# PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

## Public Bill Committee

# POLICE, CRIME, SENTENCING AND COURTS BILL

*Second Sitting*

*Tuesday 18 May 2021*

*(Afternoon)*

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**Saturday 22 May 2021**

**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**

Phil Bowen, Director, Centre for Justice Innovation

Adrian Crossley, Head of Criminal Justice and Addiction, Centre for Social Justice

Jonathan Hall QC, Independent Reviewer of Terrorism Legislation

Matt Parr, CB, HM Inspector of Constabulary, Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services

Councillor Nesil Caliskan, Chair of the Local Government Association Safer and Stronger Communities Board, Local Government Association

David Lloyd, Conservative PCC for Hertfordshire and APCC Criminal Justice Lead, Association of Police and Crime Commissioners

Alison Hernandez, PCC for Devon & Cornwall and APCC Roads Policing Lead, Association of Police and Crime Commissioners

Adam Wagner, Barrister, Doughty Street Chambers

Marc Willers QC, Barrister, Garden Court Chambers

Stephanie Roberts-Bibby, Acting CEO, Youth Justice Board

Derek Sweeting QC, Chair of the Bar, The Bar Council

# Public Bill Committee

*Tuesday 18 May 2021*

*(Afternoon)*

[Steve McCabe *in the Chair*]

## Police, Crime, Sentencing and Courts Bill

**Examination of Witnesses**

*Phil Bowen and Adrian Crossley gave evidence.*

2 pm

**Q51 The Chair:** Our first panel of witnesses is Phil Bowen, director of the Centre for Justice Innovation, and Adrian Crossley, the head of criminal justice and addiction at the Centre for Social Justice. We have until 2.45 pm for this session. Will the witnesses introduce themselves for the record, please?

***Phil Bowen:*** Hello. My name is Phil Bowen and I am the director of the Centre for Justice Innovation. I would like to make the Committee aware that from July 2020 to March 2021 my organisation had a contract with the Ministry of Justice that enabled me to provide policy advice and challenge to Ministers and civil servants on the community supervision aspects of the sentencing White Paper and the Bill.

***Adrian Crossley:*** Good afternoon. My name is Adrian Crossley and I lead the criminal justice unit and the addiction unit at the Centre for Social Justice. The CSJ is a think-tank that advocates social policy aimed at tackling the root causes of poverty in the UK.

**The Chair:** Thank you.

**Q52 Ian Levy** (Blyth Valley) (Con): Phil, for the benefit of the Committee, would you mind expanding a bit on the benefits of problem-solving courts?

***Phil Bowen:*** Of course. The Centre for Justice Innovation has long been a supporter of problem-solving courts. At their simplest, they bring together specialist supervision and intervention teams with the powers and authority of a court to review progress regularly against a sentencing plan. They generally operate out of existing courthouses and are built from existing resources. We already do work on and support about 11 courts across the UK that use problem solving to manage specific caseloads, including three in Northern Ireland, sponsored by the Department of Justice in Northern Ireland, and four in Scotland. That is in addition to the 14 family, drug and alcohol courts already in existence in England in the public family law system.

As you know from the Bill, the Government propose to pilot three separate and distinct models of problem-solving courts in England and Wales in the criminal court system: a substance misuse court model; a model to tackle domestic abuse; and a model to help vulnerable women avoid short-term custody. We are very supportive of the move, for which we have been calling for a long time. We believe that the evidence base on all three of those models is robust enough that the piloting of them in England and Wales would be useful as a first step before thinking about their further roll-out across the system. We think there is a real chance to reduce the use of unnecessary custody and tackle reoffending, particularly in the substance misuse and vulnerable women models and, in terms of the model to tackle domestic abuse, to really hold perpetrators to account and give victims a sense of safety and involve them in the ongoing supervision of those perpetrators.

***Adrian Crossley:*** Thank you; I am grateful. I am very well aware of the work that Phil Bowen is doing. CSJ also endorses the use of problem-solving courts. They have the potential to be enormously beneficial to defendants sometimes facing serious matters across the UK.

In terms of the scope of the proposed pilots, I think that the chosen three categories—domestic abuse, substance abuse and vulnerable women facing prison sentences—are wise choices. What is best about a problem-solving court is that it draws from real specialist knowledge and experience that can really look behind a problem, understand it and provide practical solutions, so these issues are worth tackling. One point I would note as a matter of caution is that problem-solving courts at their best are fantastic, but they do pose dangers. I am pleased to see that we are starting with a relatively small pilot because it is important to get right the things that sometimes appear to be small. For example, listing cases for problem courts to ensure that they are before the same panel that can continually look at a case and review it, and understand that the team that they are working with and the person in front of them are important.

In our jurisdiction, we have sometimes had difficulty with listing in front of lay magistrates—problems that they do not necessarily experience to the same degree overseas in the US. So there are examples of things that need to be done well and right. I am pleased to see that those three categories have been chosen, because they are worth tackling, and I am pleased to see that the initial pilots are small enough to allow proper analysis and reform as we go along.

**Q53 Bambos Charalambous** (Enfield, Southgate) (Lab): Still on the subject of problem-solving courts, I am concerned that the problem-solving courts do not include mental health. People with ADHD and neurodiverse and mental health conditions are over-represented in our prisons, so I wonder what Phil and Adrian have to say about how those issues can be resolved, and whether they think the problem-solving courts' proposals need to be expanded.

**The Chair:** Adrian, would you like to go first?

***Adrian Crossley:*** Yes. Thank you. I can entirely see that that concern is absolutely valid. We know from the CSTR—community sentence treatment requirements—model that substance abuse and mental health are both dealt with alongside each other, separately but often in the same hearings. It is an absolutely valid concern. I would also say that as well as substance abuse, there is now a growing need to consider the impact of gambling addiction. That issue is becoming increasingly prevalent in our country. Sadly, over the last 15 years, there has been an explosion in this sort of addiction, and it draws into crime the people who would not necessarily always fall into it.

What I would say—I have said it prior to this—is that problem-solving courts are good if they are done well, and I would hope that we do not get too prescriptive about what kind of person is in front of us and categorise

them as a domestic abuse or a substance abuse case. Often people have complex and chaotic lives with lots of different things going on. I would hope that a problem-solving court done well might have a category that they call a substance-abuse court, but be equipped to deal with something such as mental health as well.

I practised as a barrister for some time and I know that often clients, like I had before me, have issues behind what is apparent from the offence, which could go unseen unless probed. I spoke to a colleague earlier today and he explained to me that there are some 300,000 people in the UK right now who are indebted to a loan shark. You will never see the chaos behind someone's life from a simple shoplifting offence. You need to be able to explore that. If problem-solving courts and pre-sentence reports are done well, in line with the new probation reforms, this should become clear and we should be able to help people with multiple needs before the courts.

***Phil Bowen:*** To add to that, I understand that the current plans in the Ministry of Justice are to pilot those three types of models, but as all the models are drawn up, there is an awareness that people who would be eligible for substance misuse court are likely to have co-occurring mental health needs, and those would need to be addressed at the same time. The substance misuse court that currently operates in Belfast and the drugs court that currently operates in Glasgow recognise the complexity of people's substance misuse and other needs, and seek to address them.

It is pretty clear, from what I have seen, in existing practice and what the Ministry of Justice is beginning to develop, that there is a broad awareness that it may be a trigger for intervention that vulnerable women are identified as at risk of custody, but there will be a recognition and services targeted at a range of their complex needs, one of which almost invariably will be mental health. That is very much at the heart of what the Ministry proposes, and we support that.

**Q54 Bambos Charalambous:** A final question about limiting the use of child remand: do you think the provisions in the Bill go far enough?

***Adrian Crossley:*** We welcome the addition of the new statutory duty clause for courts that requires them to consider the welfare and best interests of the child. We think that is a positive part of the Bill. It would be nice if it could go further. Seeing custody as something to keep people safe is not correct, but there is broad support, as far as I can tell, from people with an interest in youth justice for this change. I know some of my colleagues would like it to go further.

***Adrian Crossley:*** I can only add that we have seen a substantial reduction in custodial sentences for youths over the last 10 years or so. We welcome efforts to encourage rehabilitation and use it absolutely as a last resort. I think it goes far enough.

**Q55 Mr Robert Goodwill** (Scarborough and Whitby) (Con): I would like to ask about the extension of categories of positions of trust. We have all been appalled by the way that some individuals have abused those positions, as football coaches, in gymnastics, in children's homes or in the Catholic Church and other religious settings.

Currently, as I understand, clause 45 would extend those definitions and include anyone aged over 18 who supervises or works with 16 and 17-year-olds. I know from personal experience with my own family that, often, older children at a dance school, perhaps over 18, often chip in to help with tuition and coaching. In some cases, they may even be in the same class at school as a 17-year-old who is part of that dance academy. I wonder whether there could be difficulties in situations such as that. Indeed, we also remove the right to give consent from 16 and 17-year-olds who may find that infringes on their ability to choose who to have a relationship with. Perhaps Mr Crossly might be most appropriate to respond first.

***Adrian Crossley:*** The first point to know is that affording some protection in this area is absolutely imperative. We have seen abuse of trust that has led to not just inappropriate relationships—that is not what we are dealing with. We are dealing with sometimes highly vulnerable children who are sexually abused. In order to make an inroad into dealing with that sort of offending, we need to get to the crux of how it comes about. All too often, positions of trust can allow a perpetrator to hide in plain sight—not only that, they make the person who is abused feel partially responsible and incapable of speaking out. The perpetrator recruits the trust of the people nearest and dearest, including their parents.

While I appreciate that there may be some difficulties in the administration of this issue, that will not unnecessarily impinge upon the movement of people and their enjoyment of their leisure, I do not put that value at naught—absolutely not. I do see, at the other end of this, we have a very real risk, which has existed pervasively throughout our society for a long time. I think the extension into the position-of-trust model starts to move away from identifying it as in small pockets of society and to see it as the modus operandi of some perpetrators of crime. I think its broadness is important and the clause as it stands is sufficient.

**Q56 Mr Goodwill:** So you would not agree with those who might argue that a small number of perfectly proper relationships might be caught up in this and that we could end up with people being unnecessarily criminalised. That is not to undermine the points that we all agree with about people in positions of trust who exploit that. The question is whether a person's right to give consent could be undermined by these changes in specific situations, particularly where an 18-year-old is at the same school or in the same class as a 17-year-old.

***Adrian Crossley:*** So much of this, as with any law, is about how it is actually executed on the ground and how the decision-making processes operate. At this stage, when you are looking at the written form of the clause, I can see that there is potential there for consent. The administration of a clause like this relies on good practice, and I would say that these things can be circumvented. You have the same sort of problem with something as controversial as stop and search, where you can see that there may be a very good reason for it but, done badly, it can be incredibly corrosive to society; it can stop people moving around freely. But that does not mean that the legislation itself is wrong. It will come down to how we administer this, and a continual review of that is necessary. But I do accept this: it is not possible for me to say that there will not be friction and difficulty as this clause is administered.

**Q57 Hywel Williams** (Arfon) (PC): I have two questions. The first is on problem-solving courts. Are there potential structural problems where the courts fall under this place, under Westminster, whereas key agencies such as health and social services, higher education and further education and a host of others fall under a different legislature—that is, public policy made by the Senedd in Cardiff?

***Phil Bowen:*** One example to offer the Committee is from the public family law system. The Welsh Government and the courts system have just agreed to create a new family drug and alcohol court. The issue is similar, in that it requires a partnership between people in the Welsh Government, local authorities and the courts service.

I certainly know that, as part of the Ministry of Justice's scoping of where the pilot sites might be, it is very keen to speak with Mayors, police and crime commissioners, the Welsh Government and others about where the most suitable sites are. So I do not think it is incompatible. It certainly will require partnerships and collaboration. That is what exists already in existing problem-solving courts; as I say, it already is going to be a feature of the new family drug and alcohol court in south Wales. So I do not think this is insurmountable. I certainly know there is a strong interest in the Ministry to have discussions with the Welsh Government about whether they think it is appropriate to have one of the problem-solving court pilots in Wales. I think there is still work to be done there, but wherever they exist, they require partnerships between different agencies and both national actors and local actors.

**Q58 Hywel Williams:** May I ask one other question briefly? Can you comment on the dangers of sentence inflation from the Bill, particularly when sentences across the board, as well as rates of incarceration, are higher in Wales than in England and when black, Asian and minority ethnic people are over-represented in Welsh prisons to an even greater degree than they are in England?

***Adrian Crossley:*** Sentencing inflation is a very real problem. For decades now, we have seen incremental rises in sentencing, right across the board. There is a theory that the more we increase the more serious offences tariffs, there is a trickle-down effect; essentially, it pulls up sentencing for lesser offences. We see, for example, sentences for drug offences increase over a 10-year period by about 30%, and for theft by around 22% over the same period. This has a very real effect on people's lives. It is not just a question of a few extra years—that would be serious enough as it is—it can often be the difference between somebody having a sentence suspended and actually being taken away and put into a cell, so it is a very real problem.

Some regard this as a Bill of two halves with what some regard as very punitive sentencing on the one hand and some very progressive, challenging and, I would say, quite brave proposals for community reform and rehabilitation on the other. A great deal of subjectivity is involved in deciding how much time somebody should serve for very serious offences. I do not see anything necessarily wrong with reviewing how this society deals with very serious offending. If there is an increase in tariff, which we as a liberal democracy think is right, that is fine, but there are real dangers with that. My view is that we are likely to see a Prison Service that is wholly incapable of dealing with the stress of an extra 20,000 people—what is forecast for the next few years—inundated with new offenders who are likely to have very little access to meaningful reform and rehabilitation. That is deeply concerning to me.

If as a society we feel that that more serious offending requires a higher tariff, we also have to address the numbers in prison. The most important thing we need to do is to look at whether people who are currently being sent to prison, perhaps at the lower and medium end of offending, really need to go there. The Centre for Social Justice published a paper last year called "Sentencing in the Dock". Our position was very clear that modern technology, with GPS tagging and alcohol tagging—I could list a number of requirements that are already rightly in the Bill—could provide a sufficient deprivation of liberty to act as a real punishment for serious offending or medium to low-level offending.

We need to be much bolder about the amount of people we keep out of prison and deal with in the community. We can see clearly that in treating alcohol, drug addiction, mental health problems, literacy and numeracy, you are far more likely to have an effect on those key drivers of crime if you deal with people in the community than if you put them in prison. We could be much bolder in dealing with community disposals. There is a real risk of sentencing inflation here, of a prison population growing out of control and, in my view, of brutalising people who might otherwise be able to reform.

***Phil Bowen:*** I agree with a lot of that. The only thing I would add is that proposals are set out in the White Paper that are being taken forward by the Ministry that seek to strengthen the community justice parts of the system. They include things such as investing in early intervention and prevention, including the improvements to the out-of-court disposals regime, which I think is vital for young people and people from black, Asian and minority ethnic communities in particular.

The nationalisation of the probation service represents a real opportunity to strengthen community sentences and win public confidence in community sentences back from the courts. I also think a strong interest and investment are needed in high-quality treatment for offenders and the more dynamic use of electronic monitoring. While I agree with a lot of what Adrian has just said that some proposals in the Bill seek to increase the use of prison, that takes away money from smarter investments in community justice. I would also like to emphasise that there are things in the Bill that we support, because we think they take forward that idea of smarter community justice.

**Q59 Sarah Champion** (Rotherham) (Lab): Two quick questions to the witnesses. If we brought in a definition of child criminal exploitation, do you think that would help or hinder the police and support for victims?

***Adrian Crossley:*** My view is that definitions usually start their life imperfect and develop with a great deal of expertise from public and experts who understand this issue perhaps better than I ever could. Notwithstanding that, and understanding that there may be a starting point of imperfection, they are useful. In my view, definitions of important criminal principles help real decision makers on the ground make practical decisions that are fair and consistent. Notwithstanding the fact

that I see problems with that—we have seen so many different definitions of domestic abuse, which started its life as domestic violence, that it is clear these things are fluid and can develop—I think they have a practical application.

***Phil Bowen:*** I have nothing to add to that. I agree with that.

**Q60 Sarah Champion:** Can I ask for your comments on special measures in court? I am thinking of witnesses being able to give evidence remotely, which at the moment is at the discretion of a judge. If there were a presumption that a vulnerable witness had an automatic right to those measures, do you think that that would help or hinder securing justice?

