PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

COUNTER-TERRORISM AND SENTENCING BILL

First Sitting

Thursday 25 June 2020

(Morning)

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not later than

Monday 29 June 2020

The Committee consisted of the following Members:

Chairs: Steve McCabe, † Mr Laurence Robertson

Bacon, Gareth *(Orpington)* (Con)
† Butler, Rob *(Aylesbury)* (Con)
† Cadbury, Ruth *(Brentford and Isleworth)* (Lab)
† Charalambous, Bambos *(Enfield, Southgate)* (Lab)
† Cherry, Joanna *(Edinburgh South West)* (SNP)
† Cunningham, Alex *(Stockton North)* (Lab)
† Dines, Miss Sarah *(Derbyshire Dales)* (Con)
Everitt, Ben *(Milton Keynes North)* (Con)
MacAskill, Kenny *(East Lothian)* (SNP)
† McGinn, Conor *(St Helens North)* (Lab)
Mak, Alan *(Havant)* (Con)
† Marson, Julie *(Hertford and Stortford)* (Con)
† O'Brien, Neil *(Harborough)* (Con)
† Owatemi, Taiwo *(Coventry North West)* (Lab)
† Philp, Chris *(Parliamentary Under-Secretary of State for Justice)*
† Pursglove, Tom *(Corby)* (Con)
† Trott, Laura *(Sevenoaks)* (Con)

Kevin Maddison, John-Paul Flaherty, *Committee Clerks*

† attended the Committee

Witnesses

Jonathan Hall QC, Independent Reviewer of Terrorism Legislation

Assistant Chief Constable Tim Jacques, deputy senior national co-ordinator for counter-terrorism policing

Public Bill Committee

Thursday 25 June 2020

(Morning)

[Mr Laurence Robertson *in the Chair*]

Counter-Terrorism and Sentencing Bill

11.30 am

The Chair: Before we begin, I have a couple of housekeeping points to make. Please make sure that electronic devices are on silent. I am afraid that tea and coffee are not allowed; water is, along as it has not been near a tea bag or any coffee granules. Social distancing must be observed. Our *Hansard* reporters would be grateful if Members could email any electronic copies of their speaking notes to hansardnotes@parliament.uk. Please do remove jackets at any point under my chairmanship as we proceed through the Bill.

We will first consider the programme motion on the amendment paper. We will then consider a motion to allow us to deliberate in private briefly, before moving to the oral evidence session. I hope we can get through these first bits without too much debate. I call the Minister to move the programme motion that was agreed by the Programming Sub-Committee yesterday.

The Parliamentary Under-Secretary of State for Justice (Chris Philp): I beg to move,

That—

(1) the Committee shall (in addition to its first meeting at 11.30 am on Thursday 25 June) meet;

(a) at 2.00 pm on Thursday 25 June;

(b) at 9.25 am and 2.00 pm on Tuesday 30 June;

(c) at 11.30 am and 2.00 pm on Thursday 2 July;

(d) at 9.25 am and 2.00 pm on Tuesday 7 July;

(e) at 11.30 am and 2.00 pm on Thursday 9 July;

(2) the Committee shall hear oral evidence in accordance with the following table:

TABLE

Day	Time	Witness
Thursday 25 June	Until no later than 12.30 pm	Jonathan Hall QC, Independent Reviewer of Terrorism Legislation
Thursday 25 June	Until no later than 13.00 pm	The National Police Chiefs' Council
Thursday 25 June	Until no later than 14.30 pm	Prison Reform Trust
Thursday 25 June	Until no later than 15.00 pm	The Northern Ireland Human Rights Commission
Thursday 25 June	Until no later than 15.30 pm	Law Society of Scotland
Thursday 25 June	Until no later than 16.00 pm	Professor Donald Grubin, Newcastle University
Tuesday 30 June	Until no later than 9.55 am	The Professional Trades Union for Prison, Correctional and Secure Psychiatric Workers
Tuesday 30 June	Until no later than 10.25 am	The Tony Blair Institute for Global Change
Tuesday 30 June	Until no later than 10.55 am	Professor Andrew Silke, Cranfield University

(3) proceedings on consideration of the Bill in Committee shall be taken in the following order: Clause 1; Schedule 1; Clause 2; Schedule 2; Clause 3; Schedule 3; Clauses 4 to 6; Schedule 4; Clauses 7 to 19; Schedule 5; Clauses 20 and 21; Schedule 6; Clauses 22 and 23; Schedule 7; Clauses 24 and 25; Schedule 8; Clauses 26 and 27; Schedule 9; Clause 28; Schedule 10; Clauses 29 to 36; Schedule 11; Clauses 37 to 45; Schedule 12; Clauses 46 to 48; Schedule 13; Clauses 49 to 53; new Clauses; new Schedules; remaining proceedings on the Bill;

(4) the proceedings shall (so far as not previously concluded) be brought to a conclusion at 5.00 pm on Tuesday 14 July.

It is a pleasure to serve under your chairmanship, Mr Robertson. I have one point of clarification to make. Yesterday, in the Programming Sub-Committee, we discussed whether we should invite the Prison Officers Association or the Prison Governors Association. On further investigation, it transpires that the Professional Trades Union for Prison, Correctional and Secure Psychiatric Workers is in fact the Prison Officers Association—that is its full name. We will therefore see the Prison Officers Association on Tuesday at 9.25 am. We had contacted the Prison Governors Association, but I am told that, rather surprisingly, it did not reply. That should satisfy the request that the shadow Minister made yesterday.

Question put and agreed to.

Resolved,

That, at this and any subsequent meeting at which oral evidence is to be heard, the Committee shall sit in private until the witnesses are admitted.—*(Chris Philp.)*

Resolved,

That, subject to the discretion of the Chair, any written evidence received by the Committee shall be reported to the House for publication.—*(Chris Philp.)*

The Chair: Copies of written evidence that the Committee receives will be made available in the Committee Room.

11.32 am

The Committee deliberated in private.

Examination of Witness

Jonathan Hall QC gave evidence.

11.34 am

The Chair: We will now hear evidence from Jonathan Hall QC, who is the Independent Reviewer of Terrorism Legislation. Welcome, and thank you very much for coming. I think I am supposed to ask you to introduce yourself, but I have just done that, so we will go straight into questioning.

Q1 Chris Philp: May I first take the opportunity to thank you for your service as Independent Reviewer of Terrorism Legislation, Mr Hall? The whole House is very grateful for the work that you do in this area, and I want to put on the record our thanks to you for doing that.

I am sure we have all read the notes that you very helpfully prepared on this legislation and published on your website at the end of May and the beginning of June. I have them in front of me and have read them with great interest. To start, I want to ask about TPIMs—terrorism prevention and investigation measures—which were the subject of some debate on Second Reading. I want first to ask about the current circumstances in which a TPIM expires and has to be reapplied for from scratch without it being possible to use the previous evidence from two or more years before. Do you think there are circumstances in which public safety may still demand a TPIM beyond the two-year period? Are these proposals a better way of handling it than the current method?

Jonathan Hall: The answer is yes, there are be circumstances in which someone ought to be subject to controls for longer than two years. Yes, there will be circumstances in which it will be appropriate to rely on terrorism-related activity that predates the imposition of the first TPIM. I understand the business case, if you like, for allowing an extension beyond the two-year period. However, the reason I question in the first instance whether it is justified is that it is none the less possible, as the law currently stands, to extend beyond two years. There are two current examples—I will not go into the details—of where a second and fresh TPIM has been imposed.

