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GENERAL COMMITTEES

Public Bill Committee

POLICE, CRIME, SENTENCING AND COURTS BILL

Third Sitting

Thursday 20 May 2021

(Morning)

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Monday 24 May 2021

The Committee consisted of the following Members:

Chairs: Steve McCabe, † Sir Charles Walker

† Anderson, Lee *(Ashfield)* (Con)
† Atkins, Victoria *(Parliamentary Under-Secretary of State for the Home Department)*
† Baillie, Siobhan *(Stroud)* (Con)
† Champion, Sarah *(Rotherham)* (Lab)
† Charalambous, Bambos *(Enfield, Southgate)* (Lab)
† Clarkson, Chris *(Heywood and Middleton)* (Con)
† Cunningham, Alex *(Stockton North)* (Lab)
† Dorans, Allan *(Ayr, Carrick and Cumnock)* (SNP)
† Eagle, Maria *(Garston and Halewood)* (Lab)
† Goodwill, Mr Robert *(Scarborough and Whitby)* (Con)
† Higginbotham, Antony *(Burnley)* (Con)
† Jones, Sarah *(Croydon Central)* (Lab)
† Levy, Ian *(Blyth Valley)* (Con)
† Philp, Chris *(Parliamentary Under-Secretary of State for the Home Department)*
† Pursglove, Tom *(Corby)* (Con)
† Wheeler, Mrs Heather *(South Derbyshire)* (Con)
Williams, Hywel *(Arfon)* (PC)

Huw Yardley, Sarah Thatcher, *Committee Clerks*

† attended the Committee

Witnesses

Campbell Robb, Chief Executive, National Association for the Care and Resettlement of Offenders

Helen Berresford, Director of External Engagement, Nacro

Sam Doohan, Policy Officer, Unlock

Dame Vera Baird DBE, QC, Victims' Commissioner for England and Wales

Public Bill Committee

Thursday 20 May 2021

(Morning)

[Sir Charles Walker *in the Chair*]

Police, Crime, Sentencing and Courts Bill

11.30 am

The Chair: I remind hon. Members to observe physical distancing. They should sit only in the places that are clearly marked, and it is important that Members find their seats and leave the room promptly to avoid delays for other Members and staff. Members should wear face coverings in Committee unless they are speaking or medically exempt. Finally, questions to witnesses should be limited to matters within the scope of the Bill, and we must stick to the timings in the programme order that the Committee agreed on Tuesday—we have plenty witnesses and only a finite amount of time. There is one other issue: we have some problems with the cameras, so we can see and hear the witnesses, and they can hear us, but they cannot see us.

We will now discuss the lines of questioning to this morning's witnesses before we start the session in public.

11.31 am

The Committee deliberated in private.

Examination of witnesses

Campbell Robb, Helen Berresford and Sam Doohan gave evidence.

11.32 am

The Chair: I call the first panel of witnesses. Campbell Robb is the chief executive of the National Association for the Care and Resettlement of Offenders, and Helen Berresford is the director of external engagement for that organisation, so we have two from NACRO. Sam Doohan is policy officer at Unlock. I would like each witness to introduce themselves very quickly so we can crack on with questioning.

Campbell Robb: I am Campbell Robb, chief executive of NACRO for the last two years. I am really pleased to be here—thank you for the invitation.

Helen Berresford: I am Helen Berresford, director of external engagement at NACRO. Thank you.

Sam Doohan: Hi, I am Sam Doohan, and I work for Unlock. We are a charity that focuses on the challenges of people with criminal records.

The Chair: Great. It is nice that we can hear you in the ether. We cannot actually see you either now, so you cannot see us and we cannot see you. We would quite like to see the witnesses if that can be organised. Who would like to ask the first question? I call Sarah Champion.

Q153 Sarah Champion (Rotherham) (Lab): It is always a pleasure to serve under your chairmanship, Sir Charles. I have two questions. Will the changes in the Bill, particularly around youth offending, help early intervention and prevention, and reduce reoffending?

Sam Doohan: There are some things in the Bill that will help to some degree, but there are some omissions. A good deal of the youth offending regime, with regard to criminal records, will stay the same. Larger changes in the Bill, particularly around cautions, are not being made for young offenders, so they will face the same regime as now and will not receive any benefit.

Another critical omission is that once the Bill passes it will still technically be possible for someone to commit a crime as a child, be convicted after they turn 18 and then receive a criminal record as if they had committed the crime as an adult. We are very keen to see some change to that. We firmly believe that we should stick to the principle that young people deserve not only a second chance but special treatment and consideration.

Helen Berresford: While there are some things in the Bill that we welcome in terms of young people—for example, the changes to remand, which will make a really big difference to what has been an ongoing issue for a while—we have a number of concerns about some of the proposals, which will likely increase the number of children and young people in custody and the time they spend in custody, with no evidence of the impact that that will have on either reducing crime or reducing reoffending. We have seen significant progress over recent years with the decrease in the numbers of children being sent into custody. That has been a really positive story, but we are very concerned that a number of the proposals in this Bill will reverse that and increase the number.

Q154 Sarah Champion: Which proposals specifically? Have you got them there to rattle off?

Helen Berresford: Some of the proposals will increase the sentencing, such as some of the proposals around sentence length and the starting tariffs for murder, for example, and some have implications for increasing the numbers, such as the changes to detention training orders. There are a number of different proposals that will likely increase the numbers of children and young people going into custody.

Campbell Robb: I would add that, overall, some of the welcome things around problem-solving courts and some of those things could be extended into the youth, and we need to see more of that. I would like to see some more discussion during the passage of the Bill about some of the non-custodial approaches that could be introduced in the youth estate, as well as in the adult estate.

Q155 Sarah Champion: Thank you. Lack of employment is a major barrier to rehabilitation after release from custody. Do you think that proposals to reform the criminal records regime go far enough to address that?

Sam Doohan: To a large degree, Unlock would say that we are happy with the direction of travel, but we do not think that the Bill in its present form goes far enough. There is something of a split in the criminal records regime, essentially between those who go to prison and those who do not, and we are happy to see that the majority of people who do go to prison will see reduced spending periods for their convictions. However, we are still quite unhappy to see that some people will still disclose for life. We believe that needs quite close attention paid to it.

Further down the regime, even when we talk about what in the grander scheme of things we might think of as quite minor offences, the criminal spending regime around road traffic offences, and speeding in particular, is radically out of step with everything else in the rest of the spending regime. People end up having to disclose, say, a speeding ticket for five years, which is longer than if they had gone to prison for a year. We think that not only does this need to change and be brought into step, but that on the whole we should emphasise not only faster spending but fewer situations in which people legally have to disclose, and a higher standard of demonstrable need to discriminate on the basis of a criminal record.

Helen Berresford: We would very much agree with that. At Nacro, we run a criminal records support service, and we receive thousands of inquiries every year from individuals who are trying, and often struggling, to navigate a very complex system. We very much welcome the direction of travel and the proposals in the Bill to reduce that burden, which is also felt by employers. That is a really important part of this: lots of the employers who we support struggle to navigate the system themselves, and that can lead to them being more risk-averse when it comes to employing people with criminal records.