***Phil Bowen:*** I think presumption to all of them is very useful. The other thing that I think is worth underlining is that part of the model of the specialist domestic abuse courts, which ought to operate in every magistrates court but at the moment do not, is that independent domestic violence advocates make sure the victims are asked about special measures and those special measures are put in place. I think there is a delivery and implementation question, as well as a legislative question, about whether the resources are there to help victims of domestic abuse and ensure those special measures are put in. Yes, I think a presumption would be useful, but I think it also requires attention to implementation and delivery issues. Special measures should already be used in specialist domestic abuse courts across our magistrates court estate and, in many cases, domestic abuse victims are without access to those measures, for want of anyone who asked.

**Q61 Sarah Champion:** Thank you. I am hoping this could be one of the benefits we get out of the covid experience. Adrian, any comments?

***Adrian Crossley:*** I endorse pretty much all of what Mr Bowen has just said. I will not repeat what he said, so forgive me, but I particularly want to emphasise the focus that was placed on the reality of actual implementation. I worked for some years as a prosecutor and in defence, and I can say that, very often, lack of special measures is not the result of an omission in thought or some massive procedural error. Sometimes the implementation of special measures and, certainly, the pragmatics of what happens in court are not there and the stress that that puts witnesses through is absolutely huge. Sometimes, we talk a lot about witnesses not turning up or defendants gaming the system, hoping that the stress of waiting for trial is so bad that the witness just will not turn up, but the chaos and confusion that is caused by a broken system that is fixed on the day can be hugely distressing to a witness. I think implementation is important.

That point is not where I was going to go, however. Just for balance, I should say that it is always right that the accused should be able to face their accuser and evidence should be tested properly. Nothing that I have seen that has been proposed, including video examination in chief and cross-examination before trial, gives me any concern that without the right implementation that could not be done well. We always have to have an eye on making sure that the accused has a fair trial. This is important; it is not a nicety. However, the measures I have seen proposed give me no real cause for concern about that. I think it makes a massive difference to the view of the complainant and, unfortunately, it would also make a massive difference to the view of some defendants, who may face the reality of the evidence against them earlier. It may encourage pleas that should have happened earlier.

**Sarah Champion:** That is very reassuring.

**Q62 Alex Cunningham** (Stockton North) (Lab): I have a number of questions across different areas, so short answers would be appreciated. First, Phil touched on the disproportionate impact on specific communities of minimum custodial sentences. Do you think the Government have given enough consideration to this aspect of the criminal justice system?

***Phil Bowen:*** Very quickly, I think the proposal in clause 100, which reduces judicial discretion about imposing minimum custodial sentences, is a regrettable step. I have seen no evidence to suggest that that discretion has been misused. I am not sure on what basis that clause was proposed, and we have been arguing for its removal from the Bill. I see a place for minimum custodial sentencing, but I tend to be against anything that fetters the discretion of judges.

***Adrian Crossley:*** Statutory minimums can have a function when we want to give a standard approach to the severity with which society regards a certain offence. My view, though, is that over a decade or two, judicial discretion right across the board—not just in this clause—has been steadily eroded, and I do not find that particularly helpful in criminal justice. Judges are well equipped to make decisions about what is in front of them, and they are well advised. No guidelines can ever foresee the variety that life can bring you, and my view is that the more judicial discretion there is, the better our criminal justice system is likely to be.

**Q63 Alex Cunningham:** That is helpful. I will move on to cautions. Do you have any concerns about the new two-tier system of cautions?

***Phil Bowen:*** In general, we support the move to the two-tier system. It is something that was called for by the National Police Chiefs' Council, as you know, in 2016. Fifteen forces already operate such a simplified framework. The concerns we have are twofold. One is that in consultation events that we have already held with a number of police forces, they strongly suggested that they wanted to retain the flexibility to issue the community caution—the lower tier—without conditions. In the existing framework, they are able to issue a simple caution that does not involve conditions. Police forces want that flexibility, and the new framework proposed by the Government does not allow that in the lower tier.

The second issue, which speaks to previous comments about disproportionality, is that we would strongly argue that it should be possible to offer the community caution—the lower tier of the two tiers—to individuals who accept responsibility for their behaviour, rather than requiring a formal admission of guilt. This is an idea that was raised in the Lammy review and has subsequently been raised in the Sewell report. We think it would be better if that lower tier could be offered to people, who are required only to accept responsibility for their actions.

As the Lammy review suggests, that may encourage the participation of people from groups who tend to have less trust in the police and the criminal justice system.

***Adrian Crossley:*** Drawing from the 2014 audit, there are some learnings from the two-tier system, most notably the training of officers so that they can refer people to the intervention that is appropriate and useful, better inter-agency communication, and sufficient time for implementation. Once that is done, our view is that this is a great step forward. We are very enthusiastic about it. This is about intervening and offering help, not just having a meaningless warning. We have spoken to charities that have actively said that these sorts of interventions, which encourage somebody to engage with treatment, can really make a life-changing difference to people. It is unrealistic to expect them suddenly to go into full rehabilitation, but it can make an introduction and open up doors that sometimes people feel are just not open to them. We see that there is real strength in this approach. We have also heard a number of police forces suggest that it would be enormously helpful to them if community resolution remained on the books. Certainly, it is currently the most widely used disposal.

**Q64 Alex Cunningham:** So the simple caution should remain?

***Adrian Crossley:*** No, not the simple caution. It is a community resolution. It is slightly different and more like a contract with the police force that they can enter into to take the matter further. That is enormously popular with the police right now. Just to be clear, our view is that the thrust of this two-tier system is that there is a condition attached to allow the disposal of tier one and tier two. We think that is a very positive thing.

**Q65 Alex Cunningham:** It has been suggested that the community caution requires a formal admission of guilt. Evidence suggests that offenders from a BAME background are far less likely to admit guilt than a white offender. Could the requirement of a formal admission mean that BAME offenders miss out on the benefits of a caution?

***Adrian Crossley:*** I think that risk is entirely possible; this is quite well documented. We have to look at ways to challenge that. Phil briefly touched on the "Chance to Change" pilots that are currently being operated, which look at this slightly lesser form of admission.

Our view is that we have to address the mischief here. If there is mistrust in this system, then there are two things that can be done. First, proper independently chaired scrutiny panels can look at the way these are run and the advice that they give to people when they enter the police station. I know that the Government have already suggested that that might be a way of dealing with this.

Above and beyond that is access to legal advice and to legal aid. We are seeing an attrition of people's access to legal advice. My experience is that when people are properly advised about what is in front of them, when they understand that they are being treated fairly and decently, and when they understand the evidence against them, then they are in a position to make an informed choice.

If it is just a choice about, "Do you trust the police?" then I can entirely see how some communities would have reservations about that and even, when it comes to sentencing, well-founded reservations about pleading guilty. A system that is transparent and provides good training, a good understanding of what they are involved in and, clearly, good legal advice at an early stage, could combat that.

**Alex Cunningham:** That is helpful. Can I—

**The Chair:** I am afraid I have to strike a balance and I have to switch to the Minister, for his questions. I am sorry.

**Q66 The Parliamentary Under-Secretary of State for the Home Department (Chris Philp):** Thank you, Mr McCabe. To pick up on the questions asked by the hon. Member for Stockton North (Alex Cunningham) about minimum sentences, we have minimum sentences in very rare circumstances at present. Can you give the Committee your views about the pros and cons or the considerations we should have in mind if any proposals are made to increase the range of circumstances or offences to which minimum sentences might be applied?

***Adrian Crossley:*** So that I understand the question and I answer it properly, are you asking what merits we would need to see in order for there to be an expansion of minimum tariffs in sentencing? Is that what you mean?

**Chris Philp:** Or the risks. What are your views about the principles of the possibility?

***Adrian Crossley:*** My own view is that judicial discretion should be king. I have not done any huge research into this, but in my view and from my practice, sentencing guidelines have become very prescriptive and they almost railroad judges into decisions. Judges always have parameters to work within, but what is before the court is often something that is necessarily unique. Minimum sentencing can shackle decision makers who are acutely aware of the facts in front of them.

The only benefit I see is in cases where there are overwhelming public interest concerns that mean that a minimum tariff would adequately address a specific mischief and would undo it. If I were to see that, I would regard that as a pro for minimum sentences. I would need to see an evidence base that that would achieve that.

***Phil Bowen:*** I agree with what Adrian says. In general, a lot of the evidence from, for example, the United States on mandatory minimums is not encouraging, but I see an argument for Parliament identifying particular crimes of concern and putting those in place. We should be clear that the deterrent effect of that is likely to be pretty mixed. The evidence is pretty mixed about whether that kind of thing really does deter future crime, but I can see the public need for the Government to be seen to respond to public desires around particular signal crimes. That is why, although I do not reject them out of hand, I agree entirely with Adrian that judicial discretion is extraordinarily important because judges will know the facts of the case much better than the press or the public watching on.

**Q67 Chris Philp:** In relation to the proposals to make curfews potentially longer and more flexible, do you think that will make community sentences potentially more effective and might, furthermore, potentially reduce reoffending?

***Phil Bowen:*** I think the emphasis in the Bill and the White Paper on flexibility around the use of electronic monitoring is the strongest part of the proposals. What

the Ministry seems to be doing, which I think is right, is to encourage probation officer discretion and the flexible use of electronic monitoring powers, both to control people where there is need for further control, and to loosen up things where they are doing well. Part of the problem with electronic monitoring to date has been far too rigid sets of curfews without the ability for probation officers to vary them while people are on community sentences. I certainly support that.

In terms of providing for longer periods of electronic monitoring, I can see cases where that may well be useful. The only note of caution that I would suggest to the Committee is that the evidence base suggests that for younger people—in particular, young adults who live at home and people assessed as low risk—longer periods of electronic location monitoring can have a backfire effect. In other words, it can lead to increases in reoffending. All that really means is that the Bill provides the powers that it does, and it is then the job of the probation service to use those powers as flexibly as possible and in line with the evidence.

**Chris Philp:** Thank you. I was going to ask about problem-solving courts, but I think that was covered adequately in earlier questions. I think Minister Atkins has some questions.

**Q68 The Parliamentary Under-Secretary of State for the Home Department (Victoria Atkins):** This is a quick question for Mr Crossley. The CSJ has obviously done a lot of work over the years on gang crime and on the many levers we can try to use to address it. What is the CSJ's view of serious violence reduction orders, namely the piloting of stop-and-search orders for known—in other words, convicted—knife offenders aged over 18?

***Adrian Crossley:*** This policy actually has its origins in the CSJ. We are obviously very supportive of the serious violence reduction order. Just for clarity, and so I can answer that more fully, this is a post-conviction order. We regard it as being part of the wider system. We do not regard it as a stand-alone solution to knife crime in our country.

We see a very significant increase, not just in possession of weapon offences, but of violent offences perpetrated with the use of a weapon. What is clear to us is that we need to do something about that which is robust enough to challenge the mindset of someone leaving their home with a weapon. We draw from the group violence intervention models piloted in Boston in the US under Operation Ceasefire, which create a sort of pull-push effect. We really want to deter people from being able to leave the home feeling that they are safe walking around with a weapon. They should know that they are much more likely to attract police attention if they are on these orders. At the same time, in the sentencing court, we would hope that the order would be able to include other, positive provisions—perhaps even a knife crime behaviour order. Real intervention, engaging young people and pulling them away from that sort of offending can also have a pull effect away from that kind of offence.

I should say that currently, as it is being piloted, it is only for adults. Our view is that knife possession is pervasive across a number of age groups: it is particularly concerning when young people are carrying knives. We would like to see this scheme really being rolled out, so that we can intervene early when people are younger, to see that we do everything we can to take knives off the street and keep people safer.

**The Chair:** As it is 2.45 pm, we had better call this session to an end. I thank the witnesses for the evidence they have given to the Committee.

**Examination of Witnesses**

*Jonathan Hall QC and Matt Parr gave evidence.*

2.45 pm

**Q69 The Chair:** We are now going to hear from Jonathan Hall QC, the Independent Reviewer of Terrorism Legislation, and Matt Parr, Her Majesty's Chief Inspector of Constabulary and the Fire and Rescue Services. Again, this is a 45-minute session, so time is tight; we have until 3.30 pm for this session. May I ask the witnesses to introduce themselves for the record, please?

***Jonathan Hall QC:*** My name is Jonathan Hall QC. I am the Independent Reviewer of Terrorism Legislation and I carried out a review into the management of released terrorist offenders after the Fishmongers' Hall attack, which is relevant to the evidence that I will give today.

***Matt Parr:*** I am Matt Parr and actually I am not the Chief Inspector of Constabulary; that is Sir Tom Winsor. I am one of the Inspectors of Constabulary; I have been doing that job for almost five years. I think the particular reason that I have been asked to give evidence today is that I have just led a series of inspections, including around protests and the way police look after them; into the Sarah Everard vigil; and then this week into the way that the Police Service of Northern Ireland policed a high-profile republican funeral. So I have been doing quite a lot of work on protesting, and I have had some discussions with the Home Office about the legislative proposals.

**The Chair:** Thank you for clarifying that, Mr Parr.

**Q70 Antony Higginbotham** (Burnley) (Con): Mr Parr, this one is probably for you. We spoke earlier today with some other witnesses about protest and public order policing. One of the things that we touched on was the impact that social media has had. So I just wondered if you could give your view of how protests and public order policing have changed over the last 20 or 30 years, and the impact that social media and the ability for situations to evolve quite rapidly have played into that.

***Matt Parr:*** Three aspects of that come to mind. First, the use of social media has clearly enabled the organisers of protests to be significantly more nimble. It means that some of the obligations to engage with the police beforehand can be circumvented, creating really quite significant problems for police commanders in the way they plan for protests.

That is the first aspect, which is reasonably obvious to anyone who has been on or near a protest, namely that there is huge potential for social media to be used—in a good way; I am not saying in a bad way. But its ability to galvanise and organise and inform people to join protests or indeed in the way they conduct them is wholly different to what the police had to contend with 20 years ago.

The second point is slightly more subtle. When we conducted the inspection into protesting, we found that more and more police forces are doing more and more policing of protests, for one reason or another, and they are also finding it ever more difficult to persuade their officers to train to be public order commanders, or indeed to make themselves available to do the lower levels of training, so that they can then help out on the protests.

One of the reasons cited for that is that police officers at protests—not in all cases; the temptation to generalise and to be unfair to all protesters is something that we have to resist here—sometimes get identified through social media. One reason that they are disincentivised from going on these protests and volunteering to train to do them is that they are nervous about being vilified on social media, having been identified beforehand. So that is having a chilling effect for police officers and in fact quite often damages their morale.

One of the things we said about the need to modestly reset the balance in the interests of protesters versus the public, and a remark made about decisions made by gold or silver commanders who are the senior police officers commanding the protest, is that they are often nervous about the backlash on social media of any decisions they take. One of the consequences is that there is perhaps a tendency to default to the balance being more in favour of the protester than otherwise. That was my second point.

My third point is that a cautionary tale came out of the inspection we did into the policing of the vigil following the tragic death of Sarah Everard, and the impact of what is frankly a single still photograph that was circulated very quickly and very widely on social media. That created a backlash, and we ended up with some people, and indeed some public bodies and some unions, calling for the resignation of the Met Commissioner. In that report, we said that the reaction was unwarranted. We all know that there is a danger that people get their news and form their opinions from social media. We trawled through hour after hour of police body-worn video of the same incident and came up with a very different view to what social media—completely understandably—led people to have. I will start with those three points.

**Q71 Antony Higginbotham:** That is helpful. Do you think that the proposals in the Bill will help with the first of the three points you raised?

***Matt Parr:*** The Home Secretary asked us to look at five proposals at that stage in November, when she asked me to give an initial impression of five of the proposals going into the Bill. In the end, only four of them went in. We had some reservations, but in general we saw the four proposals—with some caveats, particularly around the fifth one that did not go in—as having the potential to enhance the effectiveness and efficiency of the policing response to protest. If you want to discuss the details of those, we can do that, but in answer to your general question about whether they would assist the police in getting the balance right in the age of social media, I would say probably yes.

**Antony Higginbotham:** That is helpful, thank you.

**Q72 Sarah Champion:** This question is directed at Jonathan: the terrorist clauses in the Bill are welcome, and they seem comprehensive. Is there anything, in your opinion, that is missing that you would like to see there?

***Jonathan Hall QC:*** No, I tried to be as comprehensive as I could when carrying out my review of the multi-agency public protection arrangements. I thought long and hard about the additional powers that might be needed, and I am pleased that they are contained in the Bill. I cannot think of anything else. From a detailed, legal perspective I would just say that there are a couple of points of detail about two of the powers, and maybe the Committee will want to question or press on whether further safeguards are needed. I did not draft the powers, of course, and I recommended that they be done generally and they have now been put into statutory language. Overall, I have nothing to add to what is here.