The practical consequence of the current regime is that some will come off controls, and if they have literally lain doggo and have done nothing for that two-year period, the police and MI5 will have to start assembling a new case, assuming that the person re-engages with terrorism-related activity. There could be a gap period during which that terrorism-related activity is going on, during which the case is being built when they are re-imposed.

If TPIMs were currently imposed against attack planners, I would have fewer observations to make about the ability to extend further. However, in practice, as I said in my note, having spoken to officials, TPIMs are really currently used against radicalisers. It is certainly the case that public safety is not helped by radicalisation activities, but as things currently stand, people subject to TPIMs are not the attack planners, who, if they are free from restrictions, might go and do something very violent. More likely, they will re-engage in radicalising activities. As shown by the fact that two new TPIMs have been imposed, it is currently possible to manage that risk.

I understand the business case, more than I do for the lowering of the standard of proof, which we can come to separately. At the moment, I do not understand why it is needed as TPIMs are currently used.

Q2 Chris Philp: You mentioned that, in the two cases where there have been renewals, there was a hiatus—a gap—between the expiry of the first TPIM and the second coming into force. Could you give the Committee any information about how long that gap was?

Jonathan Hall: Yes, I have worked it out. In one case it was a gap of a year, and in the second it was a gap of 16 months.

Q3 Chris Philp: In those hiatuses—those gaps—of between a year and almost a year and a half, there is clearly a risk to which the public is being exposed. The rationale for the proposed changes is to remove the possibility of that gap.

Jonathan Hall: What I would say is that the risk was managed, as the law currently stands. There was a gap, but in fact, it is not as if something very bad happened from those sources in that period, as far as I can work out, having read the materials that I have read.

Q4 Chris Philp: But it is about risk; not all risks actualise. A risk may exist, but no consequence may follow. What we are trying to prevent with TPIMs is the risk itself. It is fair to say that the risk would have existed in that 12 to 16-month period.

Jonathan Hall: Yes.

Q5 Chris Philp: You mentioned the burden of proof earlier, which I am sure other Members will ask about in due course. With the TPIM regime as it stands, very few TPIMs are actually enforced. Published data, dating back to November last year, said that five were in force at that time. Have you seen any evidence of the Government overreaching, stretching or even misusing the TPIM powers, or would you say that the Government have exercised the powers that already exist with care and circumspection?

Jonathan Hall: The latter. I am quite satisfied that the Government are doing that.

Q6 Chris Philp: So in the context of the Government having behaved responsibly and carefully so far, what basis do you have for being concerned about the change to the burden of proof, given that the powers that have existed for some years now have been used, as you have said, very carefully?

Jonathan Hall: You asked me about the current TPIMs. I cannot speak for all the uses of control orders and TPIMs that have happened before my period. There is a risk that mistakes can be made about assessing intelligence. I have reason to believe that. My concern is that you are opening up a greater margin of error if the standard of proof is lowered. It is a fairness issue based on the authorities having all the cards.

The point that you make, which is that the authorities can be generally trusted to make TPIMs against the right people, to my mind rather demonstrates that a change is unnecessary. The authorities have been able to impose TPIMs, as far as I can see, where they have wanted to. I am not aware of cases where the authorities would like to have imposed a TPIM if the standard of proof had been lower—where they could say, "We think this person's a terrorist, but they may not be and we'd like to impose a TPIM, but we can't, because we cannot show on the balance of probabilities." I am not aware of that sort of case. So I agree that the authorities can be trusted and, at the moment, I think things are working okay.

The regime of control orders and TPIMs has fluctuated over the years since it was introduced. It has been subject to a lot of scrutiny and consideration by my predecessors and by the courts. It has landed in a reasonably good place. The danger about changing unnecessarily is that, maybe not now, but in a few years' time, you might provoke an overreaction.

I will give an example of that. When the control order regime came in, it was seen as a bit illiberal and that led to the removal of the power to relocate individuals when the TPIM regime was introduced. Eventually, my predecessor David Anderson, the Government and Parliament agreed that it was necessary to bring back that power of relocation. So if you like, there was a period when the public were less safe because the ability to relocate had been removed, and the reason why that ability to relocate had been removed is that it was the reaction to what had been seen as a slightly illiberal measure. If it is right that the current standard of proof is usable and fair, and I think it is, in a word, if it ain't broke, why fix it?

Q7 Chris Philp: I want to pick up on a couple of those points. We should both try to be brief, because other Committee members want to ask questions. You mentioned that the state holds all the cards, but is it not the case that a judge looks at a TPIM prior to it coming into force and if it is—I forget the phrase—"manifestly unreasonable", or some test like that, they will strike it down? Secondly, there is, of course, a right of appeal against TPIMs, so anyone made the subject of a TPIM has those two judicial protections in place, do they not?

Jonathan Hall: Yes, but of course if the standard of proof is lowered, the extent of judicial protection is lowered, because the judge will not be asking him or herself, "Was the Secretary of State right to be satisfied on the balance of probability that this person is a terrorist?" The judge would have to say, "Well, in theory, they may not be a terrorist, but the Home Secretary's view that they may be a terrorist is reasonable," so you would remove the judicial protection.

Q8 Chris Philp: It would not remove it; it would alter the balance.

Jonathan Hall: Yes.

Chris Philp: It certainly would not remove it.

Jonathan Hall: No.

Q9 Chris Philp: You mentioned the original control orders set up in 2005 by the then Labour Government, which had reasonable suspicion as the burden of proof: precisely the same burden of proof being proposed today. The years following, probably between 2005 and 2012, were the years during which the lower burden of proof—the one we are now proposing—was enforced. I know you were not the reviewer at the time, but are you aware of any evidence of misuse in that seven-year period when the lower burden of proof prevailed?

Jonathan Hall: I am not aware of any misuse, but I am aware of circumstances in which the intelligence was misunderstood.

Q10 Chris Philp: Finally, a moment ago you posed the question, "If it ain't broke, why fix it?", and you said you were not aware of any cases where a lower burden of proof would have been required to control someone. Of course, we are looking prospectively rather than retrospectively. If there are conceivable circumstances in future whereby someone is potentially a threat to the British public—our constituents, who would need protection from them—and we cannot establish the matter to the higher standard but could for the lower, it clearly would be useful to change the burden of proof.

On Second Reading, my right hon. Friend the Member for New Forest East (Dr Lewis) raised the question of someone who had been a member of Daesh returning from Syria. Of course, if somebody has been circulating in Syria, it is very hard to establish their activities on the balance of probabilities. It is hard to get witness testimony and there will be no intelligence surveillance, but the fact remains that they have been to Syria and done whatever they have done over there. In those circumstances, is it conceivable that, when British citizens who are members of Daesh return from somewhere like Syria, the lower burden of proof might be helpful, or in fact necessary?

Jonathan Hall: I have thought a little about this. It is certainly the case that evidential coverage of what goes on in Daesh-controlled areas will be limited, which is why prosecution is particularly difficult. Intelligence coverage might be more, but it might be patchy. I think that if someone has been in Syria for a long time, it is a pretty obvious inference that they have been up to no good, so I do not think that you would need the lower standard of proof. You would not say, "I reasonably suspect that because you spent five years in Syria, you were engaged in terrorism-related activity." My own view is that a judge would say, "On the balance of probabilities, you were engaged in terrorism-related activity." Of course, there will always be some coverage. I do not think that what you said is right, although I see where you are coming from.

Q11 Chris Philp: It is clearly much harder to establish that, on the balance of probabilities, somebody was up to no good in Syria, given that the evidential base is patchy at best and possibly even non-existent.

