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Public Bill Committee

CRIMINAL JUSTICE BILL

Second Sitting

Tuesday 12 December 2023

(Afternoon)

CONTENTS

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Saturday 16 December 2023

The Committee consisted of the following Members:

Chairs: Hannah Bardell, Sir Graham Brady, † Dame Angela Eagle, Mrs Pauline Latham

† Costa, Alberto *(South Leicestershire)* (Con)
† Cunningham, Alex *(Stockton North)* (Lab)
Dowd, Peter *(Bootle)* (Lab)
† Drummond, Mrs Flick *(Meon Valley)* (Con)
† Farris, Laura *(Parliamentary Under-Secretary of State for the Home Department)*
† Firth, Anna *(Southend West)* (Con)
† Fletcher, Colleen *(Coventry North East)* (Lab)
† Ford, Vicky *(Chelmsford)* (Con)
† Garnier, Mark *(Wyre Forest)* (Con)
Harris, Carolyn *(Swansea East)* (Lab)
† Jones, Andrew *(Harrogate and Knaresborough)* (Con)
† Mann, Scott *(Lord Commissioner of His Majesty's Treasury)*
† Metcalfe, Stephen *(South Basildon and East Thurrock)* (Con)
† Norris, Alex *(Nottingham North)* (Lab/Co-op)
† Phillips, Jess *(Birmingham, Yardley)* (Lab)
† Philp, Chris *(Minister for Crime, Policing and Fire)*
† Stephens, Chris *(Glasgow South West)* (SNP)

Simon Armitage, *Committee Clerk*

† attended the Committee

Witnesses

Rebecca Bryant OBE, Chief Executive, Resolve

Harvey Redgrave, Executive Director, Crest

Andy Marsh, Chief Executive Officer, College of Policing

Andy Cooke QPM DL, HM's Chief Inspector of Constabulary and HM's Chief Inspector of Fire & Rescue Services

Dame Vera Baird DBE KC

Jonathan Hall KC, Independent Reviewer of Terrorism Legislation

Professor Penney Lewis, Commissioner for Criminal Law, Law Commission

Public Bill Committee

Tuesday 12 December 2023

(Afternoon)

[Dame Angela Eagle *in the Chair*]

Criminal Justice Bill

2 pm

The Committee deliberated in private.

Examination of Witnesses

Rebecca Bryant and Harvey Redgrave gave evidence.

2.3 pm

The Chair: We are now sitting in public and the proceedings are being broadcast. We will begin this afternoon's session by hearing oral evidence from Harvey Redgrave and Rebecca Bryant OBE, who is with us virtually. We have until 2.45 pm for this panel, so please keep your eyes on the clock. Could the witnesses please introduce themselves for the record?

Harvey Redgrave: Hi, and thanks for having me. I am Harvey Redgrave, chief executive of Crest Advisory, which is a specialist crime, policing and criminal justice organisation. I am also a senior fellow at the Tony Blair Institute, where I lead on home affairs policy.

Rebecca Bryant: Good afternoon, everybody. My name is Rebecca Bryant. I am the chief executive of Resolve. Resolve is a membership organisation focused on community safety and antisocial behaviour. Our members are housing providers, local authorities, police forces and police and crime commissioners.

The Chair: I begin this evidence session by calling Alex Norris for the Opposition.

Alex Norris (Nottingham North) (Lab/Co-op): Good afternoon to both our witnesses; thank you for your time. Rebecca Bryant, you mentioned Resolve's long-running interest in antisocial behaviour. Could you give us your views on the clauses in the Bill that relate to antisocial behaviour and whether there is anything you would add to them?

Rebecca Bryant: Thank you for the question. First of all, as a membership organisation, the views are of our members. We have spent time talking to them since the Bill was published. Quite a few different views have been put forward by our members and by Resolve ourselves as an organisation. Some of the clauses we agree with, and some of them we do not. I can take you through each particular one.

We absolutely agree with the clause on creating a duty for police and crime commissioners to promote awareness of the antisocial behaviour case review. I am quite happy to elaborate on that. On extending the power to implement dispersal orders to local authorities, our members generally agree that dispersal powers should remain with the police rather than being spread to local authorities, and there are very specific reasons for that. The police are required to enforce any breach of the dispersal order, and really these powers should be seen as a partnership response rather than a sole agency response.

