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GENERAL COMMITTEES

Public Bill Committee

POLICE, CRIME, SENTENCING AND COURTS BILL

Fourth Sitting

Thursday 20 May 2021

(Afternoon)

CONTENTS

Examination of witnesses.
Adjourned till Tuesday 25 May at twenty-five minutes past Nine o'clock.
Written evidence reported to the House.

PBC (Bill 5) 2021 - 2022

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

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Monday 24 May 2021

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The Committee consisted of the following Members:

Chairs: † Sir Charles Walker, Steve McCabe

† 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

Iryna Pona, Policy and Research Manager, The Children's Society

Will Linden, Deputy Head, Scottish Violence Reduction Unit, Community Justice Scotland

Hazel Williamson, Chair, Association of Youth Offending Team Managers

Ellie Cumbo, Head of Public Law, The Law Society

Dr Kate Paradine, Chief Executive, Women in Prison

Ms Nina Champion, Director, Criminal Justice Alliance

Dr Laura Janes, Legal Director, Howard League for Penal Reform

Dr Jonathan Bild, Director of Operations, Sentencing Academy

Gracie Bradley, Interim Director, Liberty

Oliver Feeley-Sprague, Programme Director, Military, Security and Police, Amnesty International UK

Professor Colin Clark, University of the West of Scotland

Public Bill Committee

Thursday 20 May 2021

[Sir Charles Walker *in the Chair*]

Police, Crime, Sentencing and Courts Bill

2 pm

The Committee deliberated in private.

Examination of Witnesses

Iryna Pona and Will Linden gave evidence.

2.1 pm

The Chair: I will introduce our panel of witnesses. If they can see us and hear us, that is an improvement on this morning when they could only hear us. We will hear from Iryna Pona, policy and research manager at the Children's Society, and Will Linden, deputy head of the Scottish Violence Reduction Unit at Community Justice Scotland.

Colleagues, we have until 2.45 pm for this section, so just under 45 minutes. Will our witnesses introduce themselves for the record, please?

Iryna Pona: My name is Iryna Pona, policy and research manager at the Children's Society, which is a voluntary sector organisation. We work with young people who are criminally or sexually exploited, who have experienced abuse or who have gone missing from home or care. We do policy and research and also work directly with children and young people delivering one-to-one support group work as well as therapeutic support for children.

We also have national programmes such as the disrupting exploitation and prevention programme. These programmes, as well as working with young people, also work with professionals to help them improve their responses to children who are criminally or sexually exploited. Our prevention programme funded by the Home Office also runs campaigns. The #LookCloser campaign is about raising the awareness of the public and professionals of child exploitation with the aim of better identification and better and earlier support for these children.

The Chair: Thank you. Mr Linden next.

Will Linden: Good afternoon. I am Will Linden, deputy head of the violence reduction unit in Scotland. We are an independent unit as part of Police Scotland. We look at prevention in all of its guises in reducing violence from cradle to grave. We have been doing this since 2005. We adopted a public health model fairly early on.

The Chair: Thank you. Our first question is from Sarah Champion.

Q194 Sarah Champion (Rotherham) (Lab): Good afternoon, witnesses. What difference would it make if there was a definition of child criminal exploitation? Children's Society first.

Iryna Pona: I think having a definition of child criminal exploitation would be very helpful. When we did research on child criminal exploitation, one of the messages that we had from loads of professionals, both working with the Children's Society but also working with the local authority and police, was that different services—

Sarah Champion: Sorry, I am a bit deaf and your link is a bit iffy. Is there any chance you could speak a little slower, please?

Iryna Pona: Of course, yes—sorry. I was saying that the lack of shared understanding of what child criminal exploitation is prevents co-ordinated, joined-up responses to children who are criminally exploited, particularly responses that happen at earlier stages, when the children are groomed for child criminal exploitation.

Also, when children come into contact with police and law enforcement agencies, we know that they are still more likely to be treated as young offenders rather than being seen as victims of crime. So having a definition that all agencies—police, social care, the voluntary sector and others—can share and understand in the same way will really help to change attitudes and also help with how support is provided.

We also believe that the definition needs to be quite broad and not just focused on county lines. We have seen in recent years that there has been a huge focus on county lines, which is really welcome, but the county lines model of child criminal exploitation is just one type of criminal exploitation. We know that children may be exploited in a variety of other ways and that these models constantly evolve and develop.

Having a broad definition that would explain to everyone involved that child criminal exploitation is when someone manipulates a child into undertaking criminal activity would go a long way to improving the responses to children who are criminally exploited and it would improve early intervention as well.

Q195 Sarah Champion: Thank you. Will, do you have thoughts on this, please?

Will Linden: It is not necessarily my area of expertise, but I will just back up what Iryna said there. The challenge if you set a definition for child criminal exploitation is to make sure that the definition is wide and dynamic enough to cover things. The problem is that if we set definitions, we then work to them; we work to that bar—and if, for whatever reason, a young person does not qualify for or meet that definition, they can fall within the gaps in the system.

We have to be quite careful with the definition, to make sure that it is encompassing and that it is not fixed at any point in time; if we are writing it just now, the definition of "exploitation" and what happens to a young person who is being exploited will change. We have to be quite careful. It is important that we write a definition and have one, so that we understand what the services need to do, but we must not get absolutely fixated on it.

Q196 Sarah Champion: How much data is currently collected by Government agencies around offences relating to child sexual exploitation or child criminal exploitation?

Iryna Pona: From what we know about this issue, definitely not enough data is being collected. In relation to child criminal exploitation, some data is collected through the national referral mechanism when young people are referred to it. From October 2019, it started collecting data specifically on child criminal exploitation, because of the huge increase in the number of referrals. It is really helpful, but in our opinion it is only the tip of the iceberg.

No similar data is collected through social care. I know that social care will introduce this as one of the factors in assessment—from this year onwards, I think. However, at the moment we do not know the true scale of child criminal exploitation. There is some proxy data, which is about how many children have been arrested, but I believe that at that point it is too late. We need to start identifying child criminal exploitation much earlier, to offer help much earlier.

There are also gaps in relation to child sexual exploitation. Some data is collected by the police and is available from them, but police data often focuses on crime; it does not always include children aged 16 or 17 who are victims of sexual offences because of the way the data focuses on crime. It is acknowledged in the Government's sexual abuse strategy that that is a gap.

We also do not necessarily understand the progression from identification to prosecution of these cases. There is no clear data in relation to that, which I think impacts on how agencies can see the bigger picture, gather information and plan a relevant response to these really serious crimes. Regarding prosecution, some data is available, but it is very limited.

Q197 Sarah Champion: Thank you. Will, what is the Scottish perspective?

Will Linden: The Scottish perspective is very similar, but this comes down to the fact that we collect a lot of data on individuals and families—crime data, health data and social work data. The problem is that the data do not speak to each other.

We often hide behind GDPR and data protection rules. The datasets and the data holders need to be more aligned so that when we are trying to make some of the strategic decisions, we can interrogate the data better, understand the impacts on families and understand the impacts on young people. For me, this is not about collecting anything new; it is about using it smarter. From Scotland's perspective, I do not think we are much further ahead than where we are in England and Wales now, because we need to get smarter at that too.

Q198 Sarah Jones (Croydon Central) (Lab): Hello. It would be good if you could start by setting out your view on the duty in the Bill to prevent serious violence. Do you think that will help towards a public health approach to tackling violence, and what do you think could be amended in the Bill to make it better? I do not mind who starts.

Will Linden: I come from a background of looking at prevention and looking at what works, both from a public health perspective and from a criminal justice perspective—not any particular one lens.

Looking at the Bill and what it is trying to do with violent crime reduction orders and other aspects, the intent is there to try to reduce violence. Some of the challenges I have with it regard the unintended consequences of the Bill. If you are going to use some of the measures in it, such as what are essentially increased stop-and-search powers and increased powers over individuals connected to, and guilty of, violent crime and carrying knives, we have to be sure that those are the targets that we want to target with this, because we really need to be focusing on those who are the most at risk of committing the highest level of violence.

For the majority of young people—it will be young people who are caught up in some of the violent crime orders—they will probably be one-off offences. What we will be doing is further criminalising them, and the unintended consequence is that we might be pushing them further down a criminal justice pathway. Looking broadly at the Bill, it is a good idea in principle, but it is about who we point it towards and who we target it at. If we are targeting it at a wide spread—everyone who is caught with a knife, or everyone who has something to do with violent crime—and everyone becomes a part of the Bill or a part of this order, the consequences could far outstrip the outcomes that we are going to try to achieve.

Iryna Pona: From the Children's Society perspective, we are supportive of the intention behind the duty to bring together different agencies to develop a strategy to reduce and prevent serious violence in their areas. However, we know that the success of such a duty would rest a lot on how it is implemented locally. It is really important that the duty is formulated in such a way as to encourage the greatest focus possible on the safeguarding of children and on the early intervention and support for children and families, as opposed to being seen as a crime reduction initiative.

We therefore believe that for the duty to have a significant impact on reducing the criminal exploitation of children when criminal exploitation is linked to violence or children's involvement in violence, it is important that the safeguarding of children is recognised and included in the name of the duty, encouraging multi-agency action to address the underlying causes of violence, such as poverty, poor housing, exposure to domestic violence, and criminal and sexual exploitation.

All those are really important, because I agree with what Will said. Potentially, if it is just treated as a crime reduction initiative and prevention is focused on police action, it is very different from when it is safeguarding and focused on offering the best support possible to children.

Q199 Sarah Jones: Just to be clear on that, do you think that putting the safeguarding of children on the face of the Bill would be the way to ensure that this is part of the picture?

Iryna Pona: Yes. I believe it will help with interpretation of the duty locally, to enable it to be interpreted in a very similar way across the country and to focus attention on action that needs to be taken by different agencies locally on safeguarding children and taking action to provide support. It is not necessarily preventing escalation or further involvement in violence, but preventing as early as possible involvement in any violent activity. That would be really important.

I also think there are other simple ways in which the duty can be improved—for example, by making sure that when the strategy is produced, social care is part of

the consultation, because it will have information about who the vulnerable children are, what the level of need is and how things can be improved locally.

There are different elements related to the duty—for example, about information sharing—that are also important. Information sharing is obviously a very important area. We agree that it is crucial that relevant information is shared to enable agencies working together to plan a better response to children. But there is also something in the duty and in the accompanying guidance that suggests that information may be shared or requested directly—for example, from schools—by the police about individual children. We would have concerns about that, because schools have such an important role to play; school is a place where children have trusting relationships with teachers and educators. It could undermine some of the trust that children have. We believe that there are already in place multi-agency structures—such as multi-agency safeguarding hubs or multi-agency risk assessment conferences—that are better placed for that information sharing about individual children.

So I think there are elements in this duty that are really important, but there are also ways to improve it.

Q200 Sarah Jones: This is a question for the Children's Society. Could you explain, for the purposes of Committee members, what is understood by the term "plugging"?

Iryna Pona: Plugging is when young people are exploited by criminal groups to deliver drugs across the country and—sometimes—they are delivering those drugs inserted in cavities in their bodies. It is a horrific experience for children—it is also a great risk to their health. Unfortunately, it is something that a lot of children we are working with are experiencing. It is experienced by a lot of children who are exploited by criminal groups for county lines drug trafficking.

Q201 Sarah Jones: Do you think that there would be benefit in trying to define that in a better way, in terms of a criminal offence?

Iryna Pona: Yes. That definitely came up a lot when we were doing our research for the county lines report. Practitioners were—*[Interruption.]*

The Chair: Why do not we bring in Mr Linden?

Q202 Sarah Jones: I will ask you a slightly different question. Could you explain, for the benefit of the Committee and so we are all on the same page, what is meant by the term "public health approach to tackling violence"?

Will Linden: A public health approach to tackling violence is quite simple. It is about using an evidence-based approach to address the causes of the violence in the first place—looking at the challenges, the underlying situation and the underlying evidence, and addressing them before they becomes a wider issue. The public approach is nothing to do with specific trauma or with criminology; it is solely about applying what works at the earliest possible stage. It is evidence-based, it is tried and tested, and it is there to try to deliver long-term, sustainable outcomes. Obviously, over the last year we have all become aware of the public health approach in terms of dealing with the covid situation. This is the same idea: it is looking at what works. How do you vaccinate a community? How do you try to reduce violence? In relation to young people and violence, it is not necessarily about crime, prison and stop-and-search; it is about why they got to that point in the first place and what we can do about it.

Q203 Sarah Jones: For the benefit of the Committee and so we understand what is behind this new duty to prevent violence, can you explain why you think we have seen levels of violence, particularly among young people, and issues such as knife crime increase over recent years?

Will Linden: There are a number of thoughts about that in terms of what has happened over the last few years. There are increasing levels of inequality and the reductions in the services that are available because of some of the decisions we have had to make; there are also issues such as social media and young people's culture. What is interesting for me from a Scottish perspective is that although we have seen increasing levels of youth violence in England and Wales, we have not seen the same thing in Scotland. We have seen the level of violence change, go up and stabilise at a certain level, but not necessarily among young people. It is a different group and a different type of violence.

There is something particular happening within certain cultures in certain areas of the UK. We know that violence is not constant across the whole country; it is in pockets. For example, in Scotland, about 60% of the violence is attributable to less than 1% of the population at a very small geographic level. Although we talk about looking at a public health response to the whole country, it is sometimes about much more targeted interventions at a local level.

Q204 Sarah Jones: Thank you. We had an evidence session on Tuesday in which one of the police and crime commissioners said that she thought that we were seeing an increase in violence as a society, as if that was just a thing that was happening without any reason. Do you agree that tackling violence is actually preventive? Could you tell us a couple more things that have been done in Scotland that mean you have got violence among young people to a different level from what we have in England?

Will Linden: I do not hold much stock in the comment that violence is just increasing anyway, because throughout the western world violence has been reducing for centuries. We are safer today than we were yesterday, despite what the crime figures, and sometimes the newspaper headlines, tell us.

In Scotland, we looked at policing to start with. Policing is incredibly important, because sometimes you have to stabilise the patient and deal with the problem before you can put in prevention measures and deal with the underlying causes. For us, that was heavily about education. It was about looking at schools and access to young people, who were our initial target, our biggest group and our biggest challenge, predominantly in Glasgow and the west coast of Scotland, not in the whole of Scotland. That is who we targeted.

We targeted young people with education, programmes and advertising campaigns. We looked at how we could get people into jobs and mentor and support them. It was not a one-fix thing. It was about trying to understand the local situation, so in specific areas of Glasgow we looked at the gangs problem, and in Lanarkshire we

looked at unemployment. It was about looking at different problems and trying to apply the solutions locally. That took a great deal of partnership working and a great deal of intelligence and information.

