I have said this on many occasions, is that if you look back to the original Convention, it is a laudable document that was written by people of my own political persuasion, on the right—conservatives—at a time when we were in the aftermath of horrendous events in Europe; at a time when Stalin was still in power in Russia and people were being sent to the gulags without trial. I defy anybody to read it and not agree with every word of it. It contains a sensible balance between rights and responsibilities; it contains sensible caveats. The 1998 Human Rights Act writes into UK law the original Convention, or the Convention as it had evolved. The question now, 15 years later, is: have we got a system that is right for this country and is workable? There are all kinds of issues around the consequence of the changes in the 1990s for the Court and for the Human Rights framework. Do we have a system in this country where the level of evolution of the jurisprudence since the 1950s is acceptable or is not acceptable? I do not think it is about whether there a mechanism within the Human Rights Act that is right or wrong. What we have got is a situation where the human rights framework today is very, very different to what it was half a century ago. It has accelerated very fast in the last 15 years. It has run into all kinds of problems and issues,

particularly around whether it actually possible for a single court system to cope with what is there. It is crying out for reform, but I would not go back to the Human Rights Act and say, "It is about changing that clause or that clause or that particular part of it". The problems are much more significant and much more deep-rooted.

**Lord Lester of Herne Hill:** What I am asking is a bit more limited and precise than that. The Human Rights Act, as you know, is a compromise between parliamentary sovereignty and effective remedies. We do not allow our judges to strike down Acts of Parliament that are incompatible and we do our best to bring our system into line with the international obligations that we have. Can I take it from your answer that you are not looking for ways of weakening any of that so that the citizen is less well protected by our courts, our Government and our Parliament than under the existing framework?

***Chris Grayling:*** It depends on what you are looking at when you talk about the existing framework. If you are talking about the law as set out in the original Convention, then I would be very much of the view that they represent the principles upon which a modern, democratic nation should be founded. If you said to me that framework is the jurisprudence as in existence today, I have some severe misgivings about where the Court has gone to. I think it has gone far beyond the intentions of its originators. It has gone into areas that I do not recognise as being about human rights. To me, as somebody who was, as a younger man, a human rights campaigner, it is about the right not to be sent to a labour camp without a trial. It is the right to move around freely and not have your movement restricted because of your race, for example. We live in a world today where there are still grotesque human rights abuses around the world. My fear is that we are now concentrating on things that I do not see as being great human rights issues whilst not doing enough to combat the very real human rights challenges that exist in other parts of the world.

**Q5 Baroness Kennedy of The Shaws:** Lord Chancellor, you have just given us some examples of the kinds of egregious human rights abuses that you would feel were being addressed by the European Convention when it was first drafted. You are describing yourself almost as an original intention theorist: the sort of people we get in the United States who say, "We have to look at the Constitution in terms of what the founders had in mind". The nature of law though, you would accept, is that it has to evolve as society changes and shifts and modernises. Would you add to that list the right not to be tortured?

***Chris Grayling***: Yes.

**Baroness Kennedy of The Shaws:** I assumed you would. What about the right, therefore, not to be deported to a place where you might be tortured?

***Chris Grayling:*** There you are taking me into a discussion about an individual case.

**Baroness Kennedy of The Shaws:** I am not taking you into an individual case. I am taking you into the principle of protecting people from the risk of torture and therefore deportation powers.

***Chris Grayling:*** My view is that there are times and places where we have to provide support or protection to people who we find repellent because there are compelling human rights reasons for doing so. There are times when we, as politicians, must stand up and say, "You may not like the fact that we are giving legal aid to this extremely unpleasant individual, but it is right and proper that they should have the right to a fair trial". Those are things we have to accept in a democratic society. It makes it a lot easier to do that if some of the things that are less easy to justify are not there in the first place. You made reference to an evolving legal framework over a period of years. The difference between how that would take place within the United Kingdom and what has happened at a European level is this. The law changes every day in the courts. As Lord Chancellor, I have sworn an oath to uphold the independence of the judiciary and you will never find me criticising a judge for

taking an individual decision, unless I am on the other side of the case and I am involved in the case directly, when I may say I disagree with the decision. You will not find me wading in as Lord Chancellor to a controversial judicial decision and saying—

**Baroness Kennedy of The Shaws:** That is a refreshing change from some of our previous Lord Chancellors, or certainly Home Secretaries, I would say.

***Chris Grayling:*** You will not find me saying that the judge is an ass for something. I might express privately that the judge is an ass, but every day of every week there are hundreds and hundreds of decisions taken up and down the country and almost invariably they are wise and sensible. Every now and then, a judge does something dumb, in the way that, every now and then, a politician does something dumb, but we are all human and I do not think we should condemn for that. What I have always said to the judiciary is: "I will defend your right absolutely to take the decisions you take, but I am a legislator and I also defend my right to change the law when I think you have got it wrong and we need to change the law accordingly". The problem with the European human rights framework is that I actually cannot do that. I cannot say, "I do not agree with that, therefore I will change the law". That is the big problem with evolving international jurisprudence, where a democratic nation has no ability—without causing quite a lot of disruption in the system—to say, "We are not willing to accept that. The sovereign right of our Parliament says we have got a right to take that decision. We disagree with you, so we are going to change the law". That is not a freedom that exists in that world of evolving international jurisprudence and it is why I have a particular problem with it.

**Baroness Kennedy of The Shaws:** But you do accept that by signing up to it, one was agreeing to surrender a certain amount of sovereignty. That was the nature of the signing-up.

***Chris Grayling***: Those who signed up in the first place were not necessarily expecting to give up as much sovereignty as they have. That poses a problem for today's generation of politicians.

**Q6 Baroness Kennedy of The Shaws:** The question that I wanted to ask you about was that last Tuesday at Justice questions, you said that you felt strongly the need to make changes to the human rights framework in this country—and that is really what you are saying now here today. Are there additional rights that you would want to see included in this panoply of rights? Are there some rights that you would like to see taken away?

***Chris Grayling:*** I have always said what we need is a clearer balance between rights and responsibilities.

**Baroness Kennedy of The Shaws:** Is that not apple pie?

***Chris Grayling:*** No it is not, because if you look at the original Convention, it is a well-crafted document that balances rights and responsibilities. What has happened is as the jurisprudence has evolved, the responsibility part has been weakened by case after case after case.