Jonathan Hall: Yes, but I think that, with respect, what you are missing out is the big factual matter, which would be undisputed, that they were in Syria. The Secretary of State's starting point would be, "Here is a matter of fact, undisputed, that somebody spent all those years in Syria." I think that that would provide a fairly good jumping-off point for an inference that they were engaged in terrorism-related activity.

Q12 Chris Philp: They would no doubt argue that they might have been in Syria and might have been members of or living in Daesh territory, but that they were not engaged in terrorist activities expressly, and we would likely have no further evidence to establish that they were.

Jonathan Hall: I think that judges, when they come to consider these matters, are prepared to draw robust inferences. They are not fools. No doubt the Secretary of State would also not be fooled by someone who simply claimed that they were there for humanitarian reasons.

Q13 Chris Philp: I have one further question, which is on a different part of the Bill: the new serious terrorism sentences and the requirement to serve all of those in prison without the prospect of early release by the Parole Board. You commented in one of your notes

that the Parole Board would therefore not have involvement in release decisions in the way that they currently do in many cases. Are you reassured by the fact that, although the Parole Board would not take release decisions, the usual MAPPA—multi-agency public protection arrangements
—arrangements would be engaged, the Prison Service would closely monitor and evaluate the prisoner prior to release, and of course the probation service would be closely involved both before and after release during the licence period, which is now going to be longer than would otherwise have been the case? Would you accept that the involvement of those agencies, particularly the MAPPA arrangements and the probation service, provide a good level of supervision and evaluation?

Jonathan Hall: The difficulty with terrorism risk is that it is quite difficult to measure. You have actuarial tools to look at whether people who have committed burglary will reoffend, and they are reasonably robust. You do not have those sorts of tools for terrorism. As I probably said in my notes, some of the factors that you normally associate with reoffending—for example, not having a stable family background—do not tend to work so well with terrorism offenders. You find terrorism offenders who come from a stable background and have a job, so it is inherently difficult to identify the probability that someone will reoffend.

The approach that I took when I did my MAPPA review was that the more information, the better. I agree that the probation service, the police and MI5 will be carrying out assessments, but you lose the confrontation that takes place at a Parole Board hearing. As you have probably done, I have attended such a hearing, where there is an opportunity for the chairman to speak to the offender in quite a formal setting. It brings something different to the table, which you would obviously lose. You would definitely have covert intelligence sources, and you would have overt management in the sense of the police being able to speak to the offender, but you would lose the opportunity for a confrontation before they have been released. You are losing something—that is probably how I would put it.

Q14 Chris Philp: You said that it is inherently difficult to assess dangerousness and threat. Given that, is it not safest to get them to serve the whole of their sentence in prison, to be on the safe side? All the Parole Board can do is release them early, and all we are doing is removing the Parole Board's ability to do that. One loses nothing in terms of public safety. Given the difficulties with assessing threat that you have outlined, is it not safe and prudent as custodians of public safety, which we all are in different ways, to remove the prospect of early release?

Jonathan Hall: The Parole Board has two choices: it could release early, but it could, and often will, decide not to release early and say, "Actually, you're far too dangerous." That additional source of information about their risk will then be very useful to the security services when they are eventually released.

The Chair: I think that we had better move on. Alex Cunningham.

Q15 Alex Cunningham (Stockton North) (Lab): It is a pleasure to serve under your chairmanship, Mr Robertson.

I, too, am grateful for the work that you do, Jonathan. I want to ask you a number of questions away from TPIMs; my hon. Friend the Member for St Helens North will deal with that issue. You have produced three notes on the Bill, and I want to address questions from two of them—it might be helpful for the notes to be entered as written evidence.

Point 10 of your first note states:

> "The requirement of a minimum mandatory sentence for all adult offenders, however young, puts in doubt whether judges can properly reflect the fact that an adult of 18 years and one month may not be any more mature than a child of 17 years and 11 months (for whom these sentences are not available). Age may or may not result in 'exceptional circumstances' being found, which is the only basis on which the 14-year minimum can be avoided."

That strikes me as a cautionary note, and I invite you to talk a bit more about that. How specifically will this piece of legislation be different for younger offenders?

The Chair: Mr Cunningham, can you please clarify which document you are quoting from?

Alex Cunningham: I am referring to the Independent Reviewer of Terrorism Legislation's "Note on Counter-Terrorism and Sentencing Bill: Sentencing Reforms (1)".

Jonathan Hall: I have identified what is really a policy choice for Parliament. As a matter of fact, I can say that an increasing number of quite young people are being caught up in terrorism, including new forms of terrorism—not just conventional Islamist, extremist or right-wing terrorism, but other new emerging forms, such as the incel movement or even things at the very boundaries of what you might consider terrorism that are very violent. It is not impossible that young people will be caught up in this.

The point I am making—I have referred to an authority from England and Wales and I think I have also referred to the approach in Scotland—is that there is recognition that people who are young and immature are probably more susceptible to change than adults. I suppose it is a choice for Parliament, but the age for a mandatory minimum sentence—meaning no prospect of early release, and effectively putting to one side the possibility of reform—might be raised to 21, rather than that being for those in the 18-to-21 bracket. I understand that in Scotland there is a debate over whether it should be as far as 25.

All I can do is identify the choice that has been made and point out that when it comes to sentencing, traditionally it is recognised that people are not necessarily that different when they are one month over 18 as opposed to one month under 18.

Q16 Alex Cunningham: But the bottom line is that with young people, perhaps, there is greater change. You have said that there may be greater opportunity for reform there than with those who are considerably older.

Jonathan Hall: That is what judges are increasingly finding.

Q17 Alex Cunningham: In paragraph 13 of the same report, you talk about imprisonment for public protection orders possibly being used for this cohort of offenders, but you go on to say:

[Alex Cunningham]

"Conversely, determining whether a 7-year, 15-year or 25-year licence is appropriate at the point of sentencing for dangerous individuals who have committed the most serious offences may be asking courts to engage in guesswork."

What would be your advice to the Committee on that particular issue?

Jonathan Hall: I have imagined putting oneself in the position of the sentencing judge, who is faced by someone who has carried out a very serious attack planning offence, risking multiple casualties, and let us say they are 25 or 30. As I think I have said before, it is very hard to judge terrorist risk. It is particularly hard for sentencing judges, because they operate on an open basis; they are not going to look at secret intelligence, for good reasons. So the judge's task is particularly difficult at the point of sentence, and it seems to be quite difficult for a judge to work out sentencing for a 25-year-old who has committed a really serious attack planning offence. When they are released from prison, are they going to be worth monitoring for seven or for 25 years? Again, it is a choice for Parliament.

What I have identified, I suppose, is that if one were going to impose a mandatory sentence, there might be thought to be more sense in imposing an indeterminate sentence—in other words, where someone has fallen into this category of really serious offending, realising that they could be a risk for life and keeping them in prison for life, unless and until they are seen as safe to be released, and then once they have been released, keeping them on licence for life and giving the flexibility to the authorities, which includes, I should say, where eventually someone, one hopes, is no longer a threat, to roll that up and bring that licence to an end; because there is a slight risk of storing up trouble for future generations if you have increasingly long periods for licences. When they are no longer necessary, how do you bring them to an end? I do not think there is that scope at the moment. To answer your question—I am sorry to have gone on so long about that—

Q18 Alex Cunningham: That is okay. There is the younger person dimension in this area as well.

Jonathan Hall: Very much. One of the final points I make in my note about removing the Parole Board's role is that, again, if it is right that children are more likely to change, and as a matter, perhaps, of fairness, one ought to give them the opportunity, then removing the opportunity to say, at the halfway or two-thirds point, "I have now genuinely changed; that was me then and this is me now," where it can be shown to the satisfaction of the Parole Board, does seem a little bit—I would not necessarily say "unfair", but it fails to recognise the difference between adults and children.

