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THE JOINT COMMITTEE ON HUMAN RIGHTS

THE IMPLICATIONS FOR ACCESS TO JUSTICE OF THE GOVERNMENT'S PROPOSALS TO REFORM LEGAL AID

WEDNESDAY 23 OCTOBER 2013

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Evidence heard in Public Questions 1-25

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Members present

Dr Hywel Francis (Chair)
Baroness Berridge
Lord Faulks
Baroness Kennedy of The Shaws
Baroness Lister of Burtersett
Mr Robert Buckland
Rt Hon Simon Hughes
Mr Virendra Sharma

Examination of Witnesses

Tim Buley, Barrister, Landmark Chambers, **Dr Nick Armstrong**, Barrister, Matrix Chambers, **Martha Spurrier**, Barrister, the Public Law Project

Q1 The Chair: Good morning and welcome, everyone, to this session of the Joint Committee on Human Rights. This is the first session on our inquiry into the implications for access to justice of the Government's proposed legal aid reforms. This first session deals with legality and exceptional funding. For the record, could you introduce yourselves, please?

Martha Spurrier: Martha Spurrier, barrister at the Public Law Project.

Tim Buley: Tim Buley. I am a barrister in private practice at Landmark Chambers, specialising in public law and human rights. It is probably worth mentioning that I am a member of the Attorney-General's Panel of Counsel, which means that I do quite a lot of work on both sides for and against Government in those areas.

Dr Armstrong: Nick Armstrong, barrister at Matrix Chambers.

The Chair: Thank you for your presence. The acoustics are pretty good in the room, but I could not quite hear all of you that clearly, so do not be afraid to raise your voices. I will begin with a pretty straightforward question. Civil legal aid is currently subject to means-testing. The evidence we have received suggests that a test based upon a strong connection

to the UK will breach access-to-justice rights, whereas the refusal of funding on income grounds will not. What is the distinction for human-rights purposes?

Dr Armstrong: There has always been means-testing of legal aid. The boundaries of that have shifted over time, but it is very different from a residence test. We have never previously had in this country a residence test, or anything approaching a residence test, that purports to shut out groups on the basis of status alone. There are many problems with the legality of that, some of which are practical and operational, but one of the principal problems with that is its discriminatory effect, in the sense that you can have two people in materially identical situations, one of whom will have access to legal aid and one of whom will not as a matter of principle. That is very different from anything around: "You can have legal aid, provided you cannot pay".

***Tim Buley*:** Can I just add to that? It seems to me that they are fundamentally different, because legal aid is provided so that people who would not otherwise be able to afford to bring proceedings can do so. Obviously, a means-testing that sets the bar at a level that is notionally related to whether the person in question can afford to pay for themselves is fundamentally different from making a distinction based on residence or something of that kind. One can have arguments about where the means test should be set, but they are fundamentally a different kind of thing.

The Chair: How wide is the margin of appreciation afforded to states in allocating civil legal funding?

Dr Armstrong: That would be a matter for argument, but "not wide" would be my suggestion, given that you are talking about fundamental rights, first of all. Secondly, you are talking about this being done in secondary legislation, so the margin of appreciation will look at the level of parliamentary debate that takes place. Because this is proposed to be done in secondary legislation, there is a lower level of deference, if that is the right word, to that.

Also, where you are talking, as I think we are, about a potential discriminatory effect, that will be scrutinised particularly closely and the burden will be on the state to justify it. It will have to produce evidence and it will have to show that a legitimate aim is being served, that it is being served rationally and that there are no less invasive means available to it of achieving the same legitimate aim.

***Martha Spurrier*:** Exceptional funding is relevant to this issue. It was recognised in the passage of the LASPO Bill that something had to be provided to ensure that those with meritorious cases who could not fund a lawyer and who would be unable to represent themselves would have a way of getting access to justice. It was made very clear during the passage of the Bill that that way would be by Section 10 of LASPO, the exceptional funding regime, and that recognises that the European Court of Human Rights and obligations under EU Law require the UK to provide legal aid in some circumstances.

Now, those circumstances might be quite restrictive. Nevertheless, they have to be provided for. So, for example, where a case is particularly procedurally, factually or legally complex, or where a person does not have the capacity to represent themselves, Article 6 or Article 8 of the convention may require that legal aid is provided by the state in those cases.

Simon Hughes: Can any of you help us as to whether other countries, which are signatories to the convention, have gone down the road of saying, "If you do not have a residence link that is established with the country in question, then you will not qualify for our system?". Secondly, is there any specific case law of the court that addresses the specific issue of residence in relation to legal aid?

Martha Spurrier: I do not know about the systems of other Council of Europe member states, but that is certainly something i can look into and provide information to the Committee about.

Tim Buley: I think the answer is that there may be some case law, but again I am not sure enough about it. It is something we or I could do a note on for the Committee.

Simon Hughes: If somebody could, that would be very helpful.

Martha Spurrier: I am sure that in the case law of the Strasbourg court there is nothing on whether a residence test can or cannot be justified. That issue has not been litigated. There have been lots of cases about the extent of legal aid that must be provided, but they are in very general terms, which is often the case with that case.

Dr Armstrong: On the deference question, one of the points that occurs to me is that, when one talks about deference, this is not just in relation to parliamentary decisions made when you afford great deference to full parliamentary debate at primary legislation level. It tends to be on welfare benefits cases and so on, when there are resource-based debates, and parliament is making invidious choices between competing obligations and competing interests. It spends time and it draws a line somewhere, and it is a difficult line to be drawn. My suggestion would be that legal aid is not another welfare benefit, because of its link directly access to the court and directly access to the rule of law. It is very different. It is for that reason that questions like deference and margin of appreciation do not play in the same way.

Q2 Lord Faulks: Thank you, Chair, and good morning. I should declare an interest. Mr Buley and I have been on opposite sides in a case about prisoners. Dr Armstrong, thank you very much for your written evidence, and indeed for yours, Ms Spurrier. Dr Armstrong, you are critical of the proposals—*Transforming Legal Aid*—saying that it will impair the ability of individuals to hold the state to account. The LASPO Bill means that there is not very much legal aid about generally for people on welfare cases, clinical negligence and the like. Do you think that the further restrictions in *Transforming Legal Aid* are a real sea change, or do you

think that is consistent with trying to decide how you best spend your resources, nevertheless reflecting your obligations under the convention?

Dr Armstrong: I think it is a real sea change. LASPO was a significant piece of legislation and a serious restriction, but this is of a different tier altogether, and I am afraid there is some detail on this. The first thing to understand is that LASPO left in play a rump of very serious and very specialist, niche, complex and vulnerable cases. That is the first point.

Now, in those cases generally, in the same way in which the sympathy of those claimants in that situation is difficult to capture in a headline, so it is slightly difficult to capture why this matters in a sentence. There are two things that I would say about it. First, whereas previous to that, including under the Access to Justice Act as recently as 1999, you would generally have civil legal aid unless it was specifically excluded, the big change is that now LASPO specifically excludes everything unless it is expressly included. That matters because the exceptions to this—the exceptions on the residence test—tie directly into the schedule. It is said in general terms in the *Next Steps* paper that we will have a general exception to the residence test for cases that are loosely and broadly related to detention and/or the particularly vulnerable. There is no such general exception in LASPO. All that phrase does is capture a series of extremely narrow exceptions that are defined by reference to a very narrow, largely cause of action-based schedule in LASPO. That is significant and new because it knocks out everything that is not expressly included, essentially. Those are already very narrow, and then they are narrowed further again.

It might assist the Committee if I just take you through a couple of those examples of the way the residence test works.

Lord Faulks: Are these in your paper?

Dr Armstrong: They are in general terms. I am in your hands.

Lord Faulks: We have read your paper, I am sure.

Dr Armstrong: I will confine myself to saying this then: the first point about the residence test is that everybody has to prove it. There are issues about whether or not you have the documents, and that applies to everyone who seeks civil legal aid. The second thing is that there are some exceptions for groups, members of the Armed Forces or asylum seekers for example, but there are no exceptions for children generally, the disabled generally or the mentally ill, who may have particular problems accepting documents.

After that, however, it is case-based; it is cause-of-action based. For example, you get a detention case that is now exempt from the residence test, but only if you are seeking to get out of detention. If you are held in very poor conditions or sexually assaulted while in detention, as was recently in a newspaper, or if you are a child and should not be in detention and need to judicially review a local authority that has wrongly assessed you as being an adult, none of that is covered. Trafficking victims may have all of those problems and be in detention. There is a general exception for tracking victims, but a trafficking victim held in Yarls Wood who is subject to a sexual assault or some other ill treatment or misfeasance in public office cannot hold the state to account for that under these proposals. Equally, a trafficking victim who is wrongly not recognised as being a trafficking victim cannot bring a judicial review to say, "You"—the national referral mechanism or whoever— "have wrongly failed to recognise me as a trafficking victim". They cannot do any of that, and that, to bring this back to Lord Faulk's question, is a massive, significant sea change from what we have had before. No Government have previously sought to exclude those kinds of people from access to the rule of law.

***Tim Buley*:** I agree with what Nick says, but coming at it from a slightly different perspective, these are the short points that I want to make about the concerns that underlay or motivated the signing of a letter, which you may be aware of, by a large number of government-appointed barristers. What is critical to holding government to account is

judicial review; it is the central mechanism by which government is held to account by the courts. There are lots of others ancillary to that, but judicial review is central, and judicial review has been protected in previous reforms. It has been kept apart and funding has always been made available. That has changed in these proposals; judicial review funding is being seriously affected. There are lots of points to make, but let me just make two.