I agree completely with what Sam said. There are some anomalies and outliers here, and this Bill is a real opportunity to deal with them. Motoring convictions is a great example of that, and I think that can be fairly easily dealt with. There are a couple of other points that come up in this Bill, such as the new out-of-court disposals and the diversionary caution. A simple caution previously did not have a disclosure period, and I think putting one in only increases barriers, which is contrary to the Government's direction of travel. I think there are some real opportunities to go further and tidy that up, but we very much welcome the direction.

Campbell Robb: I have nothing to add—*[Interruption.]*

The Chair: Sorry, Mr Robb, we did not hear that because we have a bell going off in our ears. Could you repeat that?

Campbell Robb: I hear the bell ringing. I was just agreeing with both of them; I have nothing to add.

Q156 Mr Robert Goodwill (Scarborough and Whitby) (Con): As always, it is a great pleasure to serve under your chairmanship, Sir Charles. What we have just touched on is central to the way that we can try to rehabilitate some offenders. There is a vicious circle, which I am sure most Members of Parliament will have come across, where we are trying to rehabilitate a young offender and get them into work, but the cost of the disclosure rules often put the employers off or make the person have to return to crime—that is probably not a good way of putting it, but they are forced into criminal activity because they cannot get gainful employment.

Have we got the balance right? To what extent is an employer entitled to know somebody's criminal history? Can we do more to work with employers to get them to understand? Companies such as Timpson, for example, have been very good at taking on people who have criminal pasts, and rehabilitating them. Does the Bill move in the right direction on this? Does it protect employers from potential criminal activity from employees and does it make it easier for people to get into work?

Sam Doohan: The direction of travel is certainly positive. At the same time, we do not think the balance is right yet in the overall rationale for employers at the basic level, who are not obliged to ask for a criminal history and have a free choice whether they do or not. The fact that employers can ask because they are nosy is not fair to applicants at any level.

A 2001 study commissioned by the Department for Work and Pensions said that a lot of the problems around employers asking come from the recruiter and the person who chooses to ask. The study broke that down across several categories, including age and position within a company. There are various factors that make people more willing to ask and more willing to discriminate if people disclose a criminal past.

Another factor that came out from that was that employers would, if given scope to do so, claim that just about any job you can imagine had some tangential relationship to someone's previous criminal history. Perhaps in a very loose sense, that could be argued to be true, but we see driving convictions being held against people in jobs that do not involve driving, or people with a driving ban, who cannot legally drive, having that conviction held against them for pushing trolleys in the car park in Asda. There is some rationale in allowing employers to ask, but we do not think the balance is there yet. It is being used just to discriminate.

Helen Berresford: The balance point is a really important one. We work with employers as well, and understanding their needs is a really important part of that. For a lot of the employers we have supported, it is about transparency and knowing what they can ask and understanding that point. The system is so complex and arbitrary at the minute, and the transparency is not there, so the faith and trust in the system are not automatically there. We have to get to a point where it is transparent, easy to navigate and much simpler.

Sam's point about motoring convictions is absolutely right. We have supported people who have had job offers withdrawn because an employer has come across their motoring conviction, which has absolutely nothing to do with the job that they would be doing. It is about relevance for the job. That is a really important factor.

Campbell Robb: As both my colleagues have said, this is a step in the right direction. There is more we would like to see in the Bill. The other point is that, when we get through this, whatever the new regulations are, the Government, working with ourselves and employers, need to really think through how we talk about this. We need to run campaigns and explain to employers and work with businesses and business organisations, so that we do not just all talk about Timpson—which is brilliant at this and does a very good job, but we want to have dozens of organisations. We know they want to do more in this space, but feel put off and worried by the complexity that comes with it. We would like to see a bit more in the Bill, but we also want to work afterwards with the Government and employers to make the measures work better.

Q157 Mr Goodwill: In our farming business, we once hired a young man and we did not know until he started work that he had just come out of a young offenders institution. He was a lodger in my mother's house. He was absolutely fantastic, but if we had known, we may not have hired him. I genuinely do not know the answer

[Mr Goodwill]

to this question, but to what extent are probation service staff, who probably know more about these offenders than anyone else outside their own family, able to engage with employers to help them make that decision, or is that not in the probation service's remit?

Campbell Robb: We work every day with thousands of people who are coming out of prison, trying to settle them. We work with employers across the country to find either permanent or short-term opportunities. Criminal records are just one barrier to many people who are trying to get work when they come out of prison. It is about training and education, rehabilitation in prison and what is available then, and suitable accommodation. There is whole range of factors.

The new changes to the probation system, which I know the Justice Committee has looked at recently, are hopefully opening up some opportunities for all of us who work in this space, to provide a more rounded service. These changes to criminal records will help a bit, but they will make a big difference if we can go just that bit further.

Q158 Maria Eagle (Garston and Halewood) (Lab): Can I ask our witnesses about problem-solving courts? We have had them before. In fact, when I was the Minister of State for Justice and Equalities before the 2010 election, we had a number of different problem-solving courts, such as mental health and drugs courts. My recollection is that they worked very well, saved the system a lot of money in the long run and helped individuals, but they cost a bit more to operate. My experience of them was that they were a good thing, but they were all abolished during the austerity years by the coalition Government. So, we know they work. Do you agree with that assessment? Would you like to see problem-solving courts simply rolled out, so that we can make the savings that they make for individuals sooner rather than later?

Campbell Robb: It is simple: the answer is yes. The commitment in the Bill to community sentences, treatment requirements and problem-solving courts is a real step in the right direction for non-custodial, rounded approaches to sentencing and rehabilitation. When we work with problem-solving courts in the areas that have them, our experience is that they do work. We need to provide that rounded approach to non-custodial sentences, which is to do with treatment, problem solving, a good probation service, training and development. In short, the answer is yes. These are a good thing. We would like to see more of them. The evidence is generally positive, both for pathways out of addiction and into employment, and for reducing reoffending. We look forward to working with whoever is providing them to really get that.

The second thing to add is about better awareness among judges about the success of these courts and how to use them. When the Bill is passed, how do the Government intend to work with the judiciary and other providers to make sure problem-solving courts become more available and better used?

Q159 Maria Eagle: Can I ask Unlock if they have anything to add?

Sam Doohan: While we talk about the further end of the criminal justice system, rather than the sentencing part of it, one thing that we see as being particularly positive about problem-solving courts is that while, yes, they are potentially more expensive up front, they have a much stronger ability to head off reoffending, which saves money further down the road in potential future court cases and prison sentences.

We see it as a false economy to say that problem-solving courts cost more in the immediate term. The Government's White Paper, which led to this Bill, put the cost of reoffending at something like £18 billion—a huge amount of money. For relatively low-level offences that, in the grand scheme of things, are typically associated with reoffending over a more protracted period, if there is no intervention, that extra money is well worth it. We just have to invest it up front and make sure that the solutions actually work.

Q160 Maria Eagle: Would you like to see problem-solving courts rolled out without being piloted first? Why pilot them when we know what their benefits are?

Sam Doohan: Certainly, in the present climate, we would probably see a pilot as a political necessity. However, we would expect a pilot to be very positive. We see no reason why it would not be. It would be nice if we could make them happen tomorrow—have ring-fenced funding and have some long-term commitment to them—but if it takes a year or two years to prove the point and make them a permanent fixture of the justice system, that would be more positive in the long run.

Q161 Maria Eagle: Thanks. I just want to ask about sentencing and the wide range of proposals in the Bill. Have you detected anything in the Bill that you think will contribute to sentence inflation and will mean that, inadvertently or otherwise, people end up with longer sentences?