**Baroness Kennedy of The Shaws:** Are you then suggesting that if you are somebody who is seen to have been irresponsible, your human rights should be taken away from you? Are you making human rights conditional?

***Chris Grayling:*** The rights set out in the original Convention are sometimes absolute and sometimes qualified. They are qualified with checks and balances and those are the ones that have tended to disappear. People are sometimes very frustrated by the use of Article 8 in particular—by the legal judgments based around Article 8. If you read the original drafting of Article 8, it is perfectly sensible, but the jurisprudence has moved some way away from that original drafting.

**Baroness Kennedy of The Shaws:** What you are describing is that you would see a hierarchy of human rights.

***Chris Grayling:*** I do not see it; that is what the Convention said. The Convention divided the rights between absolute rights and qualified rights.

**The Chairman:** Baroness Kennedy, this is your last question.

**Baroness Kennedy of The Shaws:** Are you describing, therefore, that if somebody is, for example, a migrant living in this country, they might have lesser rights if, for example, they commit a criminal offence—that they might be facing a different kind of penalty?

***Chris Grayling:*** That is a "how long is a piece of string?" circumstance. It depends entirely on the circumstance. I am not suggesting that a migrant has a different right to somebody else, absolutely and certainly. That is like saying, "How long is a piece of string?" What is the detail of the case? You have to look at each case on its merits before you can possibly form a judgment. I am very clear that the original Convention did divide between absolute rights—the right to life, the right to a fair trial—which we should all hold absolutely sacrosanct, and a number of rights that were very clearly qualified by responsibilities. We have drifted a rather long way away from that.

**Q7 Baroness Lister of Burtersett:** As you know, the Prime Minister recently expressed great scepticism about equality impact assessments and, indeed, said they are no longer necessary. Do you share that scepticism? If they are seen to be so lacking in value, why is it that the assessment of equality impact has been carried out right at the end of the policy development process, as the Prime Minister suggested, rather than at the beginning of the process, where it perhaps could have had more impact on that policy?

***Chris Grayling:*** The important thing is not that we produce a document that often nobody will read, setting out details of equality impact; surely the important thing is that I or another Minister, as the decision-maker, in thinking through a policy, asks questions, listens to and

understands what the equality impacts are. If I am taking a policy decision that, for example, might have a material impact on a particular minority group, then I would need to be very well aware of that. As an example of that, when I was at the DWP, I was acutely aware of the fact that if we took a decision to close a Jobcentre, for example, it was likely to have a disproportionate impact on mums with kids because the whole working practice of Jobcentre Plus was geared around trying to provide flexible working in a way that made it a good career option for a mum who had got kids at school. We have school holiday contracts, for example, so you do not have to work during the school holidays. If you then close a Jobcentre, because you have a disproportionately high proportion of mums with kids, it will disproportionately affect them.

These are issues that you need to understand as a Minister in taking decisions about change within the public sector. You need to understand what the impact is on different groups, but you do not need a lengthy document to do that; you just need to have the discussion and to understand what the impacts are. All we are saying as a Government is, "Look, let us stop producing"—and the law does not require us to produce—"documents for documents' sake. Let us just make sure we are having the discussions and asking the questions". I have just been involved in lengthy discussions about judicial pensions. We have produced an equalities impact assessment for that process because we committed to do so. But that document, from my point of view, is not the main event. I have been looking very carefully personally and discussing in great detail the impact on the judiciary—in particular on younger judges, who are very often from minority backgrounds and often women—of the changes we are putting in place. It is not the document that has driven it, although the document is there; it is making sure I really understand in detail what the equality impacts are. I have put a lot of effort in to trying to do that so that we can try to do the right thing. It is about the principle of what you need to do, not about having the document itself, in my view.

**Baroness Lister of Burtersett:** That is what you will be doing in your office, presumably, with your civil servants, but how does the outside world know what you have been doing if there is no tangible evidence of it?

***Chris Grayling:*** I am here before this Committee; I am here before the House on a regular basis; and I am available through parliamentary questions and through Freedom of Information Act inquiries. The policy documents I receive and look at are available, to some degree—not necessarily every document, but some of them—through the Freedom of Information Act. As a Minister, I am accountable to Parliament. I am accountable to you now. Surely it is better that you can say to me, "Well, you have taken a decision about policy A. What considerations did you give to equalities issues?" and I can answer the question.

**Rehman Chishti:** Lord Chancellor, with regards to judicial pensions, having spoken to members of the judiciary, the concern that is often raised is if that package overall for judges is lowered, including pensions, then some of the brightest and most able practitioners who want to be judges will start to move away from that. On that basis, we have to make sure we get the balance right.

***Chris Grayling:*** This was a big concern. I looked very carefully at the actuarial position of people who were sitting judges who fell outside the transition arrangements that we proposed. Those proposals are now being circulated to the judiciary and for the Lord Chief Justice to pass final comment on. I looked very carefully at that. It is clearly a fact that younger judges, given all the efforts that are being made around judicial diversity, will tend to be a more diverse mix of men and women, and people from different minority groups. What I was keen to do was to ensure that the package on the table was a competitive one compared with the option of remaining in private practice. There are two routes for people who will go into the judiciary. If you are right at the top of the legal profession, earning

many hundreds of thousands of pounds a year, you are not going into the judiciary for financial reasons; you are going into the judiciary because you want to rise to the top of a different part of the legal profession. If you are somebody who is earning a good salary as a barrister but is not right at the top of the income scale, do we still have a proposition that is attractive to you? What I have done is some quite detailed work looking at the amount of money that a barrister would have to save into a personal pension to achieve the same level of pension that you would get on an index-linked basis through our judicial pension proposals. I am very confident that, on that basis, it remains very attractive. The amount of money you would have to save from your salary as a barrister to achieve the same level of pension is enormous.

**Q8 Mr Sharma:** Lord Chancellor, Lord McNally told us in September that the Government will be consulting with the devolved administrations and civil society to develop a framework for monitoring implementation of both the Universal Periodic Review recommendations and concluding observations from the UN Treaty monitoring bodies. Can you update us about the sort of framework being discussed? Would the Government welcome suggestions we might have about how to increase Parliament's involvement in monitoring the Government's implementation of such recommendations?