First of all, having a residence test—one can make a similar point about the changes for prison funding—excludes a category of persons from judiciary review altogether from funding. I know there are some exceptions, but for the reasons Nick has given, they do not cover all the hard cases, let alone all cases.

Secondly, the changes to the way in which judicial review is funded—I am thinking now about things like the proposal for the funding of permission and so forth—will seriously undermine the viability of specialist lawyers in the area working at least on the claimant's side. That is going to mean a real problem in the equality of arms compared with government lawyers, who are funded in a completely different way; they do not run the risk of not being paid, and are entitled to run cases which they think are borderline, and all the rest of it. Ultimately, it is going to make that kind of work unviable and certainly unattractive to competent lawyers, and for those two reasons these proposals involve a fundamental change.

Q3 Lord Faulks: Can I direct a question at you, Martha Spurrier, in relation to exceptional funding, which you mentioned earlier? Of course, we are concerned in this Committee with human rights, and the Government's answer is that if the withdrawal of legal aid involves a violation of the convention, that is what the exceptional funding provision is for. That was the answer that the Minister gave throughout the passage of the last Bill through Parliament. It has only been in force since April 2013. Is it possible to say whether

or not the exceptional funding provision will do its job and will in fact provide an answer where there are apparent lacunae on human rights grounds?

***Martha Spurrier*:** No, it is not possible to say whether it will provide an answer. In our experience over the past six months, it is my strong view that it does not provide an answer, and if it ever is to provide an answer, it needs significant systemic reform. There are a number of reasons for that. The main principled one is that exceptional funding is designed to assist the most vulnerable people who cannot represent themselves. Applying for exceptional funding is an onerous process. Now, the Legal Aid Agency says that it will accept applications from litigants in person in any form. It has not granted a single grant of exceptional funding to any litigant in person; in fact, it has only granted four out of the 547 applications that it has had in total. So, at the moment, we are looking at a 0.73% chance of succeeding in getting exceptional funding. I have worked on about 10% of the cases that have gone before the Legal Aid Agency, and many of those cases are, in my view, very strong, and we have worked very closely with senior counsel who have expertise in these areas who agree with me.

The point is this: if you are very vulnerable and you cannot present your case, you will also be unable to present your case as to why you should have exceptional funding. This means that this scheme cannot serve those whom it is supposed to protect. It also means that those people need assistance with making applications for exceptional funding. I can give many examples of why the process is an onerous one. I will just give three.

The first is there is no emergency procedure for getting exceptional funding. I will give an example from a case I worked on last week: a woman with a family law claim. We say that she does not have the capacity to present the case herself. Her husband, whom she is up against, is legally represented; he was granted legal representation prior to 1 April. She got in touch with us two days before her hearing at Manchester County Court. We made an

urgent application to the Legal Aid Agency, setting out why we thought the application had to be determined in advance of that hearing, and at the same time we applied for an adjournment at Manchester County Court. On Friday afternoon at 7 o'clock, we had not heard anything from Manchester County Court about the adjournment, and we had not heard anything from the Legal Aid Agency about her exceptional funding application. On Monday morning, we think, although we do not know, because we now cannot reach the client, she must have had to go ahead and represent herself. That is one of the problems.

The second problem is that a huge amount of evidence has to be provided in support of these exceptional funding applications, and I have said this in my oral evidence. It is not enough simply to make an assertion that the applicant cannot represent themselves for whatever reason. For example, if you say that Mrs *X* cannot represent herself because she has been in and out of section under the Mental Health Act for the past year and therefore the pressure of the proceedings will simply not be conducive to her being able to put her points across, the Legal Aid Agency will refuse your claim. They will not write back asking for further information; they will refuse your claim on the basis that you have not provided evidence of her mental health problems. If you then get in touch with her doctor, in most cases the doctor may charge up to £50 for providing a report about her capacity to represent herself.

A third example—and one that really goes to the heart of this issue—is that these applications for solicitors are done at risk. That means that if exceptional funding is granted, the solicitor will be paid, but if it is not the solicitor will not be paid. The 0.73% chance of success rate has a fairly significant chilling effect on whether solicitors, who are already under a great deal of pressure, will undertake the hours and hours of work it takes to make an exceptional funding application.

There has been no monitoring of this scheme in the past six months. Our experience is that it simply is not serving the people it should be serving. There needs to be an assessment of whether or not the need is being met, and there has not yet been that assessment. We know, for example, from a Freedom of Information Act request submitted by the Legal Aid Practitioners Group, that no training is provided to the people operating this scheme in the Legal Aid Agency. Until systemic flaws like that and until operating problems with this scheme are solved, no proposal that suggests people can be removed from the scope of legal aid can possibly be justified on human rights grounds.

Q4 Lord Faulks: Can I just bring you to the two things that we are particularly concerned with: residence, and prisoners and prison law. Is your view—and I direct this at all of you—that the exceptional funding provisions under Section 10 are drafted widely enough to solve the problems that have been identified in relation to those two issues?

Martha Spurrier: If I may just say briefly, I think the problem is not necessarily with the drafting of Section 10 of LASPO. That, to my mind, simply sets out that the UK must comply with its human rights obligations under EU law, and I see no problem with that. The difficulty lies in the regulations, in the guidance and in how the scheme is being operated. That is not to say that those things are not important, but it is my view that the problem is not with the primary legislation.

The Chair: We are anxious to get on. We have been going for 20 minutes and have only got to the second or third question.

Lord Faulks: I have done four, actually.

The Chair: Fine. Baroness Lister.

Baroness Lister of Burtersett: On the residence test, in your view would it be compatible with the European Convention on Human Rights and, if not, why not?

Tim Buley: Shall I answer that first? I think there is a very powerful argument that the residence test will be found to be unlawful under Article 14 of the convention, essentially because it is plainly discriminatory—I do not see how it could be said not to be discriminatory. The Government will then have to show that the measure is lawful and that it is justified by whatever it may be. I do not know, but presumably it will have something to do with the protection of public funds. There is, on the face of it, a fundamental problem with that argument in terms of the rule of law, because it is one thing to say that someone who does not meet a residence test has lesser rights—they are subject to immigration detention or do not have the same access to social security benefits or whatever it may be—but it is quite another thing, and very unattractive in rule of law terms, to say that even such rights as they have under the law, which will be lesser and so in a sense all the more important to them, are not enforceable because they cannot get legal aid to ensure even those basic rights. The first point, I think, is that there is a very powerful argument that the test, per se, will be found contrary to human rights law, and I will say, without going into detail, that there are very powerful arguments that it will be found contrary to EU law insofar as it is applied to EU residents.

There will also then be individual cases where there is a danger of breach on the individual facts. In a sense, the Act caters for that because, in those circumstances, you have to grant funding if it would breach human rights law in the individual case, but it does seem to me that that is bound to create judicial review litigation on precisely the question of whether there is a breach in the individual case, which seems to me a rather counterproductive way of trying to make savings.

There is another point, which may be outside of the scope of the question but, it seems to me, is somewhat related, which is that you will also have cases quite apart from whether not granting legal aid itself will breach human rights law. It does seem to me inevitable, for

reasons I have already touched on—holding government to account—that you are going to find other breaches of human rights because legal aid is not available. It is not available for someone to do something about being in a situation where their human rights are being breached, and we may see changes in government behaviour because they feel that there is less recourse to the courts to check the way that they are behaving. That is speculative, but it seems unlikely that it will not happen to some extent.

Dr Armstrong: I would just supplement that very briefly by saying that, on a justification argument, if cost is the argument that is being relied upon—and the cost argument, for the reasons I have set out in the paper, is very difficult to make out, particularly in relation to prisoners but also in relation to the residence test—those figures have not been challenged at any stage. Indeed, when some of those sorts of numbers or estimates were put to the Justice Secretary, his answer was, "It is not about practicality; it is about ideology". That just makes justification an extremely difficult argument for the Government to make out.

The Chair: Baroness Berridge, do you want to ask a supplementary, and then you can ask your main question afterwards?

Q5 Baroness Berridge: Could you just consider the point about the legality of the residence test from a common law point of view as well? I know it is pre the asylum-seeker legislation, but it just struck me that there is a very famous historic case from the 18th century of Mr Somersett, who was a slave on board a ship that happened to be harboured here, who would not have been resident under these new rules. What, then, are the common law principles that you would consider in relation to the legality of the residence test?

Tim Buley: I have forgotten the name of the case that you are thinking of, but it is a Lord Mansfield judgment, I think. I will not try to quote it, because I cannot remember it perfectly, but the principle—and it is a principle that I was trying to develop already—is that

everyone has access to the courts and everyone has equal rights protected by law. It is that principle that I was referring to when I said that it seems to me that it will be very hard for the Government to justify a residence test by reference to cost arguments. That same argument will feed into a common law argument.

It is harder to predict exactly how the court might update that kind of case to modern circumstances, but plainly an argument could be made directly under the common law. There is a more recent case called Witham on access to the courts and so forth, which embodies similar principles.

Finally, there is also a much more straightforward argument about the residence test, which is simply that it is not within the statutory power, because the statutory power is to add categories of work that are or are not included within legal aid, in the way that Nick has been explaining. It is not clear to me, at least—and there may be quite a strong argument—that that does not contemplate excluding people by a class of person rather than by reference to the kind of legal services that they are seeking, so I think there is a real issue there as well.

Baroness Berridge: That is, actually, in question six.

Tim Buley: I am sorry—I have got ahead of myself.