When a dispersal order is being put in place, that needs to be considered by the local authority and with it as a partnership across the board through the community safety partnership. There should be an understanding as well that the police are on the ground and out on patrol 24/7, so are in a much better position to be able to use that power. They also have the skills and knowledge to use it.

That takes me on to extending the time frame for a dispersal order from 48 hours to 72 hours. All our members that we consulted are in favour of the extension of time. Our members are not in favour of extending the public spaces protection orders to the police because local authorities are very skilled in using them—that is where the knowledge lies. Significant expertise and a lot of consultation with the public are required before you put one in place. Rather than extending it, it should be used in partnership through the community safety partnership.

In relation to lowering the age for issuing a community protection notice from 16 to 10 and increasing the upper fine limit from £100 to £500 for breaches, members are mixed, particularly on the lowering of the age to 10. A lot of work goes into early intervention and prevention and how we deal with young people on the path to causing antisocial behaviour. Penalising young people at age 10 for antisocial behaviour by fining their parents if there was to be a breach is quite a significant step and flies in the face of our approach to early intervention and prevention, which uses positive mentoring and youth interventions for young people.

On extending the time frame for applying for closure orders from 48 hours to 72 hours after serving the notice, everybody was in favour, but they would like to see more explicit guidance and support around magistrates courts. On giving the closure power to housing providers, everybody who is a housing provider is absolutely in support of that; Resolve has been lobbying for that for some time now, particularly as it is a very good tool to use for more serious types of antisocial behaviour, such as cuckooing and exploiting vulnerable people.

In terms of the power of arrest for all breaches of civil injunctions, on the whole most of our members are not particularly swayed by that because the power of arrest is a very serious tool. It requires the police to conduct that power of arrest, and it will mean significant resource implications for the police. Not only that, but we would have to get past the courts on proportionality and reasonableness for the power of arrest to be attached to any clause. It would also significantly impact on the court system, particularly if someone was arrested. They would have to be presented to court the next day, so there would be issues around cells and also the management of community expectations once we had got an injunction with the power of arrest. For the CSOs who enforce breaches of community protection notices, it was felt that this would be positive because having more resources with which to be able to enforce those breaches would be welcome.

Q76 Alex Norris: May I come back to the point on the minimum age for community protection notices? When responding to the Government's antisocial behaviour action plan, you talked about how we need to think about children as victims of antisocial behaviour—I think your phrase was "silent victims". Could you briefly talk us through that?

Rebecca Bryant: Yes. I would like to bust a few myths, if that is possible while giving evidence. There is a perception in the media and the community that young people are the main perpetrators of antisocial behaviour when, in fact, they are not: the vast majority of antisocial behaviour is perpetrated by adults.

In focusing on young people, we should be thinking about how they are impacted by antisocial behaviour. They are often victims. You will have seen terrible films on TikTok and social media outlets of fights, violence and aggression. That means that those young people are victims rather than perpetrators as a whole. We certainly need to recognise that if we can get in early and use the early intervention and prevention tools available to us to stop the antisocial behaviour or stop those young people becoming antisocial, we will be able to reduce antisocial behaviour as a whole.

Antisocial behaviour is often a precursor to more serious crime, so if we can use our opportunity—I call it a "golden moment"—to intervene with a young person, perhaps with an alternative trusted adult from outside the home, and work with them to understand the impact of the behaviour that they may be perpetrating, that in itself does not fall into the idea that we should be reducing the CPN to the age of 10.

Q77 The Parliamentary Under-Secretary of State for Justice (Laura Farris): Mr Redgrave, may I ask you a bit about some of the section 16 provisions about drug testing? You may be familiar with the ambition to give greater powers to test for controlled substances—class B and class C drugs—with a view to directing the person into appropriate treatment at an earlier stage; the idea is that that will intercept more serious offending further down the line. You have written something about this, for the Tony Blair Institute for Global Change, I think—or, at least, the Institute has done so. Can you comment on the provision, and what is your view of a wider form of testing in police stations?

Harvey Redgrave: I am in favour of this measure. I think it was used relatively effectively under the last Labour Government in relation to prolific offenders. *[Interruption.]* Sorry, do I need to speak a bit louder?

The Chair: Please try to speak up a bit.