Sarah Jones: Thank you. That was really helpful.

Q205 Maria Eagle (Garston and Halewood) (Lab): I want to ask about the serious violence reduction units and what you think they will be able to do in practice and how they will interact. I do not know what experience you have in Scotland with different arrangements; there may be some. There are existing partnerships and cross-agency collaborations. Do you think that the proposed serious violence reduction units will complement or replace them? What is your experience of this kind of collaborative working and how well it can fit in within existing structures, some of which will overlap?

Will Linden: That is an important question, because they do have to fit in with existing structures. One of the successes we have had in Scotland in delivering on the strategy is because we are connected in. We are connected into policing. We are connected into the Government. We are connected into local government across the country. If you are introducing any new structures alongside that—VRUs; it does not matter what it is—how are they going to connect into local delivery and local services? More importantly, how is it going to connect into local communities?

If we are looking at strategies based on short-term turnaround—for example, we are going to provide x amount of money to provide a reduction in the next year—that is not going to work, because you are looking at how to build the building blocks, within these communities, areas and partnerships, that are going to deliver long-term, sustainable outcomes. That does not mean that the partnerships, in whatever area of the country they are, cannot get reductions just now, but what we want to do is to build upon those short-term wins in order to build long-term, sustainable reductions that are built into the system—that are not additionality.

Q206 Maria Eagle: There are supposed to be pilots of the serious violence reduction units—I think Merseyside, my area, is one of the pilot areas. Do you have any experience of those kinds of pilots in Scotland? If so, what kind of indicators would you expect the Government to be monitoring to assess whether they have been successful before rolling out further?

Will Linden: We do not have any experience in what you are looking to do down in Merseyside or any other areas, but you need to think beyond the traditional route of crime indicators because of the length of time involved.

You can look at trying to reduce the levels of crime and violence, but what we are dealing with just now is a post-pandemic situation. Over the last year, we have seen significant changes to communities' environments, so you might actually face increasing levels of violence and there might be increasing problems over the next year or two as a result of the consequences of the last year, and post recovery. If you just tie yourselves down to simple crime figures and recorded crime figures, you could be challenged on that. What we will have to do is to look at some of the other figures around things like community wellbeing, trust in the services, trust in policing and education figures, and try to take in a broad spectrum of outcomes, particularly when we are looking at young people.

If our outcome is solely about reducing crime, that can be achieved quite simply with two things. Recorded crime can be reduced by changing the law and stopping recording it; that is easy. But if you want to reduce the harm that violence causes our communities, you have to look at all the various measurements that measure harm. Some of those are simple, like the crime surveys. Others are much more complex, in terms of mental health or wellbeing. I would look to try to include as wide a sweep as possible, to try to get an understanding of its wider impacts, not just the simple ones.

Q207 Maria Eagle: Thank you. Let me welcome Iryna back. I hope she can hear us. We can now see that she is moving, so hopefully she can hear us.

Iryna, I am asking about the serious violence reduction units and how they are going to fit into other arrangements that are already there. From the perspective of the Children's Society, do you have anything to say about how the new multi-agency collaborations are going to work alongside violence reduction units and existing structures that are supposed to promote collaboration between agencies?

Iryna Pona: First, apologies for being disconnected. There were some technical difficulties.

The violence reduction unit is obviously quite new, and they also work in very different areas. With the new duty to focus on serious violence, I think it is very important that in the way it works, it should be complementary and joined up with the work of the violence reduction unit. It is also important to understand that areas where there are violence reduction units receive additional funding to undertake violence reduction activity locally, but that is not available across the country. It is really important that the new duty is supported with appropriate resources and delivered locally.

The Children's Services Funding Alliance, which the Children's Society is part of, looked at the funding from 2010-11 to 2018-19 on early intervention and late intervention services. It showed that the funding for early intervention services reduced by 46% during that time, while the funding for late intervention services increased by 29%. That shows that there is not enough early intervention available. It is important that where there is activity that focuses specifically on diverting young persons from being involved in violence or violence-related activity, it comes together with funding to address the underlying causes of why young people may be in a situation where they may be exploited in a particular way or drawn into certain groups and activities.

It is really important to understand that local picture. In that respect, it is really important that violence reduction units and local safeguarding partnerships work together to understand those underlying causes and try to develop a strategy that will comprehensively address those local issues.

The Chair: Sorry about this noisy room, colleagues. It is an extraordinarily noisy room.

Sarah Champion: It is extraordinary. I have tinnitus, which is why I am deaf, so that ringing—

The Chair: It is driving me mad, so I do not know what it is doing to colleagues.

Q208 Sarah Champion: Let me ask you briefly, in your experience what is the impact on a child receiving a criminal record? Please can I start with Will.

Will Linden: The impact on a child receiving a criminal record is extraordinary. It sets you on a pathway for life that makes things much more challenging. It can be traumatic and it can hamper you having a job or a career in the future. It can take you further down the criminal justice pathway, where you can get further involved in criminality but you are actually more likely to be victimised and to be the victim of crime. Having young people involved in anything to do with the criminal justice system is not, under any circumstances, a thing we should ever aspire to. The criminal justice system is one of the necessary evils that we require in society at present and we should do our best to keep young people out of it as much as possible.

Sarah Champion: Thank you.

The Chair: Does anybody else have anything they would like to ask our excellent witnesses? No? Well, I thank the two of you for giving up your Thursday afternoon to join us. I am sorry that we lost you occasionally and that there was background noise, bells and banging, but we got there in the end, so thank you very much.

Examination of Witness

Hazel Williamson gave evidence.

2.35 pm

The Chair: Good afternoon, Hazel, and thank you for being ready to join us early. Hazel Williamson is the chair of the Association of Youth Offending Team Managers. I have just introduced you, but I think we need to do you the courtesy of allowing you to introduce yourself very briefly.

Hazel Williamson: Thank you. I am very grateful, and I am delighted to be able to give some evidence today. Yes, I am Hazel Williamson, and I am chair of the Association of Youth Offending Team Managers. I have been chair since September last year, and for two years before that I was vice-chair. My day job is head of Staffordshire youth offending service.

The Chair: Thank you very much. We have a question straight away from Mr Robert Goodwill.

Q209 Mr Robert Goodwill (Scarborough and Whitby) (Con): As a former Children's Minister, this is something very close to my heart. I would like to ask you a little bit about custodial remand and whether you find that in practice, custodial remand is currently used appropriately for children.

Hazel Williamson: In terms of custodial remand, we have seen a significant reduction under the previous legislation and the current legislation. Under the Legal Aid, Sentencing and Punishment of Offenders Act 2012, we have seen a reduction in remand. Some of the challenges that remain for remand are around those robust packages, and in particular suitable placements, for our children and young people. We know that placements is a national issue for children and young people, and finding the most suitable is really difficult. What we know about our cohort in the youth justice system now is that they have changed over the past 20 years. They are presenting with significant trauma and abuse, often as a result of exploitation. That makes it really difficult for our local authority colleagues to source an appropriate placement.

Q210 Mr Goodwill: Some children may be living in dysfunctional families, but very many whom the criminal justice system comes into contact with are in local authority care. In fact, sadly, these children make up a large proportion of those who get involved with the police, both as children and as they become adults: if you look at the prison population, far too many of them have been in local authority care. In your experience, is it more likely that a child in local authority care will be put into custodial remand, or would there be a consideration that that would be a good alternative?

Hazel Williamson: With remand into custody, we would always try to offer suitable alternatives wherever possible, whether that is a robust bail package supported by our youth offending teams or remand into the care of the local authority with that additional support. We know that in the custodial population, there are high numbers of children who have been looked after or are currently being looked after, along with other needs, but wherever possible we would try to work with our local authority to seek that suitable alternative to remand.

Q211 Mr Goodwill: Finally, in terms of scrutiny of these decisions, what structures does your association think could be utilised or built on at a local level, or indeed at a national level, to make sure that remand decisions are properly scrutinised?

Hazel Williamson: In particular, I would like us to record remand decisions more robustly in the courts. We need clear decision making; we need it to be clear why we have made those decisions. Also, we should take the opportunity to encourage regular reviews of remand and seek alternatives wherever possible.

I think on a national footing we need to be working closely with the Department for Education and our director of children's services to develop a more robust placement process and improve the quality of the market for placements.

Mr Goodwill: Thank you very much indeed for those clear and concise answers.

Q212 Maria Eagle: May I ask about secure 16-19 academies: the new initiative, delayed for various reasons, to try to break that link between being in custody and educational achievement ending up very low? Do they offer a way forward not managed by other provision? Do they provide a fundamentally different model from the current youth custodial provision?

Hazel Williamson: We are obviously supportive of anything that improves youth custody. We know that outcomes for children who end up in youth custody are poor and have been for some considerable time. The recent inspection reports will detail that we do not yet have the significant improvements we need in youth custody.

As an association of YOT managers, we believe that children in custody—custody should be a last resort—should be placed in small, secure units close to their homes. We do not advocate large custodial establishments where children are placed far away from their home; we would advocate small custodial units. As for the academy trust, it remains to be seen what the detail is around the secure school and how children will manage as part of the routine within that environment.

Q213 Maria Eagle: Thank you. You do not sound entirely convinced that it will be a great initiative, but no doubt the proof of the pudding will be in the eating when we see these things established and starting to work. Do you have any views on the changes proposed to youth rehabilitation orders?

Hazel Williamson: If we look at the proposal for an extended intensive supervision and surveillance programme, it did not have great results when it was previously piloted, and it was not piloted on a scale to allow an effective evaluation. We as YOT managers are not convinced that the extended ISS is the way to go. We are absolutely committed to ensuring that custody is the last resort for children and young people.

The other proposal in the Bill that we as an association have been discussing is around intensive fostering. Staffordshire youth offending team—my service—was part of one of the pilots. That scheme was extremely expensive and did not necessarily get the expected results for those children and young people. So while we absolutely support robust alternatives to custody, I think we need to be consulting with our youth offending teams to try to examine what we think will work with the cohort of children we are dealing with.

Q214 Maria Eagle: Finally from me, do the changes in the Bill on custody for children and options for children make enough good provision to distinguish between the needs of boys and the needs of girls in the system?

Hazel Williamson: There has always been a disparity for our girls in the system. I am concerned overall that the numbers of children going into custody will increase with some proposed mandatory sentencing, and I am concerned that it will impact in particular on our girls and our black and minority ethnic children—particularly our black and mixed heritage boys. I am also concerned that it may impact on our children who are looked after. There are some particular groups in the youth justice system who I believe will be adversely affected by some of the recommendations in the Bill.

Q215 Sarah Champion: Thank you ever so much for this, Hazel. I have been around one of these secure children's homes—it was a mixed-sex one—and I found it absolutely terrifying. I have visited places such as Strangeways that were nowhere near as horrifying as I found the secure unit. You said that you would rather they were small and located close to the child's home. Can you define "small"? How many children? What would be the maximum?

Hazel Williamson: I am not going to put a figure on it, but we know that we get better outcomes for children and young people who are placed in secure children's homes that are generally run by people who are social work and social care-trained, and that provides a much more nurturing environment. It is a children's home with security rather than a custodial environment overseen by prison rules.

Q216 Sarah Champion: I was really disturbed that IICSA—the independent inquiry into child sexual abuse—showed that the reported incidents of sexual abuse in youth offending institutions and secure children's homes are much higher than was previously understood. Is there anything in the Bill that would address that, or could anything be added that would be able to make an impact?

Hazel Williamson: I think there is a missed opportunity in the Bill to really strengthen the rights of children, whether that is in the community or in custody. There is a missed opportunity in that we are not strengthening our welfare-based approach to how we deal with children and young people. We know that children are different from adults, and we should take a stronger welfare-based approach with our children and young people. I definitely think that could be strengthened in the Bill.

Q217 Sarah Champion: Could you give specific examples of what could be in the Bill that would reach that outcome?

Hazel Williamson: Some things in the Bill mean that some of our children would receive mandatory sentences. I do not think it necessarily outlines for us how children's welfare and the needs of children would be taken into consideration.

Q218 Sarah Champion: Thank you. You are not being drawn on this, so I will move on. I was surprised that the option of charitable status for secure children's homes was potentially in the Bill. Who would benefit from that?

Hazel Williamson: That is really a commissioning contract that we have not been party to. In the association's view—I go back to my previous point—children should not be looked after where they are governed by prison rules, primarily.

Q219 Sarah Champion: Finally, I know that the average price for a place in a secure children's home is about £10,000 a week if it is a private one. Do you know what the cost is likely to be or currently is in a secure unit for a child?

Hazel Williamson: It is slightly more. There is no doubt that paying for care for children where we want better results will inevitably cost us more. If we compare that with what it would cost for what is being proposed in the community, that also costs more. If we want better outcomes for our children and young people, we will have to invest, and invest a lot earlier.

Q220 Ian Levy (Blyth Valley) (Con): Thank you, Hazel, for giving up your time today. As Sarah has just said, some of these homes can be really quite scary places. I know that, because before being elected as a Member of Parliament, I worked for the NHS in a mental health setting, and a lot of my time was spent working in adolescent secure units. Could you expand a little on youth offending teams and rehabilitation for children who are given community sentences? How do you administer that, and what mental health provision is there in that?

Hazel Williamson: In terms of how we administer any community order, we work together with children and their families, or their corporate parent if they are a child in our care. We develop a holistic package that includes health. There is no doubt that health across England is patchy, in terms of provision for youth offending teams. However, health is a statutory member of all youth offending team partnerships. We would certainly advocate that the health offer is strengthened nationally, so that all children, whichever area they live in, get the right treatment at the right time.

We know that children who come into contact with our service have a significant range of unmet health needs, in particular speech, communication and language needs. We know that over 90% of the children we work with are often operating at an understanding age of between five and seven years old. So when we ask a teenager to navigate a very complex environment, their understanding is much lower than their chronological age.

Ian Levy: Thank you very much. I would agree that it is a very complex issue that we are dealing with here and I think you are doing an absolutely fantastic job. Thank you.

Hazel Williamson: Thank you.

The Chair: Well done, Mr Levy. Right, are there any more Back-Bench colleagues who would like to come in before I bring in the shadow Minister, who is champing at the bit? No? I call the shadow Minister.

Q221 Alex Cunningham (Stockton North) (Lab): He always is, Sir Charles; he always is.

Earlier, I believe that I heard you correctly when you were expressing a view on the proposed changes to the test for custodial remand. Did you say that you were concerned that it could lead to more children being remanded in custody?

Hazel Williamson: No, that is not what I said. I believe that the Bill could lead to more children receiving custodial sentences. In terms of remand, we are pleased that the Bill strengthens the conditions for remand and that remand will be seen as the last alternative. However, in the courts arena we would like to see the reasons for remand being made really clearly recorded, and the decisions about it.