Baroness Berridge: It is whether the Lord Chancellor has the power to do this under the schedule.

Tim Buley: I think there is a doubt about that.

Baroness Berridge: Does anyone want to add any brief comment to whether this is a legal use of power?

Dr Armstrong: Only that there is a powerful argument that it cannot be done under LASPO, because once one delves into the structure of the LASPO Act, and looks at what Parliament, at the primary legislation level, debated at some length, saying, "This is what we are going to

do", and looks at the parliamentary debates—"These are the cases which we, Parliament, should be kept within"—many of those cases, because they will fail the residence test, will now be out. It is very difficult to see what changed between 1 April, when that Act came into force, and 9 April, when the consultation paper and the proposals were published.

Martha Spurrier: Can I just add a point on that? First, on the common law issue, it has been made very clear by the courts that the common law mirrors the protections of Article 6 of the convention, so the same concerns will arise under both. Also, without express primary legislation, you cannot transgress fundamental constitutional rights, which goes to the point about whether or not this Government can implement the residence test by secondary legislation.

On that, there are five potential sections of LASPO that could allow retrospective amendment, and it is certainly my view that none of those looks like they would allow an amendment on the basis of a class of person. I do not know if it is helpful for me to give you those sections for your note, but they are Sections 2, 9, 11, 41 and 149. Section 149 is a Henry VIII clause, but it is simply intended for transitional measures for tidying up. Section 2 does not appear to allow the Lord Chancellor to make any changes to the class of person, only to the services that are provided. The same is the case under Section 9. Sections 11 and 41 have similar tidying-up provisions to Section 149, so we do not think that there is anything expressed in the primary legislation that would allow these fundamental rights to be transgressed by a statutory instrument.

Q6 Baroness Kennedy of The Shaws: This is really about further exceptions that the Government have put forward to the residence test in their *Transforming Legal Aid: Next Steps* document. I just wanted to know whether you thought that those further exceptions were broad enough to deal with vulnerable people or whether we are still talking about a contravention of human rights.

Dr Armstrong: I think you absolutely are talking about a contravention of human rights. I mentioned some of the examples that you go through. It is not in the main bit of the paper; you have to go to paragraph 125 of Annexe B of the paper, and then cross-read it to Schedule 1 of LASPO.

Baroness Kennedy of The Shaws: If only we had more time, I would ask you to do that.

Dr Armstrong: There is a general category for protection of children, which is only about childcare proceedings, because the reference is only to Part 4 of the Children Act, not to Part 3. If you are being taken into care under Section 31 of the Children Act, you will get legal aid without a residence test to be part of those proceedings. If, however, you run away from home and seek an application for accommodation or services under Sections 17 or 20 of the Act—I am currently outside social services and I want some help under one of those sections—unless I thought to bring my residence documents with me when I fled the home, which one may think is fairly unlikely, not only will I not get in there but I will not even get legal aid to enforce the rights that I have as a matter of primary legislation. There is no carve out for that. There is no carve-out for community care cases for the disabled services. If they do not have documents or do not have the right level of residence, they will not get any of it. There is also nothing for special educational needs.

To come back, potentially, to the question asked by Baroness Berridge, you have this problem where Parliament decides on 1 April that it wants all these sorts of cases left in, and on 9 April, in a consultation document, they are all taken out. Those exceptions that are then brought in later go nowhere near very important cases.

Q7 Baroness Kennedy of The Shaws: One of the things that you mentioned, which seemed almost like a contradiction, but perhaps there are contradictions in some of this, is that there is supposed to be legal aid for those who are trafficked, yet you give examples of circumstances in which trafficked people would not be able to access legal aid because of the

residence test. Is there likely to be a kind of privileging of that exception that is given for trafficking, when there is a contradiction?

Dr Armstrong: There is nothing on the face of the exception, as currently proposed, that deals with a very large number of trafficking cases, including people who want to challenge a decision that they are not a victim of trafficking. In addition, remember that a lot of trafficking victims, when they are sorting those matters out and regularising their status, are saying, "I am a trafficking victim. I ought to have the 45-day lay-down that I am entitled to under the convention. I want the criminal justice system to work in a certain way. I need services and accommodation along the way, while of that stuff is being sorted out and the wheels of the UK Border Agency grind particularly slowly, but I do not have legal aid for any of those because I am not within the exception. I cannot go to the social services department and seek those services. I am entitled to them as a matter of primary legislation but I cannot enforce them because I failed a residence test".

Tim Buley: Could I give you an example of a similar paradox? It is about whether you come within the residence test at all. It seems to me there are bound to be disputes about that; I have had experience, both in the context of immigration detention cases and elsewhere, of that kind of thing. Sometimes, those disputes can be very complicated indeed. They can involve a lot of evidence.

Also, however, I have experience of one case where I had a client who was detained at the end of a prison sentence. He was a UK national, his solicitors obtained a copy of his passport, they sent it to the Home Office, the Home Office lost it and then refused to release him for 14 days. I am not saying that is going to happen every day—it is an extreme example, I am sure—but it does bring home the fact that there is going to be a lot of dispute about whether someone meets a residence test, and then you are going to have a dispute

with the Legal Aid Agency about whether you can get legal aid to run that litigation, which is going to be costly and take up a lot of government-body time in any event.

However, it also seems fundamentally problematic to me, and involves a paradox about the application of the residence test.

Baroness Berridge: Very briefly, Mr Buley, you commented that originally your experience is on both sides of this. You made an allusion to—this is what I read it to be; it might be incorrect—the difference when you are on the other side of the fence, representing government et cetera, in borderline cases. I think you mentioned that test. This is all taxpayers' money, though, is it not, that we are looking at here? Obviously, everyone in the room knows that we want access to justice, but we do not have an unlimited pot of money. Are you aware of any assessment that is made on rigour of the tests applied when taxpayers' money is being spent through the government department route, usually as the defendant?

Tim Buley: I do not think there is any rule that, unlike in legal aid cases, the Government will only defend cases which they think they are more likely to win than to lose or anything of that kind. There is certainly no formal rule of that kind. Often, in practice, in cases that turn on the particular facts, government will adopt a rough and ready rule, in my experience, of a 50:50 sort of approach, but there is no formal rule to that effect. I suspect strongly that some government bodies do not follow that approach; some government bodies are more obstinate than others.

There is no doubt that, in cases that the Government think are important, they will defend cases even though their lawyers are telling them, "This is a borderline case", or even, "You are probably going to lose this case". Frankly, it seems to me, from the perspective of working for government, that it is critical that they can do that. They do not have to accept their lawyers' advice as a matter of principle, but it does seem to me that if we are now cutting off the availability of funding in important cases that are borderline on the other side,

you have a fundamental inequality of arms there. I hope that goes to the question you are asking.

Baroness Berridge: It does, yes.

Dr Armstrong: May I briefly supplement that with an example?

The Chair: No, I think we must get on.

Q8 Baroness Kennedy of The Shaws: I want to take us on to prisoners. I am concerned about the position for prisoners. The Government are insisting that prisoners will retain funding for civil litigation and judicial reviews, whilst it is the non-legal advice, they are saying, where there will be assistance and advocacy services provided within the prison. I wanted to ask you whether you felt what was being proposed was enough to meet the rights of access to court.

Dr Armstrong: No. It is right that judicial review will continue. There is a question as to whether, if the rest of legal aid goes, the specialist lawyers will still be around to do the judicial review. There is a question around where they will come from and how they will be developed.

However, there are two big problems with the prison proposals. The first is cost, because it will mean people in prison longer. Those are figures I do not propose to repeat, but they are set out in the paper. It is extremely expensive; the figures I set out were supported by the Parole Board. There is also the fact that, by removing the rule of law from these areas—and removing the involvement of solicitors from letter writing and making representations, the day to day work that solicitors do to say to HM Prison Service that they have it wrong on categorisation or mother and baby units or whatever it happens to be—you are removing a level of legitimacy from the way the system works.

I met with an ex-governor of a prison yesterday about this and asked whether it was a problem. He said to me, "You are playing KerPlunk with the prison system. You are pulling

out straw after straw and seeing whether the marbles fall or not". The problem at the moment is the cuts in the prison service generally, so you have fewer staff, the staff who remain are disgruntled, prisoners have less access to courses, less access to the staff, because there are fewer of them, and then you remove, again, one of the last strands of legitimacy, access, fairness and opportunity to ventilate complaints that you would have. If they cannot get hold of specialist prison solicitors whom they trust and who are independent, then—we do not know if it will happen now; we do not know if it will happen next week—you are removing these straws. Potentially, with things like this, you are grabbing a handful of straws and seeing whether, if you pull some of those out, all the marbles fall. You are taking very serious risks with the rule of law in one of the potentially most incendiary areas of social and political policy.

Martha Spurrier: Could I add a short point to that? First, these proposals completely fail to take into account the specific barriers to access to justice that prisoners face. This is partly because they are detained, so they cannot go to their citizens advice bureau or their law centre, but it is also partly because we know that the prison population has very specific vulnerabilities. For example, in these proposals no exception is made for prisoners with learning disabilities, mental health problems or child prisoners. It also takes no account of the fact that the complaints system in many situations will be woefully inadequate. That may be because it is slow or because it is very difficult for a particular prisoner to navigate that complaints system without help, but it also may be because the complaints system or the Prisons and Probation Ombudsman is simply not able to address the issue properly.

For example, with a resettlement case, you might have an issue that lies partly with the prison but also partly with the local authority. A prison complaint system is not going to be able to deal with that; the only way you could adequately deal with that is by having a lawyer who can advise you on how to get an effective remedy in that situation.