Campbell Robb: The evidence from the Bill suggests that most of the approach in it will lead to longer sentences and people in prison for longer. It is also disappointing that there is nothing in the Bill that tackles the issue of the 30,000 short sentences of under six months that are given out every year, which cause significant damage to the individuals involved. We understand the desire of the Government to meet what it feels is the public's desire to see longer tariffs for some crimes. However, we could have done so much more, particularly on short sentences, to really think through who is ending up in prison, why and for how long.

Q162 Maria Eagle: I was not really asking you to tell me whether the provisions for longer sentences will create longer sentences, but whether there is anything else in the Bill that might inadvertently end up creating sentence inflation.

Campbell Robb: I misunderstood, sorry. On treatment orders and the others types of things that we have just been talking about, if they are too harsh or too difficult to pass, or if people have been set up to fail, there is a danger within those that if they are not done properly with the individual and they do not understand the consequences of what they are doing, people could end up back in prison for failing on a relatively minor breach of a treatment order. It is hard to say there is evidence of that, but there is some concern that that might be the case. I hope that answers your question.

Maria Eagle: Yes, certainly.

The Chair: I will bring in the Front Benchers in three minutes. Mr Dorans, do you want to ask a question?

Allan Dorans (Ayr, Carrick and Cumnock) (SNP): Nothing at the moment.

The Chair: Are all the Back Benchers content and happy? Mr Levy, I did not see you hiding behind the Perspex. You have three minutes before I bring in the Front Benchers.

Q163 Ian Levy (Blyth Valley) (Con): I will be very quick, Sir Charles, and I thank you for the opportunity. May I ask the panel for their views on what role they see charities playing in youth offending?

Campbell Robb: Central is the answer. We as an organisation have been working in this space for nearly 50 years, and we feel that the partnership between the new probation service and organisations such as ours, both locally and nationally, is absolutely essential. We need local partnerships in sentencing and pre-sentencing, and in problem-solving courts and the treatment centres. Local charities and national charities should be working together with the statutory services, providing a wraparound—ideally, to stop people offending in the first place.

When people first hit the criminal justice system, we need to bring in organisations such as ours and others in order to be able to work with people and to keep them out of it through education, training and apprenticeships that we can offer at a whole range of levels. When they are in the system, it is about making sure that they get out as soon as possible, and that they get the rehabilitation and education they need when they are in it. Charities are definitely a part of the process, and we would want to see relationships between charities supporting this work.

Ian Levy: Thank you. I will leave it at that, because I know we are conscious of time.

The Chair: You have more time. Do you want to hear from any other witnesses?

Ian Levy: Yes, if we have time.

Sam Doohan: I would certainly say that there will continue to be, and there should continue to be, a strong partnership between Government and the charitable sector, but it should also be clear in Parliament's mind that Government services for probation, youths and all manner of things should not take as read that the charitable can fill in any shortfall. It is important that we work together—we can make more of a difference together than we can separately—but things such as, for example, informing employers about criminal records and the risks associated with hiring someone who has a criminal record, which is the single biggest piece of information that changes an employer's mind about whether to hire people, are at the moment done almost exclusively by the charitable sector. We are happy to do that work—it needs to be done and it is important—but having more resource and focus from the Government to ensure that message gets out far and wide would be extremely valuable on a number of levels.

The Chair: Thank you very much.

Q164 Alex Cunningham (Stockton North) (Lab): It is a pleasure to serve under your chairmanship, Sir Charles. Helen, in one of her earlier comments, said that she has some concerns about the spending periods around the system of cautions. Do the panel members have other concerns about the new two-tier system of cautions?

Helen Berresford: I am happy to go first. You are right that we are concerned about the disclosure period. One of the other points that I would raise is that obviously the new proposal is for two tiers—a diversionary caution and a community caution. One of the things that we would really like to see from this is a growing use of out-of-court disposals to keep people out of the formal justice system, which we know has a positive impact. The more we can use them, the better. What we do not want to see with this new approach is more people being given the upper-tier caution as a result of it being two tier. We want to see more people coming into out-of-court disposals more broadly. We need to be aware of the risk of more people having the one that has more conditions attached to it, which makes it more difficult.

The second point is very much about the disclosure period. If we take the disclosure period out, we have much more of a chance to use out-of-court disposals in a positive way that does not put up additional barriers and gives people the chance to move on and not to get engaged with the formal justice system.

Sam Doohan: I entirely agree with Helen about the disclosure periods for the new upper-tier caution. That is certainly a problem; I will not re-tread that entirely. One of the other concerns that we have about the new cautions is that now, at least in the adult regime, there will only be conditional cautions, which require a fairly in-depth process of paperwork to set and monitor conditions and ensure compliance. There is now no other caution option available. Those cautions will be delivered largely on an individual officer level and by individual forces.

As a result, forces will be much more hesitant to use a caution. Whereas in the past, they might have been quite content to give a simple caution and send someone on their way with a formal warning or reprimand, now the force in question will have to take on the burden of monitoring, compliance and potentially re-arresting someone if they breach conditions. They will be forced either to go above the caution and see more cases through to prosecution, even though it would not necessarily be in the public interest to do so, or not to take action at all.

As we know with the criminal justice system as a whole, when we start having these slightly weighted decisions about who falls into what tier of disposal, those who are from disadvantaged backgrounds, along the lines of race and religion, almost universally fall into the harsher end, and those who are not do not. We are creating a system that incentivises busy working police officers to say, "Actually, I am going to make this the CPS's problem, not mine, and I have the choice of who to do it to." Is that going to lead to good criminal justice outcomes? We think it may not. We do not know yet—I stress that—because it has not been studied, but it does have the characteristics of a system that will not have the desired outcomes.

Q165 Alex Cunningham: Sam, you talked about disproportionality in relation to cautions, but have the panel got concerns that any of the Bill's proposals will have a disproportionate impact on certain communities?

Campbell Robb: We do have that concern. The Government's own impact assessment suggests that that might be the case, and that it was in the public interest to continue. We know that, at every stage, young BAME youths, in particular, are disproportionately likely to be stopped and searched, and to end up in the system in different ways. We do have that concern. We would like to see more evidence used to understand what the impact of the proposals might be. We know from previous proposals and reports, such as David Lammy's, that the system is not working in the way that it could, and there is nothing in the Bill that will positively change that. We urge the Government to think about whether there is more that we could do on that through the passage of the Bill.

Sam Doohan: One important thing to keep an eye on is that the out-of-court disposal family is one that requires co-operation from the person who is receiving the disposal. That is fine if you have a community that is reasonably homogenous and where there is no tension with the police, because people are much more likely to co-operate. They may not see the police as being friendly, but they at least understand the interaction better.

Where there is less community cohesion and there are people from all manner of underprivileged backgrounds who historically do not have good relationships with the police and are less likely to be co-operative, that again puts us in a situation where the out-of-court disposals and their relatively lesser impact on someone throughout the rest of their life will end up going to people from relatively more privileged backgrounds, and those who end up being prosecuted and receiving full convictions will be people from disadvantaged backgrounds.

Q166 Alex Cunningham: Helen, is there anything that you want to add on behalf of your organisation?