Q222 Alex Cunningham: Thank you for clarifying that. So if the Bill will lead to more children being in custody, can you explain why you believe that to be the case?

Hazel Williamson: In particular, we are looking at mandatory sentences for some offences. What we have to understand is that the children and young people who we currently work with in the youth offending service are different from those we were working with 20 years ago. Youth offending teams have worked really hard to reduce the number of children and young people in the statutory youth justice system, and we have much lower numbers now. However, what we have is an increasingly complex group of children and young people, who have often experienced exploitation, in particular criminal exploitation, and significant trauma.

For me, what is a missed opportunity within the Bill is that join-up regarding how we work with children who are exploited by our serious crime gangs, and we need to be thinking about a much more welfare-based approach to how we work with our children and young people.

We are also concerned about the differences proposed for some of our 17-year-olds. We believe that, in terms of youth justice, they are a child until they get to 18. There is also lots of evidence about brain development, showing that it can take children until they are into their early or mid-20s to fully develop.

We believe that there is opportunity within the Bill for more custodial sentences and we are particularly concerned about our black and minority ethnic children, including our Gypsy, Roma and Traveller children.

Q223 Alex Cunningham: Thank you. It is helpful that you talked about maturity, because I have a question specifically on that. Clause 36(10) states:

> "In this Chapter…'adult' means a person aged 16 or over".

Do you think that generally—you have already alluded to some of this—the Bill gives sufficient consideration to research on maturity?

Hazel Williamson: I know that there is mention of neurodiversity in the Bill, but it does not go far enough. We should treat children as children until they are 18 and they should be sentenced as a child until they reach the age of 18. In an ideal world, we would look beyond that, because many people do not develop fully, in terms of brain development, until they are in their mid-20s. The cohort of children and young people we are working with have suffered significant trauma. We know that affects what would be the brain of a teenager who had not experienced trauma; the brain develops differently, if you have experienced significant trauma and abuse. Virtually all the children we work with in our system have experienced abuse to some level or degree.

So no, the Bill does not go far enough, in my view. That links to our earlier conversation about being more welfare and rights-based. We need to think about the rights of children. They should be treated as children until they are 18.

Q224 Alex Cunningham: Hazel, you did a grand job of answering my next question in your previous answer. Maybe you would like to speak a little bit more about this point. What are your concerns about offenders who commit crimes as a child being sentenced as an adult if they reach 18 before they go to trial? What should we do about that?

Hazel Williamson: If they have committed the offence as a child, they should be sentenced as a child. During covid, there have been some delays in court processes, which has meant some children being sentenced as an 18-year-old when they committed the crime as a child. Going back to our earlier conversation, we know that brain development does not change just at age 18. For me, if you committed the offence as a child, you should be sentenced as a child.

Q225 Alex Cunningham: At the more serious end of offences, do you have any concerns about the Bill's proposals for reducing the opportunities for adults who committed murder as a child to have their minimum term reviewed?

Hazel Williamson: We have talked about this as an association. We have concerns when there are not opportunities to have terms reviewed. What we know is

that there will be significant changes. For example, the brain of a child who was sentenced to a long term at 17 will have matured significantly by the time they reach their mid-20s, so we should be enabling that review to happen along and through their sentence.

Q226 Alex Cunningham: Thank you. Hazel, your teams around the country do a tremendous job in the most difficult of circumstances. I hope you will pass on our thanks to them for the work they do. I would like to ask a general question. What do they consider to be the greatest challenges facing youth offending teams as they are trying to deliver adequate services for our young people?

Hazel Williamson: What YOT managers say to me is that the biggest challenge is around funding. Youth offending teams have absolutely reduced first-time entrants; we have reduced children and young people going into custody. We are also reducing the reoffending rates for many of our children and young people. The assumption, therefore, is that youth offending teams do not need to be funded as much as they were previously.

However, youth offending team managers have been saying for some time that just because the numbers have reduced does not mean that we are not working with a complex group of children and young people. For many youth offending teams, the numbers they are working with have not reduced; it is just that the children are in a different space and place. For example, we might not be working with as many children on statutory orders, but we will be offering some kind of prevention and diversion to keep them out of the criminal justice system.

It is not always the case that because first-time entrants are reducing and the numbers of children involved in the criminal justice system are reducing, youth offending teams are not doing the same amount of work they have always done. Funding is really an issue, as is understanding the context and the numbers of children that YOTs are trying to work with across the country.

Q227 The Parliamentary Under-Secretary of State for the Home Department (Chris Philp): Thank you, Hazel, for all the work you and your colleagues do across the country; I know that it is appreciated across the House. I have two brief questions. First, you mentioned the question of sentencing of people who were under 18 at the age of the offence, but over 18 at the point of sentence. You also made reference to maturity, as did the shadow Minister. Would you accept that, even if someone is over 18, the pre-sentence report can and does take into account maturity and the judge can reflect that in passing sentence?

Hazel Williamson: Absolutely, and we know that, but children and young people who commit those offences as children should still be sentenced as children. We can use the strength in our youth offending teams, because we have seconded probation staff working with us, so we can have quite a balanced report for those children and young people, and support them with the transition from youth offending teams into probation. Age and maturity should absolutely be considered across the whole system, but our children and young people who commit offences when under 18 should be sentenced as children.

Q228 Chris Philp: But should the court not sentence the person before the court, with regard to their maturity, condition and everything else at the point of sentence, rather than at a hypothetical time in the past?

Hazel Williamson: What we know about sentencing is that people will make significant changes between the time they committed the offence and where they are at any given point in time. We have been working with children who have been awaiting sentence in the Crown court, and who are now past their 18th birthdays. They will have made significant changes up to the point where they are sentenced, and they were still children at the time they committed that offence.

Q229 Chris Philp: If your point is that they can change, surely the pre-sentence report delivered at the point of sentence will reflect that change, and that would be the appropriate approach to take. We will no doubt debate that extensively during line-by-line consideration.

Secondly, some new youth sentencing options, and sentencing options more widely, are made available in the Bill. Can you give us some commentary on how youth offending services and courts can make a success of those new sentencing options?

Hazel Williamson: I assume you are referring to the intensive supervision and surveillance, intensive fostering, and GPS monitoring?

Chris Philp: Yes, for example.

Hazel Williamson: Okay. In terms of ISS, I have already indicated that its extension will require some resourcing. Intensive supervision and surveillance is already in place across the country for youth offending teams, and it is utilised to prevent children from receiving custodial sentences. I think that is already in place. There are concerns that the pilot of an ISS extended to 12 months did not give the results it needed to.

In terms of the intensive foresting arrangements, again, I go back to the fact that it is really resource-intensive and expensive, and it will require very close join-up with our local authority colleagues, who will be required to provide the foster carers to support it. On GPS—some trials have been taking place for GPS monitoring for our children and young people—there is some thought that it will certainly prevent some of our children and young people from being involved in those more violent crimes, and will reduce the risk of them being exploited. That is not the case from what we are seeing with children and young people who are subject to GPS monitoring and tagging. We also know that those children really struggle with the equipment, in terms of practicalities and charging the equipment. We know that GPS does not work for a lot of our children and young people in areas where it has been piloted.

As youth offending teams, we want to look for suitable and robust alternatives to custody for our children and young people. There is no doubt that it has to be done in partnership, but it will require some significant resourcing.

Chris Philp: Okay, that is very helpful. Thank you very much.

The Chair: Hazel, thank you for that. When people ask—*[Interruption.]* Bloody hell, I am wrestling with my wretched mask—my mother-in-law made it and I wear it in honour and tribute to her. Hazel, when people ask me, "How should I prepare to give evidence to a Committee?"—be it a Select Committee or a Bill Committee like this—I shall say, "Watch Hazel Williamson." That was crisp, concise and informative. It really was a

masterclass, and it is appreciated by us all at the start of a very long afternoon. We are trying to find our next witness, who is being asked to appear 25 minutes early. If we cannot find our next witness, colleagues may go and have a cup of tea and stretch their legs. Thank you, Hazel.

Hazel Williamson: Thank you.

The Chair: I will call a 10-minute break. The sitting is suspended until a quarter past 3.

3.6 pm

Sitting suspended.

Examination of Witness

Ellie Cumbo gave evidence.

3.17 pm

The Chair: Hello, Ellie Cumbo, Head of Public Law at the Law Society. Can you hear and see us?

Ellie Cumbo: I can.

The Chair: Excellent. We have until 4.15 pm for this session, but I think we are going to end early. Thank you for joining us early. We are ahead of schedule. Would you like to introduce yourself very briefly?

Ellie Cumbo: Certainly. My name is Ellie Cumbo. I am the Law Society's Head of Public Law, and I have been in post for two years. My substantive responsibilities are, as my title suggests, largely to do with public law, and we include criminal law within that definition.

The Chair: Fantastic, thank you for that. Robert Goodwill, over to you, sir.

Q230 Mr Goodwill: Good afternoon, Ellie. I would like to ask you about a subject that we discussed in some detail on Tuesday: the policing of demonstrations and the way that demonstrations can be compliant. It seems an area where the law and politics collide quite violently. It appears quite difficult to draft legislation so that those who pretty much know what they want to achieve can do so in a way that is legally watertight. Do you accept that freedom of speech and freedom of assembly are qualified rights, and that in managing a disruptive protest, the police need to balance those rights with those of others who may be adversely affected by the protest—people who want to go to work or go about their normal lawful business?

Ellie Cumbo: Certainly, there is nothing in there that sounds controversial to me. I should, however, flag that the Law Society at the moment does not take the view that it is right for us to comment on the public order provisions of the Bill. That is largely down to the fact that our role is to comment on how they will work in practice and whether it will be possible for them to be implemented by the police and understood by solicitors, clients and the general public. Much of that remains to be seen. It is, after all, the case that these are political decisions.

We of course take the point about fundamental rights. We want to point out that it has become extremely clear in the last year and a half that it is important not only that the law is clear and accessible in the ways that I just described, but that it is enforced in a way that is consistent and can be understood by the general public. That is something that we would call for. Beyond that, we have not seen fit to comment on these particular provisions.

Q231 Mr Goodwill: So you have not gone so far as to try to predict how the provisions brought forward by the Government may actually work in practice. It is pretty much, "Let's suck it and see if it actually does what we want it to do." Are you saying it is difficult to predict whether these will be effective and whether they will work, or difficult to predict whether the police will be able to use these tools at their disposal in a proportionate and possibly compassionate way?

Ellie Cumbo: I am saying that it is not within our remit. We have to judge our remit based on what we take to be in the interests of our members, which of course includes issues of principle such as the rule of law and access to justice. It may well be the case that there comes a point where, if great concern is expressed by those agencies and bodies with greater knowledge of how these provisions would be enforced in practice—policing bodies, voluntary sector bodies—we might see a need for us to add our voice to those concerns, but there are more appropriate bodies to comment on those at this point than us.

Q232 Mr Goodwill: Thank you. There are some terms we use in everyday conversation that have specific legal meanings that most members of the public would not be aware of, so could I ask what benefit codifying the common law offence of "public nuisance" into statute brings?

Ellie Cumbo: Again, clarity of the law is an issue of concern and interest to the Law Society and its members. We have not taken a view on that particular Law Commission proposal, but we certainly would not oppose it. Codification does not always come without disbenefits: in this case, we are not aware of any, but to reiterate, we have no strong view on that at present.

Q233 Mr Goodwill: Would the same apply to using the terms "annoyance" and "inconvenience", understood in the terms of public nuisance? Is the jury still out on that one as well, from your point of view?

Ellie Cumbo: I am afraid so. I am sorry not to be able to assist the Committee on that, but we have taken a view that at the moment, that is not an area for our expertise.

Mr Goodwill: Thank you.

Q234 Maria Eagle: I think the Law Society does have some concerns about some aspects of the Bill. Would you like to set out to us the main areas of concern that the Law Society has?

Ellie Cumbo: Certainly. The heading for all of our concerns is access to justice and the impact, or potential impact, of some of the provisions on access to justice. Now, in some of those areas, it is more that we have a question and we would like to see more detail about how this will look in practice—the open justice provisions would be in that category—but there are two particular areas where our concerns are already sufficient to put us

in a position where we do not support what the Bill currently proposes. Those are in relation to video juries and the pre-charge bail provisions.

Q235 Maria Eagle: The Bill, if it is enacted, would increase the initial bail period to three months, with extensions to six months, nine months and then beyond nine months. Would you set out what your precise concerns about that are?

Ellie Cumbo: I should say at the outset that we support the aim of those provisions, first to give clarity, and secondly to give the police a realistic opportunity to conduct investigations in hopes of preventing such measures as we have seen in recent years: the over-reliance on release under investigation, which the Committee may be aware that the Law Society has raised significant concerns about. At the moment, the risk is that a great many people—we do not know how many, and that is part of the problem—who are suspected of a crime but have not yet been charged with one are living in limbo for truly unacceptable lengths of time, as are all other potential parties to the case, including the complainants and potential witnesses. We understand that if the police have a little bit more time in which to put somebody on bail, that might reduce the need for them to feel that release under investigation is their only option.

However, at the other end of the scale, we do not want to return to the situation prior to 2017, where suspects could be on bail for indeterminate lengths of time. That too is a situation that places an unacceptable strain not only on defendants, as they are at that point, but on the other parties to the case, including complainants—potential victims. Our preference was for a middle way, so when this was consulted on in 2017, our preference was for an initial period of two months, followed by extensions up to four and up to six. That was what we felt was the appropriate middle ground. We feel that the potential to go to nine months before a court gets anywhere near the matter is excessive, but we do support the aim. We obviously want there to be greater certainty for all concerned.

I should just say, in closing, that ultimately what we really want, which I hope we could all agree on, is fewer delays, and investigations that conclude in a timely fashion. In our view, that is better achieved by greater investment of resources in the criminal justice system, rather than by what I might call a little bit of tinkering around bail time limits.

Q236 Maria Eagle: Are there difficulties for solicitors and lawyers who seek to assist those accused who might be on bail or release under investigation for long periods? Are problems caused by the delay, in terms of getting proper access to legal advice for those people who are on bail for an extended period of time, perhaps a long time before they are charged, or due in court having been charged? We are seeing extensions in those timescales caused in part by the impact of the coronavirus pandemic and in part by delays that were in the system beforehand. Does the Law Society have concerns about access to legal advice that are made worse by these delays because of long time periods on bail or release under investigation?