The Chair: Thank you very much for your evidence today and for your written evidence as well.

Examination of Witnesses

Dr Russell Hargrave, Communications and Public Affairs Officer, Asylum Aid, **Ilona Pinter**, Policy Adviser, the Children's Society, **Alison Harvey**, Legal Director, Immigration Law Practitioners Association, **Alastair Pitblado**, the Official Solicitor to the Senior Courts, and **Clare Laxton**, Public Policy Manager, Women's Aid

Q9 The Chair: Good morning and welcome. For the record, could you introduce yourselves, please?

Ilona Pinter: I am Ilona Pinter from the Children's Society.

Dr Hargrave: Good morning. I am Russell Hargrave from Asylum Aid.

Clare Laxton: Good morning. I am Clare Laxton from Women's Aid.

Alastair Pitblado: I am Alastair Pitblado. I am the Official Solicitor to the Senior Courts.

Alison Harvey: I am Alison Harvey from the Immigration Law Practitioners Association.

The Chair: Thank you very much. Thank you for your submissions as well. There are five of you. We want to do justice to all of you. Having said that, there is no obligation for each of you to answer every single question. In that spirit, could I ask you, Alison Harvey, representing the Immigration Law Practitioners Association, something in relation to your own submission? At paragraphs 68 and 69 of your submission, you note that claims in tort or damages claims for breaches of the European Convention on Human Rights and claims for damages resulting from abuse by a public authority of its position or powers will not be funded under the proposals. Could you elucidate that a little?

Alison Harvey: All cases were taken out. When we got the *Transforming Legal Aid: Next Steps* response, cases to do with detention were brought back in, so they will not be subject to the residence test. However, not all cases to do with detention were brought back in. Damages cases were omitted—be they for breaches of human rights or claims in tort—so

they remain subject to the residence test. If someone wants to complain about their treatment in detention, they will still face the residence test. Given that very many people are in detention because they do not have lawful residence, those people are likely to be unable to bring those cases, which can be cases about very serious mistreatment.

It is rare that our Government are found to have breached domestic Article 3 of the European convention within the confines of the United Kingdom, but in the case of their treatment of mentally ill men in detention, this has been found repeatedly. All the judgments are publicly available. They make the most horrendous reading in respect of the degree of distress, suffering and what one judge described as the seeming "callous indifference" to that suffering.

Q10 Simon Hughes: Welcome and good morning. Good morning, Alison, and others no less welcome. I want to ask you about the legitimacy of the aim, as the Government have declared it. The Government's justification for the residence test is that it is legitimate to say that a connection with the UK should be the basis for deciding whether you qualify for financial assistance from the UK. If one of you could lead off, we can see where that takes us.

I want to see whether you think that is a legitimate aim, by which I mean this: is it consistent with other principles of public policy that we have seen before? The other side of the coin is this: is it legitimate because other countries or jurisdictions, to your knowledge, have applied it and/or it has been upheld to be legitimate in case law that you are aware of, either our own or others?

Dr Hargrave: I will not try to talk about international comparisons, but there is a very real problem with legitimacy when it comes to asylum and the residency test for one simple reason: any attempt to guarantee or not, or to patrol, someone's access to legal aid through the residence test seems to fundamentally misunderstand why somebody might need help in

those circumstances. Asylum Aid very often deals with people who have found themselves in the UK illegally not through any fault of their own. It might be because they have received very poor legal advice in the past; it might be because they have been trafficked into the UK. Our colleagues earlier talked a lot about trafficking and, of course, one aspect of that is the person who has been trafficked sometimes by definition will not have control over their own documents or their own passport. Certainly, that is one measure of control for a trafficker. If that person plucked up the courage to come to us or any other charity that can help them, the idea that they may not be met by the residency test seems to fundamentally misunderstand that the reason they need help is precisely because they have been forced into a situation where they do not meet the residency test.

I will mention trafficking very quickly. Yes, victims of trafficking are going to be looked after; they are no longer subject to the residency test. That is only if they are recognised as such. If you ask the legal team at Asylum Aid, they will tell you an awful lot of the reasons why some of the quality of decisions that come out of the national referral mechanism remain extremely poor. Expert reports, for example, are often treated with extreme levity, rather than being given the weight that they should when deciding whether someone has been trafficked or not. It is no guarantee by any means that the Government are looking after victims of trafficking now; I would suggest they are not.

Alison Harvey: If I could answer the question more broadly—Mr Buley essentially answered it in the first session—because you do not have lawful residence, you have a lesser set of rights and entitlements; that is a part of our law. That you should not be able to enforce that small rump of rights that you have is what is at issue here.

Ilona Pinter: From our perspective, in relation to children, under the UN CRC children's best interests need to be a primary consideration. Under those provisions, which are

engaged through domestic legislation as well, children should not be discriminated on the basis of their status or their parents' status. From our perspective, this is not legitimate.

One of the things the Government have missed is that a lot of children in these circumstances will have a very strong connection to the UK. Research from the University of Oxford has highlighted that there are about 120,000 undocumented children in the UK, and over half of those were born here. Many of those will have lived here all their lives: this is their home for all intents and purposes. They do have very strong connections to the UK.

Clare Laxton: Could I add a point about women experiencing domestic violence? In addition to what Russell said, it is about them being recognised as experiencing domestic violence. The Government have said in the recent documentation that they are an exception, but we know that the burden of proof on women is such that they are not able to provide the evidence that is needed to prove that they are experiencing domestic violence. Actually, in effect, they will be subject to the residence test.

A briefing that we released today with Rights of Women and Welsh Women's Aid shows that, from a survey, about 50% of women trying to access family legal aid who were experiencing domestic violence did not have the prescribed form of evidence to access that legal aid. Actually, 60% of them went on to do nothing. They did not take their claim forward, so we know that the burden of evidence on women experiencing domestic violence is overburdensome and they are often not able to prove that they are experiencing domestic violence.

Simon Hughes: Chair, may I put a formulation of what Alison Harvey said back to her? Would it be fair to say that everybody within the jurisdiction of the UK has certain rights and that therefore everybody within the jurisdiction of the UK should be able to exercise

those rights and have the necessary support to do so when they need to do so? Is that a fair way of putting that?

Alison Harvey: If you have a right that is inaccessible to you—as with a woman experiencing domestic violence who cannot enforce those rights she has been given, despite her status, in an effort to protect her—then the rule of law does not run.

Q11 Baroness Lister of Burtersett: A couple of you have touched on this next question. Both some of you and others have argued that the proposals would disproportionately affect women and children. What other evidence could you point to in support of this argument?

Ilona Pinter: It is recognised in the Government's impact assessment that there will be a disproportionate impact on non-British nationals who are women and children. Obviously, we work directly with children and young people. In our experience, one of the biggest issues we have—particularly in the last few years, as budgets have become restricted—is that it is very difficult to get support for children, particularly destitute families and unaccompanied 16 or 17 year-olds who are trying to access care. As colleagues in the previous session said, while some concessions were made in care proceedings, this did not include Section 17 and Section 20 support, which is key for those groups.

There was a recent "Newsnight" FOI investigation, which found that 16,000 children, 16 and 17 year-olds, had applied for support from local authorities for homelessness protection. In 148 local authorities, they were unlawfully housed in bed and breakfast accommodation. We deal with a lot of young people in similar situations. In respect of the residence test, because a child might not be able to prove their documentation or because they would not in fact meet the residence test, they would not be able to get the vital support from a community care solicitor to be able to challenge those sorts of decisions.

Dr Hargrave: I would add one thing about women. This is a very interesting question. Not just on the residence test but elsewhere in the proposed reforms, the evidence from Asylum Aid's research and that done by organisations like Women for Refugee Women, which looks at the quality of decisions for women in the asylum system, suggests that there is already a shortfall between the quality for general asylum decisions and the quality for women, who fall a little way behind that.

Dr Armstrong mentioned earlier that there are niche areas of expertise that have been allowed to develop under existing legal aid systems, which are now under serious threat. One of those, for example, would be Asylum Aid's women's project, which has been running for more than a decade. It has built up expertise, but we have also seen that go up in other areas of law, where we are further along the line than we were, say, 10 years ago on making sure that there is good, established government policy on, for example, looking after women in the asylum system, which could be much better but is better than it was.

That will have the rug pulled from under it if, for example, you cannot bring borderline challenges, which are no longer funded under legal aid, because those are precisely the cases that are going to challenge and help carve out where people who need protection can get it.

Clare Laxton: In terms of women experiencing domestic violence, obviously, the Government have recognised in their recent consultation document that they should be an exception to the residence test. We would oppose the residence test anyway, because we believe it is against the Government's obligations under CEDAW and the EU Convention on Human Rights, as the previous witnesses spoke about.

In respect of legal aid and the residence test in general, we are arguing that the Government are putting up barriers for women who at the end of the day are victims of crimes to accessing the justice that CEDAW and other European legislation has stated that they should have the right to access. Actually, the Government in putting up these barriers that women

have to overcome are contravening what CEDAW has said about access to justice for women experiencing violence and it seems to directly contradict some of the recommendations they have made, which the UK Government should be taking forward.

Q12 Baroness Lister of Burtersett: Ilona, you mentioned children who cannot prove their residency. Obviously, there is also a more general problem with people who do not have the necessary documentation. Could you say a bit about the likely impact on these people? Is there anything the Government can do to help improve that situation?