Q19 Alex Cunningham: The Minister addressed the issue of the Parole Board and the lack of its role for people given these determined sentences. I wonder whether there is potential for some form of role there. The Minister's Bill basically dismisses the Parole Board and leaves it to everybody else. Do you have a view about how we could perhaps persuade the Minister that there is a real role for the expertise that the Parole Board brings to this situation?

Jonathan Hall: I do not want to get into the role of persuading anyone. If you like—

Q20 Alex Cunningham: I was just being mischievous.

Jonathan Hall: The practical point is one I have addressed, which is that identifying terrorist risk is really difficult. The role of the Parole Board is quite an important part of identifying terrorist risk, and if you don't have that role then you lose that insight.

Q21 Alex Cunningham: There has been some discussion out there in the world, where people are discussing the Bill, about the sentencing code and what the definition is of an act of terrorism. It is defined in section 69 of the sentencing code, which says that

"an offence has a terrorist connection if the offence—

(a) is, or takes place in the course of, an act of terrorism, or

(b) is committed for the purposes of terrorism."

Do you think that is clear enough to aid the courts, or do the Government need to provide more clarity in the definition?

Jonathan Hall: I think it is clear enough. It is taken from the Counter-Terrorism Act 2008. It is now being incorporated into the new sentencing code and it has worked well.

Q22 Alex Cunningham: The Law Society has provided us with a brief brief, in which it addresses the issue of polygraph testing. It says, for the record: "The Law Society does not agree that polygraph conditions should be placed on individuals released on licence." That is quite a bold statement. The Law Society suggests that we should ensure that the Bill is not a stepping-stone towards the wider introduction of polygraph testing. May I invite you to talk about polygraph testing, because you did refer to it in your note, and ask what your view of it is when it is used in this particular context within the Bill?

Jonathan Hall: It is consistent with my point about not losing sources of information. Because it so difficult to identify whether someone will commit a terrorist offence, and as the Usman Khan case perhaps demonstrates, there are difficulties in managing released terrorist offenders or predicting what they might do. Polygraphs provide an additional source of information.

I came at this subject reasonably fresh; I read the literature on the use in England and Wales with sex offenders. I can see that the number of clinically significant disclosures is really material, and it seems to me that it would be very sensible to use that in the same way—so you ask, "Have you been on the internet?", as a closed question—for terrorist offenders.

So, it is an additional source of information, which I think it would be sensible to use. It would do two things. One is that in certain cases it would allow the authority to find out when they are being gamed and played by manipulative and deceptive dangerous offenders. On the other hand, to some extent it would reduce the burden of the authorities. That is because the police and probation service face really difficult choices in this area. There will be a natural caution, for example, about removing someone's licence condition. However, if you can use a polygraph test and satisfy yourself that someone is telling the truth, then it may allow you to remove some conditions and allow someone to normalise. And although that sounds odd in the context of terrorist offenders, ultimately you want people who are released

to engage in a normal way in society—in other words, allowing them to get jobs and to live in their home area, and the like.

Q23 Alex Cunningham: That was very helpful. Finally, there is the need for additional expertise in the field, whether that is to do with the probation service or elsewhere, for the management of offenders under the 25-year licence, which will be considerable. Is that something that you have considered?

Jonathan Hall: I know, from when I did the review of the multi-agency public protection arrangements, that a lot of resources are being put into this area, and there are special probation officers trained in counter-terrorism. I do not think I can comment on how much resource you need for 25 years, but a lot of resource is being put into the area, which is to be welcomed.

Q24 Alex Cunningham: The Government have tabled some 17 pages of amendments to the Bill, which you may not have seen yet; they were only published on Tuesday.

Jonathan Hall: I have not seen them.

Alex Cunningham: The question is probably useless, then. I was going to ask whether they had reassured you that things had changed for the better, but clearly you have not seen them.

Jonathan Hall: No. I am sorry; I have not seen them.

Q25 Joanna Cherry (Edinburgh South West) (SNP): It is a pleasure to serve under your chairmanship, Mr Robertson. Mr Hall, may I add my thanks to you for your service to all of us as parliamentarians? It is much appreciated, as were the notes that you prepared in advance of the Bill.

I will start by asking you a couple of questions about the effect of the proposed sentencing changes in Scotland. You have produced a "Note on Counter-Terrorism and Sentencing Bill: Sentencing Reforms (3)" that deals with the effect of the proposed sentencing changes in Scotland and Northern Ireland. In particular, in paragraphs 8 and 9, you raise the question of how what is proposed for Scotland under clause 6 of the Bill impacts on the existing sentence in Scotland called an order for lifelong restriction. Can you tell us about that?

Jonathan Hall: Scotland has a unique sentence. It has a very respected body called the Risk Management Authority, and if a risk assessment is made under the auspices of the authority that shows that someone is a real risk, the High Court in Scotland can pass an indeterminate sentence with a punishment part, but with the consequence that someone is liable to be detained until they are safe enough to be released, when they are released but very carefully monitored.

I do not know whether this was intended or an oversight, but it seems paradoxical that, as things currently stand, if a judge in Scotland found that the criteria for a serious terrorism sentence were made out, he or she would have to pass a determinate sentence, if they did not otherwise pass a life sentence, even if ordinarily they might want to pass one of these orders for lifelong restriction. One would have thought that an OLR would provide more protection for the public than a determinate sentence. I do not know whether that has been dealt with in the amendments that have just been referred to.

Q26 Joanna Cherry: What is it about an order for lifelong restriction that, in your view, makes it preferable to what is proposed under clause 6?

Jonathan Hall: It is the fact that risk changes. You want to make a decision about when someone is going to be released in the light of all the information at the point of time at which release becomes an issue. People might become more radical in prison, and it seems to me that allowing a body to make a decision on whether they are safe in the light of all the information is preferable to a decision to impose a determinate sentence taken by a judge, who does not know, actually, whether in the 14 years or 16 years imposed that person will be safe.

Q27 Joanna Cherry: Am I right in understanding that the OLR cannot be imposed until a formal risk assessment has been carried out by Scotland's Risk Management Authority for the benefit of the judge?

Jonathan Hall: I think it is carried out not by the Risk Management Authority but by assessors who are certified by the authority. I am not a Scottish lawyer, but that is my understanding.

Q28 Joanna Cherry: What about the involvement of the Parole Board? You have already spoken favourably about what the Parole Board can bring to assessing risk of involvement in terrorism. Of course, there is a separate Parole Board for Scotland. Is that board involved in the order for lifelong restriction sentence?

Jonathan Hall: Yes, it is. One of the things that I discovered when I did my MAPPA review is that there is probably work to be done to ensure that where a dangerous offender is considered by a Parole Board, whether in Scotland or in England and Wales, all the information relevant to the question of risk—including, in certain circumstances, sensitive information—is brought to the attention of the Parole Board. There are ways and means of doing that. So there are certainly improvements that can be made about the way in which the Parole Board can operate, but yes, that is right: the Parole Board would have a role.

Q29 Joanna Cherry: In the second part of paragraph 9 of your note, you say:

"It would be preferable if Clause 6 was disapplied where an Order for Lifelong Restriction is passed. This also raises the question of whether a more flexible indeterminate sentence, such as the Order for Lifelong Restriction, is not preferable generally to the inflexibility of a serious terrorism sentence."

Those are your views. Have you seen anything to change your mind since you wrote the note?