Helen Berresford: No, I think that is right. Sam has just explained that very well. I think that there is a risk. We can see across a number of the proposals and, as Campbell said, the Government's impact assessment the impact on people from black and minority ethnic communities. Out-of-court disposals are a good case in point in terms of how we ensure that they do not discriminate. We can see it at every stage. We need to be looking at how we reduce the disproportionality in the justice system, and what actions we can take to do that. We can see that some of these proposals do the opposite.

Q167 Alex Cunningham: That is helpful. Are the proposals in the Bill for a court sanction of a custodial sentence for a breach of a community order necessary?

Helen Berresford: We know from the evidence that community orders are more effective in reducing reoffending than short prison sentences, which are ineffective at doing that. We want to see much better use of community sentences where they are more effective. Community sentence treatment requirements are a really good example of how we can do that, ensuring that we also put in the drug treatments and mental health support that are needed alongside it. That is really important.

A lot of these orders have the potential sanction of being sent to prison if breached. We do not support that as a way forward. We do not think that that is effective. If a community sentence is not working, we already know that a short prison sentence is less effective, so it does not make sense that that is the penalty. There is evidence to show that continuing the support in the community, to ensure that we are actually dealing with the issues, is more effective. It is about ensuring that community sentences are not setting people up to fail, and that the conditions around them try to help with their different needs, such as alcohol and drug treatment, mental health treatment, and homelessness. All those different parts need to be addressed. That is where the focus is.

Q168 Alex Cunningham: Sam, I assume that you agree with that. Could you be very brief, because I have another question that I need to get in?

Sam Doohan: The one thing that needs to be considered with community orders and criminal records is that when a community order is given alongside another disposal and it becomes an ancillary order we have to be very careful about how long we set the orders for. At present, the full conviction does not become spent until the full ancillary order is completed or ended by the court. A lot of orders are given for three years or five years. Some are given for life. We need to be aware of that, so that we are using orders in a proportionate way that matches the intention of them. They should not be given out simply as a five-year ban from this location, say, which will in fact end up with someone taking six years before what is probably a relatively minor conviction is taken off their record.

Q169 Alex Cunningham: Very briefly, the Bill proposes to expand the length and intensity of electronically monitored curfews that courts can impose. Do you think that that is an effective provision for reducing reoffending?

Campbell Robb: It is one part. To isolate it solely as being effective on its own is not something— It can be a very useful method of keeping people out of prison, but it has to be wrapped around the probationary offer and the other offers available to the individual, so that they have meaningful engagement, either through unpaid work or training or development, and are in stable, suitable accommodation, so that they are not moving all the time. So, in and of itself, it can add some benefit, but it cannot be taken as a single thing.

The Chair: Thank you very much. Mr Philp.

Q170 The Parliamentary Under-Secretary of State for the Home Department (Chris Philp): Thank you, Sir Charles, and thank you everyone for joining us this morning and for the work that you do in trying to protect the public and rehabilitate offenders. We are all very grateful to you.

May I start with problem-solving courts? Clearly, as with so many things, it is important that the implementation is right; there are some things that work and some things that do not. Can you give your views on the things that have worked and the things that have not worked in problem-solving courts that we have tried in the past—I think there was one in Merseyside a few years ago—and the lessons that we might learn from problem-solving courts in the US, as we design and implement the pilot?

Helen Berresford: This is not something that we have significant expertise in at Nacro, in terms of learning from previous pilots. With any of these things, we have to understand, as you say, what has worked and what has not worked.

The point that we made earlier about the role of building judicial confidence, which was picked up on, is a really important one, and that confidence has to be central to problem-solving courts as we roll them out. Getting the right people involved and the right support functions is important. One of the important purposes—is it not?—of problem-solving courts is that you bring the right people into the discussions and keep them engaged.

I will just refer, for example, to community sentence treatment requirements. We know from our experience of what we have seen that engaging with the judiciary in that process has a really positive impact. That is one of the things we have seen and that we would like to see much more of in the roll-out of CSTRs, and I would say the same for problem-solving courts.

Sam Doohan: In addition to building interest and engagement in the judiciary, one of the other issues is also building interest and engagement among the local population. The courts need to be credible, both to offenders and to the local population. That is probably the biggest step that needs to be taken. If local people think that someone will effectively get just a slap on the wrist and that the problem-solving court does not solve the problem, they will not bother reporting minor crimes and, to some degree, neither will the police. It is very important that that credibility takes centre stage and that the whole process has some faith that its measures will actually be successful.

Q171 Chris Philp: You mentioned CSTRs, which obviously are referred to prominently in the White Paper. I strongly support them and want to see them being rolled out, because they treat the underlying causes of offending, in particular mental health problems, and drug and alcohol addiction.

First of all, do you share that analysis, particularly where a CSTR might be an alternative to a short sentence? If you do share that analysis, what do you think we can do to encourage the wider use of CSTRs, in addition to the extra money for the actual treatment that is being provided at the moment? I ask that because I would like to see them being used a lot more.

Campbell Robb: Yes, we would too, and I think the evidence suggests that when they are used properly they can have a significant effect, on both the addiction or the mental health issues that people are suffering from, and ultimately—we think in previous studies, but not recently—potentially on reoffending. So we are very supportive of them.

I think that, as you would expect us to say, they need to be part of a wider network that is available, ranging from wider drug treatment services, through the NHS and other public health bodies, to job opportunities. They are part of a holistic approach—part of a whole series of interventions that can help people.

On their use as an alternative to sentencing, we could not agree more. That is the work that Nacro does every day, with hundreds of people across the country. If we can use them to help support people through their mental health issues, or drug and alcohol issues, and keep them out of the criminal justice system, then absolutely; we could not agree more. We are very supportive and would want to work alongside to get more of them up and running as soon as possible.

I agree that having the judiciary, as well as the public, see them as a viable alternative is something we all need to work on once the Bill becomes an Act, so that we really get that buy-in and momentum behind them so that they can be used more widely.

Helen Berresford: We have seen an increase in their usage in the test sites. The only point I would add, without repeating my earlier comment, is that building judicial confidence will be an important part of this. That is a really important thing to learn from. Continually evaluating and learning as we roll these out will be really important, learning where they have worked and where they have not. If we can build that in, I think there is a really positive role for community sentence treatment requirements.

Sam Doohan: There is also an issue with building faith with offenders and the people who will potentially receive treatment. One of the concerns that we hear with these kinds of disposals is that people are worried that their criminal record will show that they have been in drug treatment or mental health treatment. In general, although not in the absolute, that is not a problem, because it will not show up and they will not have to disclose it. But people do not know that and they do not necessarily have a great deal of faith that it will not show up three, four or five years later, when they have turned their life around.

I mention that in particular because a DWP study from 2010, I think, found that the only group who, in employment terms, were discriminated against on a par with people with convictions were alcoholics and drug users. Therefore, ensuring that people understand the full ramifications of co-operating with a drug treatment programme—that it will be private, to a large degree, and that it will give them the opportunity to move on positively afterwards—would go a long way.

Q172 Chris Philp: Thank you. Helen, you raised a point about the potential for custodial sentences following a breach of a community order. Does it reassure you that obviously that is a matter of judicial discretion, and that we expect judges to use custody only as a last resort—indeed, they are bound to do so? In order to ensure that community orders are complied with, judges need to have that option as a last resort. It is to be used rarely, but none the less it needs to be available, should it ever be required.