Alison Harvey: Many of people will be British people. The poorer you are, the less likely you are to have a passport. We see the difficulties in immigration law with, for example, employers checking whether you have permission to work. The particular difficulty here is proving 12 months' lawful residence. That adds complication hugely. Many people lead chaotic lives. It is getting to the stage where many immigration lawyers lead chaotic lives as well as many of our clients.

Simon Hughes: Politicians also lead chaotic lives.

Alison Harvey: Yes, politicians do, too. Paperwork and documents showing 12 months' residence for a British person are not to hand when you do not have any stamps in your passport when you go in and out. At some stage in your life, you have to show it, but if you are dashing back because your child has been abducted and the proper place for the hearing is the UK, and you have always lived outside the UK but you once spent 12 months here at boarding school, are you going to have those documents to hand?

A large swathe of British and settled people—people who are not British citizens but have indefinite leave to remain here—are going to struggle as much as people under immigration control with temporary status. We cannot ignore the time it will take trying to prove that residence, which will add to the time trying to prove domestic violence or trying to prove you are a child. Everything is now in question.

Simon Hughes: Exactly on that point, my experience, from my senior constituency casework that deals with the Home Office and other matters, and the rest of the team's, is that we consistently have difficulties establishing people's proof or establishing it on time. That is our experience over many years. That is not about disputed issues: it is about proving what we believe to be clearly true. We are seeking to know whether that is a common experience, whether the problem is the proof, getting the proof in time or the dispute on whether it is shared. I do not think it is a point for Mr Pitblado, but do the other witnesses say that this is a common and recurrent issue? Is that your experience as professionals dealing with this?

Alison Harvey: It is common and recurring. Many MPs' questions that come to us are, "We do not understand. We are looking at the papers and we do not understand what they mean". A lawyer who deals with family law, for example, is not going to become an immigration lawyer overnight. These are highly technical questions—questions of status. They become particularly complicated at the very points when you need legal advice. For example, when your leave is about to run out and you have been refused an extension or you have lost your appeal, what your status is at that precise time often affects your access to benefits or your access to other services. That is when you turn up looking for help. If you flee your marital home because of domestic violence, it is very likely that a lot of the documents will stay in the house.

Ilona Pinter: I agree. To add to that, one of the difficulties for the children, young people and families that we work with is that in some cases they do not know what their status is or have the documentation to prove it. Also, as one of my colleagues said previously, where they have had to submit documentation to the Home Office, it can get lost, which is very obviously distressing for our clients, for young people, but will add a further the barrier here.

Dr Hargrave: There is a wider point here as well, which I am sure creates extra workload for MPs and their caseworkers. The maladministration of the Home Office sometimes does have to be seen to be believed in terms of lost documents, misused documents or documents that turn up after many years. These are the sorts of problems that have plagued the asylum system and other parts of immigration, of course, for many years. It has never really been brought under control, but rather than put in the investment and bring it under control, we are looking at cutting away the challenges to government when they are doing things as simple as not making decisions within the time limits they are supposed to or not responding to documents that have been sent, maybe once, twice, three times and have never then appeared on a computer system at the other end in Croydon.

At the same time that the Government are failing us on some of these quite basic things—Asylum Aid spends an awful lot of its time chasing up on the basics, and not getting into the nitty-gritty but trying to get the Home Office to do its own job properly—the chance to challenge the Government when somebody really needs you to do it is being stripped away. That seems like entirely the wrong set of priorities.

Q13 Baroness Berridge: Could I draw in the Official Solicitor, who has been waiting there patiently? Could you explain your specific concerns about the effect of the residence test on individuals who lack mental capacity?

Alastair Pitblado: There are some exceptions, which I think are a good thing because I act for parents in public law children cases. Insofar as there is an exception in relation to those cases, it is reassuring. I have acted in cases with young people where there is a dispute as to their age, although those are increasingly no longer judicial reviews in the court and are being dealt with by tribunal. I do not act as a litigation friend in the tribunal, because there is no process of appointing a litigation friend.

However, the main point I make is the point Alison has just made: they are much less capable of providing the necessary evidence to satisfy the necessary authorities. They are much less capable of providing financial evidence. Whilst most solicitors I retain in these sorts of cases try their best, there is only so much work they can do in effect pro bono to bolster the legal aid application, leaving aside this additional barrier.

One of the overall problems in relation to protected parties in the general courts—or people who are called P in the court of protection—is that they are not entitled to conduct their own litigation. In itself, that raises another issue: namely, that the solicitor is normally the person who thinks, "This client may not have capacity to conduct their own proceedings", and traditionally that has meant "instruct a solicitor". If a person lacks capacity to conduct their own proceedings with the assistance of a solicitor explaining thins to them in simple terms, they certainly lack the capacity to conduct the proceedings in person. However, if there is no legal aid, there is no solicitor; the court is faced with a litigant in person who may or may not have capacity. The rules of court prohibit the court continuing if the litigant in person lacks the capacity to conduct proceedings, but there is nobody finding out whether or not they do. That is an overall elephant in the room.

Another elephant in the room is the idea that mediation will resolve all, because if a person lacks mental capacity to conduct the proceedings, they may well lack the mental capacity to conduct their financial affairs. If they lack that second capacity, they cannot compromise proceedings that involve financial affairs, or they will not be able to engage in meaningful mediation in relation to children in the private law context. I have made this point before in the past in a long response to an earlier consultation. This is a small problem—the number of people I am acting for at the moment is about 2,400, some of whom can have their litigation funded by other means—but it is a very real problem.

Q14 Baroness Berridge: Dr Harvey, could you explain your concerns about the particular impact of the proposed residence test? You have alluded to this, but do you have anything you want to add on asylum seekers, besides, obviously, the difficulty of documentation?

Alison Harvey: There is an exception to the test for people seeking asylum, and there is considerable comfort about how the Government intend to operate that exception in the *Next Steps* paper. We had concerns about fresh claims and further submissions; we have been told there will be funding to help you make it and for a judicial review if it is refused. I am very concerned about refugees, because the convention demands that they have access to the court on terms no less favourable than citizens.

It was presumed that once you were recognised as a refugee, you would have to accrue 12 months' residence as a refugee before you had legal aid. We told the Government that this was not in line with the convention. They have come back and changed it, but they have now said, "You will only have to be here 12 months from the date of your claim for asylum". The difficulty with that is if I have the strongest asylum case you ever did see and I am recognised within a fortnight, I will then be out of legal aid for over 11 months. I might have a welfare case; I might have a family case. We have seen a number of cases—including the Westminster case, where a child starved to death—where people lost their asylum support but did not immediately get on to welfare benefits; there was an interregnum where they had nothing. In that particular case, the mother had serious mental health problems, and mother and child died. It is the kind of case where, if you discovered that situation, as a lawyer you would want to challenge.

If your asylum case takes a long time to resolve and you have an appeal that takes more than 12 months, there will be no moment at which you are cut out of legal aid for family law purposes, for welfare, for housing—for all the things that all of us can look to legal aid for. It

seems to me that the Government have recognised the problem, but it has come up with a solution that does not work. I am hopeful that it can be persuaded, having recognised the problem, to look again at the solution.

Baroness Berridge: The impression I get from some of the evidence is that it is rare for a case to be considered and done within a fortnight, from start to finish.

Alison Harvey: It is unknown.

Baroness Berridge: They are lengthy proceedings. Can you comment particularly on the 700 people who come into the country under the Gateway project? Am I right in thinking that they already have refugee status? It is usually granted by the UN before they come in, so they are not within that process of having to apply once they are in the country. Do they then have 12 months from arriving at port?

Alison Harvey: They have 12 months from arriving at port. These are resettlement cases: people who have been in refugee camps, who are not safe in the first country of asylum and come to the UK. They will need to be in the UK for 12 months before they can access any benefit.

Baroness Berridge: They will not be submitting a claim for asylum, which starts the clock ticking.

Alison Harvey: They arrive as fully fledged refugees.

Baroness Berridge: But then it is 12 months. Okay.

The Chair: Thank you very much for your evidence today and your submissions. If you feel there are points we have not covered, please write to us.

Examination of Witnesses

Nick Hardwick CBE, Her Majesty's Chief Inspector of Prisons, **Laura Janes**, Acting Legal Director, the Howard League for Penal Reform, **Simon Creighton**, Prisoners' Advice Service, and **Nigel Newcomen CBE**, the Prisons and Probation Ombudsman

Q15 The Chair: Good morning. For the record, could you introduce yourselves, please?

Nick Hardwick: I am Nick Hardwick and I am Her Majesty's Chief Inspector of Prisons.

Laura Janes: Good morning. I am Laura Janes, from the Howard League for Penal Reform

Simon Creighton: Good morning. I am Simon Creighton, on behalf of the Prisoners' Advice Service.

Nigel Newcomen: Good morning. I am Nigel Newcomen, the Prisons and Probation Ombudsman.

The Chair: Thank you. A special thank you to all of you for rearranging your schedules. Mr Hardwick, I understand that you have to leave at 10.30. Please feel free to do that. Hopefully, we will be able to get through the questions for you before then.

Nick Hardwick: Thank you, Chairman

The Chair: Could I begin by quoting the words of the Lord Chancellor in describing the proposed prison law reforms? These are his words: "There will be no more legal aid available because you do not like your prison". Is this a description of legally aided prison law that you recognise?

Nick Hardwick: At the moment, it would be extremely difficult to get legal aid for something of that sort anyhow. The concern we have is anxiety about the effectiveness of the prison complaints system and in particular how that affects prisoners who do not have the capacity to make their own representations and those who are in very extreme forms of custody where it seems to me that that is part of the punishment they are receiving.