Jonathan Hall: No, those are my views. It is obviously for Parliament. As I say, I do not know whether the position with orders for lifelong restriction was an oversight in the drafting of the Bill. In Northern Ireland, there is something called an indeterminate custodial sentence, and certainly that can be passed in priority to a terrorism sentence. On the question whether a lifelong restriction is better in principle, I have made my views known. The reason, in a nutshell, is that it is a very difficult to judge risk at the point of sentencing.

Q30 Joanna Cherry: Of course, sentencing is a devolved matter, so normally the Scottish Parliament would deal with it. There would have to be a legislative consent motion from the Scottish Parliament for aspects of this

[Joanna Cherry]

Bill that impact upon devolved matters, so there could be some fruitful discussion between the Scottish Government and the UK Government about your suggestion about disapplying clause 6 where an order for lifelong restriction is passed.

Jonathan Hall: I do not think I can comment on that.

Q31 Joanna Cherry: I want to ask a couple more questions about TPIMs. The Minister took you through what is being proposed. As I understand it, you have not been given a justification or a business case for lowering the standard of proof. Is that right?

Jonathan Hall: I have obviously had discussions, but I have not been able to identify a cogent business case. Reference has been made to reducing the administrative burden. I do not fully understand that point because, as I said in my note, there are cases in which what you might call a new variant or a light-touch TPIM has been made. The courts have yet to say that those are not an acceptable way of proceeding, so it seems to me that there are options already on the table.

Q32 Joanna Cherry: Beyond the example that the right hon. Member for New Forest East raised on the Floor of the House on Second Reading about somebody who has been in Syria for a few years—you have dealt with that—have you been given any other example of a case in which the protection of the public has been hampered by the existing standard of proof?

Jonathan Hall: No. What has been communicated to me is that this is something for the future. There is a phrase that counter-terrorism officials like to use: "having a tool in the toolbox". You could probably summarise this by saying that it will be another tool in the toolbox. They cannot necessarily say when they would use it, but it might be beneficial in the future.

Q33 Joanna Cherry: What about looking at balancing out the changes made in this Bill to TPIMs by introducing some safeguards to ensure that TPIMs do not breach the human rights of a subject of a TPIM? Have you thought about that? We should always remember that the subject of a TPIM has not been convicted of any crime.

Jonathan Hall: I should start by saying that when the control order regime was in force, and the standard was reasonable grounds to suspect, that was not found to be unlawful. I cannot and do not put forward the suggestion that this change would be unlawful; it is a legislative choice.

As far as safeguards are concerned, you will probably have seen from my notes that here you have a double whammy. It is not just reducing the standard of proof but allowing TPIMs to endure forever. Something that was proposed by my predecessor, which would be an option for Parliament, is to say that if it were right that a TPIM should continue beyond two years, at least at that stage the authorities should be able to say, on the balance of probabilities, that the person really is a terrorist. That is an example of a safeguard.

Turning to the question of enduring TPIMs, another safeguard could be to ensure that a judge would have to give permission—in other words, to treat going beyond the two years without any additional proof of new terrorism-related activity as requiring a higher threshold, or some sort of exceptionality or necessity test, as a further safeguard for the subject. Again, I do not think the authorities will be unwise in the way that they use that, but there is a risk that people will be on TPIMs for a very long time indeed. As you say, they have not been prosecuted, and it seems to be right in principle and fair that there should be some additional safeguards for those individuals.

Q34 Joanna Cherry: Would you welcome the retention of the two-year limit on TPIMs?

Jonathan Hall: As things currently stand, yes.

Joanna Cherry: I will leave it there.

Q35 Miss Sarah Dines (Derbyshire Dales) (Con): It is my first time serving under your chairmanship, Mr Robertson, and it is a pleasure.

Mr Hall, thank you for the very thorough online report. It is over 200 pages, and it is obviously a very thorough piece of work. I want to ask a general question from the perspective of one of my constituents. Looking at the overall measures that the Bill would bring in, you must agree that they will make the average citizen safer.

Jonathan Hall: I think some measures certainly will. For some measures, I am less clear in my mind that they will. It would be going too far to say that some of them would have a negative effect, although there is always a question about whether people being in prison for longer will make them safer when they come out.

Something that I was struck by, when I started doing this job, was that most terrorism sentences are quite short. The reason for that is that counter-terrorism police want to go in early and stop attack planning. They may go in when they have intelligence, but before the evidence is really there. They may have secret sources that they cannot use in court. That often results in finding things on phones or computers, which results in lots of convictions for having attack manuals, but not many convictions for attack planning. In practice, that means that most people convicted of terrorism offences will come out after a period of time.

The police and MI5 are always thinking, "How can we make the risk as low as possible when that person eventually comes out?" Obviously, one of the issues that one has to confront is that prisons do not always end up making people more safe. Extending their time in custody for a bit makes someone safer in the sense that they are off the streets for that period of time, but it does not necessarily mean that they are safer when they come out.

All I would say is, yes, there are some bits that are definitely to be welcomed. Anything that allows additional monitoring, that increases licences and that allows the police more monitoring powers is to be welcomed. Some of the things I am less sure about.

Q36 Miss Dines: Which provision, in your professional view, will have the biggest effect on making our citizens safer?

Jonathan Hall: I think it is the provision that allows a judge to say that any offence, if he or she finds that it is connected to terrorism, is a terrorism offence. That means that the police have a statutory ability to monitor that person for 10, 15 or up to 30 years. That is a really welcome change, which makes people safer.

Q37 Conor McGinn (St Helens North) (Lab): It is a pleasure to serve under your chairmanship, Mr Robertson. Thank you, Mr Hall, for your comprehensive notes and the briefing that you provided to the Opposition in advance of the Bill. I have some specific questions following my colleagues' earlier comments.

TPIMs are not widely in use. You have said that the system works okay—I think that was the phrase you used in this evidence session. Is there a concern that these proposals not only do not make the operation of TPIMs more effective, but actually make them less effective, not just in an operational sense but, given the speculative commentary about their being used as an alternative to prosecution or to deradicalisation strategies, in terms of public perception, which undermines their wider use?

Jonathan Hall: It is quite difficult. I am always cautious about talking about public perception, because I do not have a crystal ball. What one can say is that the best counter-terrorism response, the one that has the most common legitimacy, is criminal prosecution. One should continue to strain to prosecute terrorists. It is fairer, it means the public can see what is being done to protect them, and it results in stronger, tougher disposals.

To pick up on the point that you made, I think I mentioned in my notes that from my consideration of TPIMs, I was not entirely convinced that there was enough scrutiny by the Secretary of State and by officials of the evidential case against individuals. There certainly is consideration by the police and the Crown Prosecution Service, but there is the risk that, once a TPIM has been made and someone has been identified as a risk, that takes priority—in other words, the TPIM is the best way of protecting the public—over trying to get criminal evidence to prosecute, which would be preferable from a public perception point of view.

Q38 Conor McGinn: Given that there has been no example of where a TPIM has been unable to proceed on the basis of the current standard of proof, would you, if the Bill passes, look very carefully to ensure that there is not an immediate spike in the use of TPIMs? In November 2019 there were five in use. Is that something that you would see as a measure of whether this is a practical measure introduced to aid law enforcement or counter-terrorism, or whether it is being used as an alternative to prosecution?

Jonathan Hall: I do not have a sense that there is an intention to spike suddenly, which is why I go back to the question: what exactly is the purpose served by changing the standard of proof?