Helen Berresford: Our preference—and yours too, I hear—is very much about looking at community sentences, where they are more effective. If there is an option of custody, I think we really need to build that in as an absolute last resort, and it is worth looking at how we can ensure that is the case. Certainly, on a broader point, in the past we have seen increases in recall to prison, and in some cases people have been recalled for very minor breaches of their conditions, and nothing to do with committing a crime. It is really important that we ensure that is not what we are doing. If there is a condition about prison as a last resort, we have to make sure that it is for a very significant reason and that it is truly a last resort.

Q173 Chris Philp: Thank you. I have one last question. Do the panel have any views on the principle of statutory minimum sentences?

Sam Doohan: Broadly speaking, statutory minimums cause problems. The reduction of judicial discretion means that cases cease to be individual and start to be set by central Government policy. Although it can be argued either way, depending on your taste, were we to follow an American model, where if you get three strikes and then a very long prison sentence for a relatively minor crime, under the current British criminal records system that would almost certainly be disclosed for life, and it would not just be a fairly stiff sentence for repeat offending; it would become a life sentence immediately. That is something always to be aware of when thinking about where we set not just sentencing guidelines, but sentencing minimums in particular. If the judge thinks that six months is appropriate, we should not be the ones to argue with that.

Campbell Robb: We agree that judicial discretion is paramount. We think that is a very, very important consideration. For any changes, it is important to be aware of that and to have an urgent space to see what impact those minimum sentences are having across the piece, in terms of numbers, time and then rehabilitation.

The Chair: I thank our three witnesses for a very strong performance and for answering the questions so fully—it is much appreciated.

Examination of witnesses

Dame Vera Baird, QC, gave evidence.

12.15 pm

The Chair: We now move on to our second session. We have Dame Vera Baird, the Victims' Commissioner. Dame Vera, could you introduce yourself for the record, please? Not that you need a great deal of introduction, as you were formerly of this parish, but just for the record.

Dame Vera Baird: Good morning. I am Vera Baird, the Victims' Commissioner for England and Wales. I hope you are receiving me. Over.

The Chair: Excellent. We are receiving you—brilliant. I am not sure if you can see us yet, but we can certainly see you. I call Mr Goodwill.

Q174 Mr Goodwill: Good morning, Dame Vera. I think the victims who feel most let down by the criminal justice system are the victims of rape. Very low numbers of those cases get to court and, similarly, low numbers achieve convictions. Over recent months and years, some electronic data from phones has been used to undermine some of those cases. Messages sent to placate—certainly not to antagonise—the abuser in an abusive relationship can be used to undermine the case, for example. Proposals on data analysis and consent for it are coming forward, but how can we improve victims' confidence in the criminal justice system—particularly for crimes such as rape and other serious sexual offences—and reduce requests for information from those victims?

Dame Vera Baird: Thank you very much, Mr Goodwill. It is very good to see you again—we were next-door neighbours at one time, constituency-wise.

I will focus on the digital download point, because it is extremely key. Clause 36 in the Bill is very problematic. We have done some considerable work on it, which I would like to mention. First, let me compliment the Home Office team who drafted it and who approached us to ask what we thought of it. Let me explain that I fully understand, as I guess the Committee does, that the purpose of clause 36 is different from the area Mr Goodwill has just rehearsed.

I understand from Mr De Meyer, who is the NPCC police officer I have mostly been talking to about this, that people say to the police, "Someone is harassing me" or "Someone sent me this. Look at my phone—there is the evidence." The police are worried that if they take the phone, they might be in breach of the investigatory powers legislation, so they are seeking a statutory power to take a phone off somebody who is voluntarily giving it up. That was good to understand—that is fine—but the power as set out at the moment does not contain any protections for the complainants who are in the position that Mr Goodwill has mentioned.

If I may, I will briefly rehearse the position as it is seen from the victim's point of view. If you look at a Rape Crisis survey 18 months ago, or if you talk daily to ISVAs, you will find that the view is that on the ground it is practically routine for rape and sexual assault complainants to be asked to hand over digital devices, and for most of the material on it to be trawled, so far as they are aware. Apparently, according to my network of stakeholders, the CPS frequently seeks a level of material straight away, before it charges, and if a complainant refuses, the case just does not get considered for charge. That is very, very troubling, and it has a chilling effect not only on current victims, but on reporting, and it could impact victim attrition.

We did an analysis of a data set showing that one in five victims withdrew their complaint of rape at least in part due to disclosure concerns. Home Office data shows an increase of rape complainants withdrawing pre-charge, and it is right to say that many senior police officers, including Mr De Meyer, accept that there has been a big blow to the confidence of the public in the police because of the whole issue of digital data.

In my own former area—I was the PCC in Northumbria until not quite two years ago—the Home Office funded a pilot of independent legal advice for rape complainants dealing with digital download. That pilot disclosed that about 50% of the requests for digital download of rape complainants' devices were not necessary or proportionate. Of course, we must take some comfort from the fact that that means the other 50% were, and my understanding is that this pilot worked well. It was praised by 23 of the 25 professionals involved in it because it also speeded matters up: where there was a legitimate request for a particular section of the contents of the device, the independent legal advisor was able to get to grips with its reasonableness and advise if it was reasonable, and it was then very quickly accepted. None the less, 50% of requests were not in that category, and we do know that it influences people about reporting rape when they fear that not only their own personal data, but the data of everybody else who is on their phone—their little brother, their sister, their mother, anyone they may confide in—will also have to be disclosed.

The last three points that I really want to emphasise to let you appreciate the seriousness of this problem are that in 2020, the Information Commissioner published a report about exactly this, and outlined a series of ways in which the police were not complying in a number of respects with data protection legislation. The gateway for consent was one of the concerns, and there was an internal report by the CPS two years ago, which found that 60% of its requests for digital download were over-intrusive and not necessary. A little bit later, HMCPSI found about 40% were in the same category. The police have now done a lot of work to try to shift policy backwards, and this new power—which has no obvious nod, even, in the direction of the protection of complainants—came out of the blue from a different Department of the Home Office, and has absolutely none of the protections that, in policy terms, the police have been looking towards for quite some time.

We have the ICO, the Home Office and the National Police Chiefs' Council all meeting with us, and we are very pleased with that. We asked whether we can draft some amendments to this that will safeguard the protection the police need, but will also offer protections for complainants when the power is used for this—as it will be, of course. In a very lightning run through them, there is no definition of agreement. What it says is that an authorised person can take information from a device if it has been voluntarily provided and there is agreement to give the stuff, but there is no definition of agreement, and we know very well—as I have just recited—that often, there is a sort of implicit threat that if you do not, that is the end of the story. We defined agreement in a fairly obvious way—fully informed and freely given. There is no requirement at all for the police to specify the nature of the material, let alone the actual material, that they want to look for. It is just all or nothing: you agree or you do not agree. A big concern is that although it is described as information that needs to be relevant if it is being sought, it does not make reference to the very important turn of phrase in the legislation, which is a "reasonable line of inquiry". It is much broader.

We therefore drafted some amendments that dealt with all of those points and a number more, and we offered them to the Home Office team. I am very pleased to say that the National Police Chiefs' Council accepted them, and felt that they fulfilled all the requirements that it had and offered some excellent protections. I am very pleased to say that the Information Commissioner's Office, although it is happy with the code of practice going way beyond this legislation, also accepted them. The Home Office did not. When we tried to probe why, the answer came:

"While the NPCC indicated they were content with your drafted provisions, they have also said they were similarly supportive of the draft we prepared. We incorporated their operational perspective…with the views of our technical and legal experts".