Consistent with some of the exceptions for the withdrawal of legal aid that the Government are making in other matters, those people in extreme custody ought to be able to have legal aid to challenge their placement there.

Simon Creighton: If I could add to that, when treatment cases were removed from the scope of public funding three years ago, the Legal Aid Agency issued guidance to lawyers, which said that cases that concern a complaint by prisoners about their living conditions are outside the scope of the contract, because they consider these cases to be suitable for resolution through the internal prison complaints mechanism. At the same time, cases involving people's sentences, the Legal Aid Agency said, should remain within the scope of finding, because they raise legal issues. The comments made by the Lord Chancellor were actually brought into effect some years ago. This is quite a big extension into areas that have always been recognised as being legal areas, rather than complaints because someone does not like their prison.

Laura Janes: In relation to children—many of whom are hundreds of miles from home: for instance, there are no prisons in the London area for vulnerable children at all—these actually do raise significant issues, but there is no funding for them at present. The Howard League has to make representations on issues like this for free at the moment.

Q16 Mr Buckland: I want to ask Mr Creighton a question, first of all. You have already touched upon one of the issues. The guidance issued in July 2010 indicates that the test that is applied is where treatment cases have no real chances of success. As I see it from the Government's consultation paper, they are now looking at the more familiar 50% chance of success. The Legal Aid Agency has granted assistance for only 11 cases since July 2010. What effect do you think the change in the threshold would have on future grants of legal aid for this type of case?

Simon Creighton: It is probably quite difficult to explain the whole background around treatment cases in a very short period of time, but if I could just try to explain it, the treatment cases provision was brought in and applications had to be made where there was a chance of success. The experience of all practitioners was that the Legal Aid Agency were telling them that cases they believed would fall within treatment, they could continue to do under sentencing. In fact, the vast majority of those continued under the old system.

The second point was that cases that fell under treatment and raised significant issues failed to be funded under what is called associated CLS work. As I say, without trying to take you into too many of the technicalities of it, the Legal Aid Agency said was that where these treatment cases raised significant human rights issues, they can be funded though an alternate stream of funding that is associated to the criminal contract. However, that funding will cease altogether, because it has to be associated to work within the scope of the criminal contract. In fact, there were unlimited cases you could start under the civil scheme as associated work, which now goes completely.

Mr Buckland: Obviously, we are talking about the criminal scheme. What is the situation regarding exceptional funding? Do you think that will be able to plug any gap—particularly where, say, Article 6 might be engaged?

Simon Creighton: The difficulty of exceptional funding was discussed this morning in terms of the complexity of the application form. It is going to be impossible for prisoners personally to access those forms, because they simply are not available to them in prison and they will need extensive help filling them out. On the question of whether that will then lead to grants if solicitors are prepared to do it, I cannot improve on the answers this morning.

However, I can give one example of a client of mine with whom we spent many hours completing the exceptional funding form, including a detailed advice from counsel saying the case had prospects of success. This was refused—it was probably about 20 or 30 hours

work—whereas an identical case to hers, which fell within funding because it happened to be before the changes, proceeded to the Court of Appeal because it raised a point of public importance. There is quite a big dysfunction between how the Legal Aid Agency assesses things and how the courts themselves are seeing things.

Q17 Mr Buckland: I want to move on to an issue Nick Hardwick has already raised about vulnerable prisoners. Nick, I read your very helpful written evidence, and I have seen the statistics relating to prisoners with a disability or mental health problem and concerns about the current complaints procedure. I am interested in the point you make that the Government might be open to a thematic inspection of that complaints procedure, which is something I warmly support. What do you think are the main deficiencies at the moment that need remedying in the complaints procedure, if we are to address the statistics you have demonstrated?

Nick Hardwick: There are a number of issues that we identify already through our inspection process. I have quoted some examples in our response. Prisoners' perception of the system and their confidence in it is crucial. People have to believe that the system is fair for it to have the necessary effect. A fundamental issue is that two-thirds of people who have had a complaint dealt with through the existing system do not think it has been dealt with fairly, and about one in 10 say they have been prevented in some way from accessing the complaints system. There are some particular prisons and types of institution where prisoners have said they were frightened to complain, because they thought reprisals would be taken against them if they did.

There are two examples of that. One is the Verne, which is a very unusual prison in some ways. The prisoners like being there for the most part, compared with the alternatives, but they told us that if they had concern they would not complain about it because they thought they might be shipped out. Another example that is even more worrying, looking at our

surveys of young people's experience of YOIs, is that one in 10 of those young people told us that they would not complain because they were frightened about reprisals.

On the question of specific instances and whether those concerns are justified, we do find examples of cases where, at its most basic, the reply to the complaint has not answered what the complaint is about. More seriously, we find an example of the member of staff complaining about the member of staff answering the complaint. There was certainly one example we identified where a prisoner had made a very serious complaint about an assault by a member of staff and that had been dealt with in a very cursory way. Certainly, we did not investigate the complaint, but we had a quick look at the records that applied and it seemed to us that it needed to be treated much more seriously than was the case. Those might be relatively isolated examples, but of course those are the things that get talked about; those are the things that undermine a prisoner's confidence in the system as a whole. Therefore, there is a feeling that if they do have a grievance they do not have a legitimate mechanism to address it.

I do not want to talk for too long, but could I give one other example that highlighted it for me? When we inspected Bronzefield women's prison, we identified a woman in the segregation unit there—a restricted status woman—who had been there for five years. In our report of that inspection, I described her treatment as "cruel and degrading", and I used those words advisedly. She was undoubtedly a woman who did not have the capacity to make a complaint about her treatment herself. The HM Prison Service would say that they were concerned about her treatment and perhaps did not necessarily agree with our concerns. It seems to me the problem is that if a woman in that very unusual but extreme situation is unable to get legal aid, what is her remedy? She absolutely could not deal with that situation herself; she would need someone to support her. I do not see how, without

access to legal aid, she could remedy what I believe to have been very extreme and inappropriate treatment.

Mr Buckland: Obviously, some of the statistics can be explained by the sheer fact that the prisoners do not like the outcome.

Nick Hardwick: Yes.

Q18 Mr Buckland: However, putting that to one side, you quite rightly mention the capacity of individuals. There is a problem, though, with those individuals accessing legal aid itself. Is the more fundamental question not about training and awareness or, in effect, retraining in a systematic way so that we have a complaints system that matches the criteria of Article 6?

Nick Hardwick: Of course, there are things that could be done first of all to resolve the need for a complaint in the first place and then to make a simple complaints system work more effectively. That would often be the best outcome. However, the Ministry of Justice's response to this is a bit disappointing, because they recognise that HM Prison Service struggles to identify and meet the needs of prisoners with disabilities—particularly mental health disabilities. I do not think there is an argument about that. Of course, they would want to improve it, but they are not going to be able to do that on a consistent and uniform basis. While those gaps remain, there is a real danger that prisoners are going to slip through them. It used to be the case that if, for instance, there was a governor's adjudication, under the existing system the governor had discretion to say, "I do not think this prisoner fully understands the proceedings. I can ensure that he is represented on this occasion and get legal aid for him". That discretion is going to be removed from a governor in those circumstances.

Mr Buckland: That is the Tarrant test.

Nick Hardwick: The lawyers here will correct me if I am wrong, no doubt. My understanding is that for the Tarrant case, where the adjudication might result in an extension to somebody's sentence, they can then receive legal aid support for that.

Simon Creighton: That is not quite correct.

Nick Hardwick: I will leave it to the lawyers. However, the fundamental point that governors and the people I meet in prisons agree with is that they recognise how difficult it is to identify and meet the needs of prisoners with disabilities—and mental health disabilities in particular. That means that despite their best efforts the ability of someone in that situation to access the system is going to be very difficult and compromised. Therefore, in the most extreme cases, there is a risk that things that are really important get missed and not addressed.

Simon Creighton: If I could back up Nick on the Tarrant point, although the Tarrant criteria remain for people to be represented in front of governors, one of the difficulties that was identified was that governors only allowed the grant of representation, the last time statistics were obtained, in 0.01% of cases. There were 20 out of 100,000, when the evidence went to the European Court of Human Rights. The governors are simply not capable of identifying these people. There is then also the issue of children.

Laura Janes: Yes. At the moment, if we think there is significant benefit to, say, a young person in asking for representation under the Tarrant criteria, we can make that case and explain it. We can send written representations to the governor saying why a young person is vulnerable and requires that representation under the principles. It is very rarely granted. I have a suicidal young woman who set fire to her cell to kill herself. It is being adjudicated. She is about to have a parole hearing, she is about to give evidence to a coroner's court, having witnessed somebody else commit suicide. If the Tarrant criteria do not apply then, in a case the police are saying is serious but are declining to deal with, when would they apply?

Q19 Baroness Berridge: The Lord Chancellor's proposals will retain the funding for sentence calculation where the date of release is disputed. However, categorisation and licence condition cases will no longer be funded. Are these completely separate issues?

Simon Creighton: Would you like to speak?

Nigel Newcomen: It is not really my forte.