Ellie Cumbo: The first thing to say is that of course that uncertainty, that living in limbo that I referred to previously, affects solicitors and legal practitioners, too. Ultimately, though, I think what my members would say is that it is their entire duty to act in the interests of their client, so it is the impact on their clients that they are quick to raise with us, and the potential injustice not only for, as I say, suspects and potential defendants, but all other parties to the case.

It is probably worth also developing the issue of what this might mean for access to legal advice. The longer a case is put off, the greater the risk of disengagement by the suspect or defendant and by all others. Memories fade. Justice outcomes are potentially damaged by the time that there actually is a hearing, and that is not good for anybody.

Q237 Maria Eagle: Thank you. You also raised concerns about remote hearings and clause 166. What concerns do you have about that?

Ellie Cumbo: I should say that we are in a middling position—again—on those provisions. We have not taken a stance against the provisions. Solicitors have adapted very well to remote hearings over the last year and a half, and they have been seen to have very great advantages, particularly in relation to administrative or interlocutory hearings where only the legal representatives are present. That has enhanced everyone's convenience and the efficiency of proceedings in a very clear way, and our members are very clear about that.

However, we do have concerns about the fact that this is a very new development. It is foetal in terms of lifespan in the broader justice system. We would not be the first to raise concerns about the ability of vulnerable parties to participate in an effective way. In a survey that we recently conducted with our members, only 16% of them told us that they felt that vulnerable parties were able to participate effectively in remote hearings. We understand that the judiciary have taken notice of that. Guidance is available, in different jurisdictions, about the cases in which remote hearings are thought to be suitable. But it is still a developing agenda, and we are concerned that things should not move forward too quickly, because it is a substantive change and of course—as with so much in the criminal justice system—we know very little about the potential impact on justice outcomes and whether it is in fact in any way a risk to the right to a fair trial to conduct certain types of hearing in a remote way.

Q238 Maria Eagle: Thank you. When I was the Minister for disabled people—a long time ago now—I led on recognising British Sign Language as a language. The Bill amends the 13th person rule by allowing a BSL interpreter into the jury room, with the aim of enabling deaf jurors to participate. Do you welcome that? If you do have concerns about it, what are they?

Ellie Cumbo: We certainly welcome it, yes. Many people might be surprised that it is not already the case that a British Sign Language interpreter can be present in those circumstances. Obviously, that is a reflection of the fact that the whole system takes the importance of an independent jury very seriously—it is perhaps the most important safeguard we have for the fundamental rights of those who are charged with criminal offences. That is probably why it has taken the length of time it has to get here.

Our view is that, given where the public consensus can be judged to be and the fact that BSL interpreters participate in other types of confidential proceedings,

we do not think that at this point it would be sustainable not to move forward with these provisions. Obviously, we are pleased to see that the Government are taking seriously the risk that the jury might in some way be influenced unduly by the presence of a 13th person, but as long as those safeguards are in place, we are entirely supportive of those provisions.

Q239 Sarah Champion: Chair, I apologise for running late.

Ellie, I am reeling from something that our Front-Bench spokesperson said in the last session. In chapter 3, on the extraction of information from electronic devices, in clause 36(10), the Government redefine an adult away from the definition in the convention on the rights of a child, which defines a child as a human under the age of 18, to

" 'adult' means a person aged 16 or over".

Could you comment on that extraordinary change?

Ellie Cumbo: I have not had the benefit of hearing that, so I think it would be unwise and unhelpful for me to do so. Could I come back to you on that?

Q240 Sarah Champion: If you could write to us on that, it would be hugely appreciated.

Within the Bill, there are changes regarding the availability of live links and when a vulnerable witness could call for special measures. What reasons would a judge have to refuse the use of a live link?

Ellie Cumbo: It is important that judges maintain that discretion. It is difficult to give an overview because the examples of a judgment that it is not in the interest of justice to use those live links will be so case-specific. It would be difficult for me to enlighten the Committee any further on that, other than to say that we place great trust in the discretion of judges and believe that they would not refuse vulnerable people the ability to use special measures without good reason.

Q241 Sarah Champion: One of the amendments I am putting forward is the presumption that a vulnerable witness can have special measures unless the judge deems otherwise. Would you be comfortable with that slight shift? Currently, it is up to a judge's discretion.

Ellie Cumbo: I think that would be difficult to assess in practice. I wonder if it would be helpful for me to consult some of our members who do defence work. It will sound to most people, including me, as though there is not an enormous difference between those two different situations, but I would not want to speak out of turn and be unhelpful. Is it acceptable for me to ask some of my defence practitioners who would be best able to give you an example of why that might or might not make a difference?

Sarah Champion: I would be extremely grateful for that. Thank you. I refer you back to one of your earlier answers. There are already huge backlogs in the justice system, for various reasons. Are there any measures in the Bill that cause you direct concern that it might increase that backlog?

Ellie Cumbo: I believe I would not be the first to note that anything that enhances the risk of a welter of contempt of court prosecutions is probably not desperately helpful. That is one of the reasons why we are keen to see the final detail around what I refer to as the open justice provisions of the Bill.

Of course, we support open justice and think it is of vital importance, but the reality is that there is a de facto limit in a physical courtroom of how many people can be observing trial proceedings at any given time and what they are getting up to while under the immediate eye of the judge. If any move towards the possibility of mass observation of court proceedings were possible as a result of the Bill, there would be a much enhanced risk of abuse and of people behaving in such a way that criminal proceedings against them ensue.

On a separate point, a concern that we have is that it puts a level of pressure on the parties that simply is not an issue in a physical courtroom, that something might go viral on social media.

Those are the concerns that we have about the open justice provisions. I am aware that I have gone slightly off topic, but certainly anything that puts further pressure on the criminal justice system in that way is not ideal in terms of dealing with the backlog. As I said with regard to the pre-charge bail provisions in particular, we would like to see significant further investment in the criminal justice system to clear that backlog, rather than changes that I think can be described as a bit of tweaking around the edges.

The Chair: Would any other colleagues from the Back Benches like to participate? No. I call the shadow Minister.

Q242 Alex Cunningham: Thank you very much, Sir Charles. Ms Cumbo, in your opening remarks you gave us some broadbrush thoughts on concerns that you might have about the Bill. Could you speak a little more about any concerns that you have about the proposed changes to sentencing, particularly in criminal cases?

Ellie Cumbo: That is another area of the Bill where, for the time being, we have chosen not to make significant comments. We comment on sentencing guidelines, but we view whether sentences should be tougher or softer as a political decision, and are slow to presume that our members would all have the same view.

Q243 Alex Cunningham: Okay, but would your understanding be, or would you comment on the fact, that there is the potential for the proposed changes to lead to sentence inflation?

Ellie Cumbo: I think I can safely say that criminal defence practitioners in particular worry about sentence inflation as a political trend in the long term, but I do not think that I could responsibly comment on the specific provisions of the Bill. As I say, I do not think that members' views would all necessarily align.

Q244 Alex Cunningham: I want to take you back to the video link issue, which is controversial to say the least. Can we get a yes or no on whether you believe that remote juries should be introduced in England and Wales?

Ellie Cumbo: Absolutely not, no. We are very clear on that.

Q245 Alex Cunningham: What has been your experience of the Government's consultation around that issue? Have they consulted widely enough? Have you had the opportunity to have your say in the way you want to?

Ellie Cumbo: I think it is worth saying that the absence of public consultation on that point is a cause for concern. Anecdotally—I am sure this is true for many of you as well—nobody I have spoken to in a personal capacity feels comfortable that such a change might be made. They certainly find that they want to know more about it, and the safeguards that would underly it. This is an area where, to me, there is an obvious need for public consultation, given the importance that we all place on the way that juries work, and the ability to be tried by a jury of your peers.

In relation to whether we have been consulted as the Law Society, we have had informal conversations. We were aware that the possibility of remote juries was under consideration at one point during the pandemic, but of course it was not then introduced, so the timing of putting it on the statute book now struck us as rather odd.

Q246 Alex Cunningham: The Lord Chancellor thinks it is a grand idea because it will allow people from rural communities to participate more in juries. I agree that that has to be a positive thing because everybody should be able to play their role, but do you think that there are key groups of defendants who are likely to be worst impacted by the provisions?

Ellie Cumbo: I think what is important is that we do not know. The problem with any change to the way juries work is the relative difficulty of having a baseline against which to compare changes. We do not know to what extent changes to the way juries operate would have an impact on fair trial rights and the justice of the outcomes.

One could only speculate about which particular categories of defendants might be impacted—the vulnerable, those who already have communication difficulties, and so on. I do not know how helpful that speculation is. The point is that you do not experiment with a decades-old system that is so important to ensuring our fundamental rights and freedom without significant evidence, including that there is a need for it and that it would in fact deliver additional capacity to the system, which has not been done yet. The evidence has not been produced that there would be a significant increase in capacity from the proposals.

Q247 Alex Cunningham: On the basis that the professionals do not understand what the Government are about—they do not understand the rationale behind the proposals for remote juries—I suppose you are not in a position to offer what safeguards should be put in place to protect fair trial rights.

Ellie Cumbo: Our preferred safeguard is that we do not do it. We are very clear on that. We do not believe it is appropriate to introduce remote juries, particularly at a time when demand for them is surely in decline.

Alex Cunningham: That is great. Thank you very much.

Q248 Chris Philp: Do you have any feedback from your members about how the use of remote hearing technology has worked during the pandemic? For example, I think we are now holding 20,000 remote hearings a week.

Ellie Cumbo: As I said earlier, it has been a story of great success in many ways, enhancing the convenience of all parties, including solicitors, particularly in relation to those types of hearings—administrative hearings—where it is only legal professionals talking to each other. Why on earth should you not use a remote hearing for that?

But it is not just an innate conservativism that prompts those concerns about whether it is working well for all types of hearings and all types of people appearing in those hearings. This is a significant change that is difficult to analyse—in fact, I believe the MOJ itself is still in the process of evaluating its success. We are keen participants in those discussions and are keen that our views are heard. Our views are that where such hearings enhance the interests of justice, we are in favour of them and, where they do not, we are not.

Q249 Chris Philp: Yes, that seems very reasonable. The question of whether remote hearings are appropriate is ultimately a matter for the judge presiding over any given hearing. Do you share my confidence that the judiciary can be relied on to make the right decisions and permit remote hearings where appropriate and not where not appropriate?

Ellie Cumbo: Obviously we and our members have implicit confidence in the judiciary. We are great believers in the importance of our independent and expert judiciary. That is not to suggest that it is not possible to make their lives a little bit easier than the current provisions do.

There is guidance, as I referred to earlier, about where remote hearings are and are not appropriate, and it differs slightly from jurisdiction to jurisdiction. That is not a comment on the judiciary but it is arguably a reason for further attention to be paid to how clear those messages are and how possible it is, with the best will in the world, for the judiciary to interpret them in a way that promotes the interests of justice.

Chris Philp: Thank you.

Q250 Sarah Champion: Ellie, I asked you earlier whether you had any concerns about the Bill putting additional pressure on the judicial system. Does the Law Society have any other concerns about the Bill that you have not already mentioned?

Ellie Cumbo: No, I think I have had the opportunity to cover most of the things that the Law Society would want to. Perhaps I should have added into the conversation about pre-charge bail that we take the same view in relation to the removal of the presumption against bail: we understand the aim, but do not think this is the best way of achieving it. We would like to retain that presumption on the basis that it is still perfectly possible to use bail, but it can only be used where it is appropriate and proportionate to do so. We think that is an important safeguard.

Sarah Champion: Thank you.

The Chair: That brings this session to an end. Ellie, thank you very much for joining us and for the crispness of your answers.

Ellie Cumbo: Thank you.

3.44 pm

Sitting suspended.

Examination of Witnesses

Dr Kate Paradine, Nina Champion, Dr Laura Janes and Dr Jonathan Bild gave evidence.

4 pm

The Chair: I say to the Committee that we are only going to run this panel for a maximum of 45 minutes. Our wonderful people in the Perspex booth doing the audio and visual will try to find the next panel so that we can end today at 5.30 pm. That is 15 minutes early, but we are running ahead of schedule.

We will now hear from Dr Kate Paradine, chief executive of Women in Prison; Nina Champion, director of the Criminal Justice Alliance; Dr Laura Janes, legal director of the Howard League for Penal Reform; and Dr Jonathan Bild, director of operations at the Sentencing Academy. Welcome, all.

May I ask for short and crisp answers? You will be asked lots of questions and there are four of you. I will not delay further. Will you introduce yourselves in no more than 10 seconds each, please? We will start with Dr Paradine.

Dr Paradine: Kate Paradine, chief executive of Women in Prison. We work with women in communities and prisons, and campaign for the rights of women in prison.

Nina Champion: I am Nina Champion, director of the Criminal Justice Alliance. We are an alliance of over 160 organisations working towards a fair and effective criminal justice system. In addition, since the Bill was published, we have helped to convene a coalition of criminal justice and race equality organisations to examine and highlight how the Bill risks deepening racial inequality in the criminal justice system.

Dr Janes: Good afternoon. I am the legal director of the Howard League for Penal Reform. We work for less crime and safe communities, and we run a discrete legal service representing children and young people in prison.

Dr Bild: I am Dr Jonathan Bild, director of operations at the Sentencing Academy, which is a charitable organisation that promotes the use of effective sentencing practices and also public understanding of and confidence in sentencing.

The Chair: Great. Mr Goodwill next.

Q251 Mr Goodwill: I shall start with a short question. Which parts of the Bill do you welcome and which parts might need some changes or improvement? Who wants to start?

The Chair: Do it in the order you introduced yourselves.

Dr Paradine: In terms of improvement, we think that there has to be a focus on rehabilitation and not on sentence inflation and the ripple effect that that will have on the prison population, and particularly on the crisis in prisons. We welcome the focus on improving community sentences, but we feel that there needs to be a really close look at what that will mean in practice on the ground.

Certainly in terms of the impact on actually preventing rehabilitation rather than encouraging it, it is important that we consider what the knock-on effects are on the system. In terms of undermining improvements that are happening on the ground, whether it is diversion from custody or strengthening support services, the Bill does not address any of those issues as it currently stands. The ripple effect on sentence inflation is a real concern for us.

Q252 Mr Goodwill: On that point, before we move on to the other witnesses, what is your view on giving the probation officer a power to increase a sentence? We were talking about carrots, but perhaps we should talk about sticks at the same time.

Dr Paradine: When we talk to probation officers, their concern is caseloads and the access to support services that help people to address the root causes of offending. We do not believe that probation officers need any more powers, and we do not think that they think that they need them, either.

The issue is access to a full, strong network of support services, particularly focused on the needs of women in the case of those that we address. For the purposes of enforcing sentences, there is not a problem with sentences not being harsh enough. Community support services that enable people to complete those sentences are what is really needed, not extra powers for probation officers.