Mr Goodwill: I think we probably need to move on, because other colleagues want to get in.

The Chair: I think we have to move on now. It is not that this is not important. It is hugely important, but you have asked one question and there was a 10-minute response. We have three colleagues. We cannot do that again. I call Mr Dorans.

Q175 Allan Dorans: Thank you, Sir Charles; this is my first Bill Committee, and I look forward to serving under your chairmanship. Dame Vera, in your view does the Bill go far enough to put the interest of victims at the heart of the criminal justice system? If not, what further measures would you like to see included in the Bill as a priority?

Dame Vera Baird: I do not think that it does go far enough. Sentencing is not a territory that I want to get into particularly because victims' views are very different about sentencing. It is by no means the case that everybody who is a victim of crime wants extremely heavy sentencing. There was a piece of research recently by RoadPeace that shows that they are not particularly strongly supportive of the increased sentences for driving offences, and would prefer driving bans rather than what they see as people who have driven dangerously but are not dangerous people being locked up in prison for a long time. They feel that long sentences may deter charging or jury verdicts.

Victims, just like everyone else, are a mixed bag, but what they want very much is to be treated decently by all the criminal justice agencies; to have adequate support and courteous engagement; to be kept up to date; to have all the entitlements when they come to court that will help them to give their evidence well; and to be supported right through, including after the sentence, going into the time when someone is serving their sentence—keeping them up to date about what is happening so that they might then more easily accept what happens when the individual comes out.

That whole procedural justice—what works for victims—is absolutely key. It does start to appear quite well in the new victims' code of practice, but certainly that code of practice, which is about the sixth version of it that we have had, must be implemented, when the others have not been. There is nothing in the legislation here to help with that. The victims' law is coming down the line and I hope that we can do more for victims in that.

Apologies for taking a long time about digital download. I meant simply to end by saying that all the problems that we have experienced can be solved by the drafts that we have prepared, which have been accepted by everyone but the Home Office. I urge the Minister in charge to look at that again.

Q176 Sarah Champion: Good morning, Dame Vera. I have a couple of quick-fire questions, which hopefully you can answer briefly, please. There should be, in the victims' code, consultation when an offender is going in front of their parole board, and the victim should receive notice, if not an automatic right to submit evidence to it. Unfortunately, that tends not to happen. I have had two cases in the last six months where offenders have been downgraded and could be eligible for release and the victims knew nothing about it. One of my amendments is to make it mandatory that victims have their statement read out during a parole hearing. What are your thoughts on that?

Dame Vera Baird: I agree. I wonder whether the problem starts with the victim contact scheme and whether we are not embracing enough people into it. We have done some really good work with HMPPS about that. They are moving to a much stronger invitation to join the victim contact scheme and are offering all

sorts of ways to do it, even after the event. That would put people in a position where their statement would be taken, and it would be read.

In fact, during the course of the pandemic, a lot of victims have gone online and read their statement to the parole board. The number of victims who have done that has gone up, and we think the online provision—giving satisfactory remoteness to an individual from a prisoner, but none the less communicating what is good—is probably a good model for the future, but it is imperative that that opportunity is given to victims.

Q177 Sarah Champion: Thank you. That leads me nicely to special measures. Again, there is the provision for special measures in courts, but it is at the judge's discretion, and it also depends on whether the facilities are there. Do you think they should be mandatory for vulnerable witnesses?

Dame Vera Baird: In essence, yes, I do. We have just done a report about special measures, Ms Champion, and it would be good if you looked at it. The problem starts with the fact that the needs assessment is not done clearly by a single agency. It is all across the CPS, witness care units and the police. We have said that it should be in the witness care units. It should be done in a professional and thorough way with them co-ordinating it.

Then there is the real problem that the range of special measures, and the one that might suit you as a witness, are not always available and are not always offered even if they are available. There is a risk of some sort of court culture limiting the choice when the intention is that the best evidence should be given for the benefit both of the complainant, to cut the tension, and of the criminal justice system, to get evidence that it might not get otherwise.

Let me add that the roll-out of section 28 enables vulnerable and intimidated witnesses to pre-record their evidence weeks and weeks—probably, in reality, years—before a case can come to trial, and then be cross-examined on video too so that, many weeks before it comes to trial, they have finished their involvement in it. Obviously, it often just needs to be a choice, but that can be the default position to get a lot of vulnerable and intimidated witnesses out of the queue at the Crown court, put an end to their stress and record their evidence while their memory is fresh. I think that should be the default position available for all the categories that you mentioned.

Q178 Sarah Champion: Thank you very much. Just one line, please, commissioner. Non-penetrative child abuse offences are not seen as serious crime; therefore, they do not fall under the double jeopardy rule. Should they be?

Dame Vera Baird: Yes.

Sarah Champion: Thank you.

Dame Vera Baird: We wrote last year and asked for exactly that.

Q179 Siobhan Baillie (Stroud) (Con): It is a pleasure to serve under your chairmanship, Sir Charles. Welcome, Dame Vera. Your role as national lead on victims for the Association of Police and Crime Commissioners is important, and we are grateful for all your work. We heard quite distressing evidence from PCCs this week about the impact of unauthorised encampments—illegal activity, damage, fly-tipping and intimidation—on the local communities where the encampments are. Do you accept that local residents who are in close proximity to the unauthorised encampments are victims of crime?

Dame Vera Baird: I am not the lead for the Association of Police and Crime Commissioners; I am the Victims' Commissioner for England and Wales, and I do not know about that conversation.

There are two difficulties. One is that an unauthorised encampment often causes great discomfort to neighbours of it—that is probably a gross understatement. The other concern I have—very frankly—is that my experience is that the appropriate statutory provision is not always made to provide Gypsies and Travellers with an alternative place that is lawful and so they, too, are put in a very problematic position.

I saw what Martin Hewitt from the National Police Chiefs' Council said the day before yesterday. He said that he did not think the police needed more powers; it would be much better if more lawful places were made available. And then there is no difficulty with getting Gypsies and Travellers out of places where they should not be, because there is a lawful place to put them. So I am afraid at the moment we have kind of two sets of victims.

Q180 Siobhan Baillie: Thank you. That is helpful to hear. On cautions, out-of-court disposals, the proposed changes will ensure that the victims are consulted for their views. Are you supportive of that? Do you think that those changes will assist with the drive towards, and the approach of, more restorative justice?

Dame Vera Baird: Yes, I do. It is very important that what victims want, which I have described—procedural justice, being treated with decency, being kept up to date and so on—is provided for in the process of delivering a caution. It looks as if victims are about as satisfied when the offender is given a caution as they are when the matter goes to court, so as long as they are consulted and they are treated as victims throughout, I think it is probably excellent to streamline the nature of this work.

There is one reservation: perhaps something needing a bit of looking at is the obligation to admit guilt in order to get an out-of-court disposal. Sometimes something like a deferred prosecution might be something that a person would be readier to accept, and it should be no more of a problem for a victim. But in principle, as long as victims are involved—we have a massive backlog in the courts, so if we can deal with justice for both sides in some other way, let us do it.

Q181 Lee Anderson (Ashfield) (Con): It is a pleasure to serve under your chairmanship, Sir Charles. I have just one question, Dame Vera. What are your views on stronger sentences for drivers who cause death or serious injury?