Simon Creighton: The evidence, in our view, is that they are completely related. What is strikingly strange about the Lord Chancellor's comments about where legal aid will be allowed is that he has restricted it to where he believes the convention applies and has ignored where common-law standards of fairness apply. We have a history of common-law cases, for example in relation to Category A prisoners, that say that while you are a Category A prisoner you will not be released on parole licence, so it directly engages the liberty of the subject. That does not engage Article 5 of the European Convention on Human Rights, but in common-law engages liberty. Whilst a prisoner remains a Category A prisoner, they cannot progress towards release. I would say that is directly related to the length of time they will spend in prison. It is something that the complaints process and the ombudsman cannot properly address. For example, if a Category A prisoner says, "I think I am being treated unfairly, because the psychologist who prepared a report on me has never interviewed me and her conclusions are unfair; I would like to challenge this", it is not within the remit of the complaints process to call in an independent psychologist to deal with that. It is not within the remit of the ombudsman to commission an independent psychologist to get a different view. This sort of thing, in relation to people's progression in their sentence, happens all the time.

The only other quick observation I would make on this is that the European Court of Human Rights, in the case of James last year, said that a failure to allow prisoners to attend offending behaviour courses can result in a breach of Article 5.1 of the convention, because

it renders their detention arbitrary. The comment that was made by the Lord Chancellor about people complaining about not liking what prison they are in will very often directly relate to their ability to attend a course that is designed to rehabilitate them and move them on. If the course is not in your prison and you are saying, "I desperately need to go to X prison to do that course", that is not about a transfer; it is about rehabilitating yourself and progressing through your sentence. That is all expressly excluded, but it actually relates absolutely directly to sentence calculation, in effect, and Article 5.1.

The Chair: I get a sense that this is very common.

Simon Creighton: It is extremely common, partly because courses come in and out of scope at different prisons. They are moved around; new courses are started; they become overcrowded. It is very common.

Baroness Berridge: I know they have sentence plans, but was the specific case there relating to IPP prisoners? We are slowing resolving the IPP situation, because there are a lot of them. Once that is resolved, does the ability to go to another prison to get a course impact other prisoners' ability for release?

Simon Creighton: The first case that looked at that domestically was way before the IPP sentence came in. It was a case called Cawser that related to the old automatic life sentences, but it is common for people serving all indeterminate sentences, whether mandatory life or IPP. It is also common for people serving determinate prison sentences.

In some ways, the Government's argument in the first challenge was that we should not prioritise people serving life sentences, because the indeterminate people will be released, and if they have not done their courses they will be released as a much higher danger, so we really ought to prioritise them. Those people serving determinate sentences desperately want to do the courses and cannot, and they will be released anyway as a danger to the public.

Laura Janes: If I could add to that, there is an extreme situation for young people. For young adults, there are only two prisons in the entire country that run sex-offender treatment programmes. There are only two. For children, there is only one accredited programme, and at the moment it is only running in one prison in the whole country.

Q20 The Chair: What none of you has mentioned, of course, is the critical role in all this of the National Probation Service. There are, from time to time, allegations by prisoners that the probation service is not coming up to the mark in what they should or should not be doing to help them. Is that the case?

Laura Janes: Yes.

Simon Creighton: That is absolutely right, and I can give you many examples. One is a woman who was convicted of murder for a mercy killing. It is the only acknowledged conviction for a mercy killing. Her probation officer was constantly assessing her as a high risk of harm, even though the Lord Chief Justice, who had heard her appeal, said it was an exceptional and unique case and that she was very low risk. The probation service would not alter their opinion on how she should be treated.

It is a very good point, because the complaints process that prisoners can access is an internal prison complaints process. Each probation service has its own complaints process, which involves the prisoner being able to have contact outside of the prison with that probation service and trying to understand what that is. There is no form on the wing they can fill in as there is for the internal prison complaints.

Baroness Berridge: Can I just clarify your answer? Can you complain about the probation service's handling of your case through the prison complaints system? Is it a different system?

Simon Creighton: It is a different system. Each probation system has its own complaints system.

Q21 Simon Hughes: This is a supplementary question. Welcome to the witnesses. I have known two of them professionally for quite a while, and I have travelled in a delegation led by Mr Hardwick in one of his previous responsibilities. Can I just pursue the categorisation issue? I have lots of categorisation cases that come my way as a local MP. My first question is this: do you accept that, of itself, categorisation raises human rights issues? It is not just the link to sentence and the length of the sentence? Secondly, is it a matter that necessarily or always would need legal representation as opposed to other forms of advocacy, including MPs but in prison as well?

Simon Creighton: The courts themselves have said that in many cases categorisation does raise human rights issues. In the higher security categories particularly, Category A has significant restrictions on your ability to have contact with the outside world and on your living conditions. You have to move cells very regularly, you can be checked during the night, and all your visitors have to be approved. There are very clear links there and the courts have outlined those.

Nigel Newcomen: Perhaps I could add a small footnote to that. The ombudsman does actually investigate cases where categorisation has been brought to my attention. In fact, it is the fifth most popular complaint area. The issue obviously does not detract from the fact that the category you are under has significant human rights implications. Nonetheless, my office is routinely investigating such issues.

Simon Creighton: Distinctions have been drawn by the courts between the impact of categorisation decisions, and that affects how legal aid is already available. For example, for Category A, there is a formal annual review process, which is like a mini parole process, where the prisoner gets a dossier of reports, can make representations and gets a written decision. For other categories—say, B to C—it is a much more informal process, and the guidance is that prisoners should only get legal advice if they are refused, whereas with

Category A or somebody being taken out of an open prison the guidance is that they are allowed assistance and advice with that right from the outset because it raises a legal issue.

The Chair: How significant in that process is the role of a Member of Parliament representing his or her constituent in intervening in that categorisation process?

Simon Creighton: Historically, prisoners have written to their Members of Parliament all the time to get advice on these things, but it is where there is a deficit or gap in legal advice. Members of Parliament will very often help people take up cases and write to the prison authorities, and the response will be, "We have gone through a process, thank you very much, the prisoner understands what the process is".

Nick Hardwick: This is important. I should imagine that one of the consequences of these changes is you will be getting a good deal more correspondence yourselves from prisoners. Sometimes, what goes wrong is not that a decision has been made after due consideration that the prisoner disagrees with; it is that no decision has been made at all and things have been allowed to drift and their case has got to the bottom of the pile.

The MP's letter gives the system a kick up the backside and then gets it moving again. It should not take an MP to do that. However, it often does. That will be where prisoners are kind of stuck in the system; their re-categorisation decision is overdue. If it is not because of the result of any decision but because of inefficiency, prisoners will come to MPs for help.

The Chair: Without going into the detail of particular cases, it seems to be common that probation officers are not properly supervised and not scrutinised in what they are doing and how they are performing or how they slide. It is only as a consequence of a prisoner writing to a Member of Parliament that there is any recourse for justice at all for those prisoners.

Laura Janes: There is a huge problem at the moment with the whole of HM Prisons Service and the National Probation Service being under immense pressure. There are a lot of

misunderstandings about how these processes work. Actually, sometimes young people are completely wrongly advised about what they are entitled to. It is not always about making complaints; it is sometimes about being very constructive and making sure that everybody understands what the legal rights and entitlements are, and making sure they get on and do it.

Q22 Simon Hughes: If I could, I would add a postscript to your set of questions. It would be really helpful if our witnesses could, if they have a moment later, drop us a note on their assessment of the utility and relevance of MPs interventions. I sense that there is no common pattern across prisons, and different governors respond in different ways. There has been a change in the way they are regarded as triggers for specific requests such as categorisation. If that could be done, it would be really helpful.

Can I ask either Ms Janes or other colleagues the broad question about advocacy services rather than legal representation in the prison sector? I will just put the circle of questions. Are the new advocacy services sufficient? Are they compliant with the right of access requirements under Article 6? Will they, can they or do they adequately deal with treatment issues? Abuse issues in particular are obviously the most acute form of that. How in particular do they impact on resettlement issues for young offenders? I am trying to ask it neutrally, because it seems to me that if you can have good non-legalistic systems, we ought to big them up and encourage them, and we ought not to be arguing for lawyers to be everywhere from the beginning every day for a prisoner, because that is unrealistic and probably not a very clever way of doing it.

Laura Janes: Absolutely, yes. It would not be a good use of our time. Actually, advocates do a fantastic job. At the Howard League, we work very closely with advocates. I personally have provided some training and information to advocates over the years. They

are not a new service. It is new that there is a contract that is solely now administrated by Barnardo's. The advocacy system has been in prisons for several years now.

In relation to whether or not they are sufficient, I have to be clear from the outset: they provide an entirely different service from the service that legal aid lawyers can provide. I will often suggest to young people that they talk to an advocate first. Advocates may help young people in an appropriate case to put in a complaint, to talk to prison staff, to get their voices heard, to go and attend a hearing, for moral support, before an internal adjudicator, for instance. They are not legally qualified; they are not legally trained. They try to educate themselves to understand the difference between things that are beyond their remit, as it were. I made inquiries today, and they are really are overstretched. For 20 children, they can expect one hour of advocacy between them a week. That goes down to three minutes per child. We are not talking about something that is capable of replacing or substituting good legal service in terms of actually looking at what rights and entitlements are.

You mentioned resettlement. At the Howard League we now run an advice line for children and young people. We receive hundreds of calls. Of those, about a third are by or on behalf of young people who simply have nowhere to live. That will mean that they may not get their early release, because most young people have an option to be released early on a tag or they will be released at the mid-point to homelessness. We all know that reoffending rates amongst young people are 70%, and a lot of that is because they do not have safe, suitable accommodation and the support to go to. It is great if an advocate can help raise the issue, but the important thing is the legal rights of every child in this country as in the judgment in G v Southwick, which I know is your area. Baroness Hale made absolutely clear in the House of Lords' judgment there that no child in England and Wales should want for a suitable package of accommodation and support. That is critical to reoffending and that is an absolute legal right there.