***Chris Grayling:*** The first thing to say about the UPR is it is gratifying to find that generally this country gets good plaudits. I am very much aware of the need to work with all of the devolved administrations on this matter and I have regular meetings with all of the devolved administrations, and indeed my officials do as well. I was in Northern Ireland last week; I saw the Scottish Advocate General very briefly last night; I was in Wales just before Christmas. I am very much of the view that we have to operate as a team in developing all of these. We are currently at the stage of considering the recommendations. We had 132 recommendations; we have accepted 91 in full or in part. We are now looking at how best

to take that forward. We have every intention of maintaining regular involvement with the devolved administrations on ensuring they are part of the decision-making process and the implementation process. In the areas where you have separate judiciaries—in Northern Ireland and Scotland—it is very important that we do that.

**Lord Lester of Herne Hill:** My question is about the devolved administrations and consulting. Would you agree with the unanimous view of the Commission on a Bill of Rights that, because of the Scottish situation with the referendum and the general feedback from Wales, Scotland and Northern Ireland, it would be sensible to go slowly and carefully in this area?

***Chris Grayling:*** I do. It is very clear that if Scotland were to vote to become an independent nation, that would have very broad-ranging legal impacts. Based on legal opinions that have been published this week, it would require Scotland to negotiate access to the Council of Europe, for example. I do not think it is realistic to believe that it is either a good idea or feasible to start, for example, moving ahead with a British Bill of Rights before the date of the Scottish referendum. I read carefully what your Lords said about that—that to me made perfect sense.

**The Chairman:** There was a latter part of Mr Sharma's question that you did not address. Would the Government welcome suggestions that we might have about how to increase Parliament's involvement in monitoring?

***Chris Grayling:*** I would. In an area like this, we are always very receptive to suggestions from the Committee and we will give a proper response to them. Good ideas are always welcome, so yes, of course, Mr Sharma.

**Q9 Baroness Lister of Burtersett:** This is a question about human rights memoranda; I am hoping you are not as sceptical about them as you are about equality impact assessments. We are getting some extremely good, detailed human rights memoranda from some

departments and rather less so from others. Would you be willing to encourage your officials to spread the best practice? In particular, the Government made a welcome commitment in December 2010 to give due regard to the UN Convention on the Rights of the Child when making law and policy and we are beginning to see the benefits of that in some of the detailed analysis from departments like the Department for Education. In our report on independent living, we did ask the Government to give the same commitment with regard to the UN disability convention, but we have not yet had a direct response. Do you know whether the Government plans to give such a commitment?

***Chris Grayling:*** I do not, but I will find out and I will let the Committee know. What I would say about memoranda is there is clearly a duty upon Government to provide as much information as is sensibly practical to Parliament. In terms of memoranda, do bear in mind that in what are challenging times financially, we have to achieve the right balance between informing and producing documents that are just there for their own sake. I am very sensitive in my own department, at a time when we are having intense pressures on front-line services, to make sure we get the right balance: to ensure that we provide a Committee like this one with all that we need to provide you with, but that we do not end up producing stuff that is not needed.

**The Chairman:** Lord Chancellor, we want to move on now to the relationship between European Court of Human Rights and the Supreme Court, and between the courts and Government and Parliament. Lord Faulks.

**Q10 Lord Faulks:** Lord Chancellor, some of us share your feelings about some of the jurisprudence from Strasbourg, but as the UK was Chair of the Council of Europe, it had an opportunity to do something about the European Court—in particular we know of the Brighton Declaration. Can you tell the Committee, Lord Chancellor, what achievements are measureable following the Chairmanship? If you can give any examples in terms of

strengthening subsidiarity, promoting rule of law or encouraging greater national implementation, we would be grateful.

***Chris Grayling:*** The simple answer is that a lot of the outcome of the Brighton work is still very much in development. The principles were established there; a lot of the detail is being done. We have seen some improvements to case-handling; the number of cases outstanding has fallen from around 150,000 to around 130,000. Some of the streamlined processes that were introduced at Brighton have started to make a little bit of a difference. We have got some way to go. Certainly, some of the documentation that has been circulating in Strasbourg since Brighton has not been all that it would have been hoped to be. There is a lot of work come. The work, for example, on subsidiarity and the work on improving the Court's efficiency is moving ahead. There is a lot of work to be done over the next two years, looking more broadly at larger-scale reforms to the Court. We have got some way to go before we would be anywhere near to achieving the kind of reforms that you and I might think were necessary. Indeed, one of the concerns that I have, looking at this now, is to what degree we have coming up leadership for the Council that will engage sufficiently to make sure this process drives forward. The Brighton Declaration called for deeper consideration of the long-term future of the Court and the Convention; that is due to start later this year. We will need to encourage the nations that have taken over the leadership of the Council to try to make sure they really do push forward with that agenda. Whether we get what we have hoped for, only time will tell.

**Q11 Baroness Kennedy of The Shaws:** Lord Chancellor, I want to ask you a few questions about indeterminate prison sentences. They were introduced by the last Government in 2005 and there have been a number of cases taken to Europe relating to them. The cases of *James, Wells and Lee* and *Betteridge* both found against the United Kingdom. *Betteridge* was about delays in being allowed to apply for parole, and a criticism

made of us in not getting the case before the parole board speedily enough. The other, *James, Wells and Lee*, was about the opportunity of people having access to rehabilitation courses and programmes and their not being available in the period after a person had served terms beyond their own tariff. It does not provide the opportunity for people to show that they are able to come out and are not a risk to society.

***Chris Grayling:*** What we inherited was something of a mess. You had a situation where you could have indeterminate sentences with tariff periods that were very short indeed and then an ongoing period of seeing what happened then. The original intention of IPPs was to deal with the most serious offenders. In the end, what we inherited was something that had developed mission-creep in its own right. My predecessor formed the view that it was best to replace those with longer, determinate sentences. We will look at sentence lengths available to the courts in areas like terrorism, where I want to make sure that the court always has the opportunity to apply the sentence it would wish to in something like a serious terrorist case. There are some terrorist offences that have optional life sentences, for example, and there are others that do not. NOMS has been working very hard to make sure there are improvements to the availability of rehabilitation interventions for IPP prisoners. You do not just get released because you have completed an accredited programme; it is a matter for the Parole Board to take that final decision. We are working to make sure that the issues highlighted by the court to us are addressed.