**Q73 Sarah Champion:** I am not sure if either of you can comment on this, but I particularly welcome pre-charge bail being on the face of the Bill. The Minister and I discovered the chilling effects of the 2017 legislation. Will either of you say if the Committee ought to be mindful of any resource issue around pre-charge bail or release under investigation?

***Matt Parr:*** Shall I go first? I am afraid it will be a short answer. We are aware of the issue, and as you may know we do a 43-force inspection of all police forces on a rolling basis. We think that it is a bit early and that we need more time to reach an informed view on the issue, but we will look at it in our next round of inspections.

***Jonathan Hall QC:*** I have a short point to add: I did look at one issue. There are special arrest powers in section 41 of the Terrorism Act 2000, and those powers differ from other arrest powers in that they allow for people to be held for up to 14 days. I did consider whether there should be the power to bail after arrest in section 41 in my first report, but for various practical and technical reasons I thought that was probably wrong. That is the only thinking I have done about that.

**Q74 Sarah Jones** (Croydon Central) (Lab): Jonathan, could you outline your findings from the Fishmongers' Hall inquiry to help the flavour of the Committee's conversation? I think we are all in the same place on what is in the Bill, but it would be useful to hear that from you.

***Jonathan Hall QC:*** I thought there were three key points. First, managing the terrorist risk from released offenders involves practitioners from agencies who are not always good at working together. For example, the probation service and MI5 do not have, historically, an easy way of working together.

Secondly, the likelihood of making really good decisions at the right time, which is what matters, would be increased if there was a shared understanding of risk. That involves greater data sharing, and not just secret data sharing—though that is important—but sharing data from all other sources. One of the good things about the Bill is that it resolves an uncertainty about when data can and cannot be shared. It also requires better understanding in all the agencies about what tools exist. Probation has a really fantastic, powerful tool—the ability to recall risky offenders to custody. That is probation's power—it is not the police's or MI5's—and it is important for MI5 to understand that and to make sure that the person making that decision understood the risk. So a comprehensive understanding of each of those powers is important and, as you know, I recommended a couple of extra powers, which are in the Bill.

Thirdly, there is a particular difficulty in practice of managing people who had not been convicted of terrorism offences but who were of terrorist risk when released. Take, for example, someone who went to prison for a very violent offence and became radicalised in prison—they present a terrorist risk on release. It is quite difficult to get them into the structures that exist for managing such a terrorist risk, but the Bill is going to change that to make it easier—*[Inaudible.]*

**Sarah Jones:** You froze. You were saying, "to make it easier".

***Jonathan Hall QC:*** The Bill will make it easier for MAPPA—the management structures of risk—to apply to all terrorist risk offenders. That is not just people who were convicted of terrorism offences but people who are of terrorist risk when they come out of prison.

**Q75 Sarah Jones:** Taken together with the measures in the Counter-Terrorism and Sentencing Act 2021, you have said that potentially there is nothing more legally to do—we cannot guarantee that these changes would have prevented what happened, obviously—but you did mention a couple of concerns in a bit of the detail of two of the powers. Would you like to expand on that?

***Jonathan Hall QC:*** I have nothing to say in relation to the power of the police to arrest urgently where there is a breach of licence; that is a really sensible addition. There is a power in clause 159 to apply for a warrant to search the premises of a released offender, and I support that. The point of detail is that it would be possible to apply to a judge for a warrant that would allow you to enter on any number—potentially an infinite number—of occasions. If you think about released terrorist offenders on licence, their licences can last a very long time—for example, 10 or 15 years—so perhaps the Committee may want to think about whether it is appropriate to have a power that would authorise multiple entries into a person's premises throughout 10 or 15 years. The power of multiple entry under warrant does exist when you are talking about a live operation, and the police find that quite useful. I am not quite sure whether it is justified in the context of this particular risk. That is just one small point of detail, more by way of a safeguard. Secondly, I recommended and am pleased to see in the Bill a power to search the person of a released terrorist offender. For example, if someone is going to London for the first time, or if a released offender who is very dangerous is going to meet a probation officer for the first time, that would authorise the police to pat them down to make sure they are not carrying something. That is good not only as a deterrent, but as a reassurance. It is reassuring to have that ability, which exists in the context of offenders under civil measures called TPIMs—terrorism prevention and investigation measures.

The only small point is that in the Bill the purpose of searching is

"for purposes connected with protecting members of the public from a risk of terrorism".

In other statutes, for example the Terrorism Prevention and Investigation Measures Act 2011, the power is to be used for

"ascertaining whether the individual is in possession of anything that could be used to threaten or harm any person."

When I was thinking about this point, I had in mind patting someone down for a weapon or something of that nature, rather than a personal search to check generally whether they are complying with their licence conditions. Again, that is something that the Committee will probably want to consider—what precisely is the purpose of the search. It may be that the purpose of the search goes a bit wider than is necessary. Those are two relatively small points of detail.

**Q76 Sarah Jones:** In March, I think you said there was no proof that the desistance and disengagement programme for released terrorists was working. Do you think the Government have taken any steps to address that? Is there anything in the Bill that addresses that point?

***Jonathan Hall QC:*** No, I do not think there is anything in the Bill to address that. The only other bit of the Bill relevant to my area of business is the power to refer an individual who has become dangerous in prison to the Parole Board so that they cease to be someone who is automatically released and can only be released by order of the Parole Board. I think that is sensible. I do not know whether you know that I am doing a review of terrorism in prisons at the moment. The need to be agile and respond to the radicalisation that does sometimes happen in prison is important, so that is to be welcomed. I do not think—unless you can refer me to it—that there is anything that addresses the question of deradicalisation or desistance. I think the truth is that officials will say that it is an ongoing process. I am not saying it will not work with some people, but I would not put all my eggs in that particular basket.

**Q77 Sarah Jones:** This question is for Matt. In the "Getting the balance right?" report, the conclusion was a modest reset of the scales. There is a disagreement as to whether the Bill is modest. Can you appreciate the arguments that have come from many organisations that the breadth of powers in the Bill could have two impacts? The first is that it is not a modest reset, but quite a significant one, potentially going too far in the other direction. Secondly, you talked about the blame that the police have received on social media for decisions on protest. I completely agree. Given the breadth of powers in the Bill, is it possible that the police might be more likely to be seen to be making decisions that are subjective or political or whatever it might be, because we as legislators are not clear enough on what the police should and should not be doing in those situations?

***Matt Parr:*** I have got quite a lot of sympathy with what you say. We were very clear in what we said that any reset should be modest. We also said that, because of article 10 and article 11 rights, some degree of disruption is not just an inevitable by-product, it is sometimes the whole point of the exercise of protest, and on that basis, it has to be encouraged. Zero protest is certainly not the aim as we saw it; zero disruption was not the aim either—some degree of it is inevitable. It is just a question of where the balance lies.

I take your point. Some of the things in the Bill we were not asked to comment on. For example, imposing conditions on one-person protests—clause 60 in the Bill—we were not asked to comment on. Some of the specific areas such as access around Parliament—clause 57 and then clause 58 if Parliament moves—we were not asked to comment on, either. There are things that we did not really look at, and therefore I have not got a judge on what effect they might have and what the potential benefit might be.

Perhaps the most contentious would be the third of the proposals that we were asked to look at that widens the range of circumstances in which police can impose conditions on protests: static assemblies or processions. It could be either type. We said that at the moment there are four acid tests. In the disruption one, it was "serious disruption" to the life of the community. As I understand it, the proposal is that that is modified to "significant impact" and so on. Ultimately, these will have to be judged in the courts. It struck me that it clearly aims to set a lower bar. Personally, when I reviewed it, I did not think the bar was necessarily the problem. There is just as much of a problem with educating and training the police officers and making sure they understand how article 10 and 11 rights can be properly tempered. It was a question of training and understanding as much as it was of where the bar was for disruption.

Interestingly—again, I am probably simplifying it a bit too much—there is quite a stark difference between London, which obviously gets a disproportionately large number of protests, and elsewhere. Senior police officers outside London—again, I am generalising—tended to think they had sufficient powers, and senior police officers inside London tended to think that more would be useful. I think that is a reflection of it.

I think yes is the short answer to your question. I think there are dangers and, as ever, the bar for measuring what was significant or what was serious should be a high one. We all recognise that. It should not be done on the flimsiest of pretexts. Again, it would then be open to challenge, and I think police officers would only wish to use it when they were confident.

**Q78 Alex Cunningham:** Clause 108 grants the Secretary of State the power to prevent the automatic release of prisoners who are considered to be a significant public protection concern. Some experts have expressed concern that the clause could create a cliff edge whereby an offender prevented from being automatically released would be released at the end of their term without licence. Can you confirm that that is what you understand by this? If that is the case, would it not put civilians at greater risk?

***Jonathan Hall QC:*** Certainly most of those convicted of terrorism offences will have some sort of Parole Board referral anyway, so automatic release for people convicted of terrorism offences has virtually come to an end. I spoke—

**Alex Cunningham:** Sorry, can I stop you there? Can you explain the parole role in this, because my understanding was that it would not actually happen?

***Jonathan Hall QC:*** Let us say I get a determinate sentence of eight years for robbery—no, let us say for fraud, a non-violent offence. I will be released automatically after four years. I understand the clause is intended to allow the Secretary of State to ask the Parole Board to look at me to see if I have become a dangerous offender while in prison. Let us imagine I have been radicalised and all the assessments are that I am a dangerous terrorist offender. The Secretary of State could refer that individual to the Parole Board to make a determination that they should now be treated like a violent or a sex offender. In other words, they will not be released automatically at four years, but would have to apply for parole. That is what I understand the clause does.

**Q79 Alex Cunningham:** The Bill vests that responsibility in the Secretary of State. He is the person to make the decision, not the Parole Board.

***Jonathan Hall QC:*** Okay. I have to say that I have not looked at the detail. The Parole Board has a role in deciding whether that person should be released.

**Q80 Alex Cunningham:** Can I give you a quote from the Prison Reform Trust? It said in its briefing:

> "Making release from custody discretionary, and contemplating the possibility that the period in custody could be doubled as a result, is not some minor alteration in the administration of a sentence. It is retrospective sentencing by the executive, a form of internment, circumventing the judicial process and all the protections it confers."

Do you think the changes to automatic release have any constitutional implications?

***Jonathan Hall QC:*** I will confine myself to talking about terrorist-risk offenders. I do not want to discuss anything outside my remit. If you are talking about people who are sentenced to be automatically released as, for example, Usman Khan was, if in the course of their time in custody it becomes apparent that they are very dangerous, it is appropriate to be able to make their case dependent upon the Parole Board.

As the evidence from the Fishmongers' Hall inquest has shown, Usman Khan came out with a huge amount of risk, as a result of his behaviour inside. Does that have constitutional implications? The current law is that that sort of change, as you know from the emergency legislation that went through last year, is not contrary to article 7. Does it have big implications for individuals? Yes, it does. It is a decision that would have to be taken very carefully. Does it give rise to the risk of a cliff edge? Yes and no. As you know from the Usman Khan case, they had to be released, and there was no way of changing that.

The point about someone's release being discretionary is that it is then open to the Parole Board to time their release, and to delay their release if they are not safe enough to be released. Of course, there is always a cliff edge. A person could go to the end of their sentence. The Parole Board could say, "We are not going to release you at all," and then they would come out automatically. It adds something to put them in the hands of the Parole Board once they have been identified as a risk.

**Q81 Alex Cunningham:** Is it not a matter for the courts, or a judge, to determine the sentence on an offender, rather than the Secretary of State accepting advice from the Parole Board?

***Jonathan Hall QC:*** It is a really good question. It is a power that will be exercised pretty rarely, I expect. I do not think that you can ask the judge who passed the original sentence to change the sentence. That would be an odd situation, to ask the sentencing judge to reconsider their sentence, on the basis of what happened in prison.

If you think, as I do, that there will be the rare case where you need to delay someone's release, I cannot see an alternative mechanism, other than putting it in the hands of the Parole Board. You are right that it will disappoint some people, as I think we have discussed in the past. I am slightly concerned about the fact that for some dangerous terrorist offenders—people who have

already been identified as dangerous—the role of the Parole Board has now been abolished altogether, because of the Counter-Terrorism and Sentencing Act 2021 that is now in force.

I do not think it is a bad thing to have the Parole Board looking at the small sub-set of individuals who are identified as very risky. In the course of my review into terrorism in prisons, I have seen evidence of individuals who are very risky and potentially becoming riskier because of how they are in prison. It seems right that they should know that, as a result of the risk and what they are doing in prison, their release may have to be delayed.

**Alex Cunningham:** Well—

**The Chair:** I am going to have to stop you there. I will switch to the Government side and Victoria Atkins.

**Q82 Victoria Atkins:** Thank you. First, Mr Hall, I would like to understand how the measures relating to MAPPA in clause 162 will improve public protection and the management of terrorist offenders.

***Jonathan Hall QC:*** First of all, it means that anyone who is a risky offender—whatever they were put inside for, whether they were sentenced for a terrorist offence or were sentenced for a non-terrorist one but are in fact a risk—can be managed under MAPPA. The law as it stands states that someone must be a risk based on their offending.

To take the example of a fraudster who went to prison and was then dangerously radicalised and became a terrorist risk, their risk would not in fact flow from their offending. Clause 162 cures that, so that anyone who is identified as a terrorist risk may be manged under MAPPA. That is a good thing, because the authorities found it quite hard to deal with that cohort of people.

The other thing that clause 162 does is to make it very clear that people can provide information to MAPPA without having to do what they used to do when I carried out my review, which was to look for information gateways in, for example, the Children Act 1989 or the Crime and Disorder Act 1998, because they did not feel that there was a clear basis for them to share information with MAPPA. As you will understand, the key thing about managing terrorist risk is that all the right information should be receivable. Clause 162 cures that point as well.

**Victoria Atkins:** In other words, dealing with the reality presented by a very small number of the most dangerous offenders—dealing with that reality, rather than being constrained by the fact that they committed a fraud offence in the past, rather than a terrorist offence.

***Jonathan Hall QC:*** Exactly.

**Q83 Victoria Atkins:** Thank you. May I clarify something, Mr Parr? Please forgive me if this was my mishearing or misunderstanding. You asked a series of questions in relation to the public order measures and at one point, I think, used "significant", rather than "serious". You said that HMIC had looked at the risk of serious disruption and so on. Is that correct? Did I understand you correctly?

***Matt Parr:*** There were four tests in the law as it stands, one of which is "serious disruption". Clause 55, I think, changes that to "significant disruption", among some others. It is a general lowering of the bar.

**Q84 Victoria Atkins:** I must confess that I cannot see that wording—perhaps we can take this up afterwards. Clause 55(6) talks about

"serious disruption to the activities of an organisation",

or,

"serious disruption to the life of the community."

That is the wording in clause 54 as well. As you will understand, clauses 54 and 55 are about ensuring consistency between moving protest and static protest. We heard from police witnesses this morning that one can flow into the other very easily, and back again.

May I also ask about clause 59? That places the common law offence of public nuisance on the statute book. Does the inspectorate have any views on that, or has it made any recommendations on it previously?

***Matt Parr:*** Not previously, but we did in the report we put out in March. That was one of the five proposals that the Home Secretary asked us to comment on in particular. Our view was that we agreed with what the Law Commission recommended back in 2015, I think. We concluded, for much the same reasons as they did, that that was a sensible thing to do. In summary, we thought that protesters deserve to know where they stand, and that there was no harm in making the rules clearer than they are. It was supporting the Law Commission's proposal.

**Victoria Atkins:** Thank you very much indeed.

**Q85 Chris Philp:** May I start by asking Matt Parr if you have any views on the proposals for out-of-court disposals, in particular to simplify the current number of out-of-court disposals, cautions and so on from six down to two, following the pilot that took place in three force areas?

***Matt Parr:*** I am really sorry. I have not looked at that. I cannot give you an answer, I am afraid.

**Q86 Chris Philp:** Not to worry; no problem at all.

Let me turn to Jonathan, if I may, going back to clause 108, which Alex Cunningham was asking about. This is in relation to prisoners sentenced for non-terrorist offences who are deemed to become high risk in the course of their sentence. To clarify, is your understanding of the clause the same as mine—that the Secretary of State does not have the power to unilaterally ask for their prolonged incarceration, but instead the Secretary of State simply has a power to refer the prisoner to the Parole Board, which will then make the assessment of dangerousness? It is the Parole Board that makes the decision, not the Secretary of State; the Secretary of State simply refers. Is that your understanding as well?

***Jonathan Hall QC:*** Yes. I have it in front of me. I think the point that Mr Cunningham was making is that it is the Secretary of State who refers it, but you are right: it is the Secretary of State who refers it, but ultimately it is the Parole Board that decides.