Mr Goodwill: I cannot remember who was next.

The Chair: It is Nina Champion.

Nina Champion: We certainly welcome aspects of the Bill around reducing use of child remand, criminal records reform and the focus on diversion from custody, but overall we are very concerned about the sentencing and policing aspects of the Bill, and about the lack of evidence that it will improve public safety or reduce crime. It will put great pressure on an already stretched criminal justice and prison system. We are particularly concerned that the cumulative impact of many of the recommendations will result in increased racial inequality in our criminal justice system.

Q253 Mr Goodwill: Would you not agree that keeping dangerous, violent or sexual offenders in prison for longer protects the general public?

Nina Champion: For that period of time, but when you look at all the evidence, there is none to show that keeping people in prison for longer will have any impact on public safety or on their own rehabilitation. We are concerned, for example, about provisions that keep people in custody for longer and then reduce the amount of time that they spend on licence in the community, which is absolutely vital to enable people to resettle into the community and have that supervision by probation. Reducing that could have an adverse impact on public safety.

The Government have clearly committed to trying to reduce racial inequality in our criminal justice system, but that has to be by actions and not just by words. They have to be able to show evidence that this will have the impact that they want, and there just is not that evidence.

Dr Janes: We at the Howard League also really welcome the provisions in relation to remands for children, but we do think that not getting rid of the rather Dickensian ability to remand women and children for their own protection and welfare is a real missed opportunity, especially now that there will be a requirement

to consider welfare before remanding a child. We also welcome the criminal records changes, which are very good, but more can be done to make sure that the rehabilitation period reflects the date at which the offence was committed.

We are incredibly concerned about the cost. The impact assessment shows that the increase in prison time will cost millions of pounds. We are also very concerned about the impact on our prison system. With these proposals, in the next five years the prison population will increase to 100,000, which is unprecedented in our country. Just to put that in context, in only the 1990s we were at 40,000, so that is an absolutely huge increase, and the impact assessment states that that will lead to instability, compound overcrowding, reduce access to rehabilitation, and increase self-harm and violence.

Although covid has absolutely been a challenge for everyone and a tragedy for many, it has given a brief pause in the uptick in the prison population. Not building on that, and putting further strain on the prison system, really is a bit of a missed opportunity.

Dr Bild: I echo a lot of what Nina said on the sentencing provisions. We have concerns that they do protect the public but in only the narrowest of senses—only for those additional months, or perhaps years, that someone spends in custody. If there is a plan to do something with those people while they are in custody for that extra time to make them less likely to reoffend when they come out, we suspect that that may only kick the problem down the road by a few months or years.

We are very keen on the issues around public confidence in the criminal justice system, but we do not necessarily think the Bill will make a great leap in that direction because of the technical nature of many of the changes. What the Bill does do is to make sentencing ever-more complex and complicated.

A pre-requisite for public confidence is public understanding. One of the results of some of these changes will be that it will perhaps be more difficult than ever to really understand what a custodial sentence will mean in practice. There is much more uncertainty about what a length of custody actually means. Overall, it is yet more piecemeal change in sentencing, which further complicates the framework.

Q254 Sarah Champion: First, hello Nina—I have never spoken to another Champion that I am not related to before. My question is for Laura. Will the number of people in prison increase as a result of this Bill?

Dr Janes: Yes, the projections, as I just mentioned, show that it is set to go up to around 100,000. It is absolutely clear that many of the provisions in this Bill will see people spending a lot longer in prison. There is the increase in the minimum term. We know that with the DTO sentences we are likely to see up to 50 children at any one time in custody. The release provisions for the serious offences—four years or more—will go up to two thirds, rather than a half, which goes right back to the point that both Nina and Jonathan have made in terms of less time in the community under supervision, which is important for victims and confidence in the system.

Q255 Sarah Champion: Thank you. Kate, what percentage of women in prison are actually victims of crime themselves?

Dr Paradine: Most women in prison have experienced much worse crimes than those they are accused of committing and that end up meaning that they are in prison, particularly domestic abuse, child abuse and other forms of sexual exploitation, so this is a massive issue. We are really concerned about the impact on women, on families and, particularly, on children in terms of the imprisonment of primary carers.

We support the Joint Committee on Human Rights proposals for an amendment that would require judges to record and consider what they have taken into account in relation to sentencing primary carers, including to prison, and to collect data on that, so that finally we have the data, which it is really shocking that we do not have, about the number of children and families affected when the primary carer goes to prison.

When a mother is in prison, in 95% of cases her child will have to leave their own home to go into care or to live with relatives. It is completely unacceptable that the measures up until now have not resulted in the change needed. This is an opportunity to make that small change. It does not require anything different, but it will make sure, hopefully, that the things that should be happening in court do happen, that imprisonment is not having a disproportionate impact on children and that their best interests are safeguarded.

Q256 Sarah Champion: My understanding is that women tend to be in prison for survival-type crimes. Is that correct? Can you give us some examples and any data that you have?

Dr Paradine: That absolutely is the case. The majority of women are in prison for things like theft and non-violent offending, often linked to property, to mental ill health, to substance misuse and to multiple needs. The 5% of the prison population that is women is the most vulnerable of that already vulnerable population of people in prison. It is quite ridiculous that we plan to build 500 new women's prison places, when what we should be doing is driving down the women's prison population, which we can do if we invest in the right things and focus in the right direction.

Unfortunately, this Bill is a missed opportunity to turn the system around and to focus on rehabilitation, community intervention and making sure that prison is a last resort and not the first resort, which sadly it still often is, drawing people into a system that they find it difficult to escape from. We plead with you to make sure that we try and make sure that this Bill does not make a bad situation even worse.

Q257 Sarah Champion: Thank you—I hear your pleas. My final question is to Jonathan. Do you feel that the proposed changes in sentencing within the Bill adequately consider the impact on women, children and primary carers? Other witnesses can come in if they want to, but I direct the question to Jonathan.

Dr Bild: Yes, when it comes to primary carers that is a relatively stable area of law and it is a relevant mitigating factor. I understand that there has been an amendment moved to go into statute, which is something that would be sensible, but sentencing will already refer to the guidelines on that. I would defer to Kate on all of these issues; it is very much her area of expertise.

The Chair: Dr Janes, you wanted to say something a moment ago and put your hand up.

Dr Janes: I would just add, on this point, that the really important aspect of sentencing is judicial discretion. That is essential if you want to really make sure we do not make women, children and disabled people—people from all sorts of backgrounds—suffer unduly. There is a real shift away from judicial discretion in this Bill.

Nina Champion: Some of the provisions will disproportionately impact women, and also black, Asian and minority ethnic women. For example, on the clause relating to assault on emergency workers, the equality impact assessment acknowledges that for that type of assault, which can often happen, for example, after a stop and search, it is more likely that women will be caught up by extending the maximum sentence in that provision. Of course, we want to protect our frontline workers, but these sentences have already been increased, even in 2018, and the deterrent effect just is not there. The proof is not there that it has any impact on protecting our frontline workers. What it does is catch more people up in the criminal justice system.

The other proposal relating to mandatory minimum sentences, particularly for issues around drug trafficking, will also capture more women and black, Asian and minority ethnic women. As Laura said, it removes judicial discretion to look at the individual circumstances of the case. We know that many women may have been coerced or exploited in drug trafficking cases. As Kate said, they are victims themselves. Introducing minimum sentences removes the opportunity for the judge to look at the individual circumstances of the case.

Q258 Maria Eagle: I want to press a little further on the impact on women in prison and on whether this Bill will help or make things more difficult. As my hon. Friend the Member for Rotherham said, many of the women who end up in prison are there on short sentences for less serious and non-violent offences, and quite often they are victims themselves. To what extent to do the sentencing provisions in the Bill recognise the difference in offending in respect of women, who are a small proportion of the overall prison population? Do you believe they have been forgotten in this policy development process?

Dr Paradine: Yes, absolutely. This is a Bill that does not recognise the nuances of individual cases, including those relating to women. We know that hard cases make bad law, and many of the provisions are an example of that. We absolutely think that the needs of women have been overlooked.

We know that sentence inflation has knock-on effects throughout the system. There are many unintended consequences to, for example, focusing on the enforcement of community orders and including more and more enforcement measures without addressing the real issue, which is about support to ensure that those who have community sentences can complete them with the support that they need. From our point of view, many of these measures are not looking at individual cases and enabling the discretion on the ground that is needed to make sure we meet each case as we find it. We know that the women's prison population can be radically reduced, but not with some of these measures, which do not take into account the unintended consequences—particularly the impact on women who are primary carers and the best interests of their children.

Nina Champion: I just wanted to add a point about the lack of overall consultation with this Bill and these provisions. Because it was brought in as a White Paper, rather than a Green Paper, there has been no public official consultation. Groups that will be disproportionately impacted by these measures have not had the opportunity to be heard, including organisations and individuals representing those from black, Asian and minority ethnic communities, women, or young adults. We really need to have much greater consultation before these measures are brought in to ensure that there are not the adverse impacts that Kate was talking about.

Q259 Maria Eagle: In your experience, does it happen that women end up getting sentenced, usually for short terms of imprisonment, because they have either breached community orders or have committed repeat petty offences, such that magistrates end up feeling like there is not really any alternative to a custodial sentence? And to what extent do you believe that a broader range of more appropriate community sentences, for example, might be an answer to this situation, rather than imprisonment?

Dr Paradine: Yes, absolutely. The problem-solving courts pilot is one small green shoot of hope in this Bill, in that those sorts of measures, which will enable court and multi-agency support across the system locally to tackle the root causes of what brings people into the system, are really the answer here. We would like to see much more focus on those innovative solutions, restorative justice and out-of-court disposals, of course, which are a really untapped resource in terms of what could turn our system around.

We are concerned not only about the lack of consultation with all sorts of groups representing the interests of those affected by this system but with professionals working within it. We know that there is real progress with out-of-court disposals and the use of simple cautions, conditional cautions and all those provisions available to the police, and we think that those measures must be looked at really, really closely, to make sure that the unintended consequence is not to undermine progress that is already being made in doing exactly what you say needs to be done, which is to focus on a wide range of community solutions that enable us to tailor sentences and responses to individual cases, and actually turn these situations around rather than driving people into a system—indeed, a revolving door—that they find it difficult to escape from.

Maria Eagle: I think that the Howard League wanted to come in there, if I can see properly.

Dr Janes: Thank you very much; I just want to make a brief point. I completely agree with what Kate just said, but I will add to it that the Howard League is concerned about this increased use of electronic monitoring, and particularly, as was raised earlier, the lack of scrutiny of it by the courts. There is a real concern that, instead of it being an alternative to custody, it can become a gateway to custody, and a real concern that that could disproportionately affect women. I just wanted to add that.

The Chair: Dr Bild wants to come in on this and then Nina Champion. Dr Bild.

Dr Bild: Sometimes there is a disconnect between what Parliament does with legislation and what happens in practice. Lots of relatively innovative and problem-solving options have been available, in theory, for a number of years. You can attach treatment orders—alcohol treatment

orders, mental health orders or drug orders—to community orders and suspended sentence orders, but in practice it happens very, very rarely. Only a tiny proportion of community orders and suspended sentence orders will have what might be a rehabilitative order attached to them.

Part of this is a commitment to resourcing, as well. There does not need to be huge legislative change; this stuff is already on the statute book and it is already, in theory, available to sentencers. Anecdotally, sentencers are reluctant to impose an order that they are not entirely sure is available, and the defendant will not be able to benefit, through no fault of their own.

It is not necessarily only about finding new ideas, although new ideas are very welcome; it is also about properly resourcing, and showing some commitment to, what is already on the statute book.

Nina Champion: I just wanted to add that there are a couple of missed opportunities, in terms of a presumption against short sentences—there was a real missed opportunity here to divert people from custody—and to look at adult remand as well as child remand, as adult remand disproportionately affects women.

Also, just picking up on Kate's point about restorative justice, the White Paper made some positive noises about the benefits of restorative justice, both for victims—in terms of coping and recovery—and for reducing reoffending, particularly for violent offences. However, the Bill does nothing to ensure that there will be more access to restorative justice. For example, the national action plan for restorative justice expired in March 2018 and has not yet been renewed. Those are the sorts of measures that really will make a difference for victims and reduce reoffending.

Q260 Maria Eagle: Finally, the Government do have a policy about diverting women from prison. They have a concordat. They have policy development ongoing that seeks to do that. Do you believe that that policy intent, which has often been referred to by Ministers—there is documentation out there about it—is reflected in the Bill, and that the policy intent of trying to divert women from prison can be translated through the measures in the Bill, as well as existing provision, into concrete change that will divert women from prison?

Dr Paradine: I am sorry to say that, no, we do not think that the current Bill does that. There are all sorts of ways in which the intent to reduce the number of women in prison radically and to divert women, and others, from the system is not played out in its provisions. For all the reasons that have been covered by the various members of the panel, it does not do that. Sadly, unless the Bill's direction of travel is redirected towards rehabilitation and communities rather than prison and creating harsher sentences, any progress that has been made will unravel really quickly. The 500 prison places will sadly be the focus, rather than our hope that we could really transform the system in the way that it affects women, families and communities, and beyond that men and young people also.

There needs to be a really strong rethink of what the Bill is trying to do, and a focus on the real problem, which is community support services and the ways that we tackle the root causes of offending. There is very little in the Bill that convinces us that that is the focus, so we need a really strong rethink to focus on communities and not on prison. We know that victims want sentences that work. They do not want to see harsh sentences that do not work. Their interest is in stopping crime and reducing reoffending. Sadly, we do not think that the Bill as it stands achieves that ultimate aim.

Q261 Alex Cunningham: I will be very brief because my colleague has also asked some questions. Jonathan, do you have concerns about clause 108 and the power to refer high-risk offenders to the Parole Board in place of automatic release?

Dr Bild: Yes I do. Of all the clauses, that is the one that I have the most concern about. I saw some of the discussion on Tuesday with Jonathan Hall, QC in relation to terrorism, but this is broader than terrorism, of course. It takes in a large number of offences that are violent, and certain sexual offences.

The problem I think it creates is twofold. First, there is an issue with the power being given to the Secretary of State. As I say, I saw the debate on Tuesday. I think it engages slightly different considerations than the changes that took place last year in relation to terrorism did. On this occasion, we are talking about the Secretary of State intervening on the sentence of an individual prisoner, which engages a slightly different debate to the Secretary of State changing the arrangements for everyone convicted of a certain offence. I would draw an analogy to the Home Secretary's old role to set the tariff for life-sentence prisoners. That power spent about 20 years in litigation before the Home Secretary lost it. It is slightly different, but there is an analogy, I think, and I am not sure that it is an appropriate power for the Secretary of State to have.