**Baroness Kennedy of The Shaws:** Are you going to appeal those cases? Initially that was what was said, but I wonder whether, on reflection, now that you are looking at different methods of dealing with this kind of case and reform of the sentencing processes, perhaps appealing is not the appropriate road.

***Chris Grayling:*** There are two bases for appeal, in my view. There are those where there is, in our view, a fundamental flaw in the decision, and there are those where we want to

challenge the nature of the jurisprudence. I do not think it would be right and proper for me to start talking about individual cases at this moment in time. I have always tried to avoid in my role getting involved in discussions about individual cases because I do not want to start attacking individual judges and individual decisions. I will appeal to the Court in two circumstances: where I believe that there is something technically wrong with the judgment; and where I believe the judgment is treading into places that the Court should not be treading.

**Baroness Kennedy of The Shaws:** Is the latter your view in relation to these cases?

***Chris Grayling:*** If you will forgive me, I do not want to get into a discussion about the individual cases because I do not think that would be fair and appropriate.

**Q12 Lord Faulks:** I appreciate what you say about not going into the details of these cases, but perhaps I can ask you this question about the decision in *James*, which was, after all, a reversal of the decision of the higher courts of this country, which said that there was only a breach of Article 5.4, i.e. not a speedy review. The European Court of Human Rights decided there had been arbitrary detention. Without asking you to comment on the case specifically, does that seem to you to be an example of a failure to afford us the margin of appreciation?

***Chris Grayling:*** Given what we have done—unusually amongst some Members of the Council of Europe—in writing the Convention in the way we have into UK law, and given the establishment of the Supreme Court, in a way that is obviously transparently independent of the political machine in a way that you might perhaps have formed a judgment was not the case when the House of Lords was sitting, even though, largely, it clearly was, my view is that it should be very unusual and there should be very good reason for the European Court to overrule our Supreme Court.

**Lord Lester of Herne Hill:** Lord Chancellor, I agree with that, but I wonder whether you are aware that as a result of our Supreme Court's case law and the careful attention given by our courts to the Strasbourg case law, not treating it as binding precedent except where there is a final judgment, our system is more persuasive now in Strasbourg than that of all the other countries of 47 states in influencing the Strasbourg Court. It is an example of a good export of our system to Strasbourg to influence them. I do not know whether you are aware of that, but certainly that is what the Strasbourg judges say to me, and I believe it to be true.

***Chris Grayling:*** It is certainly the case that only a relatively small proportion of the cases that go to Strasbourg are found against us. The ones are that found against us tend to be quite significant and are sometimes in areas where I have great issue with the Strasbourg Court believing that it should intervene in the first place. The key issue, though, is that if our Supreme Court deems that a particular action is not lawful and finds against the state or finds against a public body, in a democratic society it is for Parliament to say, "Actually, we do not think you have got that right and therefore we are going to adjust the law accordingly". There are some fundamentals of human rights. I have always personally opposed the death penalty, for example. We have written the right to life into human rights law. I do not really see that changing now. There is a world of difference between Parliament deciding to change the law on capital punishment or changing the law on the right to a fair trial, and Parliament saying, "We do not think you have got that particular part of your decision about our prison regime right and therefore we are going to legislate accordingly". When it goes to Strasbourg, our freedom for manoeuvre disappears and that is where the problem comes in, in my view.

**Baroness Kennedy of The Shaws:** Picking you up on that, the difficulty with the rule of law is that it requires us to follow law and to follow judgments made by courts. If we cock a

snook at the European Court of Human Rights, we give a very clear signal to Moldova, Russia and Turkey and many other places that if you do not like the judgment, you might just ignore it.

***Chris Grayling:*** There is a real danger, is there not, that—leave aside the Court for a moment—if you have a regulator operating in a particular field, it is sometimes easier to get the good guys to do something slightly better than it is to deal with the problems of the bad guys? I worry sometimes that in the field of regulation generally—and I am not citing the Court in this particular case—where somebody is doing something broadly right, if the law is constantly changing and affecting what they are doing, it is not doing what it should be doing, which is dealing with where there are real problems. The issue I have with our human rights framework, and the way that the human rights world operates today, is there are some horrible things happening around this world that are utterly, utterly inhumane and indefensible, and they are not happening in this country. We are right at the top of league table in the way we treat our citizens and in the tolerance we have in our society. I worry that we are asked, as part of an international framework, to make changes to the way that our law operates and changes to the way that we behave as a country that really do not do very much to contribute to human rights and yet the focus of the world is not where it should be.

**Baroness Kennedy of The Shaws:** The point is that we are very, very rarely—as you have just pointed out—ever called to book by the European Court; it is a very rare occurrence. Even if, on those rare occurrences, we choose not to comply, the message it sends to who you would call the bad guys is a very poor message. Would you not agree?

***Chris Grayling:*** It depends if the jurisprudence of the Court continues to expand into areas that are far beyond the intent of the original Convention. I believe passionately in the

importance of human rights as set out in the Convention: for example, the right to trial and the right not to be tortured. These are fundamental rights.

**Baroness Kennedy of The Shaws:** The right to family life.

***Chris Grayling:*** The right to family life in the original Convention is a qualified right that you are entitled to enjoy as long as you fulfil certain responsibilities to society.

**Baroness Kennedy of The Shaws:** No, no, no. There we would disagree.

**Q13 Mr Buckland:** That brings us nicely on to the topic I want to ask you about, Lord Chancellor, and that is prisoner voting. We are all familiar with the line of authorities that have culminated in *Scopola*. The final judgment of *Scopola*, in which the UK intervened, has given us something of a discretion in terms of the precise regime that we want to impose. The so-called blanket ban, which of course never was a blanket ban in the UK—that is one of the great myths of all of this debate—is one of the options that are before Parliament as a result of the statement you made in November. What of the obligation of the United Kingdom under Article 46 to comply with final judgments? How are we going to square that circle if Parliament decides to do nothing about reforming prisoner voting?