**Q87 Chris Philp:** I think Mr Cunningham said that the Secretary of State took the decision, so I was simply seeking to clarify that the Secretary of State refers but the Parole Board decides. Mr Cunningham also made

*[Chris Philp]*

a point about the prospect of longer incarceration, and he quoted the Prison Reform Trust. Jonathan, can you confirm that no one can stay in prison for longer than the sentence handed down by the judge? What this is simply doing is potentially removing the release point, and removing the release point within a sentence—a sentence handed down by the judge that cannot be exceeded—is considered lawful and compatible with ECHR and other rights. Indeed, we have done it before, have we not, in changing the automatic release provisions in previous legislation?

***Jonathan Hall QC:*** Yes, that is right. When the Terrorist Offenders (Restriction of Early Release) Act 2020—the emergency legislation that came in after the attack at Fishmongers' Hall—transformed people from automatic release prisoners to people who would have to apply to the Parole Board at the two-thirds point, it had an effect on people who are currently serving. That was challenged in the courts by one of the affected prisoners, and the High Court concluded that it was consistent with article 7.

**Q88 Chris Philp:** Exactly, and this would have a similar effect. I was the Bill Minister for that Bill, and I was delighted that the High Court found our legislation to be lawful and compatible with human rights.

The final point that Mr Cunningham raised was in relation to the potential for a cliff edge if somebody serves all of their sentence in prison and is not released early. He referred to the possibility of a cliff edge, which exists in various other contexts that you have referred to already. Am I right in saying that if the Government, the security services or the authorities are concerned about the risk that a particular prisoner might pose following release if they were released without licence conditions because they had served all of the sentence, it would be open to the security services, acting through the Secretary of State for the Home Department, to apply for a TPIM if they felt the threshold was met? That would be one option available if they wanted to manage risk, accepting that TPIMs are rarely used.

***Jonathan Hall QC:*** You anticipated what I was going to say. Yes, that is available, but TPIMs are very resource-intensive, and they are very rarely used for that reason.

**Chris Philp:** That is an option. That is extremely helpful clarification.

**The Chair:** Does anyone else have any questions?

**Alex Cunningham:** I misunderstood the line about the role of the Parole Board. I was concerned about what happens beyond the completion of the sentence. As the Minister says, the TPIM is used only in extremely rare circumstances, and it was unclear when that would apply and when it would not apply. Again, my concern is the cliff edge—somebody being released into the community without any licence conditions or further restrictions on their movements.

**Q89 Chris Philp:** To clarify, the serving of the full sentence is a matter for the Parole Board. It is open to the Parole Board to choose to release the prisoner after the automatic release point but before the end of the sentence, in which case there would be a period on licence between the release point and the end of the sentence. It does not follow automatically that they would be released with no licence period following, although it is possible.

**Alex Cunningham** *rose—*

**The Chair:** Hang on a second. I think we are supposed to be taking evidence from our witnesses. Do you want to answer that, Mr Hall?

***Jonathan Hall QC:*** Yes. To continue the thought, where someone reaches the end of their sentence, their sentence cannot be increased—for example, by adding an extra licence period. In a way, it sounds quite a sensible idea that if someone is very dangerous, when they get to the end of their sentence you should just add a licence on administratively, but that would be completely wrong in principle, because the point of a licence is that you can be recalled. If someone was sentenced to 10 years by a judge and got to the end of their sentence, and you then added on a licence period of, say, five years, if they were recalled—quite a few terrorist offenders do end up being recalled—they would end up serving up to 15 years. That would, of course, be wrong in principle.

**Q90 Sarah Champion:** As the witnesses are talking about parole, I have a specific question. Do you think there should be an assumption that victims are able to give either written or verbal statements to the Parole Board about the implications of its decision?

***Jonathan Hall QC:*** I am not trying to avoid it by saying that it is a really good question, but I have not properly absorbed the role of victims in the work that I have done as reviewer of terrorism legislation. One of the difficulties of terrorism is that you are looking more at future risk than at past impact, but obviously, a really bad terrorist attack has the most atrocious consequences for individuals. I am going to slightly dodge it, if I may, by saying that I have not really thought that one through, but I will take it away.

***Matt Parr:*** I do not really have anything to add. It struck me at first glance—it is the first time I have thought about it—as a reasonably attractive idea, but again, I have not really given it a particularly great amount of thought.

**The Chair:** Are there any further questions? It appears not. In that case, I thank you both very much for your evidence.

## Examination of Witnesses

*Councillor Nesil Caliskan, David Lloyd and Alison Hernandez gave evidence.*

3.26 pm

**Q91 The Chair:** We will now hear from Councillor Nesil Caliskan, chair of the Local Government Association's Safer and Stronger Communities Board; David Lloyd, Police and Crime Commissioner for Hertfordshire and criminal justice lead for the Association of Police and Crime Commissioners; and Alison Hernandez, Police and Crime Commissioner for Devon, Cornwall and Isles of Scilly, and roads policing lead for the Association of Police and Crime Commissioners. We have until 4.15 for this session. Would the witnesses introduce themselves for the record, please?

***Councillor Caliskan:*** I am Councillor Nesil Caliskan. I am chair of the Local Government Association's Safer and Stronger Communities Board—[*Inaudible*].

**The Chair:** We are having a bit of a sound problem here. Could you repeat that, Councillor Caliskan?

***Councillor Caliskan:*** Thank you, Chair—I hope you can hear me now. I am Councillor Nesil Caliskan. I am chair of the Local Government Association's Safer and Stronger Communities Board and the leader of Enfield Council.

**The Chair:** While we straighten out the sound, let us go to Mr Lloyd.

***David Lloyd:*** Hello, I am David Lloyd. I lead on criminal justice for the Association of Police and Crime Commissioners, and I am the recently re-elected Police and Crime Commissioner for Hertfordshire.

***Alison Hernandez:*** I am Alison Hernandez, the national lead for roads policing and safety on behalf of the Association of Police and Crime Commissioners, and I was recently re-elected the Police and Crime Commissioner for Devon, Cornwall and Isles of Scilly. I am here particularly to give the voice of the public on some of the areas in the Bill, and in our role as a scrutineer of policing.

**The Chair:** Thank you very much. We are trying to straighten things out with Councillor Caliskan's sound—hopefully we can get that sorted—but we will proceed because of time. I call Ian Levy.

**Q92 Ian Levy:** Over recent years, we have seen more demonstrations in cities. Could the panel give me their views about that, and how intimidating it can be to local communities—people who want to live their everyday lives? Do you agree that a balance has to be struck between people who want to demonstrate peacefully and other people who do these prolonged demonstrations? I would value your opinion.

***David Lloyd:*** I think you make a really good point. Demonstrations are frustrating, especially when they put other people's livelihoods at risk. Certainly, in Hertfordshire, we had an Extinction Rebellion demonstration that really put free speech at risk by closing down the printing press in Broxbourne, which my friend, the other Chair of the Committee, Sir Charles, will know all about. Certainly, it was difficult to balance the right to demonstrate against the right to free speech.

I think that the strengthening in this Bill is very helpful, although in that specific demonstration the issue was not so much whether the protesters could be arrested, but how they could be arrested, because of the way they had got themselves in some very clever holes so that you could not unpick them. However, I think we really do need to think about the broader population when people are demonstrating, rather than just the rights of the demonstrators.

***Alison Hernandez:*** As you will know, it does not matter which police area the protests occur in; there is a reflection upon police forces nationally from communities thinking, "It is happening where we are, where we live." There is sheer frustration about some of the disruption that has happened. One of the key factors for us is that it is about being proactive with people who want to run peaceful protests. Our police force in particular has been very good at doing that. As you may be aware, we have the G7 summit coming to us in June in Cornwall, so we are very sensitive, to a heightened extent, about this particular area, and we want to facilitate peaceful protest.

I think these measures in the Bill are needed. Anything that gives the police a tool that ensures public confidence in policing and shows that mob rule does not rule is really important. It really is reflected in public confidence that our police force is on the side of those who are on the right side of the law.

**Ian Levy:** Thank you. Councillor Caliskan?

***Councillor Caliskan:*** I think it is important to differentiate between protest and the opportunity for the public to come together for things like a vigil. That is obviously—*[Inaudible]*—the very tragic death of Sarah Everard, for instance.

**The Chair:** Are you able to bring your face closer to the microphone or bring the microphone closer to your mouth? I think that would help.

***Councillor Caliskan:*** Is that better?

**Ian Levy:** A little bit.

**The Chair:** Okay, try now.

***Councillor Caliskan:*** And we must also differentiate between a one-day vigil or protest and something that is over a longer period of time. In my experience, from having spoken to council leaders from across the country, the best way that peaceful protest is facilitated is planning in advance. That means the community and organisers having a good relationship with the police, and local forces working closely with local authorities ,so that you know when gatherings will take place, how you can put measures in place to support them to express their views and do so in a safe way. Differentiating between short-term gatherings and long-term gatherings is important.

**Ian Levy:** A community is a community, and free speech should be exactly that—not about the person who can shout the loudest or bang the biggest drum.

**Q93 Sarah Champion:** My first questions are to the councillor. We might need to follow up in writing—I am a bit deaf, I am afraid. I am very aware of the multi-agency work that happens between local authorities and the police, but I am also aware of the unequal distribution of resources to do that sort of work, with local authorities often having their statutory duty, meaning that they have to pick up the brunt of the work without necessarily additional resources coming their way. Are there things in the Bill that give you and your members concern with regard to the resource implications for local authorities?

***Councillor Caliskan:*** The first thing to say is that the Local Government Association broadly welcomes the Bill. We recognise its intentions for victims of crime and to support communities. However, there are aspects of the Bill, for instance, the offensive weapon homicide reviews, that I referred to, that lack clarity on the

implications for resources, and why they are necessary, given that other reviews take place that could probably cover some of the issues. Reviews take place when you want to learn from an incident. It is unclear what the outcome of an offensive weapon homicide review would be and what learning would be achieved from that.

On the broader point about resources and support, local government have been under incredible pressure in funding youth offending services for several years. We know that youth services have seen a cut in their budgets. Youth offending services primarily have two functions: to stop reoffending, and to stop offending in the first place. The second function is not a statutory responsibility, and it is up to local authorities and partners, such as the police and NHS, to be willing to put in resources to stop offending in the first place. The early intervention and prevention aspect of things will be critical if the intention of the Bill to reduce crime over a long period of time is serious. Alongside the statutory responsibilities that the Bill sets out, the LGA's view is that it is critical that there are adequate resources to be able to intervene with preventive measures at an earlier stage.

**Q94 Sarah Champion:** That is very interesting, thank you. Alison, I have a particular interest in road safety because I have a smart motorway running through my patch. That is not covered in the Bill and—I have looked—I cannot see scope for getting it into the Bill. From a road safety perspective, are there other areas that we could add to the Bill that would make a difference?

***Alison Hernandez:*** There are a few bits in the areas we have been looking at. One area that is particularly of public interest is around the level of offending on our roads from poor driver behaviour generally. There is an absolute appetite from the public—we carried out a survey about 18 months ago on road safety through the Association of Police and Crime Commissioners and over 66,000 people responded. It was absolutely clear that people witness offending behaviour on the roads where they live for about 70% of the time. So there is an appetite for more enforcement and for the fines levels, and that is in the Bill around delivering courses for some of those driver behaviours, which I think is really great. We are interested in seeing another area, which would be a levelling up of the fines for some of those offences. They are all different, whether for speeding, using a mobile phone, or not wearing a seat belt. The fines are all at different levels. Our suggestion is: why don't you level up the fines, then you also have an opportunity to spend more funding on road safety?

**Q95 Siobhan Baillie** (Stroud) (Con): On unauthorised encampments, I am sure all the MPs in the room receive a mixed bag of correspondence on this issue.

I am very interested in this issue and there are two parts to my question. First, do you think that the existing powers under the Criminal Justice and Public Order Act 1994 are sufficient to address the issues that arise from unauthorised encampments for communities that are affected? If not, do you think that this Bill goes some way to fill any gaps that have been identified and raised by a number of different groups?

Separately, regarding local authorities, I think it is little-known that local authorities are actually required to find space for Travellers' sites, transit sites and authorised encampments. Do you have examples of local authority areas that are doing that alongside communities and the police, and it is working well? And what more can local authorities do?

**The Chair:** Who do you want to start with?

**Siobhan Baillie:** Alison Hernandez. Thank you.

***Alison Hernandez:*** There are a few things, actually. Some of the existing arrangements under the legislation that you mentioned are quite strong, but there is a resistance—a nervousness—among police actually to deliver on them, and I think that having a very clear criminal offence makes it a lot easier for the police to act.

At the moment, if you look through the National Police Chiefs' Council guidance on how to deal with unauthorised encampments, it refers to a number of elements that must be met before the police take some action. This change actually enables the police to make that decision much more easily and more simply, so we really support the change to the way that we are looking at this issue.

I want to be clear that right now, as we speak, I have two unauthorised encampments, one in each county: one in Truro; one in Cranbrook. And these encampments are really affecting our communities' confidence, by allowing people to break the law and cause damage. Actually, our communities are taking extreme measures to try to stop these unauthorised encampments from happening. This is not about being against people who have an alternative lifestyle; having such a lifestyle is absolutely fine. But when they impact on the communities' amenity and actually cost the community money to clear up and solve issues, this offence helps to make it really clear that we do not want to see that situation in our communities.

I will just add that the sort of extreme measures that I have witnessed here in my area of Devon and Cornwall include a local council spending £18,500 on metal gates with locks to stop people from accessing pieces of land, which people have still broken into and accessed. The council have now built a concrete wall to stop those people, but it is also stopping local communities from using that land, too, because the council do not want to spend more money to clear up the land afterwards. So there is a challenge about sites—absolutely—for local authorities to consider, but I think this offence makes it clear for policing that there needs to be action.

***Councillor Caliskan:*** The issue is experienced by local authorities up and down the country to different extents. I think it is true to say that there is disruption and that it can cost local authorities resources and funds. It is also true to say that across the country our Gypsy and Traveller communities are badly served in terms of sites that are allocated through planning policy, and it does not help when local plans take a number of years to agree things for them. So, even when there is a clear commitment to find additional sites, it can take years to identify those sites in planning policy. It is partly a planning policy issue and it is partly, I think, a lack of commitment to be able to find adequate space for our Traveller communities.

However, I have to say that the best example of existing local government being able to accommodate Traveller communities is when local authorities proactively build relationships, and while the Bill clearly sets out a way forward to be able to deal with the issues from an

enforcement perspective, that is only a part of the picture. The LGA's view would be that alongside that there needs to be a genuine commitment to accommodate communities, to have adequate spaces and to support those communities in additional things that they might need, such as health provision. Over the past year, there have been good examples of local authorities appointing community liaison individuals just for Traveller communities to be vaccinated, for instance. It costs local authorities resources, but there is a bigger picture that has to be considered.

***David Lloyd:*** I think first of all we have got to start to look at how we can work together across the public sector, and I do not think that we are good enough at that. Very often, the first thing that happens is that the police are called to move on rather than thinking about what the issue is in the first place. Certainly, when I was first elected to a local council back in 1992, we had issues with Travellers and unauthorised encampments. If we had started then with a policy of ensuring that every single borough and district council had sufficient provision for those who may pass through, so that then, when there were unauthorised encampments, they could be moved on to those places, I do not think that anyone would feel that there was a problem in doing that. The issue is when there is no other place reasonable for them to go that is within close proximity. I do not think the duty of the districts and boroughs in two-tier areas and local councils in other areas is enforced sufficiently.

We always have to think about what it is that victims of all crimes and members of the public think most of all. One of the things that concerns people most of all is when there is an encampment—very often, it happens around a bank holiday weekend—and it seems that nothing can be done. I think that the strengthening powers within this will be helpful but that does not, in the long term, help with the real problem, which is: is there sufficient provision? We have got to do something alongside that.

In this discussion, along with the earlier question where Sarah Champion asked "What about budgets?", we have to find a better way in local government—and I am proudly a part of local government as a police and crime commissioner—to share all of our budgets and we have to find a better way to plan together. Because one of the problems is that the issue of unauthorised encampment is always pushed to someone else as their problem, rather than any one of us picking it up as our problem. We have got to find a way through that.

**Allan Dorans** (Ayr, Carrick and Cumnock) (SNP): The Bill introduces offensive weapons homicide reviews. What do you see as a rationale for holding only reviews where offensive weapons are involved? Why is the focus on this type of weapon and is there not a danger that those who have lost loved ones to other causes or other methods will feel that their loss is less valuable than others? That is to anyone who wishes to answer that. I think we will start with Councillor Caliskan, please. *[Interruption.]*

**The Chair:** I think we have lost you again, councillor. Shall we go to someone else while we see if we can sort this out?