Dame Vera Baird: I am not an expert on sentencing and I do not think you particularly want my personal views. Do you want the perspective of victims on that?

Lee Anderson: Yes, please.

Dame Vera Baird: It is hard to say because we do not get a lot of victims coming to us and talking about sentencing; they are usually talking more about their

own treatment by the justice system. But what I can tell you is that although they are broadly supportive of different sentencing, the briefing that you have probably had—and that we certainly have had from RoadPeace, Brake and British Cycling—suggests that they are worried about the difference between a sentence where someone has caused death and a sentence where someone has "only" caused what might be the very most serious of harms, and they wonder whether there ought to be some nearer proximity between the two.

But victims do say quite clearly that they have concerns about making causing death by dangerous driving and causing severe injury by dangerous driving have much higher penalties, because of the factor I mentioned before: it might deter prosecutions, or it might deter juries, who can pretty easily see themselves in a driving seat when something goes wrong, from convicting. So they have that reservation.

I think the telling line is that victims are not sure why there is such reliance on custodial sentencing for people who may have driven dangerously but are not dangerous people. Is it not better to use driving bans more effectively and not to allow such leeway about the unfairness of it but to make them pretty well automatic? That is their take on it, and I do not think I can second-guess them.

Q182 Sarah Jones (Croydon Central) (Lab): It is a pleasure to serve under your chairmanship, Sir Charles. Dame Vera, you answered, in response to your first question, most of the questions that I was going to ask, so I am very pleased that you were able to do that. Obviously, as the Opposition, we have tabled a lot of amendments, which seek to do exactly what you described.

To finish the conversation that we started at the beginning, it would be helpful if you could describe the impact that you think those amendments will have on the process and on the victims. Perhaps you could say a bit more about their sense of confidence in the system. What are we aiming for here?

Dame Vera Baird: We do have to protect the article 8 rights of complainants, and the open nature—the swingeing and unconditional nature—of these clauses does not do that. I have set out all the people who have commented on how commonplace it is for a victim to have their phone demanded and for it to be trawled, as it is called on the ground. I have set all that out.

The consequence, of course, is that complainants, who say they have been sexually assaulted—they are already injured, and we have already failed to protect them against crime. They are probably vulnerable. They are certainly very nervous. They have heard that it is not a nice thing to go to court. They probably know the conviction rate is very low. They have got together the courage to go and talk to the police and to discuss the case, and they seem to be met—my survey last year made this very clear—with police officers who are looking askance at them as genuine victims and saying, in effect, "Hand over everything there is for me to know about you, so that I can check whether you are a worthy person for me to get behind and prosecute this case."

Other than sexual assaults, rapes and trafficking, and occasionally domestic abuse, I do not know of any other kind of case in which the download of phones is used in that way. It is not just the download of phones. Frequently the police ask for, and frequently the CPS requires, all health notes, psychiatric notes, school reports and social services reports, which obviously adds to the tendency to think that you are the one under investigation, and not the other. This is a massive deterrent and, not surprisingly, a good reason why people withdraw.

Following the pilot we did in Northumbria, which was highly successful, it is very important that there should be automatic legal advice. When someone's article 8 human rights—we have an obligation to protect human rights—are put at stake by what the CPS has found are overly intrusive demands in 60% of cases, the only way to try to deal with it, given that there are a whole range of cases about it, is to get free, independent legal advice for the purpose of discussing and ordering with the police and the CPS what is appropriate to seek, what should be disclosed and what should not.

Our amendments say that, and we have sent those to the Government. I think we have also sent them to every member of this Committee. I hope that the Government will realise that although it has an end-to-end rape review—the purpose of which is to restore confidence and restore prosecutions—this piece of legislation is actually running in the opposite direction and is likely to make things worse.

Sarah Jones: That is very clear. Thank you.

Q183 Alex Cunningham: Hello, Vera. As Sarah said a few minutes ago, you have covered much of the material that we would want to ask questions on. I will ask you to give us a reasonable summary. Do you believe that any of the proposals in the Bill increase victims' confidence in the system, particularly if they are victims of rape? We all know the figure: 44% withdraw their case before the trial even begins. If you were to give us a series of headlines, what would they be?

Dame Vera Baird: What needs to happen is that section 28 needs to be the default option, so that rape complainants can finish with the trial while their memory is fresh and facilitate getting some trauma therapy, if that is what they need—section 28 and independent legal advice. I think it is fair to say to the CPS that if they require a level of data from phones and other places and they find something, however irrelevant, it may call the complainant's credibility into question. There was a terrible case when I was a PCC in Newcastle, where it was put to a woman of 23 that she had always been a liar because she had lied by writing a letter to her school saying that she could not go to the swimming pool that day, and forging her mother's signature. She was 12 when she did that. If something like that is found, the police probably think they have to disclose it to the other side, because they have a full duty to do so.

The point is not to look for ridiculously irrelevant material, or you are in pursuit of what I think victims think the police are looking for, which is the perfect victim. Of course, none of us would be a perfect victim in that sense, so that needs very much to be met by legal advice. It may be that once that material is found, there is no power in the CPS to do anything but disclose it. It is arguing at the beginning about what material should be sought.

It is absolutely clear that the Crown Prosecution Service has to start prosecuting rape. It now prosecutes around 1,700 cases a year, whereas for the best part of a

decade, prior to a change in its approach to rape in 2016-17, it prosecuted 3,500 cases a year and got a corresponding number of convictions. Now it is prosecuting only half as many as that and getting convictions only in three figures, which is a terrific collapse. That approach, which changed, needs to be changed back.

There must also be good provision of independent sexual violence advisers. Anyone who comes to make a complaint, which is a very courageous thing to do given what they have gone through, the imbalance of power between them and the police and their complete lack of awareness of what the criminal justice system is like, needs a professional friend beside them to help them to cope. They may need to move house, if the rape was in the house, or move job, if the rape was connected with the job. At least a professional friend can help with those things, and you cannot expect a complainant to cope with that as well as with the criminal justice system. All that seems imperative. I am mindful of the Chair's wish for brevity from me, so perhaps I will write to you with a longer list.

Alex Cunningham: Thank you very much for that. I think you have covered everything that I needed to cover.

Q184 The Parliamentary Under-Secretary of State for the Home Department (Victoria Atkins): Dame Vera, I want to roll back and put this set of clauses in context. Everybody acknowledges that there is a significant problem with the trust of victims of sexual violence in particular when it comes to the seizing of phones and digital evidence. There have been recent cases that we have heard about. In consequence, the Government have an ongoing end-to-end rape review, which is looking at every single stage of the criminal justice system. Following the last question, I would not for a moment want colleagues to think that this Bill is the Government's answer to addressing the real and keenly felt concerns of rape victims and other victims of sexual violence.

On the point about digital divides, do you accept that there is a need to clarify the law on this? At the moment, we have the Criminal Procedure and Investigations Act 1996 and we have the Attorney General's new guidelines, but presumably you accept that there is a need to set a framework in law in order to help and protect victims, and to protect the right of a free trial under article 6 of the Human Rights Act 1998?

Dame Vera Baird: I think national legislation to clarify the law about this is imperative, but it is just not this national legislation.

Q185 Victoria Atkins: Okay. Within that context, we have to bear in mind the Criminal Procedure and Investigations Act 1996 and the Data Protection Act 2018. Do you accept that?