***Chris Grayling:*** It will certainly take us into interesting territory. The legal position is this. I personally wish that the European Court had not chosen to rule in this area. It is an example of an area where I feel the jurisprudence has gone too far. But they have chosen to do so and they have, in the current framework, a right to do so. The question is: does the United Kingdom accept that ruling? As Lord Chancellor and Secretary of State for Justice, subject to the Ministerial Code, I have an obligation to present to Parliament an option to implement that ruling. I am also acutely aware of the fact that in 1999 Lord Justice Hoffmann said very clearly that Parliament was sovereign. That view has also been articulated in the last few months by our Attorney General. These are matters for Parliament. What Lord Justice Hoffmann said was that Parliament has the right to overrule the European Court of

Human Rights; it must accept that if it chooses to take that approach, there is a political consequence for doing so. What I have done, given the fact that I know there are very strong feelings on this issue in Parliament, is to table two options before Parliament. The first is to accept the ruling of the Court and to offer prisoners who have had a sentence of four years or less, or to off prisoners who have a sentence of six months or less, the chance to retain their vote while they are in prison. I have also offered Parliament what is clearly a non-compliant option: to say, "No we do not accept the ruling". That is a matter for Parliament to decide, not for me as Lord Chancellor to decide, and Parliament will form a view. We are currently going through pre-legislative scrutiny on that Bill, which will last until later this year. A measure will then be brought before Parliament and it will be for Parliament to decide what it wants to do. Clearly, if Parliament decides it does not want to accept the ruling of the Court, then, as Lord Justice Hoffmann foretold in that judgment 14 years ago, it will create a political issue. We will cross that bridge when it happens, if it happens.

**Mr Buckland:** Lord Justice Hoffmann was right to talk about the Human Rights Act in Parliament but Article 46 directly binds the United Kingdom and therefore the Government as a high contracting party is bound by that particular provision. The Human Rights Act does not actually come into it. If Parliament does elect to retain the status quo, will that not put the Government potentially in difficulty with the European Court in terms of infringement?

***Chris Grayling:*** It certainly does what Lord Justice Hoffmann said previously and what the current Attorney General has said since: it generates a political issue for the United Kingdom if Parliament chooses not to accept that ruling. All the legal advice I have received is that Parliament has the right to do that but there is a consequence politically of making

that decision. That really is the question that is on the table for the two Houses of Parliament to address in due course.

**Q14 Lord Lester of Herne Hill:** We have advice that Parliament is bound by the Convention in the same way as the other branches of Government and that this would be the first time in the history of the Convention system that any country through its Parliament failed to fulfil the Article 46 obligation. I am sure you have had advice of that kind. Would you accept that, with the exception of Greece, which, under the junta, had to leave the system, no other country would get away with its parliament reacting in this way, unless we withdrew from the system altogether of Europe?

***Chris Grayling:*** If I recall correctly, there have been three occasions on which a country has not accepted a ruling of the Court. I think two of them involved Turkey and Cyprus. There have been three occasions, but I will check that and write to you, Lord Lester. From my memory of reading about the history of the Court and the Convention, there are three occasions on which it has happened.

**Lord Lester of Herne Hill:** I represent Cyprus and I am not aware of any such case. There have been cases of gross delay; that is true. But a decision by a national parliament like the Duma that says, "We are not going to abide" would involve our having to leave the European system. I am sure you have been advised of that. Winston Churchill would spin in his grave.

***Chris Grayling:*** I think Winston Churchill might struggle to recognise the framework that has evolved several years after his death.

**Q15 Rehman Chishti:** Lord Chancellor, in relation to the position of human rights in public debate, what can the Government do to contribute positively to an informed and accurate public debate on human rights in the United Kingdom?

***Chris Grayling:*** The key thing is that we should all—and certainly someone in my position should—continue to talk about the importance of human rights. I am not anti-human-rights. Human rights are fundamentally important. They are the bedrock of a democratic society: freedom of speech; the freedom to have a fair trial; the right not to be tortured; the right not to be in prison without trial; the right to religious faith. These are all fundamentally important parts of a democratic society. Nothing that I say or do in this job will ever walk away from the fact that those rights are important. That is why I said at the start that if you read the Convention, it is a laudable statement of the way in which a modern, democratic state should run. If you think of the times in which it was written, when precious few of those freedoms and those rights were available in the continent of Europe, they were then, and remain today, extremely important. The issue I have is not those founding principles; it is the evolution of the law and the jurisprudence that has surrounded them since then and taken them to areas that I do not believe the originators ever intended or imagined they would go.

**Simon Hughes:** I have a follow-up to Mr Chishti's question. Does the Ministry of Justice have a proactive unit that tries to correct blatant misrepresentation when it appears in, for example, the popular and tabloid press—which is not unheard of—so that there is some authoritative statement that can be offered to them by way of letter or comment? It seems to me that often views are formed by the press and the press often misrepresent the accuracy of the human rights legislation.

***Chris Grayling:*** It is not simply the press. There is a very close comparison in this area with my former job and the issue of health and safety. An awful lot of things are blamed on health and safety where there is no legal basis for doing so at all. We set up a myth-busters panel to try to deal with some of the issues that frustrate. The fact is that both human rights and health and safety are an excuse for laziness and for not doing something by individual

local bodies. It is very important that we challenge, "I cannot do that for human rights reasons", when it is palpable nonsense that that is the case. We do not have a specialist unit but we would always seek to say "That has nothing to do with human rights" where the circumstance arose, and I would say it has nothing to do with human rights. It worries me to hear sometimes people quoting human rights as a reason for inaction in a way that undermines the concept of human rights and is totally fallacious in legal terms. That makes it a bigger challenge. I stand by everything I have said today in terms of the Court and the jurisprudence—I think there is real change needed—but it is not helped by a narrative that is utterly devoid of reality and we have also got to be willing to challenge that when it arises.

**Q16 Lord Faulks:** Lord Chancellor, I would like to ask you, if I may, about the engagement between Parliament and the Government, and the judiciary, particularly currently serving judges. You have told us already that you are a great respecter of judicial independence, but do you think it would be beneficial to have some formal, or even informal, mechanism by which Parliament can consult serving judges, particularly in areas such as the Justice and Security Bill, where they are going to be directly involved in critical decisions? Can you also tell us how the Government currently consults with serving judges?