There is also a real concern that the most dangerous people will come out with no supervision, no licence conditions and no support. In some respects, the more dangerous you are, the less you will be managed in the community. In terms of managing that—

Q262 Alex Cunningham: That is helpful. I will stop you there, because I need to crack on. The Bill contains provisions that would give probation officers the power to restrict a person's liberty in ways that go beyond what the court has sanctioned. What implication does that have on confidence in sentencing?

Dr Bild: I am not sure that that will be a high-visibility issue for confidence in sentencing, to be honest. One of the huge problems we have is that we do not really know what goes on in magistrates' courts. Magistrates' courts themselves are very low-visibility things, so I do not think we should overstate the impact that these reforms will have on confidence.

Q263 Alex Cunningham: Laura, do you have any concerns about the Bill's proposals to reduce the opportunities for adults who have committed murder as a child to have their minimum term reviewed?

Dr Janes: Yes. These minimum term reviews are very little understood, because they are rare, but I have done a number of these cases in my own practice, and it is a very unusual situation where we get to see the criminal justice system actually incentivising people to make consistent and genuine change. The current proposal pins that opportunity on the arbitrary date when you happen to be sentenced. All of us want to see the

consequences of crime actually fit what happened, and we know that in the current climate, cases are delayed for all sorts of reasons beyond a young person's control. That might be because of delays due to covid, or because extremely vulnerable young people have to have their sentencing delayed while they have psychiatric and psychological reports, so this proposal does not seem to have any rational basis. It seems to deprive the most vulnerable people of something we would want for them, which is to be incentivised to really change their lives around.

Q264 Alex Cunningham: Do others want to comment on that? If not, let me ask this question. Why has the age of the offender at the time of sentencing, rather than at the time of the offence, been chosen as the determining factor for the renew of minimum term in clause 104, when it is the age at the time of the offence that determines the nature of the sentence?

Dr Janes: That, I really cannot answer. As you say, the entire sentence is galvanised around the date of commission. As was said by the House of Lords in the Maria Smith case, that is because it is recognised—and has been for decades, and internationally—that children are less culpable than fully grown adults. There seems to be no rational rhyme or reason as to why the date of sentence would be chosen.

Alex Cunningham: Does anybody else wish to comment on that? If not, I will pass to Sarah.

Q265 Sarah Jones: My question is for Nina. Could you talk to us about the serious violence reduction orders and any concerns you might have about the disproportionality, which the former Prime Minister the right hon. Member for Maidenhead (Mrs May) raised on Second Reading? Also, what do you think we might look to do in the pilots, and what might we learn from the pilots for the knife crime prevention orders that might help us here?

Nina Champion: Thank you for that question. We responded to the consultation on serious violence reduction orders to oppose them—well, we tried to oppose those orders, but there was no question to enable us to oppose it. That option was not given as part of the consultation; it assumed that these were going ahead before the consultation had actually happened. What we do know is that many respondents to that consultation said that one of their key concerns was the disproportionate impact of this provision, particularly on young black men.

We do not believe that serious violence reduction orders are needed, or that there is evidence that they will reduce knife crime. Of course, we all want to reduce knife crime, but rather than additional surveillance, we would rather see additional support for people convicted of these offences. We worry about these very draconian and sweeping police powers to stop and search people for up to two years after their release without any reasonable grounds. Reasonable grounds are an absolutely vital safeguard on stop and search powers, and to be able to be stopped and searched at any point is a very draconian move that, again, risks adversely impacting on those with serious violence reduction orders. For young people who are trying to move away from crime, set up a new life and develop positive identities, to be repeatedly stopped and searched, labelled and stigmatised as someone still involved in that way of life could have adverse impacts. It could also have impacts on the potential exploitation of girlfriends or children carrying knives for people on those orders. There could be some real unintended consequences from these orders.

In relation to your point about what could be done, if these powers were to go ahead, we would like to see a very thorough evaluation of them before they are rolled out nationally. I do not have much confidence in that, given that section 60 powers, which also allow suspicion-less searches to happen, were rolled out following a pilot after several months without any evaluation being published or any consultation. It is therefore absolutely vital that these powers are thoroughly evaluated. That could involve things such as looking at the age and ethnicity of those who were stopped and searched, the number of people stopped in the belief they were someone who had an order but did not—we might see increased stop-and-account of people who have got nothing to do with an order, in cases of mistaken identity for someone who is under one—or the number of times individuals were stopped.

We would like to see scrutiny panels given access to body-worn video footage of every stop-and-search that is done under these powers or in belief of these powers. It is crucial that the evaluation speaks to people who are directly impacted by these powers, interviews them and understands what the impact is. It should also interview and speak to the organisations working with them. Ultimately, it should also look at whether this has achieved its aim. Has it reduced knife crime within an area compared to non-pilot areas? Much could be done to ensure that the evaluation is thorough to avoid the roll-out of these powers, which we believe are not necessary and could have disproportionately adverse impacts. They are just not needed.

Sarah Jones: Thank you.

Q266 Chris Philp: Jonathan, I will come to you first. A few minutes ago you were talking about the measures whereby a prisoner who becomes dangerous—or who might have become dangerous—can serve more of their sentence in prison, and you drew comparisons with powers exercised by previous Home Secretaries to set tariffs for live sentences. Is it right that you were making that comparison?

Dr Bild: Yes.

Q267 Chris Philp: You were. To be clear, do you agree that in fact the powers in the Bill are simply for the Home Secretary to make a referral to the Parole Board and that the assessment of dangerousness and decisions about release are made by the Parole Board, not the Home Secretary?

Dr Bild: Yes, I agree with that. I think the concern is the ability of a Secretary of State to have the power to intervene in the automatic release of a prisoner. That is the question. I agree that the ultimate decision will be made by the Parole Board, which is an independent tribunal, but there should probably be a bit more of a firewall between the Secretary of State and an individual prisoner's sentence.

Q268 Chris Philp: But you accept that the decision is made by the independent Parole Board, not the Home Secretary.

Dr Bild: I do not know if it is going to be made by the Home Secretary or the Justice Secretary. Yes, I agree on the final decision for release, but the halting of the automatic release will presumably be done by the Secretary of State.

Q269 Chris Philp: The referral is made by the Secretary of State, but the decision is made by the Parole Board—that is the critical point. Will you confirm that your understanding is the same as mine: that the release will be delayed only if the Parole Board make an assessment of dangerousness? So, were we not to bring forward this measure, it would open up the possibility that dangerous prisoners might be released into the community before the end of their sentence, by which I mean the total sentence.

Dr Bild: I agree with you, but the issue you have here is that somebody who is dangerous could be released into the community under licence. If that person serves their entire sentence in custody, that same person, who may be even more dangerous by the end of their full sentence, will be released into the community with no licence conditions, no supervision and no support. So yes, I agree with you that it is safer for the extra time that someone is kept in custody, but it is less safe once they are released.

Q270 Chris Philp: Although of course it is possible to undertake rehabilitative activities in prison. Is the judgment that we are discussing here not one that can be exercised by the Parole Board? The Parole Board might choose to have a prisoner serve the totality of their sentence in prison, but equally the Parole Board might choose to allow a release that is after the automatic release point but before the end of the sentence, still allowing the period on licence. Whether there is a period on licence would be a matter over which the Parole Board would have discretion by virtue of the time at which it decided release was appropriate.

Dr Bild: The Parole Board only has discretion in the sense that it has to follow its own rules. Therefore, it can release someone only when it is satisfied that they do not pose a risk to the public. The Parole Board would not be able to decide that now is a nice time to release someone and have a little bit of licence period; I assume that it would have to follow its rules. If it was not fully satisfied that the person is safe to release, I imagine that the Parole Board's hands would be tied by its own rules.

Q271 Chris Philp: But of course, by exercising that power it would be preventing the release of a dangerous prisoner. I think the shadow Minister quoted—he may have mentioned it again today, and he certainly mentioned it previously—some commentary by third parties that later release is somehow inherently unjust or represents a deviation from the sentence handed down by the court. However, is it not the case that the sentence handed down by the court is the total sentence, and that the release point is essentially the administration of that sentence? Following the passage of the Terrorist Offenders (Restriction of Early Release) Act 2020, the High Court held last year that moving the release point was lawful, because it fell within the envelope of the original sentence. Would you agree with the High Court's analysis of that situation—that it is lawful and consistent with human rights and common law?

Dr Bild: I would agree that that was the case last year in relation to the terrorism legislation, as I said earlier. I am not saying that it is not lawful, but I think that a different issue is engaged when a Secretary of State is making a decision on an individual case and not a blanket, "You have committed a certain offence, therefore this is your release arrangement." That is the issue.

Q272 Chris Philp: Thank you. For clarity, the Secretary of State makes a referral, but the decision is made by the Parole Board. I want to be absolutely clear on that point.

Let me move on. I want to ask a question to all the panellists, so perhaps the answers could be relatively brief, given that I am sure we are under time pressure. We had some debate some time ago in this session about the appropriateness of imposing minimum sentences, whereby Parliament specifies in statute that if someone is convicted of a particular offence, there is a minimum period of time that they must be sentenced to in prison, regardless of the facts of the individual case, and regardless of any discretion that the judge may wish to exercise. Can each panel member give the Committee their views on the appropriateness, generally, of statutory minimum sentences?

The Chair: Briefly, please.

Chris Philp: We have got three minutes.

Dr Janes: The problem with mandatory minimum sentences is that they do not allow the judge to take into account the specific characteristics, needs and circumstances of the person before them. We have already spoken about why those things are so important. *[Interruption.]*

The Chair: Do not all speak at once, but one of you please speak.

Dr Paradine: For us, it is the same as for Laura: minimum sentences, the lack of evidence of a deterrent effect, and the inflation of sentences across the board. We really do not believe that minimum sentences are the way forward, and there is so much evidence that that is not the way to go. It is misleading, and it will not do anything for public confidence. What will do so is sentences that actually work in preventing and reducing offending.

Q273 Chris Philp: Would you also apply that analysis if the offence was something of the utmost gravity, such as rape?

Dr Paradine: Yes, because judges should have the discretion to apply to the case the sentence that is required. That is why we have judges, and that is why our system is as it is. There is no need for constant interference in the way that is proposed in the Bill.

Nina Champion: I agree with both Kate and Laura about the importance of looking at the individual circumstances of the case. I would also like to add that, in terms of racial disparity, we know that black people are more likely than white people to be sent to prison at Crown court. We know that black women are more likely to be given a custodial sentence. We know that these disparities exist. Even taking into account other factors such as the lack of an early guilty plea, we know that black people are disproportionately represented in terms of sentencing and being sent to custody, so this would disproportionately impact those groups.

Q274 Chris Philp: Again, would you apply that analysis even in cases of exceptional seriousness, such as rape?

Nina Champion: Across the board.

The Chair: Dr Bild, last but not least.

Dr Bild: I agree with the other panellists. If there was any evidence whatsoever that mandatory sentences deterred people, there could be some justification for them, but in the complete absence of any such evidence, I see no reason to have mandatory minimum sentences. To pre-empt the question, that includes every single offence.

The Chair: Thank you very much, panel. Have a happy Thursday evening and a great Friday, working into the weekend.

Examination of witnesses

Professor Colin Clark, Oliver Feeley-Sprague and Gracie Bradley gave evidence.

4.45 pm

The Chair: Colleagues, we now move on to our final panel. It is scheduled to end at 5.45 pm, but it is starting five minutes early. It is up to you when it ends, but it was scheduled for 45 minutes. If you want to take it to an hour, that is up to you, but it was scheduled for 45 minutes, and it could end earlier than that.

We will now hear from Professor Colin Clark from the University of the West of Scotland, Oliver Feeley-Sprague, programme director for military, security and police at Amnesty International UK, and Gracie Bradley, interim director of Liberty. In the order I have introduced you, could you each say hello and tell us who you are, in no longer than 10 seconds?

Professor Clark: Good afternoon, colleagues. As indicated, my name is Professor Colin Clark. I work at the University of the West of Scotland and am based here in Glasgow.

Oliver Feeley-Sprague: Good afternoon. Thank you for having me. My name is Oliver Feeley-Sprague. I head up Amnesty UK's work on policing, military and security issues. Usually I am based in London, but I am currently sitting in Northamptonshire, in a very windy upstairs room—I hope we will not be disturbed.

Gracie Bradley: Hi, I am Gracie Bradley. I am interim director at Liberty and I am at home in London.

The Chair: Thank you all. I also thank you all for joining us early. It was really kind of you to give up part of your day to let us talk to you a few minutes before we had scheduled. Right, Mr Anderson would like to ask a question.

Q275 Lee Anderson (Ashfield) (Con): My phone has been pinging all day. We have an unauthorised Traveller camp just set up in the constituency of Ashfield. With that comes lots of problems. We know from experience that there will be an increase in crime locally tonight. We will see sheds getting broke into. We will see a little bit of intimidating behaviour in the local neighbourhood. Probably, pub landlords will have a tough time as well. There will be some fly-tipping. The list goes on and on. It is a big problem, not just in Ashfield, but all over the country. The Bill sort of addresses that and it is great news for my residents.

I surveyed 1,000 people in my constituency earlier this year. I will run through a couple of the questions I asked. The first question was: do you think the Travelling community respect the rights of the local community when they set up camp in your area? Only 4% said yes. I asked: do you think the Home Secretary is right when she said that we need to give our police tougher measures to stop unauthorised camps? Only 3% said no. I am not going to run through all the questions, but the last one I will give you is this: do you think crime rises in the area when an illegal camp is set up? Some 92% of my residents said yes.

The Bill is great news, because what it will do is see a decrease in crime the four or five times a year when unauthorised camps are set up in my community. I would like to ask the witnesses whether they agree with me that crime will reduce in places such as Ashfield because of the new measures in the Bill to stop unauthorised camps. It is a yes or no answer.

Professor Clark: Well, I am speaking to you as someone who has been employed as a professor and a researcher for more than 25 years.

I suppose we need to begin with querying the methodology of the survey that was just mentioned and how robust that kind of response and the data are. In terms of a yes or no answer, the answer in a sense would be this. What is in place to ensure that we address the ripple effect of the issues and consequences of the lack of provision of Traveller sites at least since the Caravan Sites Act 1968 and up to the Criminal Justice and Public Order Act 1994? The concern is that if people have nowhere to go, if there are no legal sites in the area, these encampments will not go away, so unfortunately this new legislation, which I think is going to be just about as unpopular as the Dangerous Dogs Act 1991, and we all remember how unpopular that was, will do nothing to solve this issue.