Dame Vera Baird: Yes, of course we have to do so. I am not sure you will be doing that with this power. I think there is a real human rights challenge here already, and I am pretty satisfied that there will be data protection challenges too. Yes, of course data protection is the law and it is important. I do not think this fulfils all your obligations under that either.

Q186 Victoria Atkins: All right. Clause 36(5)(a) sets out the conditions under which the power may be exercised—namely, that an "authorised person", as defined elsewhere in the Bill, must reasonably believes

"that information stored on the electronic device is relevant to a purpose within subsection (2)".

That wording of course comes from the 1996 Act, doesn't it?

Dame Vera Baird: I do not know which it comes from, but "relevant" is no good, Minister. "Relevant" is not a reasonable line of inquiry. Somebody who comes across the letter from the lady in Northumbria might think that is relevant. I do not think that finding it is a reasonable line of inquiry. A reasonable line of inquiry in the CPIA is the right test, and this is the wrong test.

Q187 Victoria Atkins: All right, but do you accept that there is a test of relevance in terms of disclosure under the 1996 Act?

Dame Vera Baird: There is a test of a reasonable line of inquiry under the CPIA. That is the test, and that is very much a narrower test than the one in the proposed clauses. I have to say, because we narrowed it from relevance down to a reasonable line of inquiry in our amendments, the police were happy to accept that, so I am not sure why the Home Office wants it to be wider than the police want it to be.

Q188 Victoria Atkins: I will come back to that. The test in clause 36(5)(b) is that the authorised person must be

"satisfied that exercise of the power is necessary and proportionate".

Again, that wording applies across the board in terms of criminal proceedings. Is that correct?

Dame Vera Baird: I have come across the terminology before, but it is highly subjective. Insufficient detail is gone into for it to have the meaning that it is important to have. I think it is a very good thing, if I may say so, Minister, that you have accepted that the backdrop against which we approach these clauses is a very, very undesirable one, where confidence has been lost by over-demands on vulnerable complainants' personal data. It is hugely important therefore to put into the legislation every protection that can be put in, for fairness. Remember, there is a massive power imbalance in the relationship at the time of the requests—

Q189 Victoria Atkins: I have long accepted that, Dame Vera. That is why we have the end-to-end rape review, which is ongoing, as you know. The reason I ask that is because one would not want the Committee to think that these clauses are the only measures being taken to secure the framework for extraction of digital devices. You will accept that the clauses set out that a statutory code of practice will accompany the Bill.

The codes of practice under the Police and Criminal Evidence Act 1984, for example, are vital codes of practice that are relied on in court. If a police officer does not meet the standards expected by that code when interviewing suspects, for example—if there is a significant breach—the entire prosecution can fall. Do you accept that although we are rightly looking at the wording of the clauses, just focusing on those would not give the full picture? We also need to consider the importance that the code of practice will have. It will deal with some of the practice points that you have raised.

Dame Vera Baird: I do not think it is the right analogy to compare any code of practice. Let me tell you, the code of practice under this is invisible or non-existent. Codes of practice are discussed though they are the answer to it all. The first thing to say is that

they do not have the power of statute, and if the legislation goes through as it is now, that is what the police will likely rely on. Of course a statutory code of practice under PACE has the consequences that you described, Minister, but that is because if you break the code of practice under PACE, it impacts on the defendant. The defendant can say, "Oh, that's been done unfairly and jeopardised my fair trial," and a breach can even be the end of a prosecution. There is absolutely no power for a rape complainant to have a similar resolution of a breach of any code of practice in this legislation. They can breach the codes of practice until they are blue in the face, and it does not make any difference to the trial.

Victoria Atkins: But you accept—

Dame Vera Baird: That is a difference in power, is it not? That is an important point.

Q190 Victoria Atkins: No, it is a proper analogy, because they are both statutory codes of practice. Of course the police will have to abide by those codes of practice and will be held to account by the Victims' Commissioner and others if they are seen to be failing those codes.

Dame Vera Baird: I am sure you accept the difference, though, Minister—

Victoria Atkins: No—

Dame Vera Baird: There is no possible remedy or solution for the complainant that is analogous to the outright acquittal that can be a consequence of breaching the PACE code of practice, because that is about a defendant. This is about a complainant. What do you suggest would be the solution if the code of practice were breached in my case of rape and too much documentation was taken and disclosed? What is my remedy?

Q191 Victoria Atkins: The police force or the CPS are accountable for their conduct under the codes of practice. That is why the code of practice is in the Bill, not least because putting the sort of detail you seem to be suggesting in the Bill is not as responsive and flexible as putting it into a code of practice—by definition, changing primary legislation is not as responsive or flexible. These clauses are not the only factors to bear in mind when looking at the overall issue of digital devices. I will move on—

Dame Vera Baird: I would like to answer that, if I can. They are the only thing, because there is no sign of a code of practice. There is no draft code of practice at all. When I ask what my remedy would be as a rape complainant, you say to me that the police will be accountable, but how will they be accountable? It is not a crime and it is not a tort to break this code of practice, so what is the remedy if it is broken? It is not an analogy with the PACE code of practice. Do not over-rely on this code of practice, Minister. You and I share the aim of protecting complainants. Do not over-rely on a code of practice no one has ever seen and that does not have statutory form.

Q192 Victoria Atkins: This will not be operating in a vacuum. The police are of course accountable to police and crime commissioners, as you know as a former commissioner. The police are also accountable to Her Majesty's inspectorate of constabulary, and the police forces have their individual complaint processes. There are ways of accountability. I will move on—

Dame Vera Baird: If those routes really do exist, have they been working, Minister? I do not remember any complainant being able to come to me as a PCC and complain about an individual case. Let's face it: the dire situation where the public, or at least this sector of them, have lost confidence in the police has occurred at the time when all of those bodies that can call them to account have been in play, and they have not called them to account.

Q193 Victoria Atkins: There are many aspects to public confidence, but that is why we are addressing this one aspect of it in the Bill as part of the Government's overall work on the rape review and, as you said yourself, the victims law.

I will move on to unauthorised encampments. You were asked about the impact and you fairly conceded that residents can be victims in the context of unauthorised encampments. Clause 61 sets out the offence. The conditions that are laid down for the alleged commission of an offence include factors such as "significant damage", "significant disruption" and "significant distress". With your focus on antisocial behaviour, presumably you welcome the focus on those unauthorised encampments that result in those sorts of distressing conditions?

Dame Vera Baird: I would not want anyone to suffer from any of those, but causing damage—I do not know what that is. If you are on an unauthorised encampment and you have not got a lavatory so you dig a latrine, is that causing damage to the field? I think it depends how it is defined. I really cannot go much further than saying that unless there is proper provision of authorised encampments, you have two sets of victims. I quite agree with you that the people who are distressed, damaged or whatever by an unauthorised encampment are victims of that. There is no doubt of it—you have made your point—but I want you to take into account the difficulty of finding somewhere to camp in a lot of places, which forces people into an unlawful place. Of course, damage is not justifiable, but that is a factor to consider. I was so pleased when the NPCC appreciated that as well.

Victoria Atkins: So do you see it as inevitable—

The Chair: Order. I am afraid that brings us to the end of the time allotted for the Committee to ask questions. I thank the witness again for her evidence.

1 pm

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o'clock.