***Chris Grayling:*** On the latter point, I talk to serving judges all the time in my job. I have regular meetings with the Lord Chief Justice; I have regular meetings with other senior members of the judiciary. I am also trying to spend time with judges in chambers and in the courts whenever I possibly can. I try to maintain a dialogue, and indeed would encourage other colleagues to do so—certainly my colleagues in the Ministry of Justice would do that. In terms of Parliament and judges, the one thing we have got to be careful of is that we do not want to end up with judges sucked into the political process. It is really important that we try to maintain a clear divide between the two. I would never say never to the concept of judges regularly appearing before Committees, but I am uneasy about how you create a

sensible protection. That is not to say it can never happen, but if it was a routine that you were calling in judges to talk about the law and it strayed quickly on to individual judgments, you could end up with quite a big greying of the area between the independence of the judiciary and the political process. I would be very cautious about doing too much. Never say "never" and never say "never, in any circumstance", but certainly only to a limited degree, would be my view.

**Baroness Berridge:** Lord Chancellor, you spoke very much about the need to keep the separation between what Parliament is doing—the political side—and the judiciary, but under separation of powers, the same thing applies to the Government and the judiciary. I know you sit with an overlapping role within that. There were particular concerns under the Justice and Security Bill about consultations taken by your predecessor from the judiciary that were then not open to scrutiny by Parliament in relation to that Bill, which changed the nature of court. Is there not a mechanism to make even that, the dialogue between the Government and the judiciary, more open, like declaring when meetings have happened and that kind of thing? The lack of transparency in that was quite concerning, when we were trying to scrutinise those proposals.

***Chris Grayling:*** I believe you are seeing my predecessor shortly so I would steer you in his direction to ask questions about the process. In terms of meetings with the judiciary, I do not think there is any great secret. In terms of routine meetings, if Parliament asks me when and how I meet the judiciary, I would tell them. I do not think there is any basis for trying to be confidential about routine meetings with the judiciary. In terms of matters related specifically to the Bill, I genuinely do not know what discussions have taken place because, as you know, that Bill is now being steered by the Cabinet Office. I know my predecessor has had one meeting with the Lord Chief Justice since I took over, but I do not think that was about the Justice and Security Bill. I guess you are best off asking him in a while.

**Q17 Lord Lester of Herne Hill:** One of the great changes in my lifetime since 1977 has been the development by the judges of judicial review as a very important mechanism in our Constitution for holding the Government and public bodies to account on human rights and other matters. The Prime Minister, when he spoke to the CBI, said that the Government is determined to cut it back. Should we not be alarmed by a statement by the Prime Minister that would make it more difficult for Ministers and civil servants and public authorities to be held accountable to the courts under the rule of law?

***Chris Grayling***: I think you should be alarmed instead at the way in which judicial review is now, in my view, being increasingly abused for purposes apart from that for which it was created. There is a really important role for judicial review or a similar process—and I am not suggesting there is about to be a new one—in challenging significant injustices, mistakes, errors and false decisions by Government and by public bodies, and people should have the right to challenge. Increasingly, I see judicial review being used as a PR tool, a delaying tactic and similar by third-party bodies that have an agenda to pursue. I do not believe judicial review today is operating in a way that is either right for the country or is what was originally intended by the judges who created it. We have to work together to find better ways and that involves sensible discussion between the judiciary and the executive and Parliament. We do not want to lose that core principle, but when you have judicial reviews being launched about minor technicalities—a small error in a consultation process that would in no way have changed the final decision—at significant cost to the taxpayer and disrupting decisions that are necessary and in the interests of the country, that is not where we should be.

**Lord Lester of Herne Hill:** I am not asking you about misconceived judicial review applications of the kind you have just been describing; I am asking you about the principle of judicial review itself as a fundamental part of our constitution. It is the only way that abuses

of power by yourselves as Ministers, by civil servants, and so on, can be dealt with, and there are all these safeguards: the filter, the need to apply, the need for discretionary remedies, the costs sanctions against those who bring cases, and so on. I do not understand whether you are objecting to that form of accountability or whether you are quarrelling with the way in which some groups have been abusing the system, which is a wholly different matter.

***Chris Grayling:*** I am not disagreeing with that core principle. What I am saying is that judicial review as a system has moved a long way away from just being that. What we have to do now is find a way of reforming it that means it goes back to what it was originally intended to be, that does not curtail the ability of an individual with a genuine grievance to pursue a legal remedy, but does stop some of the riding on back of the system that we see now to make a political or a campaigning point.

**Mr Buckland:** Looking at the figures for the increase in judicial reviews, it is quite clear that the issue arises because of the increase in immigration and asylum cases between 1998 and 2011—an increase from 4,500 to 11,000—whereas non-immigration cases have remained pretty constant at just over 2,000. Would a better way to deal with it not be to focus on the immigration and asylum issue rather than looking at a widely-cast net over areas that perhaps are appropriately challengeable by way of judicial review?

***Chris Grayling:*** I think we need a bit of both. If I look at what I have seen of judicial review over the last couple of years, I am absolutely clear that it is used by campaigning groups as a PR tool. The cases they bring very often generate all the publicity they want before really ever even getting to the point of getting to court. I talk to judges who acknowledge and believe that they are themselves frustrated by the way JR is being used. Your point about immigration is absolutely right. There have been some very clear statements by the judiciary in court, in JR proceedings, that these are being used by individuals to delay being deported from the country when they should be. I hope that some of the changes we are making to

the legal aid system may help on that front, but it seems to be very clear that a system that allows people in immigration cases to keep on coming back is one that is not acceptable. JR costs the taxpayer significant amounts of money in cases that are not well founded, which are about issues that would not materially affect a decision taken by Government. Each time that happens it costs us money that could be spent on something else. At the core of it, when someone has a genuine grievance, of course they must have access to JR, but JR is a tool to remedy a genuine grievance; it is not a PR vehicle.