Q39 Conor McGinn: I understand that. I have some sympathy with the Government on statutory renewal being on the basis of new evidence of terrorism, but I have some concerns about what is called, rather bizarrely, "indefinite renewal"—I think your term "enduring TPIMs" is more palatable and makes more sense. Is there a logical compromise on this so that, after a certain period, there must be evidence of continuing involvement in terrorism or a lack of repudiation of terrorism, rather than the onus being on finding new evidence? Might that assuage some of the safeguarding concerns about indefinite sentencing?

Jonathan Hall: If there is evidence of continuing terrorism, that would meet the current law and allow a new TPIM to be imposed. So far as repudiation is concerned, I expect that, if the law is changed in this way, that is how these matters will be framed. It will be said that there was evidence of somebody being involved in terrorist-related activity, that they have not repudiated their views, and that therefore they remain a risk. I would not venture to suggest that one could amend the law as to how risk should be proven. I think one should leave that reasonably open.

Q40 Conor McGinn: One could argue that that is exactly what the whole thrust of the Bill is doing in relation to the standard of proof.

When relocation orders were used before, one in six were overturned in court. Are you concerned that this is rather a dubious way to proceed, if you are going to undermine not just the legislation that you are creating but the wider counter-terrorism strategy? A not insignificant proportion of the people subject to relocation orders as part of control orders in the past were able to overturn them in court.

Jonathan Hall: Relocation is an important power. It is regrettable, in the sense that it is a very strong measure and causes a lot of disruption, but I am quite satisfied that in a small number of cases it is needed. You are right to pick up on that when one looks at the enduring TPIM. The combination of lowering the standard of proof, plus the ability for TPIMs to endure forever and the power of the measures, including relocation, means that someone could be forced to live away from their family for up to, say, a decade, on the basis that they only "may" be a terrorist. A possible safeguard is to say that if one is going to do that, one at least ought to be satisfied on the balance of probabilities.

Q41 Conor McGinn: Is it your understanding, looking at the package of measures being introduced, that you could conceivably have someone who has been convicted of a terrorism offence being free from constraints before someone who has been placed on an enduring TPIM?

Jonathan Hall: Yes.

The Chair: We have three Members still to ask questions, so we need to be very brief.

Q42 Laura Trott (Sevenoaks) (Con): It is a pleasure to serve under your chairmanship, Mr Robertson. I have a clarification question, following the Minister's questions about TPIMs. You said that there is a gap between the two, which can be managed. Can you give us more detail on how that will be done without the powers present through TPIMs?

Jonathan Hall: This is the covert world. I will slightly fudge my answer, because this is more of a technical thing—you might want to ask the next witness. Obviously, the police and MI5 have ways of monitoring and managing people, even if they are not subject to a TPIM. It is something that the authorities have to wrestle with. Some people who have been convicted are on licence, which gives you a way to manage their risk. Some people are on TPIMs. Unfortunately, there are quite a lot of people who are neither on a TPIM nor on licence, and who the authorities have to measure. They have real

expertise in dealing with it. It is slightly sensitive to go into details. Your question is probably one for the next witness.

Q43 Laura Trott: Would it not be better if those individuals were on TPIMs?

Jonathan Hall: It would be easier for the police.

The Chair: Thank you very much. Rob Butler.

Q44 Rob Butler (Aylesbury) (Con): It is a pleasure to serve under your chairmanship, Mr Robertson.

Mr Hall, can I address the young adult age group? It has also been referred to by the Opposition. If we accept that there are different questions of maturity, do you also accept that the 18 to 20 age group can be incredibly dangerous?

Jonathan Hall: Yes, and it is not only people who are over 18. It seems to be a phenomenon at the moment. If you think about what is available on the internet, and if you bring in issues such as mental health, young people can be very dangerous. As you know, there was the so-called Anzac Day plot involving a very young person.

Q45 Rob Butler: I was on the Youth Justice Board at the time, so I am very familiar with that case. You note that there is provision in the Bill for the under-18s, as judges will have more discretion on sentencing. You have expressed some reservations about the young adult age group—either 18 to 20, or 18 to 24, depending on how one decides to define maturity. As you have highlighted, there is some debate about what that age group should be. What would be an appropriate balance between safeguarding the possibility of people maturing out of offending while still ensuring the safety of the general public?

Jonathan Hall: A sceptical Parole Board. Sometimes people look at the Parole Board and see early release. It is certainly correct that the Parole Board would have the power to grant early release, but it often does not release people.

Q46 Rob Butler: So are you suggesting an exceptional case for that young adult cohort—that they should be eligible for Parole Board consideration where older adults are not? That is what I am trying to clarify.

Jonathan Hall: Yes, I think that would be a legitimate policy choice for Parliament. Can I just clarify one thing? You have the serious terrorism sentence, where the judge's power is to pass one of these only for people who are 18 or over. In my notes, I have made some points about the 18 to 21 age group. You also have people who are not subject to those orders, but who are dangerous and have been convicted of offences that carry a maximum of life. For those people, including people below the age of 18, the Parole Board role disappears. One choice would be to say that if people are under 18, the Parole Board ought to retain a role.

The Chair: Thank you. Julie Marson.

Q47 Julie Marson (Hertford and Stortford) (Con): It is a pleasure to serve under your chairmanship, Mr Robertson.

Thank you for all your evidence, Mr Hall. On sentencing, we have talked about rehabilitation and risk management quite a lot. The other purposes of sentencing are deterrence, protection of the public and punishment. Do you agree that those purposes are well served by the changes in sentencing that are contained in the Bill?

Jonathan Hall: Yes.

The Chair: We have come to the end of the session. Mr Hall, thank you very much indeed.

Examination of Witness

Assistant Chief Constable Tim Jacques gave evidence.

The Chair: We will now hear from the National Police Chiefs' Council. Should hon. Members wish to ask a question, it would be helpful if they could catch my eye early in the proceedings, so that I can try to restrict Front Benchers as necessary.

Thank you very much for joining us, Mr Jacques. Could you please briefly introduce yourself and your organisation?

Tim Jacques: I am Tim Jacques. I am an assistant chief constable and I work with counter-terrorism policing here in the UK. I am the deputy senior national co-ordinator.

Q48 Chris Philp: I will try to self-censor, Mr Robertson, for brevity. I will start by asking a general question. Assistant Chief Constable, you are responsible for counter-terrorism policing. Taken in the round and viewed as a whole, will the measures in the Bill make your job easier or harder? Will they make the public less or more safe?

Tim Jacques: It will make our job easier, and yes, I believe it will make the public safer.

Q49 Chris Philp: Good. Thank you. We have heard TPIMs and the burden of proof extensively debated, and we have questions about why the burden of proof should be lower—reasonable suspicion rather than a higher level. Do you think that in future there might be cases where somebody threatens the safety of the public, and you are unable to meet the higher burden of proof on the balance of probabilities, but you could meet the lower burden of proof—reasonable suspicion—and that without this change that is proposed in the Bill, the public would be exposed to greater risk?

Tim Jacques: That is a very long question. On the first point, policing itself is not the applicant for TPIMs; the Security Service is. Am I able to share its view in this forum?

Chris Philp: Please do.

Tim Jacques: First—Jonathan touched on this—there have not been occasions thus far when the current burden of proof has prevented the application of a TPIM. In terms of the numbers, there are six now in place in the UK. Neither we nor the Security Service envisage a large increase in those numbers as a result of the provisions in the Bill. The Security Service points to three instances where it thinks this would have utility from an operational perspective. The first is where an individual's risk profile is rapidly increasing—hypothetically, somebody who we know might be operating online, but our belief is that they are moving towards posing an

actual threat on the street with an attack plan in place. If that is very rapid, which it can now be—we have seen instances of that—then being able to use a lower standard of proof is something that MI5 thinks would be of use.