**Allan Dorans:** Mr Lloyd?

***David Lloyd:*** My understanding of the Bill—you will understand it better than me, probably—is that it does not get rid of other homicide reviews. Of course, the one that probably you and all of us are familiar with is the domestic homicide review, which is always very helpful, and we all learn a great deal across all agencies around that when that happens. I think this builds on that and that is reasonable.

One of the areas of focus at the moment is around serious violence. I think it not unreasonable, therefore, that we take a little bit more time and we have a little bit more evidence around what has gone wrong. I am a real believer in evidence-based policing, and we have to look at that really closely. I am very much in favour of that. It is going to be, remember, an 18-month pilot. If that brings about initiatives to prevent homicides and protect communities, I think that is a very good idea.

**The Chair:** Let us try Councillor Caliskan again.

***Councillor Caliskan:*** Hopefully you can hear me now. I agree with what David said about the pilots, and it will be interesting to see the outcomes. The direct comparison is to domestic violence homicide reviews, where there can be very clear learning; and being able to learn, as a system of multiple agencies, where you might have been able to intervene earlier to stop something helps us to reduce crime in the future.

The issue with offensive weapons homicide reviews is that the evidence shows that somebody with an offensive weapon may not necessarily know their victim. You can take knife crime, for example, and compare it with domestic violence. In most cases of domestic violence, the victim and the perpetrator would know each other; that is not necessarily the case—in fact, most often is not the case—when it comes to knife crime.

I think it will be interesting to see the outcome of the pilots, but we have to be careful that we are not just creating additional burdens on agencies and that we have clear criteria and pathways for learning. Also, who will be the owner of the outcomes? Who will be responsible for being able to implement some of those lessons learned? I think that level of detail is probably missing from the Bill, so I wait to see the outcome of the pilots.

***Alison Hernandez:*** One of the challenges around domestic homicide reviews is the lengthy delay from, obviously, when the incident happened to when the review is completed. Often, the challenge we have is that people have moved on and some of the corporate learning from it is not actually kept well within the organisation. So I think that that accountability around this trial would be really helpful, to be clear. There are opportunities around things like local criminal justice boards and there are opportunities through police and crime commissioners of actually holding on to this as part of something that we have to report on. So I think it would be good to look at that accountability to make sure it does not become a paper exercise and is not really utilised in decision making.

**Q96 Bambos Charalambous:** I have just one question, about youth remand. I want to ask what assessments people have made about the remand to local authority accommodation for children and, in particular, for Councillor Caliskan, what constraints she feels that she or her authority has in offering such accommodation.

***Councillor Caliskan:*** The burden of finding alternative accommodation is really about the fact that you are competing. You are competing because you may have victims of domestic violence that the local authority also needs to find accommodation for. So it is about limited resources. It does happen already: they will be rare occasions, but there may be examples where a young person needs to be relocated because they may have been involved in county lines or gang activity. But it is not simple and it is not just about relocating that individual—

**The Chair:** Councillor, I am very sorry to interrupt you. Is it possible to bring the mouthpiece closer to your mouth? We are really struggling to hear you.

***Councillor Caliskan:*** How is that? Is that better? I will hold it.

**The Chair:** Let us try.

***Councillor Caliskan:*** Hopefully you can hear me a bit clearer. The other point I was going to make is that it is not as simple as just relocating an individual. It is often a family that you have to relocate, and there are additional processes associated with that. Examples of issues are employment for the parents and the tenure of accommodation. If they own their own property, relocating them becomes more complicated. The picture is complicated, as you might expect. This is possible; local authorities do do it, but it takes multi-agency working and it requires a real bespoke approach depending on the individual and the family that you are trying to support.

**Bambos Charalambous:** Do Alison or David have any insights? I imagine not, but if they do I am happy to hear from them.

***David Lloyd:*** All I would add—I am sure Members will be very much familiar with this—is that probably the vast majority of our criminals are under the age of 25 and a huge number of them are under 18. In Hertfordshire a couple of years ago, three quarters of our murders—we have very few—were committed by people under the age of 18. So in many ways we need to get how people are being remanded right. There are greater rights that children would rightly expect and have, but that does not mean to say that some of our most serious criminals are not children. Getting that balance right is difficult.

***Councillor Caliskan:*** If I might add, there are good examples throughout the country where youth offender services are intervening at an early stage that not only supports individuals not to reoffend but provides a family approach, supporting siblings who may be at risk of being involved in criminal behaviour. That early intervention makes a real difference, so as local government we would look to see how such public health approach-led practice could be rolled out more consistently across the country.

**The Chair:** Commissioner Hernandez, do you have anything you want to add?

***Alison Hernandez:*** Just one point in relation to youth remand. The challenge in helping young people and getting that right is the gap between arrest and conviction. With the courts backlog there is at the moment, that can be a long gap, and one of the challenges is that sometimes you cannot work with that young person until they get to the point of conviction. I just wanted to flag that up, but that is more about charge to conviction than remand and awaiting.

**The Chair:** Mr Goodwill, have you got a short one you want to squeeze in?

**Q97 Mr Goodwill:** It is a quick follow-up to the points on illegal occupation of land. We see a situation where Travellers purchase land and then occupy it—they obviously do not plan to travel a great deal more—and it becomes a planning issue rather than one of trespass and occupation. I cannot see anything in the Bill that would address that. I know that the planning process can be protracted. Could more be done in that area? Perhaps Mr Lloyd might comment.

***David Lloyd:*** I feared that you were going to say that. I am not convinced that anything can easily be done. Clearly, on private land, there is a planning process, but it is private land, and that is difficult. I think you are talking specifically about where someone has purchased land and invited people in, and they may well have inappropriately developed that land so that there is a site built there. It is very difficult to know how to deal with that. I certainly have not got the answer. You may well have an answer among you, but how you get the planning process to discriminate, if you like, in a positive way against that which is clearly not right and for that which is right will be difficult.

**Mr Goodwill:** Thank you.

**The Chair:** I think we can allow each side of the Committee seven or eight minutes.

**Q98 Sarah Jones:** I know all three of you are incredibly busy doing very important jobs, so thank you for giving us the time today. I want to talk about the duty to tackle serious violence and the view in the consultation among some people in the police and local government that it was perhaps better to go down the route of enhancing and building on community safety partnerships, as opposed to this new layer of multi-agency collaboration. Obviously there is not one way that works better than any of the others, but can you talk through some of the challenges of how you get organisations to work together? We envisage a public health approach to tackling serious violence, where everybody comes together to look at the evidence and what the violence issues are in the area and works out ways to prevent them. Any one of you can go first.

***David Lloyd:*** Can I come in first on that and perhaps also bring in another bit? One of my concerns about the Bill is that it does not go far enough; in fact, it does not really mention how we might use police and crime commissioners more. My concern has always been very much about trying to be at the centre of the criminal justice system and how we bring that together with someone who is a focus for that on a local basis.

One of the benefits of police and crime commissioners has been their ability to bring different parts of the criminal justice system together, along with local authorities, so that we can better ensure that we reduce violence and crime, that the lessons are properly learned and that we put support for victims and perpetrators in the right place. I think it is perfectly reasonable to establish the situation as we are doing it, but we need to go further.

One tends never to talk about what is not in a Bill, but the big thing this misses, as far as I am concerned, is how you put PCCs at the very heart of the criminal justice system.

Frankly, with extra duties falling to police, more people will be arrested, and they will end up in a queue going to court which is getting ever longer. Until you have got someone who is able to break through that long queue to get to court, none of this will really work. That is a crisis that we need to solve, and I think we have a solution in trying to give more power to police and crime commissioners. That might be a discussion for another day, but it is something we really need to focus on.

***Councillor Caliskan:*** I think the LGA would highlight that a prevention-first approach is a long-term, sustainable approach to deal with crime in our communities. We absolutely support collaboration and a multi-agency working approach, because it works. The evidence demonstrates that it works, and the best and most successful outcomes demonstrate that. Take the violence reduction units, for example; there are very good examples of that.

There are not violence reduction units everywhere, so there is this inconsistency. They were, as I understand it, first established based on the areas where there were high levels of knife crime. Now, whether that should be the criteria going forward is a matter for debate, but I would emphasise again that the long-term statutory responsibility is suitable and that the multi-agency approach is properly resourced to be able to deliver those early interventions.

The community safety partnerships are really welcome as well. Again, there are some good examples of them. I guess that the benefit of community safety partnerships is that local communities can decide what the issues are. That gives communities agency, and it allows different organisations to come together to have ownership of the problem.

We at the LGA would ask for there to be more consistency. For that, we should see violence reduction units extended and offered in more areas, and there should be a more sustainable funding model. If we are serious about seeing a reduction in crime, we have to have models that move away from just one-off grant funding or one-year grant funding, to five-year periods of funding, so that there can be long-term projects.

***Alison Hernandez:*** If I may say, I get a bit frustrated with the conversation about funding, because it is not all about having funding from the Government. I absolutely applaud the serious violence duty. One of the challenges that we all recognise is that, generally, society is getting more violent. This isn't, "Who has got the most violence in their area?" We have a general societal problem, which every area needs to be looking at, focusing on and tackling.

In Devon and Cornwall, we are not one of the areas that received the violence reduction unit funding, so the chief constable and I have come together in a partnership to establish a serious violence prevention programme. We are funding that through council tax payers' funding, because we believe that it is fundamentally important that we make this a priority. So you can do it yourselves if you think it is important. The serious violence duty will help people to see that this must be prioritised to be tackled. We want to do prevention; we do not want to deal with the things in the Bill that are just about enforcement and the hard end of it. We are able to look at that early intervention and prevention.

Many Members will have heard of things such as Operation Encompass, which is throughout the country in all 43 police forces, to try to help children who are at the receiving end of domestic abuse. In that sort of thing, we are trying to help children as young as possible, to break that cycle of violence. We fundamentally know that domestic abuse is one of the key issues that, if not tackled at a young age, leads to more violence in later life. I am an absolute supporter of the serious violence duty. We have things within our own powers, as commissioners with our local authorities, to set the priorities to tackle that.

**Q99 Sarah Jones:** Okay. Nesil, we have sort of had this conversation already about unauthorised encampments. The view from the police organisations that gave evidence today, and others I have spoken to, is that the existing legislation is sufficient; what is insufficient is the provision of sites for people, and you cannot enforce without there being places for people to go. The number of permanent sites has gone down over the last few years. What needs to happen to ensure that local authorities can increase the number of permanent pitches for Gypsies and Travellers in their area?

***Councillor Caliskan:*** I think you are right. There is no point talking about just enforcement if you want to see community cohesion. Enforcement alone does not allow for Gypsies and Traveller communities to have their place in our community when they want it. It is the nature of their protected characteristics.

What needs to happen? There was a question mark over the efficiency of—*[Inaudible]*—policy. There has to be a commitment from local authorities that those sites are allocated. The statutory legislation that already exists for these protected characteristics needs to be taken seriously. We should be meeting the obligations that are already set in statute, which says that we should have adequate sites for these communities, but we just do not.

I would like to give parliamentarians some reassurance that the LGA absolutely takes tackling crime seriously. That is why councils up and down the country fund multi-agency working. We take it really seriously—it is a priority, because residents tell us that they want to be safe. We also recognise that crime is a symptom of what is often a complicated socioeconomic issue. If we want to collectively be serious about tackling crime, we have to tackle it at every stage, which means talking about prevention and—*[Inaudible.]*

**The Chair:** I think we will switch to the ministerial side of the Committee.

**Q100 Victoria Atkins:** On the subject of unauthorised encampments, can you give us any insight about the harms and costs caused by unauthorised encampments in your local areas?

***Alison Hernandez:*** I want to be really clear what we are all talking about. We are not talking about all Gypsies and Travellers.

**Victoria Atkins:** Exactly.

***Alison Hernandez:*** We are not talking about the travelling community. We are talking about a minority of people. I have examples in Exeter city where the local authority created a very nice site so that we could admit them quicker from where they were. It had everything that they needed and the facilities that they wanted, and it was in a nice, secluded spot. When the police went in to evict them, they decided not to go to that site that was available to them. They wanted to go to the next game that they wanted to play. Let's be really clear about this: we are talking about a minority of people who do not want to abide by the law of this country. I believe we need this offence to support our communities and to send a very strong message: you do not do this type of behaviour.

I mentioned the £18,500 metal fencing created at Drumbridges roundabout to stop them accessing that land. They broke into that land. I have communities who will tell me that they have spotters who go ahead to break open the gates, so they will use the excuse that the gates were already open. All these sorts of things are happening. I have asked about CCTV—can we put it on the main sites where we have these things happening? It cannot be done, because of human rights—because it is where someone is living. Every place you turn to as a community to try to solve this problem is not available.

For me, harms are being caused. On Dartmoor alone, when they had an unauthorised encampment, it became absolutely huge. When these things get so huge, no one can move them on, because the amount of resource required to do so is immense. The bailiffs were going to cost £50,000 a day, and they would still need police back-up in order to do it. The cost is absolutely huge. There is something about sending a message through this Bill which tells the public that we are on their side and that we do not support people who do not want to abide by the law.

***David Lloyd:*** I entirely agree with that. In Welwyn Garden City, we have a person who has almost been driven to the verge of bankruptcy because there was an unauthorised encampment which decided, at the same time, to take on industrial-level fly-tipping. It would cost about £150,000 to move those materials. That originally happened 18 months or two years ago. It is still there among all the woodland.

These people are at the end of their tether. The cost is not just monetary. I have people calling me who really are frightened because they have had large numbers of people on their own land and they feel intimidated and personally threatened. We need to do something about it. Much of it is about sending a message.

While I recognise that it is not helped, as I said earlier, by the fact that local authorities do not provide sufficient spots for Travellers to move on to—I recognise that is something we need to do—we also need to send a message that these people can be moved on if they are in an unauthorised place. We need to send that message out again, as Alison has said far more ably than me, so that the public recognise that we are on their side and we are on the side of the underdog.

***Councillor Caliskan:*** All I would add is that I recognise that there are strongly held views, and we have councils who articulate exactly what colleagues on this panel have spoken about. It can be a huge cost to a local authority.

The best way to deal with these issues is through a collaborative approach, not just through agencies in a particular area, but also with the communities themselves who may be occupying the space. Something has got to give at some point, and an obvious solution is trying to identify space. Local authorities absolutely do not want to be encouraging criminality and disruption, not least because it costs a lot of money, but we could be going round and round in circles unless we find a long-term solution. I recognise that the Bill is an attempt to do that. All I would say is that in order for there to be a collaborative approach, alongside that there needs to be an approach that is about dialogue with communities, too. I do not think that contradicts anything that other panel members have said.

**Victoria Atkins:** Just to assist the Committee, clause 61 focuses on the conditions whereby this offence can be committed. The phrases "significant damage", "significant disruption" and "significant distress" appear to cover the descriptions given by Commissioner Hernandez and Commissioner Lloyd.

On the serious violence duty, where the Government are requiring local agencies to work together to draw together plans to tackle serious violence in their local areas, I am happy to reassure Commissioner Lloyd that clause 13 very much views police and crime commissioners and mayors with policing powers as having a convening role in that. What value do you think will be gained in your local areas from requiring these organisations—vital as they are, in their many ways, in tackling the serious violence that we hope to prevent—to get around a table and work together with schools and educational establishments, in particular, to ensure that we prevent serious violence?

**The Chair:** Very briefly, please, because we are almost out of time.

***David Lloyd:*** Things that are asked for specifically and are required of us get done. This measure strengthens what many of us are already putting into our own police and crime plans. It is always better to place a duty on us, because that ensures that it gets done. We really do need to ensure that the scourge of serious violence is reduced. There are many parts of the country—thankfully not Hertfordshire—where this is out of control, and this measure will help.

**The Chair:** I think we had better leave it there.

***Councillor Caliskan:*** I think—

**The Chair:** Order. We will stop, because we are out of time. I am sorry, Councillor Caliskan, but we have a very tight schedule today. I thank the witnesses for their evidence, and I thank Councillor Caliskan for persevering with some of the sound problems.

**Examination of Witnesses**

*Adam Wagner and Marc Willers QC gave evidence.*

4.16 pm

**Q101 The Chair:** We will now move on to our sixth panel of witnesses. We have 30 minutes. Could I ask you to introduce yourselves for the record, please?

***Marc Willers QC:*** Good afternoon. My name is Marc Willers. I am a QC barrister practising at Garden Court Chambers.

***Adam Wagner:*** Good afternoon. I am Adam Wagner, a barrister practising at Doughty Street Chambers.

**Q102 Sarah Champion:** From a human rights perspective, are any groups disproportionately discriminated against in the Bill?