What needs to be in place is a national site strategy that to some extent addresses the wide-ranging social policy issues that arise when there are unauthorised camps, as they were referred to there; roadside sites is another way of talking about it, in terms of the terminology. The Government need to work with the organisations that represent the communities to plan an effective road map—quite literally—of UK sites and accommodation. I just do not see this legislation helping that by any means at all.

We are witnessing right now what is going on in Bristol—the really draconian eviction that is going on in Bristol. We are witnessing what has happened at the Wickham horse fair. This goes back many, many generations, and I think there has been an overreaction at the Wickham horse fair today as well. A really serious rethink is needed. I would hope that time and energy were spent addressing the shortfall issues with accommodation and the consequent social policy issues that arise, rather than trying to use a sledgehammer to crack a walnut. It is a minority within a minority of the population. Bear in mind that 75% to 80% of the Gypsy and Traveller population in the United Kingdom are in bricks-and-mortar housing; this is a small percentage.

I absolutely sympathise with the speaker who mentioned the issues in the local area. What needs to be done is to address that issue in a more comprehensive, national strategy. That, not criminalising populations, is the answer.

Oliver Feeley-Sprague: I agree with a lot of what Colin said. The specific issue around Traveller legislation is not something that we prioritised in great detail in our submission on the Bill, but as a representative of Amnesty International I would say that Travelling communities, not just in the UK but widely across continental Europe, are among the most discriminated against and victimised of any minority group in existence. That is even reflected in things like the Lammy report on racial discrimination in the UK. You do not address the problem by criminalising an entire way of life, which is one of the potential outcomes of the measures in the Bill, especially when you are talking about groups that already have protected characteristics under other relevant law.

I point out that the list of things that anecdotally were reported as part of the survey are already criminal acts. There are already powers in place to prevent, detect and stop those things and to prosecute the offenders. A common feature of some of the measures in the Bill, in our view, around the necessity and proportionality test, is that many of the things that are addressed are already criminal, or can be made criminal in the right circumstances. Those measures are neither necessary nor proportionate.

Gracie Bradley: I would echo a lot of what Colin and Olly said. The real issue here is the chronic national shortage of site provision. Instead of criminalisation, what we want to see is local authorities and Government working together to improve site provision.

It is really important to recognise that we are talking about one of the most marginalised communities in the UK at the moment. These measures are a disproportionate and probably unlawful interference in Gypsy, Roma and Travellers' nomadic way of life. Article 8 of the European convention on human rights protects people's right to private and family life and their home. The Court of Appeal has set out that this community has an enshrined freedom to move from one place to another, and the state has a positive obligation to protect Gypsy, Roma and Traveller communities' traditional way of life. The new seizure powers in respect of vehicles in particular are very likely to mean that people end up facing homelessness.

As we have already discussed, some elements of these proposals are very subjective and invite stereotypes and profiling. The majority of police forces do not want greater powers. Research from Friends, Families and Travellers has shown that when police were consulted in 2018, 84% of the responses said that they did not support the criminalisation of unauthorised encampments, and 75% of responses said that their current powers were sufficient and/or proportionate. The issue is the chronic national shortage of site provision, and that should be the priority of Government and local authorities.

Q276 Maria Eagle: Thank you to our panel for turning up early. I want to give you an opportunity to tell us anything you like about your views on the powers for policing protests in the Bill. Are they necessary? What impact will their use have if the provisions are enacted?

The Chair: We will go in reverse order. Gracie first, then Oliver and Colin.

Gracie Bradley: Thanks. I would like to set the Bill in its wider context. What we are seeing is a shrinking space for people to speak up and hold power to account, the Human Rights Act potentially being watered down, and attacks on judicial review. Now we see this policing Bill that inevitably poses an existential threat to our right to protest. These aspects of the Bill are so significant and so serious that they cannot be mitigated by procedural amendments.

The right to protest is the cornerstone of a healthy democracy and it is protected by articles 10 and 11 of the European convention on human rights. I recognise that it is not an absolute right, but the state has a duty to protect that right and has a positive obligation to facilitate it. We must not forget that protest is an essential social good. For people who do not have access to the courts or the media and so on, it might be the only way they have to make their voices heard.

In Liberty's view, we have not seen a compelling case in favour of expanding existing powers in respect of protests. The existing powers are already broad and difficult to challenge, and they are weighted heavily in favour of the authorities. I know that there is some analysis to suggest that the protest provisions in the Bill are a direct response to Extinction Rebellion and Black Lives Matter. I just remind the Committee that during the judicial review of the Met's decision to ban Extinction Rebellion protests in 2019, the commissioner conceded that there were sufficient powers in the Public Order Act to deal with protests that were attempting to stretch policing to its limits. We are incredibly concerned by the existential threat to protest that the policing provisions in the Bill propose. We invite the Committee to say that they should not stand part of the Bill. I will leave it there for now because I am sure others have more to say.

Oliver Feeley-Sprague: Again, I agree wholeheartedly with what Gracie has said. Amnesty is part of a number of civil society organisations and academics who think that part 3, on protests, in its entirety should be removed from the Bill. It is neither proportionate nor necessary.

I have been working on policing issues for the best part of 25 years and I have never seen a roll-back of policing rights in all of that time. Often I think what is missing from these discussions is recognition that it is not necessarily about a lack of policing power. It is a tactical and operational decision made by commanders at the time to maintain and uphold public order, and they already have a variety of powers and laws. You have only to look at the College of Policing's authorised professional practice on public order to see the enormous list of powers police have at their disposal.

From an international perspective—you would expect me to say this as someone from an international human rights organisation—these are international legal obligations under article 21 of the international covenant on civil and political rights. Interestingly, the Human Rights Committee issued a general commentary on this issue last year. It is quite normal in international legal circles for authoritative bodies to introduce guides and interpretation statements about how these things are supposed to be implemented. Importantly, the commentary on the right to peaceful protest issued by the Human Rights Committee last September said that states parties should avoid using

"overbroad restrictions on the right of peaceful assembly."

It stated that peaceful assembly can be

"inherently or deliberately disruptive and require a significant degree of toleration."

Lowering the thresholds and introducing vague terminology such as "noise", "annoyance" and "unease" are the clear definition of overly broad restrictions on the right to peaceful protest. It puts the UK out of step with its international obligations.

That is also important in the foreign policy setting, because Britain—the UK—goes out of its way to say that it wants to be a champion of human rights around the world, especially on issues of civic space and freedom of assembly. It was a feature of the integrated review and it featured in the UK's response to the G7 communiqué. It is awfully difficult for the UK to champion these issues on the world stage when domestically it is rolling them back. If any other regime in any other context were to introduce powers of the kind introduced in the UK by this Bill, the UK Government would be the first to criticise. It gives those regimes an easy excuse or get-out clause. They can point the finger and say, "Well, the UK is as guilty as all of us. The UK has no credibility to lead on these issues on the world stage." That discussion is missing a bit from this Bill.

Professor Clark: There is little I can add to what has been said, but I will do my best.

The words that Olly quoted—"noise", "annoyance" and "unease"—are replicated in other parts of the Bill, where there is talk of "disruption", "damage" and "distress" of a significant nature. What strikes me is the imprecise language and terminology of the Bill, and the potential that it would introduce for discretion, the operation of prejudice and bad governance, in a sense. It leads to some fundamental questions about what kind of democracy we want to live in. Do we want to live in a democracy that protects human rights, protects peaceful assembly and guarantees both formal and substantive citizenship rights?

I am of an age where I remember being outside where you are right now back in 1993, peacefully assembling to protest the introduction of the Criminal Justice and Public Order Act 1994 for the same reasons that we are here today. There is a real sense of déjà vu about this in terms of the rights to protest and to peaceful assembly. Then, of course, it was raves and the succession of repetitive beats, as the Act made it known. It was a section of the Criminal Justice and Public Order Act 1994 that effectively ripped up the obligation of the state and local authorities to provide Gypsy sites within local authority areas. There is a real sense that we have not made much progress here at all.

Again, I concur with what Gracie and Olly said. I hope this is taken on board.

Q277 Sarah Jones: Good afternoon. On both topics, you have set out your stall really well, so I do not really have much to add—*[Interruption.]* Was that a "Hear, hear" from the Minister? In response to the points raised by the hon. Member for Ashfield about unauthorised encampments, you made the point that there can be victims of crime, and that there are existing laws already in place to deal with the antisocial behaviour and criminal activity that you might come across.

In terms of protests, it is completely reasonable for the police, particularly in London, to say, "We have these enormous protests that last for several days. They may well be peaceful, but the city grinds to a halt. Is the balance of power right in this setting?" That is a perfectly reasonable question to ask, and there are different views about what the answer is. You have all made your views clear on the Bill, and I agree, but do you think there is anything reasonable that should be done, perhaps not through the Bill but in other ways? There are lots of different practices that could be looked at. Does any of you have a response to the charge that there are protests that last for days and cause significant disruption, and what are we to do about that?

Gracie Bradley: That is as really interesting question. It is a good question, but the problem is that, in seeking to legislate for that kind of thing, we have ended up with something that is so broad and has the lowest threshold so far that essentially any protest may be targeted. That is just not really what is at hand here. The issue is that nearly any protest could be considered to cause serious annoyance. All kinds of protesters may fall foul of it, and nobody should face a sentence of up to a decade for exercising their fundamental rights. That is the problem that we have with this legislation.

I appreciate that you are asking what we should do with protests that go on for days, and are disruptive and so on. As I said, protest is a fundamental right, and it is the state's obligation to facilitate it. The very essence of protest is that it will be disruptive to some degree. One person may say, "This has been going on for days," or one public authority may say, "This has been going on for days and now it is causing a huge problem," but other people will perceive the threshold as much lower, so it is a really dangerous road to try to go down. What we should really be looking at is how we uphold the right to protest.

Again, there is a perception that this is just about Extinction Rebellion or Black Lives Matter, but people have been out to protests for all kinds of reasons over the last year, be it either side of the Brexit debate, lockdown or BLM. The Court of Appeal said:

> "Rights worth having are unruly things. Demonstrations and protests are liable to be a nuisance. They are liable to be inconvenient and tiresome".

It is to approach the question from the wrong perspective to be saying, "How can we limit?" We really need to be looking at how we can facilitate, especially when we have had scenes like the ones at Clapham Common under existing powers, and when the Black Lives Matter protesters last year were subject to very heavy policing—kettling, horse charges and so on. We have seen a nurse fined £10,000 for organising a protest. Really, the question is, "What can we be doing to better protect and uphold protest rights?" rather than, "How can we clamp down?"

Professor Clark: I very much agree with what Gracie says. In a sense, this issue is back to front. It is ostensibly an issue of management and pragmatics, and how to better facilitate protest, as Gracie puts it. We recently had a situation here in Glasgow. It was two tales of the weekend, really: on the Saturday we had Rangers football fans in Glasgow city centre, and then on the Sunday we had a march in support of Palestine and against what was going on there.

I attended the Sunday event, not the football event, but it seemed to me that those were very much issues of management and pragmatics. The Sunday event was well planned and prepared for, and proportionately policed and managed. It had a clear start point and end point, and as far as I am aware there was no trouble whatsoever—there were stewards present and so on. The Saturday was a rather different matter. It was expected but not particularly well planned for, particularly by Police Scotland and other representatives.

Bearing in mind what happened there and in other instances of what this legislation could be used for, it strikes me that we need to come back to the idea of how we embrace and understand questions of formal and substantive citizenship, and manage the pragmatics of given protests and how we can better facilitate and prepare for them. That seems the right thing to do if you believe—to go back to what I said earlier—in human rights and want a better functioning democracy.

Oliver Feeley-Sprague: I repeat what I said earlier about the fact that the right to peaceful protest is a right, enshrined in international law, that everybody has, and for centuries those rights have been used, often in very noisy and productive ways, to deliver everything from votes for women to preventing serious wrongdoing, behaviours and things of that nature. Noisy and uneasy protest is often the way that we see very productive social change happen. I think that is recognised in the international commentary around how states should react.

The way the police manage public order is an enormous skill of tactical and operational consideration. I would just go back to the toolkit that they already have. Sometimes they make the right decision, and sometimes they make the wrong decision—everybody is human—but the answer here is a toleration, not a restriction, and a tactical and operational decision about how best to manage. The threshold needs to be set high to prevent serious threats to public order, not noise and unease.

I would like to bring in two other points so that we do not miss them. The Bill captures other people by using a very low threshold of "ought to know", which basically means in this context that if you attend a protest, you should be aware of any restrictions that may have been imposed either by a Minister via regulation or by the police. You are then criminalised for that—criminalised for things that in any other context would be perfectly lawful. That is a very dangerous threshold for ordinary citizens to have to face going about their daily lives.

Allowing Ministers to further define these vague terms through secondary legislation, by issuing regulations, creates a space for the Executive branch of Government essentially to outlaw things it finds uncomfortable, rather than the general threshold of serious threats to the public health or order. By doing it via the regulatory framework, you are not allowing Parliament enough scrutiny and enough checks and balances on that.

The way that bystanders and people who participate may be criminalised, and the way that it gives Ministers disproportionate power, are two dangerous things that should not be there.

Q278 Sarah Jones: I have one final question, but do not feel that you have to answer if it is not something you have considered. Obviously, in the last year or so we have been under very draconian legislation—necessarily, because of covid. A lot of the debates that we have had, and the discourse about protest, have been within that context. The vigil for Sarah Everard, the Black Lives Matter debate and so on were all under that umbrella of what is healthy and permissible under covid legislation. Do you think we are slightly in a muddle because of that, and that if we had not had the covid legislation, all those protests would probably have gone ahead and been managed in a perfectly reasonable way, and would not necessarily have been an issue?

The Chair: That question could elicit some very long answers, so could we please have really crisp answers? Let us start with you, Gracie.

Gracie Bradley: That is a great question. To put it bluntly, Liberty was founded in 1934 in response to oppressive policing of the hunger marches. As I am sure Committee members will know, we have taken significant action over the years, in court, in terms of policy, influencing legislation and so on, in respect of what we perceive to be heavy-handed or disproportionate policing of protest. To say that if we had not had the covid restrictions it would all have been better is unfortunately too optimistic and not borne out by the evidence. I referenced the injunction that unlawfully banned protest in 2019 brought by the Met. That was pre covid.

The pandemic has unfortunately given rise to confrontations that we perhaps would not have seen, because we have seen interventions that would not have had any basis in law had we not been in the context of the pandemic, but Liberty's history of campaigning, policy and legal work tells us that some of the tactics that we saw at Black Lives Matter protests, such as kettling, horse charges, and people being stopped and searched rather than being supported when they were seeking support from the police, are not confined to the pandemic.