Secondly—Jonathan touched on this too—there is the issue of somebody returning from abroad, who we believe has been involved in terrorist-related activity overseas, and the issues of evidence in that. The Home Secretary can currently impose temporary exclusion orders at the lower standard of proof. If somebody wants to come back and has a right to come back to the UK, they can be imposed on the lower standard of proof. If someone somehow makes it to the UK under the radar or without our knowledge, the higher burden of proof would have to be applied to impose a TPIM. That is the second case that MI5 would point to.

The third issue, which Jonathan also touched on, relates to sensitive material. TPIMs are challengeable and there is an automatic review and so on. The disclosure of sensitive material would potentially compromise sensitive techniques and therefore make our job and that of the Security Service harder, but the lower standard would assist them in their national security role.

Q50 Chris Philp: For those three reasons, you are being categorically clear with this Committee and with Parliament that the proposed lower standard of proof would be a benefit to the police and the security services, and that it would make the public safer.

Tim Jacques: That is the view of the security services. We are not the applicant, but that is their clear view.

Q51 Chris Philp: Thank you for making that extremely clear. I am sure that the Committee will pay close attention to the advice being given to us through you by the security services. I have one more question on TPIMs, relating to the current two-year expiry date and the proposal to make them annually renewable. They will not be indefinite unless the threat is indefinite. Do the security services for whom you speak see a threat to the public as a consequence of the gaps that we have heard Mr Hall describe: the 12-month gap in one case and the 16-month gap in the other?

Tim Jacques: Because we jointly manage TPIMs once imposed, I can speak on this. Yes, we do see an increase in the threat if that gap occurs, and that gap has occurred, as Jonathan has pointed out previously.

Q52 Alex Cunningham: There is a very helpful question on our briefing paper about the danger that measures perceived as oppressive and disproportionate may alienate individuals who could otherwise be rehabilitated. Do you have a view on that, particularly in relation to younger people, who might be a little immature?

Tim Jacques: I certainly have a view on that. From a policing perspective—I do not think it is any different for our operational partners—there are two trains in place here: one is punishment and incarceration, which was mentioned earlier; and the other is rehabilitation, desistance and disengagement. Ultimately, the best outcome is the latter: we change the individual's mindset and view of the world, and mitigate the risk that they pose to the public in an enduring manner. Anything that promotes that prevent, disengagement and deradicalization position is to be welcomed.

Both those options are considered with TPIMs, and indeed with most of the work that we undertake. Both protect the public, if successful. We are conscious of that and drive both of them. Counter-terrorism policing operates across all the Ps of the Government's counter-terrorism strategy, called Contest, and prevent and pursue are included in that.

Q53 Alex Cunningham: Specifically on rehabilitation, do you think we need to amend the Bill to give younger people an opportunity to appear before the Parole Board. Should they be managed differently?

Tim Jacques: I cannot comment in detail on the Parole Board element of it. If we can encourage people via the use of TPIMs and the programmes that TPIMs include, that would be a good thing, but the intricacies of sentencing and release are beyond my expert knowledge.

Q54 Alex Cunningham: There is much talk in the Bill about polygraphing. Do you believe that introducing polygraphs in this area will drive the benefits that the Minister hopes for? Are you satisfied that the science around them is good enough, and that they provide real value?

Tim Jacques: There are two elements, as I understand it, where polygraphs are introduced: one is in licence conditions and the other is the use of TPIMs. I can certainly talk about the latter, but maybe not the former.

It is safe to say that the science around polygraphs is not absolutely fool-proof. For that reason, we and the CPS agree that we would never seek to use them as evidence in a criminal prosecution in the UK. By introducing polygraph measures in these circumstances—in TPIMs—you may end up with that evidence through disclosure, not for criminal prosecutions.

The reality is that polygraphs are untested in the terrorist space, but we would welcome the ability to pilot them. We would not necessarily be seeking mandation on every single TPIM. It says "if required", and again that should be an operational decision for us. They are untested, which is why they are not used in criminal proceedings. They have utility in the management of sex offenders, as Jonathan pointed out, and they may well have utility in the management of terrorist offenders. We would be happy to try that and see where it takes us.

Q55 Alex Cunningham: So you would want to see a trial, rather than wholesale introduction?

Tim Jacques: Our point has always been that polygraphs are something that may have utility. If the Bill enables that utility, we would be very happy to try that, but whether to use them is an operational decision. They are untested, but the Bill enables them to be tested.

Q56 Alex Cunningham: Do you have any concerns about the fact that this cohort of offenders will be released into the community without the involvement of the Parole Board? They are just taken out and simply released, although I know that other work will go on. How do you feel about the fact that there will not be the expertise of the Parole Board behind any decision for them to be released into the community?

Tim Jacques: I do not want to dodge the question, but these people will come out of prison at some point. My understanding of the measures in the Bill is that they will come out later, rather than sooner. We have to

manage and mitigate the risk as and when they come out. We have to manage them when they come out, and they are going to come out at some point. That is the point for us.

Q57 Joanna Cherry: I have just a couple of brief questions. You have mentioned three potential justifications for lowering the current standard of proof. You will be aware that the Independent Reviewer of Terrorism Legislation does not consider that there is any justification, but just let me cover a couple of the points that you raised. Jonathan Hall tells us that at present there is something called a new variant TPIM, which has been used by the security services, and that is a means of using the existing law to reduce the administrative and litigation burden on the authorities, which really means that when fewer measures are imposed on individuals, it is not necessary to establish in evidence every chapter and verse of an individual's terrorist-related activity before a TPIM can be imposed. Mr Hall seems to envisage that the existence of these new variant TPIMs is sufficient to reduce the sort of administrative and motivation burden on the authorities that you have described in relation to sensitive material and a rapidly increasing risk. Do you see his point?

Tim Jacques: I do see his point, yes. The new variant, as Jonathan describes it, is about using fewer measures and can include, of course, not relocating the subject, which was a matter of discussion earlier. Because each measure has to be justified as necessary and proportionate to the Home Secretary and then approved by the court, of course each one of the measures and the case for each one of the measures can be, and very often is, challenged on behalf of the subject. In simple terms, the fewer measures there are, the less opportunity there is for challenge and the less need for administrative work to deal with that. That is where that comes into play. It is MI5's view that potentially there is further opportunity for them to get engaged in that if there is a lower standard of proof, and for disclosure of sensitive material potentially.

Q58 Joanna Cherry: So where there is a rapidly escalating situation or where there is a need to manage sensitive material, we already have available to us the option of a new variant TPIM without changing the standard of proof.

Tim Jacques: Well, a TPIM is a TPIM. We have the option of a TPIM to manage that case, yes, as it currently stands. MI5 has pointed out that there is no case thus far where the standard of proof has been a blocker.

Joanna Cherry: That is quite an important statement: there is no case so far where the current standard of proof has prevented an application for a TPIM. Thank you.

Q59 Rob Butler: Assistant Chief Constable, we have heard, and probably all accept, that young people can be immature and easily led, but would the police view also be that they can be extremely dangerous?

Tim Jacques: Absolutely. Sadly, we have seen—you have mentioned the case that is within my background knowledge—very recent examples of very young people who pose an extreme risk to the public. It is sad, but it is real and it is true.

Q60 Rob Butler: And consequently there is a need for legislation around sentencing that reflects that.

Tim Jacques: We would absolutely say that, yes.

Q61 Rob Butler: Can you describe a little bit, from your policing perspective, the increased threat that you are seeing, from both under-18s and young adults aged 18 to either 21or 24?