Harvey Redgrave: I am in favour of the measure. It is right to test more offenders, particularly prolific offenders, many of whom are driven by addiction. The more we can divert offenders into treatment to address their offending behaviour, the better. I think there needs to be a broader look at how we deal with prolific offenders who recycle around the system sometimes tens or hundreds of times before they stop their offending. There used to be something called the prolific and other priority offenders programme, which was disbanded along with the whole infrastructure around it.

There is a need to place this drug-testing measure within a broader set of interventions that look at how we grip prolific offenders, how judges are able to defer sentencing, and how offenders are able to be rehabilitated and dealt with much earlier on rather than them serving short sentences, coming out, reoffending and going back in at great expense to the taxpayer.

Q78 Laura Farris: I think that some of that is in the Sentencing Bill, which is running in tandem with this legislation.

The other question I wanted to ask is about Crest Advisory's role in Baroness Casey's review—again, if you were not personally involved in that, you can correct me. I think Crest Advisory played some role in supporting her review into the misconduct issues in the Met police, and there are two provisions in this Bill that at least partially respond to that. I would like to look at clause 73, which is on ethical policing and the duty of candour. In the light of your work with Baroness Casey, do you think it is important, and if so why? What does it answer in relation to her findings about failings in the Metropolitan police?

Harvey Redgrave: To clarify, some of my team at Crest Advisory were seconded in to support Baroness Casey on her review, but obviously she led the review and wrote it herself. It is really important that we look at the ethics and systems around misconduct within policing. There is a crisis of public confidence in policing at the moment, particularly among women. The Commissioner of the Met has spoken repeatedly about wanting to have more say and control over getting rid of officers when there are cases of misconduct, and I think the Government have acted on some of that.

I support the measure, but I would argue that there is a case for going even further and looking at the whole system around vetting and how that takes place within policing, and the system of who really upholds the professional standards within policing. Which body do we hold responsible—the College of Policing, the National Police Chiefs' Council, or the Home Office? It feels to me like there is a slight lack of clarity at the moment about where the buck stops on some of this at a national level, with each force able to adopt slightly different practices.

Q79 Laura Farris: Do you think it is helpful then that the duty of candour, and what is required underneath it, will be set by the College of Policing? Do you think that will help ensure consistency?

Harvey Redgrave: I think that it is helpful and is a welcome step, but I am not sure that, in isolation, it will be enough to bring about the kind of culture change that Baroness Casey believes is necessary, within not just the Met but policing as a whole.

Q80 Laura Farris: My final question on this topic is about the other highly irregular employment-law-type power in the Bill: the right conferred on a chief constable to appeal against a disciplinary outcome for one of their subordinates. I think we can put that in plain English: if they do not like an acquittal, essentially, they can submit an appeal. Do you think that is an appropriate power for a chief constable to hold? I think Baroness Casey dealt with that; I recall reading about senior officers who were unhappy about the fact that they suspected problematic people were still part of the team.

Harvey Redgrave: It comes back to the question of whether the chief constable should have more discretion over being able to hire and fire people, and to be able to get rid of people they are unhappy with. We have created systems and processes over the last 20 or 30 years that have taken some of that discretion away. It is a balance, and we need proper professional standards to be upheld by the College of Policing. In general, I think it a good thing for there to be greater discretion for chief constables to be able to act when they believe there is misconduct within their force.

Q81 Laura Farris: Okay, that is helpful. My final line of questioning is about one of the issues that has been debated in Parliament, not just in relation to this Bill but previously too. It was about having a stand-alone offence of assaulting a retail worker. I do not know whether you are familiar with the contours of that debate.

We heard from the Crown Prosecution Service this morning, and it said that it did not think such an offence was necessary because the mechanics of an assault charge apply anyway—obviously, with actual bodily harm and grievous bodily harm, if that should arise. There is also a statutory aggravating factor for assaulting a retail worker. Do you have a view on this? If you do, could you set out what it is and why?

Harvey Redgrave: Shoplifting is a real concern and we need some deterrents in the system, but I am not sure that we get those deterrents through harsher sentencing. A bigger problem is whether we are catching offenders, charging them, and convicting them. All the evidence shows that for this type of offending, it is swiftness and certainty that deter rather than severity. Not many shoplifters are thinking about aggravating factors or how long they are going to spend in prison.

Q82 Laura Farris: Just to be clear, is your view basically that the police response needs to be more uniform, rather than we need a distinct offence?