**Q18 Baroness Berridge:** When you announced the review of judicial review, you described judicial review often as a "Pyrrhic victory". The consultation makes much of the fact—and I think you have here today—of the very small proportion of cases that stand any realistic chance of success. You referred to a Pyrrhic victory; how are you defining success in this context? Are there not other ways in which applications can be successfully resolved within the framework of judicial review, for example by settlement prior to permission in the claimant's favour? What is success and what is a Pyrrhic victory in this context?

***Chris Grayling:*** It depends which way round you look at it. A successful judicial review is very often a protest group trying to stop something from happening, where all that actually happens is that the public body has to go back and re-do the same consultation all over again, adjusting some minor part of the consultation to make it legally compliant, and the decision is exactly the same as it was. The public purse has paid out large amounts of money; the protestors have paid out large amounts of money; it has made a PR point but nothing else. From the Government's point of view, a Pyrrhic victory is where you fight a lengthy, expensive and distracting case for large amounts of money and end up where you were before. Very often this achieves nothing for anyone. There is, as Lord Lester rightly says, a fundamental point at the heart of this, which is that the individual citizen needs to have a legal remedy if a public body takes a decision that is irresponsible, damaging or

unjustifiable. But the judicial review processes I see are much more about whether you have not carried out that consultation exactly how you said you would in the original document; you have done something slightly different and therefore, it is not legally valid, which does none of us any favours.

**Baroness Berridge:** Do you have any statistics you could provide us with of how many of these judicial reviews go back in, go through the different process and come out with the same decision, and those go back in and come out with a different decision?

***Chris Grayling:*** No, but, as you will have seen, we announced a small package of reforms before Christmas. I intend now to do some much more detailed work on this so I can quantify exactly the nature of the issue and what one can realistically change. I do not disagree with Lord Lester's point that there is a fundamental core here that must be protected. But it does no one any favours—courts, judges, Parliament—if we have a system that is so readily usable for triviality.

**Q19 Simon Hughes:** Can I pursue with you the question I asked you in the House the other day, which links the last question from Mr Buckland with legal aid matters? I have a huge amount of immigration and asylum casework as an inner-city MP. Huge numbers of initial decisions are overturned on appeal. There clearly is a problem in the accuracy of decision-making. The first part of my question is: are you working with colleagues in the Home Office to try to make sure we have a much more robust decision-making system in the first place, which would save a lot of money? Secondly, your predecessor undertook, when the legal aid Bill was going through Parliament a year or so ago, that there would be a review a year down the line about legal aid, not for asylum cases, which are protected, but for some of the immigration cases. We are doing work on unaccompanied minors but there are also family reunion cases and I have a really clear view that some of them absolutely need legal aid if they are to have their rights upheld. Would you be willing soon to start the

review? Are you sympathetic to those sorts of vulnerable people and their possibility of having legal aid in scope rather than not in scope?

***Chris Grayling:*** On the review point, we are only now putting through Parliament a lot of the regulations that permit the changes in LASPO. Once those have gone through and once the new system is up and running, I am very happy to confirm that we will look at how the system is working and make sure that there are no unintended consequences. In terms of children, those children coming unaccompanied into the country would almost invariably be people who are asylum seekers rather than simply children turning up, who would be covered. Asylum seekers are not excluded from receiving legal aid. Where you had a child who was not an asylum seeker and the particular circumstances required legal aid to be administered, the officials involved have the discretion to provide legal aid in cases that do not conform to the norm. That is something I regard as very important because there is no such thing as one-size-fits-all in these cases. There is discretion around the margins to deal with the unexpected cases.

**Q20 Baroness Kennedy of The Shaws:** One of the things that was very clear to those of us who sat on the commission on a British Bill of Rights was that the devolved nations sometimes have different responsibilities, because some matters are devolved and some matters are not, and it sometimes creates a blurring of responsibilities. How do you get some sort of clarity of responsibilities as between the different nations, assemblies and departments? What is happening to create a synchronicity there?

***Chris Grayling:*** First and foremost, the UK's participation in the Convention applies across the UK. It is written into, for example, the Good Friday Agreement. It is already embedded into our devolved settlements. We have endeavoured to ensure that the Supreme Court is able to operate in the way it should in terms of dealing with cases that come through the devolved jurisdictions in Scotland and Northern Ireland. There were changes in the Scotland

Act in 2012 to ensure that cases could flow freely to the Supreme Court. The Supreme Court has a focus on devolved matters as well; it has representation from around the United Kingdom, but particularly there is an expectation from me, as Lord Chancellor, that the Supreme Court will work closely with the devolved jurisdictions and make sure that it fulfils the role it should do with them of being a genuine Supreme Court with a jurisdiction in Northern Ireland and a jurisdiction in Scotland. That is the sensible balance.

**Baroness Kennedy of The Shaws:** Our experience in dealing with migrant children is that, for example, Scotland deals with some of those issues differently because of their own different education system and their differences.

***Chris Grayling:*** That is bound to happen. That is devolution for you.

**Baroness Kennedy of The Shaws:** What it brought home to us was the way in which in fact the reservations that you are expressing about human rights are not shared around the United Kingdom. In Scotland, in Wales and in Northern Ireland there was a greater enthusiasm and a resistance to the idea that one should be talking about a British Bill of Rights—that actually the Human Rights Act was doing a good job and that they were building on it. Have you gone out and gone round to get a feel of that viewpoint in those other parts of the United Kingdom?

***Chris Grayling:*** I have certainly gone out. I have been to Northern Ireland and Wales and as yet nobody has argued to me that anything I have said on the Human Rights Act has been wrong.

**Baroness Kennedy of The Shaws:** You might be talking to the wrong people.

**Q21 Baroness Lister of Burtersett:** How does the Government maintain its oversight of the observation and implementation of the UK's international human rights obligations, which is a non-devolved matter, given that many functions with significant human rights implications are the responsibility of devolved assemblies? In particular, could you outline

how the Government co-ordinates the implementation of the UN Convention on the Rights of Persons with Disabilities, as we requested in our report on independent living? If you are not au fait with that latter part of it, perhaps you could write to us.

***Chris Grayling:*** I will write to you on that one. That one I do not know the answer to, I am afraid. Generally speaking, in terms of the interaction of the devolved assemblies, we interact all the time, either through meetings or by correspondence. There is a huge amount of interchange between ourselves and the devolved assemblies. They have extensive consultation rights on decisions taken by my department. We have regular ministerial meetings. I would hope that there was no sense that there is a lack of contact. I was in Northern Ireland last week, for example, and I regard the contact we have with the devolved assemblies and the devolved jurisdictions as being of particular importance.