***Adam Wagner:*** I will leave the Gypsy and Traveller aspect to Marc. From a protest perspective, what worries me about the Bill is that it decouples the public order element from the Public Order Act 1986. It makes that Act do things that it was not designed to do—to protect public order by effectively giving the police powers to impose directions on any protest that is very noisy, which is any protest.

In terms of discrimination, I regularly act for clients who protest—not for any particular thing; I act for clients who protest all sorts of things. My concern is that the police and potentially the Government will end up cherry-picking the kinds of protest that they consider to be valuable and the kinds that they consider to be problematic. That will ultimately be a political decision, not one based on public order. Ultimately, it does not matter whether it is a left-wing Government or a right-wing Government—they will have the ability to discriminate against groups that they do not agree with.

***Marc Willers QC:*** You might have guessed that I am going to indicate that the Bill, particularly part 4, discriminates against Romani Gypsies and Irish Travellers, two ethnic minority groups with a traditional way of life, an integral part of which is living in caravans, and which also involves nomadism. The Bill will criminalise trespass at a time when many of those who resort to and reside on unauthorised encampments have nowhere else to go, the reason that being site provision, an elderly but enormous elephant in the room, has not been addressed since 1960, when the Government and Parliament of the day introduced the Caravan Sites and Control of Development Act 1960, which closed the commons.

A statutory duty was introduced in 1968 by Lord Eric Avebury, but that duty was subsequently repealed in 1994. I am afraid that the encouragement of private site provision has failed abysmally, and we still have a cohort of Romani Gypsies, Irish Travellers and, indeed, new travellers who do not have a lawful stopping place. Criminalising trespass and giving greater powers, which the police have roundly suggested they do not need, to occupiers of land for the police to enforce really puts another nail in the coffin of nomadism and makes such people's lives extremely difficult. The disproportionate impact on Gypsies and Travellers is there for all to see.

**Q103 Sarah Champion:** Thank you very much. To focus on the protest aspect of the Bill, do you think that the terminology around protest is simple enough for protesters to understand, or could it lead to confusion? Again, I will start with Adam, please.

***Adam Wagner:*** It widens the test for being able to impose conditions on a protest to encompass pretty much any protest that is noisy enough to cause intimidation, to harass, or to cause

"serious unease, alarm or distress"

or "serious disruption". If you are a protest organiser, you will know that that could apply to any protest. You have to appreciate that the current section 12 of the Public Order Act 1986 allows for conditions only when a protest causes

"serious public disorder, serious damage to property or serious disruption to the life of the community."

That is already pretty wide.

By making it about noise, you are effectively saying to the organiser that any protest could be caught by that description, so they will have to rely on the good will of the police and the Home Secretary, because the Home Secretary will have a regulation-making power not only to define any of the new terms that I have expressed, but to give examples. Organisers will have to rely on the police and the Home Secretary to decide that their protest is not worth putting conditions on. From a protester perspective, that puts you entirely in the hands of the police and the Home Secretary. That very problematic for somebody organising a protest, because a lot of people will think it is just not worth it, particularly when they are representing an unpopular cause or one that they consider to be controversial. Those are precisely the protests that are the most important, and the most important to protect.

**Q104 Sarah Champion:** Have you done any analysis on how the measures, particularly the sentencing measures, will impact on women, children and primary carers?

***Adam Wagner:*** No; I have not, I am afraid.

**Sarah Champion:** That is very lax of you, but we will pass.

**The Chair:** Is there anything you wanted to add, Mr Willers?

***Marc Willers QC:*** Much the same can be said about proposed new section 60C of the Criminal Justice and Public Order Act 1994, in terms of its language. It seems to me that a lot of the language used is vague and uncertain. There is a reference to causing "significant distress" as one of the conditions that could lead to the criminalisation of an individual who refuses to leave a piece of land. That, in itself, brings inherent problems, because a private citizen could very easily invoke the power and leave a police officer with a fait accompli—in other words, they have no option but to arrest an individual who refuses to leave land in circumstances where the occupier says, "I am being caused significant distress by the very fact that this individual is parking on land that I occupy."

That distress can be engendered or underpinned by the prejudice that Gypsies and Travellers face in our society today. It is a widespread and long-standing prejudice, dating back to the first time that Romani Gypsies came to these shores in the 1500s. I am afraid that it is fuelled by mainstream media and politicians. It is instilled in the minds of many members of the public, and it is bound to play a part. There may well be unwarranted and unjustified concerns on the part of the occupier, which could lead to the criminalisation of an individual who has nowhere else to go.

**The Chair:** Thank you. Robert Goodwill.

**Q105 Mr Goodwill:** Thank you, Chair. As a layman, I was not aware that terms that are understood more widely in the community have specific legal meanings and definitions. What benefit is there in codifying the common-law offence of public nuisance into statute? Does it clarify the situation or help? Or would you be critical of that suggestion? Perhaps Mr Willers could answer.

***Marc Willers QC:*** It might be better for Mr Wagner to deal with that issue, given that I am dealing with part 4.

***Adam Wagner:*** This is a recommendation by the Law Commission, as I am sure you are aware. My concern about codification is that it becomes a statutory tool in the armoury that might not previously have been used. I appreciate that the Law Commission recommended it. It does have benefits in terms of clarity and making the definition of public nuisance a statutory one, rather than coming out of common law and arguably being subject to not being clear.

I do worry that once it becomes a potential tool in the box, it will be used more. From the perspective of protest, and protecting the right to protest and freedom of assembly, it is just another tool in the armoury of public authorities to limit protest. Both Mr Willers and I deal with cases involving private injunctions against protesters and, in Mr Willers' case, Gypsy and Traveller communities. You can see this proliferation in the courts of the use of any kind of method that will allow private companies and public authorities to restrict what is generally non-violent activity that does not cause much, if any, public order issue. You can see that being used. My concern is that it adds another potential bar to an already quite extensive collection of bars to public protest.

***Marc Willers QC:*** I echo what Mr Wagner had to say. In the context of unauthorised encampments, there has been what has been described by the Court of Appeal—Lord Justice Coulson—as a feeding frenzy, in a case involving Bromley's application for a wide injunction, effectively creating a no-go zone in Bromley, where Gypsies and Travellers would not be able to camp. That has been replicated up and down the country, in what has been described, as I said, as a feeding frenzy of litigation.

The Court of Appeal, in that context, concluded that the creation of such no-go zones offended the Equality Act 2010, the European convention on human rights and the protection of the right to respect for the traditional way of life of Gypsies and Travellers, and the enshrined right to roam. To bring it back to unauthorised encampments, in part 4 of the Bill the Government appear to be creating the no-go zones that the Court of Appeal has said in another context would fundamentally breach the rights that I have identified.

**Q106 Mr Goodwill:** Mr Willers, I was going to ask whether you thought that as cases come to court and we get more case law, some of these definitions might become more clearly defined and could be referred to if they go to appeal or even to higher courts, so we might see clearer definitions as we use this law in practice.

***Marc Willers QC:*** The problem with part 4—it is speculation as to whether or not definitions will become crystallised in litigation—is that most Gypsies and Travellers will have left the site and be unable to challenge the decision by a police officer to arrest them, given the scenario that would play out under, for example, proposed new section 60C of the 1994 Act. A Gypsy or Traveller parking on a piece of land with their family, perhaps on the way down to Kent from somewhere up north, is not going to hang around when threatened with the seizure of their vehicle to argue that they should be entitled to remain on the land. Even if they did, they would probably not get legal aid with which to challenge the application of the section and their prosecution. In those circumstances, we are probably unlikely to see much, if any, judicial consideration of the vague terms in part 4.

***Adam Wagner:*** If I may, I will add that

"serious unease, alarm or distress"

is not new to the law. You see that wording in the definition of criminal harassment and in other places. My concern is more about width than about clarity. I have dealt with numerous cases involving over-wide injunctions. There is quite a lot of case law about clarity versus width, and the point is that once this language is in the law relating to noise, it will be obvious to the courts that it is a very wide provision indeed and will rely to quite a large extent on the decision making of the police officers.

For example, if a protest decided to be completely silent, it would be difficult for the police to say that that protest was going to cause enough noise to cause serious unease. I imagine that the next Extinction Rebellion protest we see will be completely silent after this. But in seriousness, I think the court will just see that as very wide. What you have really got here is nothing to do with public order; it is about nuisance. It is about criminalising a certain kind of nuisance arising from what should be a protected activity—exercising political speech rights, under articles 10 and 11 of the European convention.

**Mr Goodwill:** I think—

**The Chair:** We will move on. I call Sarah Jones. You have about six minutes.

**Q107 Sarah Jones:** I have one question for each witness. Apparently, I have six minutes, so you have three minutes each, which is not ideal. Adam, it could be said that the nature of protest has changed and new forms of protest have occurred over the years. Extinction Rebellion is a new form—this is what was put to us this morning. We need to update the legislation, we need clarity, and we need to bring things into the modern age. I would like your response to that charge.

Marc, it was put to us earlier that this is not about discrimination or attacking Gypsies or Travellers. It is about people who are engaged in significant criminal damage in places where they should not be. It would be helpful to have your response to that charge—Adam first.

***Adam Wagner:*** I hear that. I will just quote Lord Justice Laws, who said:

"Rights worth having are unruly things. Demonstrations and protests are liable to be a nuisance. They are liable to be inconvenient and tiresome, or at least perceived as such by others who are out of sympathy with them."

Protest has not changed; protest has always been a pain, a nuisance and liable to be inconvenient and tiresome. What has changed is that we have a Government who do not like certain protests—although that in itself has not changed either.

Extinction Rebellion is no different from any widespread protest movement—the civil rights movement in the 1960s, the environmental movement previously—but

what is different is that it has managed to attract hundreds of thousands of people to its cause and is making real inroads on the public consciousness. That in itself is not a justification effectively to give the police powers to ban or impose conditions on any protest or, even more troublingly from my perspective, to give the Home Secretary—whose role is only to protect public order, not to protect particular opinions or to impose her, his or the Government's opinion on any particular group—powers in effect to give examples of protests that she considers to be noisy, the ones that this legislation is targeting. You are getting yourself into a situation not where the public is better served, but where this essential part of democracy is going to be reduced down and chilled.

**Sarah Jones:** Thank you. Marc?

***Marc Willers QC:*** The first thing to say is that those who are committing significant criminal damage can be prosecuted using existing legislation. If they are committing antisocial behaviour, existing legislation is in place. Indeed, the police made that point in their responses to the consultation on these proposed measures, and did so in spades. The response from the vast majority of the police forces was, "We do not need additional powers", or, "We do need the existing powers under the Criminal Justice and Public Order Act 1994 to be strengthened."

I have no hesitation in saying, fund the police properly and ensure that they prosecute those who commit criminal offences, whether they be Romany Gypsies, Irish Travellers or members of the settled population—everyone should be treated in the eyes of the law—but part 4 and the proposed provisions do not just affect those who are committing significant criminal damage; they affect each and every Gypsy and Traveller who is exercising their right, enshrined in our convention and under the European convention of human rights, to nomadism, to roam. We should not force them into a position in which they are only lawfully exercising that right when actually on the road—a road to nowhere.

The provision not only will force them into that situation, in which they are literally only within the law when they are moving along the road, but will give police the power to seize their homes, should they fall foul of the provisions. Should they camp on a piece of land and be asked to leave by an occupier who is prejudiced against them and would not want them to be there out of fear that they might commit some behaviour instilled in the mind by prejudice against Gypsies and Travellers, then as I said, it is a fait accompli for the police who are called in. They will have to arrest and almost certainly seize the caravans, that being the home. The individual and family might end up being destitute.

This is all at a time when there is insufficient transit and permanent sites for Gypsies and Travellers to live on. The proposed legislation ignores the rather elderly and enormous elephant in the room—the lack of site provision. That lack of site provision has continued unabated since the 1960s, as I said, when the commons were first closed.

**The Chair:** We had better move to the Government side.

**Q108 Victoria Atkins:** I should declare that I am a door tenant at Red Lion Chambers. Mr Wagner, I will first deal with the issues you raised. Presumably you accept that freedom of speech and freedom to assemble are qualified rights.

***Adam Wagner:*** Yes, of course.

**Q109 Victoria Atkins:** And presumably you accept—well, you tell me. Do you accept that the Public Order Act 1986 is a piece of legislation that has stood the test of time and should remain in law?

***Adam Wagner:*** I think I would be neutral on that. It is a very wide piece of legislation. Every time I read it, I am pretty surprised at how wide it is already. What I am pretty clear about is that section 12 does not need to be widened.

**Q110 Victoria Atkins:** So the Public Order Act 1986 goes too far for your liking in some instances in section 12.

***Adam Wagner:*** Well, potentially. The proof is often in the pudding. It depends on how the police use it and whether they are using it effectively. I have read the report from Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services. I speak to a lot of police, and my experience is that they know they have a wide suite of powers when it comes to protest. What they struggle with, if you look at what has happened over the covid regulations, is deciding when to use them and what is proportionate. These are very difficult policing situations, and they are not necessarily solved by imposing widespread conditions that may lead to legal challenges, which may be successful. Successful policing of protests ultimately comes down to working with the protesters and civil society—hearts and minds stuff from the police. You saw that with the Sarah Everard vigil, and you see that with Extinction Rebellion and Black Lives Matter. I do not think you can really enforce your way out of some of the disruption caused by protest. It is really about allowing voices to be heard and being careful.

**Q111 Victoria Atkins:** And yet the 1986 Act, which you have described as very wide ranging, has permitted the protests that you have described by some of the organisations you have described—yes?

***Adam Wagner:*** Well, in part. The Public Order Act was used quite extensively over the course of the Extinction Rebellion protests, and Black Lives Matter was under the covid regulations last summer. That was the power that was used, and those are much more extensive. The covid regulations are far too extensive. We saw there the problems when the police are given too much power, because then they have to make what are not really public order decisions but substantive political decisions about which protests they do and do not allow. That is the danger. I do not think it is a right-wing or left-wing issue; any Government should be worried about protests being limited by political decisions, rather than public order decisions.

**Q112 Victoria Atkins:** Mr Wagner, just to be clear, you are the only person thus far in this Committee who has used the phrases "right wing" or "left wing". Presumably you are pleased that in clause 54(3) the Government have introduced the objective test of a person of reasonable firmness in order to assist police officers making the very difficult decisions—as you yourself have said—under this part of the Bill. In other words, it is an objective test, rather than a subjective test.

***Adam Wagner:*** I think the objective test would assist the courts; I do not think it would assist police officers. Anything that limits these powers is better than not, but I just think the powers themselves are too wide for the

reasons I have set out. I do not think that helps anything. From a policing perspective, applying all those tests is not going to be easy anyway. Really, this is about the width of the powers overall as a package, rather than the reasonable firmness test or anything like that.

**Q113 Victoria Atkins:** Chair, I am conscious of time. Mr Willers, I want to draw to your attention the drafting of clause 61. I hope that you would accept that it is very focused on Travellers or people in unauthorised encampments. In other words, they are seeking to reside or are residing on private land without the consent of the occupier. Proposed new section 60C(4) of the 1994 Act lays out conditions that have to be fulfilled in order for this particular offence to be satisfied, including "significant damage", "significant disruption" and "significant distress"—yes?

***Marc Willers QC:*** I do not think it would just be related to private lands—

**Victoria Atkins:** I accept that. There are provisions on common lands as well—you are quite right.

**The Chair:** I think we had better let Mr Willers answer as we are going to run completely out of time.

***Marc Willers QC:*** It covers private and public land, and common land, and you are right that the conditions are "significant damage", "significant disruption" and "significant distress". My comments earlier were about the fact that significant damage and disruption can be covered by other legislation. The "significant distress" point was one I made in the context of the fact that the occupier may have their own impression of "significant distress", or may suffer significant distress because of an inherent prejudice towards Gypsies and Travellers.

**Victoria Atkins:** So what is appropriate distress—

**The Chair:** I am really sorry Minister, but we are going to have to stop there because we are out of time allotted for this session. I thank you both for your evidence.

**Examination of witness**

*Stephanie Roberts-Bibby gave evidence.*

4.46 pm

**The Chair:** I now call Stephanie Roberts-Bibby, acting CEO of the Youth Justice Board. Once again, we are down to 30 minutes, so we have to be tight—we have until 5.15 pm for this session. Stephanie, would you introduce yourself for the record, please?

***Stephanie Roberts-Bibby:*** Good afternoon, everyone. My name is Stephanie Roberts-Bibby, and I am the interim chief executive officer for the Youth Justice Board. It is great to be here today to give evidence to you.