For our £200 fixed-fee cases, we are often routinely able to explain to local authorities those duties and to make sure they comply with them. On the whole, they do. We do not have to issue judicial reviews on this issue anymore. We do not often even have to threaten to do it. We just remind them of their legal rights and duties, and that is not something that an advocate is able to necessarily do.

Nick Hardwick: If I could just add to that, certainly in my eyes we have seen advocates do very good work, particularly around resettlement—helping the boy or girl concerned get access to the services they will need when they leave. For instance, for a looked-after child, the home local authority has an obligation to provide accommodation and actually pursue that and to try to make sure it happens. However, when push comes to shove, if that local authority is unwilling to do it, in the end the advocate has no powers to make it happen, and it is at that point you might want to say, "If you do not do what we want, we will take you to court". The lawyer can do that, and it might get the result Laura is talking about.

Certainly advocates are not necessarily always advocating on the child's behalf. Sometimes it is about explaining to the child what the consequences of the decision that has been made about them are or what they need to do in response. It is those sorts of things. That is not the same as saying that in the end, "This child has some rights here that, if you do not accept, we will take you to court to enforce". An advocate cannot do that.

Laura Janes: One of the important roles advocates play is facilitating that access to justice. That is especially important as the legal services officers, which were a mandatory requirement, have gone from young offender institutions. They actually dovetail very nicely with us, and that is a very important role.

Nick Hardwick: In some adult prisons, the introduction of advocates would in some way be very helpful. For a lot of things, it might be helpful, but it is not an either/or situation.

Laura Janes: If I could add one thing, there is a real danger here. Something can seem fixed on the surface: a child might have accommodation, but a lawyer may be able to appreciate that the accommodation is unlawful under the Housing Act and they are losing their entitlements to leaving care rights, which would provide them with support and care until they are 21. There is a real danger that quick fix solutions may result in lost rights.

Q23 Baroness Berridge: How does the Prisons and Probation Ombudsman respond to cases where your decisions are not being implemented? Will this be impacted by these proposals? I have a couple of supplementary questions at the same time for you. Do you think your ombudsman services are able to deal with the serious disciplinary cases that currently get legal representation? Do the Government need to put anything further in place to allow you to carry out your duties more efficiently?

Nigel Newcomen: I will start at the last supplementary, if I may, because my representations to the Ministry of Justice regarding the legal aid changes were fairy basic and blunt, and they suggested that one of the difficulties that I face in potentially mopping up some of the consequences of these changes is that I am already a demand-led organisation with very significantly increased demand and significantly reduced resource. In response to your last point, I would venture to say that recognition at ministerial level that potential pressures are being placed on bodies like mine if these changes go forward is perhaps necessary.

On the first question, I can only make recommendations, as you know. I do not have a statutory footing that allows me to impose any formal decision of the kind of definitive nature that a court process would allow. Nonetheless, the recommendations are, as you are probably are aware, almost always accepted. In a thematic of recommendations I undertook recently, 99% of recommendations in the complaints context and 96% of recommendations in the death in custody context are accepted. That then begs the question of whether acceptance means action. As somebody who spent eight years inspecting prisons prior to

becoming ombudsman, I am very well aware that there is a gap between promising and doing.

The most I can say on that score is obviously having moved from the inspectorate to the Prisons and Probation Ombudsman's office, I would be very keen to work with Nick Hardwick and his staff to ensure we get some clarity as to areas where they consider that our recommendations have not been taken up. That is easier in the context of a relatively smaller number of deaths in custody, but we are working in tandem to try to assess whether there has actually been action. Indeed, to be fair to the National Offender Management Service, it is obliged to provide us with an action plan to tell us how it is going to set about putting the recommendation into practice. However, there will remain a question as to how far a body that can only make a recommendation can guarantee that action will subsequently follow.

With regard to your other supplementary, which related to whether my office can look after serious cases and get involved in those cases where disciplinary action may be recommended, for example, that is exactly my expectation and aspiration. It is a struggle because of the volume of cases and the relatively small number of very serious cases that I have to deal with, but the first two annual reports I produced give examples both of the approach I am taking, which is to try to target resources on investigating serious cases but also be firm and very direct as to what consequences should follow.

For example, there were some cases which the Howard League had brought to our attention. We recorded those in the annual report that was published in September. We formally recommended disciplinary action, and that disciplinary action has now been taking place. There are occasions when my office can take on significant, detailed, thorough and robust investigations, and can demand and expect that the recommendations that we make should be taken forward.

As a footnote, if I may, one of the other features I am trying to bring to the ombudsman's office is trying to ensure that lessons are learnt. There is a whole agenda now that I have tried to construct on learning lessons. We have materials and publications looking across investigations to see whether the serious cases and other, more mundane cases can be headed off at source, if you like, by learning the lessons, so that complaints are not required in the first place.

Baroness Berridge: When you are investigating those serious complaints that are made by prisoners, within that process as it stands now will you be dealing directly with the prisoner or will you be dealing with a legal representative for the prisoner or the prisoner and an advocate.

Nigel Newcomen: Generally, it is the prisoner.

Q24 Baroness Lister of Burtersett: Some of our evidence, including from the Prisoners' Advice Service, raised concerns about mothers and babies. I wondered whether you could say a bit more about what the issues are here and, in particular, how prisoners with babies who may be being separated against their will are able to appeal against these decisions. In your view, will these provisions satisfy Article 8?

Simon Creighton: This is one issue that has been flagged up right from the outset. Effectively, legal aid disappears for mothers going into mother and baby units or being excluded from mother and baby units. This is one of the most serious concerns that has been raised. The problems that are engaged cannot properly be resolved by the prison complaints system, because they will often involve decisions by outside agencies such as the social services. They often require very immediate emergency action. For that reason, even if they are able to make some form of internal complaint and it does not resolve it in the way they wish it to, alternative sources of redress such as the Prisons and Probation

Ombudsman simply do not have the speed to deal with something where you are talking about a separation taking place overnight.

We are also dealing with people who are in an incredibly vulnerable position. It is often somebody who is about to give birth or has just given birth in a custodial setting and may be told that they are not allowed to remain with their baby because of their behaviour, which may be linked to the whole range of vulnerabilities they have in custody. The concept that these people are in any way capable of presenting their own case is an absolute fiction.

The only way these cases will now progress in any sense is if the mother in that situation is miraculously somehow able to find a solicitor that can take on a judicial review without having done any previous preparatory work and will then suddenly start judicial review proceedings without any background to the case, if legal aid is still available for the judicial review.

There are very serious concerns about breaches of Article 8 here. There are concerns about breaches of Article 6 in the fair procedures leading up to that. In all the evidence that you have been given, there are many examples of situations where mothers have been separated. Two of them in the evidence involve people who would probably fail the residence test. One was a Moroccan national who faced false allegations that led to her being told to be separated. Her solicitors were able to intervene through representations without the need for judicial review, but that involved obtaining paperwork and information from other agencies to counter the allegations. One was from a Spanish woman whose baby was born with disabilities, and she was being told that she would be separated, because if she was repatriated to Spain the Spanish authorities could not accommodate her and the baby together. In fact, we were able to establish in a very short space of time that Spain had much better facilities and the authorities were prepared to allow them to remain together

for many years. It stopped a child with disabilities being placed into care in the UK, in a foreign country, while the mother was repatriated.

All that was done for a fixed fee of £220, whereas now we are being told that would have to be forced through judicial review if it was still available at the cost of many thousands of pounds to the Government.

Baroness Lister of Burtersett: In effect, you are saying there will be no effective appeal.

Simon Creighton: There is no effective appeal, partly because of the vulnerabilities of the clients and the outside agencies, because legal aid has just gone completely for this.

Laura Janes: I might add that there are many girls with babies in the criminal justice system. There is no standard procedure for those young women, and their situation is of course extreme. In the past, we have been able to help them very effectively.

Simon Creighton: I would just recommend to this Committee the judgment of the Supreme Court that was delivered two weeks ago in the case of Osborne and Booth v the Parole Board in relation to parole. Lord Reed gave the unanimous decision on behalf of the entire Supreme Court.

There were two comments that are very relevant, because it is in a prisons context. The first was that "procedures which involve an immediate cost but contribute to better decision-making are in reality less costly than they appear". That is very true of this. In terms of prison unrest, he said, "The potential implications [of unfair decision-making] for the prospects of rehabilitation, and ultimately for public safety, are evident". This is the Supreme Court looking at these types of restrictions.

Q25 Simon Hughes: Magistrates' courts have duty solicitors. Has any thought been given as to whether each prison should have a duty lawyer who is there for the prisoner and nothing to do with the prison authorities?

Nick Hardwick: There used to be a system of trained legal officers in prisons who were not lawyers but prison officers who had received legal training. That has now been abandoned. You do not even have that. Far from introducing a kind of duty solicitor scheme, it is heading in the other direction.

Simon Hughes: Would it be a good idea to introduce such a scheme?

Nick Hardwick: Yes, it might well be an answer. I have not given it much thought, but it would certainly be something worth looking at.

The Chair: Thank you very much. This has been a most productive and illuminating evidence session. If you feel that there are points that we have not covered, please write to us, in particular on Mr Hughes' point about the role of Members of Parliament, which we had not thought about until this moment.

Simon Hughes: Until you thought about it, Chairman.

The Chair: Until I thought about it, yes. Even though I have thought about it, it is an important matter. Could you reflect on it and write to us about the interventions of Members of Parliament in this process? Thank you very much.