**Q22 Lord Faulks:** Lord Chancellor, I have some questions on the "rehabilitation revolution". Clearly one of the main problems that we have as a society is high reoffending rates—people going in and out of prison. You have announced various consultations concerning various proposed improvements to this. Can you help us with the overall aims behind this in terms of whether it is restricted to simply to limited reoffending or whether its aims are to achieve greater social integration for offenders and thereby restrict their desire to commit further offences?

***Chris Grayling:*** I will finish with an anecdote. About two or three months ago I visited a drug rehabilitation centre in Stoke-on-Trent and had a group discussion with the people going through rehab there. One of them was a former offender, who said to me, "The first time I went to prison, I came out and afterwards I had no idea how to get my life back together again and I found it very easy to drift back into crime". We have to remember that, while there are a few evil Mr Bigs, an awful lot of the people in our prisons come from extraordinarily difficult backgrounds: they come from broken families, they dropped out of

school, they have addiction problems and they have mental health problems. A quarter of them were in care as children, which I find totally shocking. We are much more likely to prevent them from reoffending if we help them get their lives back together post-prison. My vision is that a prisoner walks out of the gate to be met by a mentor, who they have already had dealings with in prison.

**Lord Faulks:** Who is the mentor going to be?

***Chris Grayling:*** It will be somebody who is trained. It may be a professional; it may be a volunteer. I am not imposing the model. Very often it may be an old lag gone straight, because there is nobody better placed than someone who has been there before to prevent somebody else from going back to prison and helping them turn their lives around. It will be somebody who will sort out where they are going to live, has made sure they are signed up for housing benefits so they have got somewhere to live, has made sure that, if they were on a rehab programme in prison, they are able to carry on that treatment post-prison, and has maybe got them booked into the local college. Certainly they should be in the Government's Work Programme, hopefully starting on the path towards getting back to work. It is trying to help them, support them, befriend them and encourage them and support them to get their life back together again. I think that is a piece that can make a real difference to the rehabilitation of offenders. Your original question was: "is it about preventing reoffending or social integration". It is kind of both. You cannot do one without the other. If people get back into society and find bedrock in their lives, they are much less likely to reoffend, and that is the goal.

**The Chairman:** Lord Chancellor, we have to suspend this session now. We will resume as soon as two Peers return, so it could be within five minutes, so please stay with us.

*Sitting suspended.*

**Q23 Lord Faulks:** Lord Chancellor, further to my previous question, the scheme that I think you envisage includes a payment-by-results model, involving people outside the probation service who have been traditionally associated with rehabilitation. How can you ensure that the quality of what is provided will give the long-term benefits that must be critical to prevent reoffending not just for a few months but for the foreseeable future?

***Chris Grayling:*** The essence of the payment-by-results approach is that it forces best practice and it forces excellence, because if you are not really good at what you do, you underperform financially. It will create a vehicle for us to bring together the best of the public, private and voluntary sectors, and there are high-quality skills in each of them. Within the public sector, there are skills in multi-agency management of harm and risk assessments, interaction with the courts and so forth. That will continue in a smaller, specialist and highly professional public probation service. Alongside that, we will bring together skills that currently exist in the public sector and will move into the new world, alongside skills in the voluntary sector, where you have great mentoring expertise, and private sector management skills as well, because I want a system that is leaner, meaner and more efficient in order to ensure that we can spread the support that we provide to include those who receive sentences of less than 12 months. At the moment, they leave prison with £46 in their pocket and that is it. What I want is a system that operates more effectively so that we can provide more rounded support to those people as well. The use of payment by results will mean that there is an obligation to be good, because if you are not, you will not succeed financially. By definition, it drives best practice.

**Q24 Baroness Berridge:** Can I refer you back to a previous question? I declare an interest as I am a trustee of a prisoner-rehabilitation charity called Kainos. With trying to introduce mentors, there were two issues that I wondered if you had come across. Firstly, there were the security issues for governors of having somebody come into the estate who

then had contact after the prisoner was released. Secondly is the very practical issue that the prisoner often had to give up an existing visit for family in order to see that mentor. The only option to that was to grant an extra visit that then has staffing implications in a prison. You might not know the answers, but those are two issues that we as a charity encountered when trying to introduce exactly what you were saying: a mentor who went in first and then met them at the prison gate to take them home.

***Chris Grayling:*** What we are looking to do is to integrate the resettlement services within prisons with the rehabilitation support that happens after prison. I do not see this as replacing a family visit, for example; it would become a part of the routine work of the prison. One of the things I hope to be able to do is to make sure there is a closer link between the geography of detention and release, and the geography of rehabilitation. As we know, prisoners are moved around the country all the time. I want to see a situation where, certainly as people are approaching prison, they are detained in the area they are going to be released into and that the work that is being done by the resettlement services in prisons will follow them beyond the prison gate and into the community.

**Q25 The Chairman:** Lord Chancellor, you began, when you started giving evidence to us, in a very positive way, making positive remarks about the importance of parliamentary scrutiny of the Government. In the light of that, I am prepared to accept that the small matter, which was an important one for us, of you withdrawing an official to appear before us was an aberration. It did cause some inconvenience to us and we had to cancel an evidence session, but in the light of your positive remarks I will say that it is an aberration. In the light of that, however, could you reassure us—I wrote you a letter last week—that the Crime and Courts Bill does not proceed to report stage until my Committee has reported on the very significant human rights issues of that Bill, particularly relating to deportation and extradition?

***Chris Grayling:*** As you know, Dr Francis, the timings of these things are done through the usual channels, rather than through my department, and the matters to which you refer are Home Office matters; the Bill covers both departments. But I will certainly make sure the views you have just expressed are represented both to the usual channels and to my colleagues in the Home Office. I understand what you are saying.

**The Chairman:** You will recall that a large number of amendments have been tabled at very short notice so it would be greatly appreciated if we were given that time. On behalf of the Committee, could I thank you very much for your attendance today? It has been a most productive session—indeed, a comradely one. Thank you very much.