**The Chair:** I see that you are on an iPhone. Could I possibly ask you to flip it round so that you are in landscape?

***Stephanie Roberts-Bibby:*** Is that better for you, Chair?

**The Chair:** It is, thank you very much—sorry about that. I call Bambos Charalambous.

**Q114 Bambos Charalambous:** I have a question about minimum-term sentences. We have a situation whereby if a young person commits an offence when they are under 18, but there is a delay in their coming to court and being convicted, they are then treated as an adult. What are your thoughts on that? Is that an opportunity missed in the Bill?

***Stephanie Roberts-Bibby:*** Absolutely. We would say that children who commit offences as children should be sentenced as children, and that, where possible, the court should take into account the age and maturity of the child at the time of the offence. I know that HMCTS has been working tirelessly—particularly at the moment with the covid pandemic—to make sure that children's cases are held promptly and before their 18th birthdays.

**Q115 Bambos Charalambous:** More generally, what are your thoughts on the length of sentences for children set out in part 7 of the Bill?

***Stephanie Roberts-Bibby:*** We strongly believe that when the offence was committed as a child, that should be reflected in the length of the sentence, so they should be sentenced accordingly. We appreciate the logic for some of the tapering proposed in the Bill, but we feel that it fails to recognise that all children, who were under 18 at the time of the offence, had a distinct set of rights and vulnerabilities, and that the nature and length of time with which children and young people's development takes place needs to be reflected. Indeed, evidence points firmly to brain development continuing up until the age of 25.

**Q116 Siobhan Baillie:** Do you support the introduction of secure schools?

***Stephanie Roberts-Bibby:*** We wholeheartedly support the introduction of secure schools. We very much welcome the Government's proposal to open the first secure school at Medway and we look forward to a further secure school as part of the Government's commitment to an alternative to secure accommodation for children. We have been working closely with Oasis, which was announced as the provider of the first secure school. It is a very strong academy trust and will offer a different operating model from the secure environments that currently exist. While there is some great practice that takes place across the secure estate, we know from the data about the outcomes for children who have been in the current secure estate that those outcomes are poor and that further offending continues.

**Q117 Siobhan Baillie:** How important is the expertise of the people running secure schools? You have mentioned Oasis already. Who else is in the mix, and how do we ensure that that expertise is in place for the youngsters?

***Stephanie Roberts-Bibby:*** It is a concern that the market, as you would describe it, for providing a secure estate is quite limited. We would want to try to stimulate that market, to get the full range of providers that will be able to meet children's needs. I think there is something about really understanding the complexity of children in the secure estate. These children are extremely vulnerable and, as a result, their behaviours can then be deemed as being extremely risky and posing a risk to others.

Our only concern about the delivery of the secure school is that link, at the moment, to the academy sector, particularly for children entering the youth justice system who have quite often been involved in practices whereby they have been off-rolled. For instance, we note the high levels—the prevalence—of exclusion of children. For example, we know from HMIP data that 89% of children at Feltham in 2018 had been excluded from

school. We would be really keen to seek an assurance through the tendering process that academy trusts that are selected to open or run a secure school have the full range of skills, expertise, structures and ethos to support children to change in a secure setting.

**Q118 Siobhan Baillie:** If I may ask one more question, albeit in two parts, how do youth offending teams rehabilitate children who are given community sentences? Also, where there has been a tragic incident or a really horrific situation—a stabbing in a local area that has really rocked a community—what can the youth offending teams and the Youth Justice Board do? How do we educate the community and ensure that other youngsters are not caught up in it and are supported with their families as well?

***Stephanie Roberts-Bibby:*** Youth offending teams are critical in early intervention and prevention with children who may be on the cusp of offending. There are a whole range of sentencing options available, but before that point there are out-of-court disposals, which means that children can be engaged in a range of activities, interventions and indeed supervision that would help them to address their needs.

Regarding the latter, I think there is really something about us all committing to understand children's development, some of the social and economic environments in which children are living, and some of the deprivation and the structural barriers that children in our communities are experiencing, particularly children from black and minority ethnic backgrounds, who we know are disproportionately represented across the youth justice system. So there are a range of options available from youth offending teams.

One of the challenges that we hear about from the sector is its capacity to work upstream. Often, that is a result of funding, although this year the youth offending teams have had an additional uplift in their grant to help with some of the challenges that they are currently experiencing.

**Q119 Siobhan Baillie:** If I may ask just one very final question—

**The Chair:** One tiny one.

**Siobhan Baillie:** Very tiny. I have a number of youth groups in my patch, as no doubt all MPs have, that are trusted by youngsters and that have been there and built the relationships. How do the Youth Justice Board and youth offending teams work with the grassroots youth organisations?

***Stephanie Roberts-Bibby:*** If I start with our role as the Youth Justice Board, we work really closely with the voluntary and third-sector community. We have a regular stakeholder forum, where we come together with all of the voluntary sector to hear their voices and concerns, so that we can have effective oversight of the youth justice system.

At grassroots level, which you referred to with youth offending teams, local authorities can subcontract or co-commission services to the voluntary sector, although again we know that in latter years some of those organisations have not necessarily been able to sustain themselves. However, those services are really critical to understanding the context in which children are living: the services they need, and the services that are able to get alongside children and help them. We also have a youth-affiliated network in which we hear from children and hear their voices. They are often the go-to services when children are in crisis, are feeling vulnerable, or do not know what to do.

**Chair:** Anyone else? I will go to Mr Cunningham, you have about 10 minutes.

**Q120 Alex Cunningham**: Fine. Thank you, that is helpful. Clause 36(10) of the Bill says that

"In this Chapter—

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

Given the wealth of evidence on maturity, do you think that the section and other provisions of the Bill that address sentencing 16 and 17-year-olds are appropriate?

***Stephanie Roberts-Bibby:*** I go back to my original answer in which we are clear that the age in law for children is up to 18. We absolutely promote a child-first youth justice system which means that children up to the age of 18 should get treated as children, as they are in law. The evidence base in the debate about maturity strongly suggests that brain development continues until the age of 25, and indeed some evidence shows that it may extend to 28 for males in particular. We would absolutely continue to champion the idea that children should be sentenced as children until their 18th birthday.

**Q121 Alex Cunningham:** The Alliance for Youth Justice said:

"There is no evidence that the threat of harsher custodial sentences deters children from offending, no evidence that contributes towards rehabilitation or promoting long-term positive outcomes. Meanwhile, there is abundant evidence that imprisonment is extremely harmful to children and disrupts their healthy long-term development."

How do you think the changes to youth sentencing proposed in the Bill will impact reoffending rates?

***Stephanie Roberts-Bibby:*** A number of changes are presented, and I want to pick out some of those. We are broadly supportive of the proposals relating to youth rehabilitation orders. We are supportive of anything that prevents children from being drawn further into the youth justice system. That would include offering them greater support in the community, and making sure that they get their needs addressed. There is no evidence to show that punishment changes behaviour. What we know changes behaviour is pro-social identity, and giving children a positive image of themselves where they can build on their strengths, and aspire to contribute to our society and our economy. We are very clear that we would not want to see the Bill result in more children being pulled into the youth justice system, and indeed we would want to see children continuing to be referred into the services that rightly should be there to meet their needs and prevent them from offending, as we have seen in the last 20 years since the youth justice system was established.

**Q122 Alex Cunningham:** The number of children in custody has come down quite considerably in recent times, but it still stands at around 500, which is tremendously high. How significantly will the changes to youth sentencing in the Bill increase the number of children in custody? Will we see more children in prison?

***Stephanie Roberts-Bibby:*** We really support the proposals and changes to remand. I will start with that point, if that is okay. We welcome the proposal that there be

a statutory duty for the court to consider the child's welfare and best interests when applying the prospect of custody test. We know that at the moment only a third of children in custody on remand go on to get a custodial sentence, which raises the issue of why so many children are being remanded in the first place. So we very much support the proposals around remand.

We particularly support the changes that would say that only a recent and significant history of a breach, or offending while on bail, would result in custodial remand. We recommend that those definitions be tightened or specified. We would recommend that "recent" refer to a six-week period, and "significant" refer to a situation where there is a potential to cause serious harm or injury. We are very supportive of measures that would reduce the number of children being drawn into the system, particularly into custody, so we support the recommendations around remand, but those measures in isolation will not reduce the number of children in custody. There still needs to be work in the community around appropriate accommodation for children, with holistic services that meet their needs. At the moment, there is a misalignment between the priorities of the criminal courts and available community provision for children's social care accommodation.

We also think there is limited time to build an appropriate bail package. As we all know, there is more to do, although there is ongoing work around vulnerable children and reducing the likelihood of their being exploited.

We very much welcome the changes to the detention training orders, but some of them could result in an increase in the number of children in custody. It might be helpful if I talk through each of those changes. I am conscious of the time and that I am talking very fast, but I think those changes are quite significant. We welcome the fact that there will be more flexibility with their sentences, rather than the rigidity that we have now. However, there is a challenge that the fixed lengths mean that children may miss out on the opportunity to be enrolled in school, for training or for an apprenticeship.

We have some concerns that the findings of the impact assessment that the Government completed may mean that individuals making an early guilty plea may end up with longer sentences than they currently receive. While there would be no additional children's sentence to detention training orders under this option, that would increase the capacity at any given point of the number of children in the secure estate. We have estimated that to be a potential 30 to 50 places, costing £5.3 million to £8.5 million per year.

**Q123 Alex Cunningham:** You are managing to get a lot on the record, but I would like to put one other question before I run out of time. Do you think the changes to youth sentencing will disproportionately impact any particular communities?

***Stephanie Roberts-Bibby:*** We would suggest that some of the changes may further disproportionately disadvantage black and mixed heritage boys—that is indicated in the impact assessment that is currently being completed. We would be very keen to work on some mitigating actions that might prevent those unintended consequences disproportionately affecting those children further.

**The Chair:** Minister, you have until 5.15 pm.

**Q124 Chris Philp:** I will not need all that time, because most of the points that I was going to raise have been helpfully raised already by colleagues. To return to the question of secure schools, I think you expressed in your answers at the beginning support for the proposed introduction of secured schools and gave a bit of flavour as to why you support them. Can you talk about the benefits that may be delivered by increasing the range of organisations that can be brought into the business of providing these services with the change being contemplated here?

***Stephanie Roberts-Bibby:*** We would see the benefits very much related to the skills, experience and expertise that multi-academy trusts could bring into a secure school setting. As you may know, the secure estate is split into three different sections: secure training centres, secure children's homes and young offenders institutions. The custodial element of those organisations is very strong and probably strongest in the YOIs and the STCs. The introduction of a very different model that accounts for children's needs will not mean that they will not be secure; it will mean that they have a focus on education, mental health, and a trauma-informed approach to working with children who have complex needs, which is very much needed.

**Q125 Chris Philp:** Do you have any particular observations on measures we might consider to reduce offending, either in the Bill or, indeed, beyond it?

***Stephanie Roberts-Bibby:*** Gosh. We could probably provide you with a significant amount of evidence on that and I would very much welcome the opportunity to do that in writing to the Committee.

We would suggest coming from the perspective of the child first and using the evidence base that has been developed recently, which focuses on children, their personal and social identity and their strengths, rather than being deficit-based. The evidence, which equally applies to adults, is that if you look for good and build on good, much more is achieved than if you tell people that they are no use and no good and cannot contribute to society.

We know that with children, the earlier we intervene, the better—early intervention and prevention, and targeting services upstream. That is a challenge for youth offending teams at the moment. They have statutory caseloads and trying to balance intervening earlier is really difficult. Some local authorities manage to do that better than others. There is a massive evidence base and we can share the evidence after the Committee today.

**Q126 Chris Philp:** My final question is on the remand review. What is the Youth Justice Board able to do to support the remand review and its subsequent implementation?

***Stephanie Roberts-Bibby:*** We have been working really closely with the Ministry of Justice on the remand review. We are very keen to understand the data better and to have a look at the trends across the country. One of the things we would really welcome as, dare I say, an amendment to the Bill is for there to be a decision why bail is and is not granted. There is still a lack of evidence on what needs to change for more children to remain in the community, and we want to avoid perpetuating cycles of evidence.

You asked about what more we could do around the remand review. There is certainly something more we could do around trying to knit the system together better, through our heads of regions constantly having discussions with the sector around remand. We are doing quite a lot of work at the moment on developing alternative models for accommodation. We are working across London. We are investing in a pathfinder project to try to develop a different model for children, to prevent them being taken into the secure estate on remand.

**Chris Philp:** I think that covers everything I wanted to ask. Thank you for the work you are doing.

**The Chair:** If you do wish to furnish the Committee with further written evidence to support your comments, that would be most welcome. I think Mr Cunningham had a further question.

**Q127 Alex Cunningham:** Yes, in view of the fact that we have some time left. You talked about the secure schools system. How can we ensure that secure schools learn from the systemic problems in other parts of the youth custodial estate, including secure training centres? How could Her Majesty's inspectorate of prisons assist with that?

***Stephanie Roberts-Bibby:*** As I understand it, the inspection framework for a secure school will be Ofsted, quite rightly, because it is a secure school rather than a prison. Of course, there is a role that HMIP might play in helping to share and disseminate best practice. As is the case when Ofsted does an inspection in the secure estate, HMIP is part of that broader inspection team. There is a role for it to share best practice as it sees and finds it.

**Q128 Alex Cunningham:** I have an open question for you. One of my colleagues who was supposed to be serving on the Committee asked what the principal challenges in the youth justice system are.

***Stephanie Roberts-Bibby:*** Some of the principal challenges come from the fact that services for children sit across everyone's responsibility but no one's responsibility. There is absolutely something about us continuing to reach out across the Government. We very much see joining services up as some of the leadership space that we are in and will continue to be in, so that children who are vulnerable to offending are seen and are not slipping through the gaps in service provision.

**The Chair:** If there are no further questions, I thank you very much for your evidence today.

**Examination of Witness**

*Derek Sweeting QC gave evidence.*

5.10 pm

**Q129 The Chair:** We move to the eighth and final witness session of the day with Derek Sweeting QC, the chair of the Bar Council. Good afternoon. Could I ask you to introduce yourself for the record, please?

***Derek Sweeting QC:*** I am Derek Sweeting QC, chair of the Bar Council of England and Wales.

**The Chair:** Thank you. We have until 5.45 pm for this session.

**Q130 Mr Goodwill:** Could I ask a question about open justice? We will all have seen American courthouses where some of the barristers seem to be playing to the gallery rather than necessarily to the jury. Do you think that the proposals to make justice more open to the public and to observation will work? Do you support them?

***Derek Sweeting QC:*** Two questions there. Would we support them? Yes, because open justice is a really important objective within the justice system. Will they work? There are obvious problems with managing hearings that are accessible over the internet, particularly in an age of social media when people know how to record things and take photographs and video online—that sort of thing. I think there are issues with how you police open justice and ensure that proceedings have the seriousness and gravity that they should have and that you do not get an abuse, particularly on social media, of the facility to be able to see things from afar. But generally I think it is a move in the right direction.

**Q131 Mr Goodwill:** We have seen situations where jurors have been engaged in social media conversations about a case, and I think in some cases they have been found guilty of contempt of court. If, particularly in high profile cases, there was a lot of social media debate, could that increase the number of situations in which jurors are compromised or undermined by being tempted to engage in that? As it is sometimes difficult to see what jurors are doing, could we police that in any way? If that subsequently came out, could it result in miscarriages of justice?

***Derek Sweeting QC:*** Yes. I think at the moment there are already dangers around jurors doing things that they should not through the internet and social media. They are given a very specific warning and written information about what they can and cannot do while they are serving on a jury. I think all of this must be considered with a lot of care. There are bits of court proceedings that I think should not be directly under the gaze of the camera and so on. So there is a lot of room for working out what the protocols are and how things work best.

On the general point, there is plainly a risk that we will have more occasions on which there could be potential contempts of court, but I do not think we can go backwards; we just have to manage these things as we have done with every technological step forward that impacts on the justice system.

**Q132 Mr Goodwill:** And there is no danger whatsoever that barristers might play to the gallery to try to raise their own personal profiles and popularity.

***Derek Sweeting QC:*** Well, barristers never do that, of course. I think we are a long way off the American sort of proceedings that we sometimes see. That is perhaps slightly unfair to many American attorneys, who conduct their business with a lot of decorum, even under the gaze of the camera.

**Mr Goodwill:** Thank you. That was slightly tongue in cheek, although we do occasionally have barristers appearing at the Dispatch Box and I would not comment on their performance.

**Q133 Bambos Charalambous:** Some witnesses such as child witnesses and people who are particularly vulnerable take part remotely in hearings. What are your thoughts on the technology currently in place in courts to enable that to happen? What dangers do you see in hearings with remote witnesses and the impression that juries may form of them when they are not physically in court?