Harvey Redgrave: In general, the Bill probably focuses too much on sentence lengths and not enough on what is happening at the front end, around the police's ability to catch, detain and bring offenders to justice. That is where I think the real gap is.

Laura Farris: Okay. That is all from me.

Q83 The Minister for Crime, Policing and Fire (Chris Philp): I would like to ask Rebecca Bryant some further questions about the antisocial behaviour and nuisance begging and rough sleeping measures.

Rebecca, thank you for joining us this afternoon. In response to the shadow Minister, you raised questions about reducing the minimum age for community protection notices from 16 to 10, which is enclosed within clause 67 of the Bill. Do you agree that bringing 10 to 15-year-olds into the scope of CPNs provides an opportunity to halt a path into criminality that might otherwise occur? Combined with that, there is an opportunity to make other interventions to try to prevent the young person from getting into crime.

Rebecca Bryant: It is using a hammer to crack a nut. For 10 and 11-year-olds in particular who are on the cusp of causing antisocial behaviour, there are many other tools available to partners. I am not necessarily thinking about fining parents, because a lot of the young people who are involved in antisocial behaviour come from more deprived backgrounds, and breaching and fining is not going to enable change.

What we are looking for is a change of behaviour in the longer term. Yes, we are looking to prevent in the first instance, but then we look for change. Being able to engage with a young person and their parents by putting in positive mentoring and other youth interventions would surely have longer term success than a community protection notice would have. Also, there is a community protection warning before a notice; that kind of warning and discussion between a parent, a child and the authorities, which could be the housing provider, the local authority or the police, has much more impact when you are offering a positive intervention.

Q84 Chris Philp: Those interventions are likely to be tried prior to the use of a CPN. Do you not agree that a CPN would be a welcome alternative to prosecution in the more extreme cases?

Rebecca Bryant: More extreme antisocial behaviour is often a criminal offence, so potentially there would be criminality and therefore a charge. That may be welcome in some cases, but not a blanket reduction to say that anybody from the age of 10 could have a CPN, which could then lead to breach and fine. As I say, from our members' perspective, that seems too young.

Q85 Chris Philp: Thank you. I would like to move on to the nuisance begging and nuisance rough sleeping measures. First, do you support the plans to implement the repeal of the Vagrancy Act 1824, and do you agree that repealing that Act potentially leaves some gaps in the law? I would like your views on the nuisance begging and nuisance rough sleeping provisions in clauses 38 to 62, which are designed to replace the 1824 Act measures where nuisance is being caused, but not otherwise.

Rebecca Bryant: First, our members absolutely welcome the repeal of the Vagrancy Act. It is outdated and clunky, and has not been fit for purpose for many years. The replacement powers suggested in the Bill are generally welcomed by our members. I think there is some movement around more community rehabilitation. The people we are talking about here are particularly vulnerable members of society who have been through significant trauma or who have significant mental health problems, drugs and alcohol addiction, and their behaviours and rough sleeping are due to those underlying facts. Thinking about community rehabilitation and support to change is as important as moving people on and creating the powers to do that.

Chris Philp: Thank you, Rebecca. Those are all my questions.

Q86 Jess Phillips (Birmingham, Yardley) (Lab): Harvey, do you think that there is the capacity for police forces across the country to drug-test everybody who comes through their doors?

Harvey Redgrave: No, it needs to be attached to more resourcing.

Q87 Jess Phillips: So if this law passes, it will not be able to be enacted?

Harvey Redgrave: I am assuming there is an impact assessment and a cost that has been attached to the Bill.

Q88 Jess Phillips: Never assume, Harvey. So currently, across the policing estate in our country, this would not be able to happen.

Harvey Redgrave: I do not think it would be able to happen if you took current resource levels as the baseline. Some piloting is already going on in some forces, I think. I do not know how much of that has been allocated in future years.

Q89 Jess Phillips: Okay. As the conversation was about Louise Casey's review, I was remembering some of the highlighted things in that review—testing samples left in fridges with sandwiches and things. I cannot say I have noted that the police estate across the country could cope with anything like this law, so I just wanted to check. Going back to Louise Casey's review and the issue of vetting and suspension, do you think that what is in the Bill is enough?

Harvey Redgrave: No. It is a good step forward, but not sufficient.

Q90 Jess Phillips: Okay. Have you seen evidence that where police officers are suspected of violence against women and girls or child abuse they should be suspended from duty, not just put on paper-based activities?