I think it is incredibly dangerous that we may be heading from a situation in which protest has been policed for the last year, in Liberty's view wrongly, as if it were not lawful, straight into a situation, if the Bill becomes law, where effective protest can be shut down more or less at a public authority's whim. We are seeing a continuity that we may not have seen had we not been subject to the pandemic restrictions that we have been subject to, but even there the police have overreached in their interpretation of the powers. We have seen protest treated as if it were banned, and it has never been under a blanket ban in the course of pandemic. That is why we have seen a lot of confrontation.

Oliver Feeley-Sprague: I want to be careful not to imply that I would ever think that there was a time when the powers in the Bill to restrict protest were proportionate or necessary. I do not think that they ever would be, but we are in unprecedent times in terms of overall restrictions on things that would normally be perfectly lawful. We are living in extraordinary times. I agree with Gracie that some of the policing decisions have clearly been wrong, but we have been living under unprecedented restrictions that have almost become normalised and entrenched on our views. We are all anxious about going outside, playing by the rules, doing the right thing and keeping everyone safe, as we all want to be during this pandemic. If ever there were a time not to be increasing policing powers in the way that is envisaged in the Bill, now is that time because this is not normal. But I want to be careful because Amnesty would say that the powers in the Bill would never be proportionate.

Professor Clark: I would underline that the key word, which Gracie used earlier, is overreaching. I think that is what we have seen. In a sense, the current context and public health situation because of the pandemic has allowed for that overreach to happen. That is not to say that it might not have happened in other, more normal times, but there has been evidence of overreaching. Olly was spot on when he said that this is absolutely not the time to be doing this. We need to be really cautious about the next steps.

Q279 The Parliamentary Under-Secretary of State for the Home Department (Victoria Atkins): Mr Feeley-Sprague, you said in your evidence that the Bill criminalises an entire way of life in relation to unauthorised encampments. Under clause 61, which we are focusing on, an offence is committed only if one or more of the conditions mentioned in subsection (4), which include significant damage, significant disruption and significant distress to the owner and others, is satisfied. Why are those behaviours a way of life that needs to be protected?

Oliver Feeley-Sprague: I think in my answer, I said—if I didn't, I should have—that it has the potential to criminalise a way of life. Some of the powers around returning to a site and seizing vehicles, when those vehicles might be your home, clearly do raise that prospect. I will repeat what I said about our experience as a human rights monitoring organisation: Gypsy and Traveller communities across this continent, across Europe, possibly even—

Q280 Victoria Atkins: Mr Feeley-Sprague, forgive me, but we are dealing only with England and Wales in this context. I just want to press you on that point: do you believe that significant disruption, significant damage or significant distress are behaviours that should be protected?

Oliver Feeley-Sprague: It depends on how you are defining that threshold of "serious". I have seen little in the Bill that gives any indication of what threshold you are using to reach those determinations. It is true, as far as I am aware, that the Gypsy and Traveller community is one of the most persecuted groups in the UK, and they are persecuted across Europe.

Q281 Victoria Atkins: But this is not dealing with the whole of the Traveller community. As your colleague Professor Clark made clear, 70% to 80% of the Traveller community live in bricks and mortar, and therefore will not fall under this criterion of unauthorised encampments where significant damage, distress and disruption are caused. Can I ask the panel, then, what in their view is an acceptable level of distress for local residents to live under?

Gracie Bradley: I just want to echo what Olly said in respect of the fact that the threshold is not clearly defined. These definitions are vague, and they could potentially include a very wide range of issues. I would also add that the way the clause is drafted, it is not simply where significant disruption, damage or distress is caused; it is where there is a likelihood or a perception that it is likely to be caused. The offence can be committed by someone who is said to be likely to cause damage or distress. This is highly subjective, and may invite stereotypes and profiling based on the mere existence of an unauthorised encampment. Again, the issue is really about the breadth of the drafting, the lack of definition, and the fact that the mere threshold of likelihood may invite judgments that are based on stereotyping and profiling. That is what is really concerning about this clause.

Q282 Victoria Atkins: Sorry, but you have not answered my question. What level of distress do you deem to be acceptable for local residents?

Gracie Bradley: That is a difficult question to answer. I do not have a firm answer to that, but I think that if you are taking into account the distress of local residents, you also have to take into account the fundamental right of Gypsy, Roma and Traveller people to live a nomadic way of life. It is not an absolute in either direction, and when we are talking about a community that, as Olly has said, is one of the most persecuted in the country, we have to be really careful about introducing these really broad and vaguely defined measures that are likely to invite them to be stereotyped and discriminated against further.

Q283 Victoria Atkins: What level of damage would you be happy for local residents to live with?

Gracie Bradley: As I have already said, the issue is that we are talking about "likely to cause damage". That is subjectively determined. There are some people who will be perceived as likely to cause damage; there are some people who, in another person's mind, will not be. This is very subjective, and I do not think we can abstract it from the history of how people have been treated. I think Colin wants to come in.

Professor Clark: Yes, I can say something about this. In a sense, it is not even local residents; it is actually in the hands of the landowner or the licensee. That is one of the changes between, for example, the regulations in the law as contained in the Criminal Justice and Public Order Act 1994 and the current Bill—this is where there is a significant change. In the 1994 Act, it was the police who had that decision to make about when the action should be forthcoming. In this Bill, that right is given over to the landowner or the licensee, and in a sense it is up to the people who—to answer your question, Minister—own the land on which the Travellers are camped. The landowner would make a decision: "I now feel that this is disruptive, damaging and distressing, so therefore I will call the police and then issue the actions." That is the issue at stake here.

I will just remind the Minister about the lack of movement on a national site strategy, around both permanent and transit sites and around the right number of pitches on those sites. A lot of these issues would go away and it would be far less expensive than a constant cycle of evictions. The economics of this, as well as the human rights aspects, are quite important.

Q284 Victoria Atkins: Professor Clark, I am sorry but that is an offence, so it will be for a court to decide, and of course for the police and the CPS to make decisions to investigate and charge. Is £50,000-worth of damage to a piece of land acceptable, in the panel's view? Is that a cost a landowner should bear? That is a historical constituency case that I had.

Professor Clark: What is the context? Without context that is an impossible question to answer.

Victoria Atkins: Fly-tipping. A field was taken over by an unauthorised encampment and it cost £50,000 to clear it. Is that acceptable?

Professor Clark: There is legislation in place already to deal with fly-tipping, I believe. I do not think that there needs to be an enhancement of that legislation to the current law as it stands. There is legislation to deal with fly-tipping, whoever may cause it.

When sites come into being in local areas, it is not uncommon for other people to notice that it is Travellers coming in and use that as an excuse to fly-tip their own business-related waste, and then blame it on the Travellers.

That comes back to the points that my two colleagues made about the dangers of invoking racialised stereotypes here and apportioning blame, when it is not those individuals who are to blame. Again, this is where we need to be careful about the way in which we use language and how this Bill goes forward.

Q285 Victoria Atkins: All right. Mr Feeley-Sprague, do you want to add to that before I move on to public protest?

Oliver Feeley-Sprague: Anybody responsible for causing £50,000-worth of damage to somebody's property is committing a crime and, absolutely, people should be protected from that. To echo what the other panellists have said, I think you need to be very careful about further minoritising the Gypsy and Traveller communities. To answer your question bluntly, any form of significant damage of that nature is a crime, whoever does it.

Q286 Victoria Atkins: Of course. On the public order provisions, does the Law Commission have a reputation for either not understanding human rights law or in some way working against the human rights law, of which we are very proud in this country?

Gracie Bradley: I am not sure that I understand what the question is getting at.

Victoria Atkins: Does the Law Commission have a reputation for not understanding human rights law, or for somehow wanting to diminish people's human rights?

Gracie Bradley: Not that I am aware of. I suppose what you are getting at is that codifying public nuisance in statute was a recommendation of the Law Commission, which is correct. In 2015, it did recommend that codifying public nuisance should be done, but it did not consider the application of public nuisance to protest.

The Law Commission noted that its proposed defence of reasonableness would increase cases where a person was exercising their right under article 10 or article 11 of the convention, but they also noted that it is somewhat difficult to imagine examples in which this point arises in connection with public nuisance. The Law Commission absolutely did not propose a maximum custodial sentence of a decade.

The Chair: Would any of the other witnesses like to respond to that question?

Oliver Feeley-Sprague: Just to say that I agree 100% with what Gracie said. That is my reading of what the Law Commission concluded in 2015. There are very specific qualifications about article 10 and article 11 rights needing to be protected under any changes of the law. By my reading, this Bill does exactly the opposite of that, so we should be extremely cautious.

Professor Clark: I think the Law Commission is fully cognisant of the rights and responsibilities of a healthy democracy. It understands questions of human rights and citizenship. I would not dare to suggest differently.

Q287 Victoria Atkins: Good. I think that one witness this afternoon has mentioned the wording "serious annoyance". Presumably you all accept that, in the context of public nuisance, that is a well-founded legal phrasing, which does not have the connotations that it may have in language outside of court; it has a very understood and settled meaning within legal definitions.

The Chair: One of you can respond to that, if you would like to kick off.

Professor Clark: I can. What was the question?

Victoria Atkins: "Serious annoyance" is a phrase that has caught attention. In the context of public nuisance, that is a phrase that has arisen over centuries—I think I am right in saying that—of legal development and does not necessarily have quite the flippant meaning that it may have in day-to-day life outside of a court of law.

Professor Clark: Okay. I understand now—sorry. I think this comes back to the point that all three of us have made on the issues around terminology and definitions, and the use of them, and the ability to exercise discretion. You would like to hope, and expect, that moving forwards such expressions would take on their proper meanings in a legal context, but applied fairly and applied justly.

Given the overall nature of the Bill and what I said earlier about the impreciseness of the language and terminology, certainly in the case of part 4 with regard to unauthorised encampments, I think that is why a lot of outside bodies and organisations and non-governmental organisations have question marks.

However, I will hand over to Gracie, who might be better informed than I am on this.

Gracie Bradley: I am happy to pick this up. We know the legal genesis of that definition of "serious annoyance", but of course the provisions in the Bill do not confine themselves to "annoyance". If we look at clause 54, we see that conditions may be imposed that appear

"necessary to prevent the disorder, damage, disruption, impact or intimidation"—

Q288 Victoria Atkins: Forgive me—sorry. It is specifically in clause 59; that is the public nuisance clause, as recommended by the Law Commission. That is why I used that wording. It is in clause 59, not clause 54.

Gracie Bradley: I was not saying that it was in clause 59; I was picking up on another clause in the Bill, which contains language that is vague and concerning. But I can leave it there, if you want to stick with clause 59; I do not have anything to add on that.

Q289 Chris Philp: I will be very brief. It is a question for Gracie. I want to pick up on a point that you made, Gracie, in relation to unauthorised encampments and article 8. You suggested that the legislation might infringe article 8. However, paragraph 2 of article 8 says that interference by a public authority is "justified"—because article 8 is a qualified right, as you know—in the interests of, among other things,

"public safety…the economic well being…the prevention of disorder or crime…or for the protection of the rights and freedoms of others."

Of course, unauthorised encampments of this kind do infringe

"the rights and freedoms of others".

Thereby, I would suggest, article 8 is not engaged. Moreover, the right to enjoy one's property is made very clear, is it not, in article 1 of protocol 1, which says that people are

"entitled to the peaceful enjoyment of…possessions."

So, given what I have just said about paragraph 2 of article 8, and about article 1 of protocol 1, would you care to reconsider your article 8 analysis in relation to this clause?

Gracie Bradley: No. I think that what I said was that under article 8 it would likely be an unlawful interference, and I would disagree with your analysis that if it is proportionate, article 8 is not engaged. If the right can still be engaged, and a limitation may or may not be proportionate—

Q290 Chris Philp: Let me rephrase the question: would you agree that article 8 is not infringed?

Gracie Bradley: The point is that there is a balance to be struck; that is what happens with qualified rights. And I think the point is that the potential threshold at which these measures may be applied is so low, and the impact on Gypsy, Roma and Traveller people is potentially so distinct, that it would be disproportionate for the measure to be applied to them. What we are talking about, especially when we are talking about the potential seizure of vehicles in the context of nomadic Gypsy and Roma Traveller communities, is people potentially losing their homes entirely. If we are talking about people potentially facing a custodial sentence, that is a really significant interference with their article 8 rights, and it may have further implications—for example, what happens to their children if their caregivers are not available to them? Yes, I recognise that there may be interference in the life of the local community, but the point is that the threshold at which these measures may be invoked, and the impact on people who live in their homes and who have a nomadic way of life, is so significant that the way the Bill is drafted is disproportionate. In Liberty's view, it also invites discrimination.

I recognise that the Committee is trying to get at the point about the wider community. It goes back to what Colin spoke about at the beginning and what numerous police forces have mentioned—that there is a lack of lawful stopping places, and that there is inadequate provision. I do not think we square this circle by getting into whose rights are more infringed on which side. The point is that what we need to get to is working constructively together to ensure that communities are provided for, and to make sure that there are enough stopping places and pitches. That is the way that we resolve this.

Q291 Chris Philp: Do you place any weight at all on people's protocol 1, article 1 rights to have "peaceful enjoyment" of their possessions? Do you place any weight on that at all?

Gracie Bradley: Of course—Liberty is a human rights organisation. As I am aiming to demonstrate, I am not dismissing that this is a qualified right, and that there are other things that hang in the balance on the other side. I have said there is a balance to be struck but, at the same time, the way the Bill is drafted means that it poses a disproportionate and really significant threat to the rights of Gypsy and Roma Traveller communities. They are a persecuted and minoritised community, and I do not think it is defensible for them to be targeted in this way, especially when there is a non-punitive solution, which is to ensure that there are adequate stopping places.

Chris Philp: It is not targeting that community expressly; it is targeting people who engage in a particular kind of behaviour, regardless of their identity—but I think I have taken this far enough.

The Chair: I thank the witnesses on behalf of the Committee. Thank you for coming early and staying longer than your allotted 45 minutes, and I thank you for your evidence.

That brings us to the end of today's sittings. The Committee will meet again at 9.25 am on Tuesday in Committee Room 14, in order to commence line-by-line consideration of the Bill.

Ordered, That further consideration be now adjourned.—*(Tom Pursglove.)*

5.37 pm

Adjourned till Tuesday 25 May at twenty-five minutes past Nine o'clock.

Written evidence to be reported to the House

PCSCB06 Rights of Women, the End Violence Against Women and Girls Coalition, Latin American Women's Rights Service and Southall Black Sisters (joint submission)

PCSCB07 Transform Justice

PCSCB08 Article 39 and the National Association for Youth Justice (joint submission)

PCSCB09 Big Brother Watch

PCSCB10 Ms Azra Bloomfield