***Derek Sweeting QC:*** I think the first part of the question is: what technology have we got in place at the moment?

When the pandemic struck, and once we got back in particular to jury trials in the Crown court, we did see the roll-out of CVP—Cloud Video Platform—which very few of us knew was under development at the time. That was vital to allowing work to resume in many jurisdictions. We have also got a new system on the way, so the technology is improving all the time.

The second part of the question is really about how satisfactory is remote participation by the witness or others in court proceedings, and I think it really prompts the question, if we can do it, whether we should. That is the point—that fact that we can is not really a reason for necessarily doing it. I think it is absolutely clear that proceedings in future will probably involve a hybrid, with some witnesses attending remotely where that is appropriate. That has to be judicially managed. I think for some hearings it is pretty clear that everything could be done remotely, particularly administrative hearings. But in hearings that are serious in their nature because they will result in the final disposition of a case and so on, there is a much greater argument for ensuring that all of the participants and all of the evidence start on the basis that if evidence can be given in person, it should be. Thought should then be given to what is unnecessary to have in person and what could be dealt with remotely.

It is an area where we are finding our way. The Bar Council has just issued a statement with the Bars of the Republic of Ireland, Northern Ireland, Scotland, and of course England and Wales, which I represent, which actually makes that point. It says that there are many aspects of a remote hearing that are not satisfactory, in the sense that they are not as good as having everybody in the room—the old model, where you get two teams together with a referee and you have an adversarial contest. But that model anyway is something that we need to think about as we go forward.

There is plainly a use for more remote, but I think the profession would like some guidance as to what the parameters are for when we should be remote, what the starting position is and when it is appropriate, and only appropriate, to be in person.

**Q134 Siobhan Baillie:** I will be brief. There has been some suggestion this afternoon that there is no need for changes to the law, because protests should be managed in part by winning hearts and minds. What we know from the public, and what we have heard from the police, is that especially when windows are smashed, paint poured over people and in really disruptive protests, it is very difficult to be winning hearts and minds first in those circumstances. Do you agree that the nature of protests and the antics of protesters that we are seeing now results in and rewards a change and an update of the legislation that we have in place?

***Derek Sweeting QC:*** The two types of conduct that you have just described are in themselves likely to be criminal offences, so there is nothing new about that. Has protest changed in its nature? I think we have certainly heard some evidence that, particularly with social media, the way in which protests can be arranged makes it much more difficult for them to be managed. I think there is some public concern about that. The measures contained in the Bill, particularly in relation to noise levels and serious disruption to and impact on persons in the vicinity, raise a legitimate question about whether it goes a bit too far, particularly in relation to what "significant" means and who has to take that decision on the ground. You ask whether things have changed, and I think you might look at this and say that almost every suffragette protest would have been caught by the proposed legislation.

**Q135 Siobhan Baillie:** I know. Suffragettes are often referred to; I always say that the suffragists, the letter writers, had an equally great impact. I jest, but it is an important point. My final question is what benefit does codifying the common law offence of public nuisance bring in conjunction with the Law Commission recommendation?

***Derek Sweeting QC:*** I think it is a sensible measure. We welcome the fact that we have got a statutory maximum of 10 years. It was a Law Commission recommendation—clause 59 is what we are talking about. I think the only thing I would inject into the conversation around this is that the Law Commission report itself actually includes a defence of reasonableness, and that defence applies particularly to cases where the conduct is in an exercise of an article 10 or article 11 right to freedom of assembly or freedom of expression. Effectively, you might say that the Government seek to criminalise, on the basis of what the Law Commission's report addressed, acts that the Law Commission itself thought would be caught by a reasonableness defence in relation to public protest and the exercise of important rights of freedom of expression or freedom of assembly.

**Siobhan Baillie:** Thank you for your time.

**The Chair:** I call Alex Cunningham. You have about 11 or 12 minutes.

**Q136 Alex Cunningham:** That is a richness in time, Chair. Clause 46 covers criminal damage to memorials and mode of trial. How does the clause actually add to existing legal provision for these types of offences?

***Derek Sweeting QC:*** I think it changes things, rather than adds, doesn't it? In relation to memorials, we will now find ourselves in the Crown court rather than the magistrates court. It is important to acknowledge that approaching the issue of damage to memorials only on the basis of value, for example, really underplays the quite significant sentiment that attaches to particular memorials and ought to be recognised. However, magistrates already have the power to imprison in relation to the existing offences that would apply. It seems a little unnecessary, I would have thought, to say that all these offences need to be covered by an offence that means they have to be dealt with in the Crown court, with all the extra cost and time that that would entail, particularly in a jurisdiction that already suffers from a significant backlog.

**Q137 Alex Cunningham:** So it is perhaps not really necessary.

***Derek Sweeting QC:*** I wonder whether the sledgehammer is being used for a nut here. I think you have to reflect public concern about attacks on memorials, but this may just flip the problem from something that perhaps does not provide enough in the way of sentencing options to a much more onerous and ponderous procedure to deal with something that can involve, for example, removing flowers from a memorial, which you would not have thought would be something that could not be dealt with by magistrates. One would anticipate a range of sentencing options within the summary jurisdiction and perhaps in the Crown court as well, but not the need to go off to the Crown court for all these offences.

**Q138 Alex Cunningham:** What impact do you think the proposed changes in sentencing across the Bill will have on criminal cases?

***Derek Sweeting QC:*** The answer is that we are probably likely to see longer sentences and more of them. I hope that does not sound too pessimistic, but that is the overall effect that you are asking me about. That is probably what we will see if the sentencing reforms are carried into effect, because to some extent they limit judicial discretion and extend the role of mandatory sentencing.

**Q139 Alex Cunningham:** I am learning more this afternoon about automatic release and the roles of the Parole Boards. Some stakeholders have expressed concern that changes to the automatic release point will make an already confusing sentencing regime even more confusing. What is your view?

***Derek Sweeting QC:*** You are adjusting the release point within a sentence that has already been passed by the court. I think there is an argument that it might make things more complex, but on the face of it, it seems to me to be something that may actually provide a little clarity within the existing sentencing regime.

**Q140 Alex Cunningham:** What should happen instead of this provision in the Bill?

***Derek Sweeting QC:*** Which one are you referring to?

**Alex Cunningham:** The provision about the changes to automatic release and referral to the Parole Board.

***Derek Sweeting QC:*** I am not sure that we have commented on that, actually.

**Q141 Alex Cunningham:** Fair enough. Do you have any concerns about plans to abolish the simple caution and move to a two-tier out-of-court disposal system?

***Derek Sweeting QC:*** The concerns around that are really that it is sensible to try to reduce the complexity of this area—I think the ambition is to reduce down to two—but I think the attachment of conditions to both of the cautions that are left, as a requirement, is not necessarily helpful. It would be useful to have something that was a more general tool that the police could use, that would not turn up in criminal records later on and so on, and that would give the police the option effectively just to give what is now the simple caution.

**Q142 Alex Cunningham:** Would you welcome provisions being added to the Bill as it exists today to tackle criminal child exploitation?

***Derek Sweeting QC:*** Yes. I think we have drawn attention to the fact that those are not in the Bill, so it would be sensible, we would have thought, to try to do that and to be a bit more ambitious around the youth justice points in the Bill.

**Q143 Alex Cunningham:** I just love brief answers—this is great. The Bill amends the 13th-person rule by allowing a British Sign Language interpreter into the jury room. I do not know whether you would welcome this particular amendment, but how can we develop the system in order to allow more disabled people to participate in jury service?

***Derek Sweeting QC:*** We do welcome, certainly, the British Sign Language proposal in the Bill. I think that, if anything, we were slightly surprised that there was not some consultation around it. There are jurisdictions in which this is a development and there is some learning about it; there is some practice as well. It involves, generally, two signers, so there is obviously a resource impact as well. This is not just about the interpretation of evidence; someone would go into the jury room when the jury retired. That is likely to require some additional training of signers, because it is a different role from just interpreting. Those are the sorts of things that we think might well have been covered by some consultation.

In fact, in a way, the opportunity was lost, by not consulting, to consider whether there are other categories of disability for which reasonable adjustments and accommodations might be made to enable people to serve on a jury, because it is an important civic duty and the wider the range of citizens who can undertake that duty, the better. So it is the right direction of travel, but we think the arrangements around it will obviously need some thought, some investment and some training for signers, and actually there might have been an opportunity to think a little larger about who else might benefit from similar adjustments or adjustments that are specific to their needs.

**Q144 Alex Cunningham:** You have already addressed the issue of remote juries. I was not too sure whether you were actually prepared to accept them in some circumstances. What is the clear position of the Bar Council in relation to the setting up of remote juries? I thought that this might be a great idea if we were having a covid pandemic every year, but that is not in fact the case—I hope.

***Derek Sweeting QC:*** I hope it is not the case; I think it is once in a lifetime, as far as I am concerned. If I did not make the position clearer earlier, that was because we were really dealing with the general question of remote participation. I think, in the case of remote juries, that is an area where we do have significant concerns, and I think we would oppose the measure that is proposed in the Bill. The reason for that I think you have touched on already: this is not a measure that has been needed over the course of the present pandemic. It is said, I think, to be effectively a just-in-case measure, an emergency measure, but it is wholly unclear what the circumstances would be in which the measure would be required or executed—put into effect. So I think we do have concerns about that.

Fundamentally altering the character of a jury trial by, as the Lord Chief put it, having the jury as spectators rather than participants, which is certainly the view he was expressing about what the impact of remote juries would be—changing it in that way is a very significant change to a very important part of our justice system, a bit of the justice system that really has public confidence, and that we know from the research really recognises diversity and does not produce outcomes that are unfair. I think we need to be very careful and cautious about making significant changes. I think, if we are going to have a measure, it should not be a measure on which we say, "Oh well, there might be a need for it at some point." If the point arises, it would be much better to consider itin the circumstances of any future emergency, if it occurs. We certainly would not like to see remote juries deployed outside of emergency conditions. There does not seem to be any reason to do that. There is no research about that and no evaluation of the effect on outcomes of having a remote jury. Even in Scotland, where it has been trialled during the pandemic, with much larger juries of 15, it is yet to be evaluated.

We would suggest that it ought to be approached with a lot of caution. It is not a measure that is needed; we can wait until it is needed. Equally, as I think is acknowledged, the technology is only barely there. Again, we ought to wait until the technology can be factored into the mix to consider whether it is a good idea.

**Q145 Alex Cunningham:** We look forward to the debate with the Minister. I want to return to the extension of the use of video and audio links. In your experience, are there any particular groups of defendants who would be more impacted than others if those provisions were brought in more wholesale?

***Derek Sweeting QC:*** Those who are vulnerable; young defendants and those who may find it difficult to follow proceedings if they are held remotely, who may need particular access to their counsel, which is much more difficult if you are dealing with things remotely. There is a raft of problems that you may encounter when you physically separate the defendant from the trial process.

**Q146 Alex Cunningham:** Finally, what safeguards could the Government place in the Bill to ensure that clause 168 does not detrimentally impact fair trial rights?

***Derek Sweeting QC:*** In the end, it will have to be managed judicially. I am not sure that we need to hem in the exercise of discretion in relation to that. There are already provisions in relation to what the judge must take into account when considering whether there should be remote participation. They are very difficult to apply to juries, by the way, but if they are followed, we will find that they involve a significant number of safeguards for the fair conduct of proceedings.

**Q147 Victoria Atkins:** A quick point of clarification. Mr Sweeting, in relation to clause 59, which is the statutory offence of public nuisance, you made reference to wishing there was a defence of reasonable excuse. I wanted to reassure you that it is in there, in subsection (3).

***Derek Sweeting QC:*** Yes, I think my point was really about the suggestion that the statutory offence—these are the words—is to cover the same conduct as the existing common law offence of public nuisance but, yes, you are right that there is an offence of that sort in there.

**Q148 Chris Philp:** I have one or two brief points. Mr Sweeting, you discussed remote hearings already; have you or your members seen during the pandemic evidence that using video and remote hearings is any more convenient for participants, both advocates and witnesses, or that the proceedings are any more efficient than they would ordinarily be?

***Derek Sweeting QC:*** Two questions. Is it more convenient? Certainly, during the pandemic it has been important to have a method of holding hearings when we have to socially distance. Under the circumstances of the pandemic, it was vital. Remote hearings have enabled the family jurisdiction in particular to keep on working from the word go—it never stopped. Using technology in those circumstances in remote hearings was extremely helpful. It was certainly convenient during the pandemic.

Is it convenient for everyone? During the pandemic itself, we had some opposing views. Counsel certainly found it convenient, but one or two participants in family proceedings publicly said that they felt detachment from the proceeding. We have to recognise that there are reasons for being cautious about making the assumption that if it is convenient for legal professionals and judges, it is also necessarily a good experience for users. Certainly, there are whole categories of users for whom, if they cannot get to court or if they have mobility problems, the ability to have a hearing remotely is going to be valuable. Of course, we have been in a big laboratory, and we have tested a lot of these things in a way that we that we would not have been able to do in the decades before the pandemic. We need to take forward the best of remote and carry on using it.

Are there disadvantages? Yes, I think there are. There are experiences that we have all heard about, which are salutary and should make us be cautious about just assuming that we can always do things as well if we are doing them remotely.

**Q149 Chris Philp:** Thank you. You touched in one of your answers on the question of sentencing powers where a memorial—for example, a war memorial—might be desecrated, and you made some observations about the potential sentence length. It is the case, is it not, that sentences are always a matter of judicial discretion. Notwithstanding what the maximum may be, it will always be for the judge to decide what the appropriate sentence is, given the facts of a particular case. Is not the overriding consideration here that we are simply giving judges more discretion where a memorial may have a more symbolic value that goes beyond mere monetary value, and that we are simply recognising that in the statute?

***Derek Sweeting QC:*** I am not sure that is right. The point that I was making is that the proposed amendment is to the mode of trial for a limited class of offences of criminal damage. That is the effect of the amendment. It removes the power for an offence involving a memorial to be tried in the magistrates court, however small the value of any damage. That was the point I was making earlier. I was really being asked whether that is a proportionate measure, and the point I was making is that there are some offences involving memorials where one would have thought that the magistrates' powers are perfectly adequate, and it is not proportionate to require that matter to go to the Crown court.

**Q150 Chris Philp:** Okay. Although of course, as I say, the magistrate has limited sentencing powers, and there might be some cases, might there not, where the desecration may be of a sufficiently serious nature that the magistrate's maximum sentencing power of six months may be inadequate. On some occasions, therefore—not in every case necessarily—the increased sentencing power of the Crown court might be appropriate?

***Derek Sweeting QC:*** Well, there might be, but equally there might be cases where it is wholly unnecessary to go to the Crown court. Since the definition of "memorial" extends to moveable items, removing a bunch of flowers from a memorial amounts to the offence. It is difficult to see why that merits a trip to the Crown court. It is well within the magistrate's existing sentencing.

**Q151 Chris Philp:** Is your understanding of the change that it makes it an either-way offence? Is it your understanding that it would be compelled to be held in the Crown court, as an indictable-only offence would be, or that it could be heard in either, as in an either way offence?

***Derek Sweeting QC:*** My understanding that a mode of trial change is being contemplated under part 2.

**Q152 Chris Philp:** My final question relates, again, to judicial discretion. I am not talking about any particular offence; I am just asking in general terms. What are your general views about minimum sentences and how they interact with judicial discretion?

***Derek Sweeting QC:*** There are obviously circumstances in which minimum sentences can be used. It is a matter for Parliament. You have to reflect on public disquiet and the need to make sure there is a sentencing regime that reflects the seriousness of offences. The general position is that if you have minimum mandatory sentences, you inevitably tie the hands of the judge to some extent. If you carry on extending that, you are making potentially significant inroads into judicial discretion. The lesson of sentencing is that cases generally need individual sentences because there are very complex differences between them. You were just making the point about judges having discretion to sentence according to the gravity and nature of the crime.

**Chris Philp:** Thank you, Mr Sweeting. I have no further questions.

**The Chair:** Does anyone else have any further questions? I cannot see anyone. In that case, Mr Sweeting, thank you very much for your evidence to the Committee. I thank all witnesses who gave evidence today to the Committee. That brings us to the end of our oral evidence session for today. The Committee will meet again on Thursday to take further evidence. We will meet in this room at 11.30 am.

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

5.40 pm

*Adjourned till Thursday 20 May at half-past Eleven o'clock.*

## Written evidence to be reported to the House

PCSCB 01 Leeds for Europe

PCSCB 02 Law Society of Scotland

PCSCB 03 Zoe Everett

PCSCB 04 Alliance for Youth Justice (AYJ)

PCSCB 05 Amnesty international UK