Harvey Redgrave: I would agree, yes.

Q91 Jess Phillips: You would agree that they should be suspended, as a teacher would be.

Harvey Redgrave: Sorry—I would agree with the premise of your question.

Q92 Jess Phillips: Okay. But currently that is not in the Bill.

Harvey Redgrave: If I could also add one further thing on violence against women and girls—

Jess Phillips: Please feel free.

Harvey Redgrave: One of the good developments that has taken place in the last couple of years is Betsy Stanko's work on rape and Operation Soteria, which is now being rolled out across the country. As you know, it takes a new approach to the way that rape is investigated. There is a very good case for widening that to look at all violence against women and girls, because some of the same principles apply. I would look very closely at whether that requires legislation, and if it does not, at what is required to broaden that approach.

Q93 Jess Phillips: So you think there might be a legislative solution by writing that into primary legislation or secondary legislation.

Harvey Redgrave: Potentially.

Jess Phillips: I will crack on with that, then.

Q94 Vicky Ford (Chelmsford) (Con): Rebecca, when you were talking about clause 67 and the CPNs, I think you suggested at the beginning of your comments that this was not a unanimous view from your members. Is that correct?

Rebecca Bryant: Yes, it is.

Vicky Ford: It is not a unanimous view from your members.

Rebecca Bryant: No, it is not a unanimous view. There are some mixed views. Some people represented by some organisations suggested reducing the age to 14 rather than 10, particularly when we are talking about the 10 to 13 age group, who are particularly young. Yes, of course they have criminal responsibility in this country, but we are talking about antisocial behaviour here rather than—

Q95 Vicky Ford: I just asked a very simple question: were your members unanimously opposed to this measure? And you said no, it is not unanimous—correct?

Rebecca Bryant: Yes, that is what I am saying.

Vicky Ford: Thank you.

Q96 Stephen Metcalfe (South Basildon and East Thurrock) (Con): I have a question for Harvey—a point of clarification, really. You mentioned that you did not think that there was any need to increase the sentence for shoplifting; you thought that it just needed to be applied more uniformly. Is that right?

Harvey Redgrave: I suppose it is more about saying where I think the priority should be. I do not have a particular problem with increasing sentences for shoplifters; it is just that I do not think that that is where the biggest challenge is.

Q97 Stephen Metcalfe: I think the Minister started by asking about the creation of a new stand-alone offence of assaulting a retail worker. By association with your previous answer, do you think that that is unnecessary, or do you think it would be a helpful deterrent?

Harvey Redgrave: I think it is fine; I do not have a problem with it. I am broadly supportive of it, but I do not think it will act as a particular deterrent when we are not catching enough shoplifters to begin with. That would be my slightly—

Q98 Stephen Metcalfe: Sorry to interrupt, but are you saying that all assaults on retail workers tend to be associated with shoplifting?

Harvey Redgrave: Yes.

Q99 Stephen Metcalfe: Thank you. Rebecca, can I follow up on Vicky Ford's question? You made it clear that opposition to reducing the age to 10 was not unanimous. There were some people who thought that 14 might be more appropriate. Were there any who thought it should go up?

Rebecca Bryant: No.

Q100 Stephen Metcalfe: So it is really just a question of finding the right level. Is that correct?

Rebecca Bryant: Yes, I think so. When I say it was not unanimous, I am saying that a few members said that they agreed with 10. The vast majority said that they did not.

Q101 Stephen Metcalfe: Okay. The problem is that between the ages of 10 and 16 there is a vast range of maturity, shall we say. Presumably, if some discretion were exercised, it might well be an appropriate measure for some 10-year-olds but not for others. Would you agree?

Rebecca Bryant: I would suggest that if the behaviour were serious enough to warrant a CPN at the age of 10, there would be other significant issues within the family environment. You would be looking at a huge range of interventions. Unless a particular scenario is presented, it is quite difficult to say what type of intervention you would try in order to reduce or stop the antisocial behaviour, but I do not want to get away from the point

that early intervention and prevention work. If we invest in early intervention and prevention, you would expect antisocial behaviour cases involving young people to reduce. The enforcement side would therefore become less necessary.

Q102 Stephen Metcalfe: Finally, with an understanding of everything that you have just said, do you think that the measure proposed will be detrimental, or is it just unnecessary?