Tim Jacques: We can see and we have seen not just the case that goes back a few years but, certainly within the recent past, a number of, and a worrying increase in, young people engaging in terrorism of different forms and posing a real threat to the public. It is shocking, in one sense, that you see people of such a young age and the maturity with which they carry out their activity, and the hate-filled ideologies that inspire them at such a young age, but it is real.

Q62 Rob Butler: So while it is very important that the police are able to engage with young people in a way that is constructive, it is also important that the police can keep all young people safe from the threat posed by other young people.

Tim Jacques: Yes, absolutely. As I said earlier, we are there to do both. We protect the public by both measures: prosecution and criminal justice means, if that is needed—which can lead to desistance and disengagement programmes—and measures before that. If we can dissuade and reduce and prevent people from getting to that stage, that is a good option for us as well—if it keeps the public safe.

The Chair: Thank you.

Q63 Conor McGinn: Thank you, Assistant Chief Constable Jacques—and not just for you and your colleagues' work now. As a north-west MP, I am particularly proud of your distinguished service in Lancashire and our region over many years. I am very pleased to see you in your current position. In terms of policing's priorities and asks from the Government, was this top of your list?

Tim Jacques: Was what top?

Conor McGinn: The measures contained in the Bill: the amendments to the current operation of TPIMs, and provisions on sentencing. Is that what counter-terrorism policing in the UK feels it needs as a priority from Government?

Tim Jacques: The Bill came out of the recent changes in sentencing. One of the potential effects of those—in the previous Bill that went through Parliament—was offenders coming out without licence conditions in place. We refer to that as a cliff edge; I think Jonathan referred to a different cliff edge. For us and our operational partners—the Probation Service, the security services and so on—licence conditions are incredibly important, allowing us to manage individuals. In some of those cases there is potential for TPIMs to be applied in order to manage the risk that people pose, whereas the licence conditions do not offer that. That was the driver behind the TPIM element of the Bill.

Some of the measures and the changes that the Bill includes are the result of the Bill being put forward and talking about TPIMs. They include some of the problems that we have encountered in recent cases and that we

think could be improved through legislation. This was not right at the top of our priority list, but if the Government are looking to take the Bill through, we think aspects of it are worthy of consideration by Parliament because we have encountered them operationally as problems.

Q64 Conor McGinn: Do you think you will require additional resources in order to implement the measures that are proposed in the Bill?

Tim Jacques: As you have seen, the number of TPIMs is very low. We do not envisage there being swathes of TPIMs if the Bill is enacted in its current state. There will be changes—the use of polygraph and so forth—that will have an impact. In the grand schemes of things and in the numbers that we are talking about, it will have an impact. Where TPIMs endure longer than two years, they will obviously require monitoring and resources for that. If an individual poses a risk and a threat anyway, they will consume resources regardless of whether they are on a TPIM; there is just less control around them.

Q65 Conor McGinn: May I press you a little? You say that the measures in the Bill will make the police's job easier and will make people safer. When the police or the security services say that, I absolutely trust them and believe that that is the case. You also said there is no case where the current standard of proof prevented a TPIM, as the hon. and learned Member for Edinburgh South West said. You went on to say that some of the things, such as individuals' risk profile increasing on returning from abroad, mean that the measures are welcome. However, those risk factors exist today and have existed for a period of time. I am trying to work out the contradiction in saying that there has not been a case where the standard of proof has prevented a TPIM, but that lowering the standard of proof will make it easier.

Tim Jacques: In relation specifically to the standard of proof, I think the security services' point is that that may have utility in the examples that I gave. My answer to the question was on the wider changes around notification of TPIMs, the sentencing regime and so forth. It may have utility in terms of lowering the burden of proof, and it will make our collective role easier and the public safer.

Q66 Conor McGinn: I understand. Thank you. Finally, the Bill also contains a measure to remove the statutory deadline for the reporting of the Prevent review. The review was announced last January, but it has been delayed and postponed. We are now at the stage where the Government intend to have it report next summer but have removed any deadline. Is it frustrating that you have continuing speculation and debate around Prevent, with an independent review proposed, mooted and having gone through several iterations, yet you are still none the wiser about where the review is at, so you cannot get on and do not have certainty about what it will look like after the review, 16 or 17 months after it was first proposed? Is that a frustration for the police? Does that uncertainty undermine the Government's wider counter-terrorism strategy?

Tim Jacques: We welcome the Prevent review and are very happy to engage in the Prevent review. Prevent is a critically important part of our role; it is absolutely vital. It is controversial, and has been controversial, but we engage in it, we operate, and we protect the public through Prevent every day. The review will be helpful, I am sure, from many perspectives.

Q67 Conor McGinn: But you are keen for it to progress speedily and get it done and out of the way.

Tim Jacques: It would be helpful if the review came to an end. Whether that will finish the debate on Prevent, of course, is another matter. It may do that; it may not. We will continue regardless, but we are happy to engage in the review and see it concluded.

Q68 Miss Dines: Assistant Chief Constable Jacques, may I first thank you on behalf of the Committee for all the work you do to keep us safe? You have made it quite clear that your view is that the provisions in the Bill will make policing easier. Can you give us a working example of that, please?

Tim Jacques: Gosh—there are many examples. If you look at some of the relocation notification measures, because of the new variant, and because some of the terrorism prevention and investigation measures we now use are not relocation, there is potentially a flaw in the legislation as currently made out that subjects do not have to tell us where they are living. That is one small but fairly clear and obvious example. If we are not relocating them, which we are not all the time now, the law does not require them to tell us where they live, which seems an obvious gap. The Bill will enable us to manage the individual to use these measures in a different way, and potentially a less intrusive or restrictive way for the individual, enabling us to manage the risks that they pose to the public.

Q69 Miss Dines: You were asked earlier about rehabilitation, and I am sure no one in the room does not think that it is an important part of the state's job and the police's job to assist where possible. However, do you agree that at times—particularly in these troubled times—immediate safety must trump the long-term aims of rehabilitation to keep people safe?

Tim Jacques: I absolutely agree. Protecting the public is our No. 1 priority and sometimes that means we have to intervene regardless of evidence, because the risks to the public are so great.

Q70 Julie Marson: As the daughter of a police officer, I would like to acknowledge and recognise how much you do and how often it is police officers on the frontline running towards danger when others are running away. When we talk about the importance of the Bill's provisions in keeping the public safe, is it fair to say that, by definition, we are keeping the police safe?

Tim Jacques: The police are a target for terrorist offenders, as are many institutions of the state. The police are the public and the public are the police, so by some of these measures, you protect the police and you protect the public.

The Chair: We have about six minutes left. Would anybody like to come in?

Joanna Cherry: I would like to add to what Julie Marson said. I do not think we can say often enough how much we and our constituents appreciate the risk

[Joanna Cherry]

that police officers put themselves in. You are there for us. I think all political parties would want to associate themselves with that. Thank you.

Tim Jacques: Thank you.

Alex Cunningham: On a point of order, Mr Robertson. Given that the Government have tabled 17 pages of amendments to the Bill, would it be in order for us to invite Mr Jonathan Hall to provide a further note on the Bill?

The Chair: Mr Hall is still here. Mr Cunningham is offering you extra work. If you would like to do that—*[Interruption.]*. I am terribly sorry; I am advised that I cannot invite you to speak again, but I think you have got the point.

Mr Jacques, I think the point Joanna Cherry made, supporting Julie Marson, was a good one that we would all echo. Thank you very much for joining us.

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

12.55 pm

Adjourned till this day at Two o'clock.