Rebecca Bryant: I think it is unnecessary, and I think you will find it is very rarely used. There are other enforcement tools and powers available for young people that are also rarely used, because the focus of the sector is very much on early intervention, prevention, restorative justice and community remedies. There are all sorts of other tools that are perhaps more appropriate, particularly for dealing with young people who are on the cusp of causing antisocial behaviour.

Stephen Metcalfe: Thank you very much.

Q103 Alex Cunningham (Stockton North) (Lab): Rebecca, I am really interested in the stuff about 10-year-olds. You said that if there were a situation in which one of these orders would be applicable, there would be other issues in that child's life that were affecting their behaviours and everything else. What would be better than imposing this sort of order on a child of 10?

Rebecca Bryant: Look at how we respond to antisocial behaviour. It is a partnership response—things like Supporting Families, which used to be Troubled Families, and those types of interventions and support provided to the whole family, which are trauma-informed and understanding of adverse childhood experiences, and recognise that behaviour is often a symptom of something happening within the family environment. We should be taking a whole-family approach, rather than looking at a young person, a 10-year-old, as an individual on their own. There is something there about the drivers of why that young 10-year-old is behaving in the way that they are. It is much more complex than focusing on a specific incident perpetrated by a child at the age of 10.

Q104 Alex Cunningham: Would you accept that a family that has a child with challenges in his or her life may not be the best equipped to ensure that the child adheres to any order placed on them, and the child may therefore end up in the criminal end of the business rather than the supported end of the business?

Rebecca Bryant: That is a fair assessment. Civil enforcement powers do not enforce; all they really do is set out very clearly how society expects individuals to behave. There is an expectation when that order is given that the person is able to comply. If a young person aged 10 or 11 is perpetrating and demonstrating this type of behaviour, are you setting them up to fail if you are not thinking about different sorts of interventions and support? You could think of supporting the parent to become a better parent, able to set boundaries and support longer term change, or using other trusted adults and other types of intervention and remedy to support that young person to change.

Alex Cunningham: That is very helpful. Thank you.

The Chair: Thank you. It looks like there are no further questions from Members. I thank the witnesses for their evidence. We will move on to the next panel.

Examination of Witnesses

Andy Marsh and Andy Cooke gave evidence.

2.37 pm

Q105 The Chair: We will now hear oral evidence from Andy Marsh and Andy Cooke. We potentially have until 3.30 pm for this panel. Would the witnesses please introduce themselves for the record?

Andy Cooke: Good afternoon. I am Andy Cooke, His Majesty's chief inspector of constabulary and His Majesty's chief inspector of fire and rescue services.

Andy Marsh: Hello, I am Andy Marsh, the chief exec and chief constable of the College of Policing of England and Wales.

Q106 Alex Norris: Thank you both for your time this afternoon. Andy Marsh, I would like to start with you. The point about vetting has come up frequently. You may have heard it in the previous panel, and you may be aware that we also discussed it this morning. What is the College's view on vetting?

Andy Marsh: I am of the view that there has not been enough rigour in the way in which vetting responsibilities and duties have been conducted. I am also of the view—significantly because of high-profile cases, but also because of inspection work by Andy Cooke's team—that not only have vetting processes been inadequate but they have not been complied with. The College has done two things as a start: we have rewritten the code of practice for vetting to introduce new standards, and we are about to launch a new authorised professional practice for vetting that will set new, more rigorous standards across England and Wales that address all of the areas for improvement addressed in Mr Cooke's inspection report.

Is that enough? In my opinion it is not enough. When the spotlight moves on from this important area of safeguarding the public and the reputation of policing, will chiefs and police forces continue to apply the scrutiny and effort that is going into this at the moment? It is my intention—I have expressed this—for this to be an area of service provision that is high-risk and which the College proposes to license or authorise in each force vetting unit each year. There will be training and support for personnel, and there are good people in those force vetting units, but in my plan, if they do not achieve the required standards, they will not be allowed to do vetting. It will have to be done by another police force.

Q107 Alex Norris: I might come to you, Andy Cooke, in a second for your reflections on that, but very briefly, when you write up your expectations, are you likely to put a new time limit on the period of vetting or do you have an alternative way of doing that?

Andy Marsh: I am unlikely to put a new time limit on the period of vetting, because I think in the 21st century when people—I am talking about all employees and police officers—commit a misdemeanour or when something occurs that throws into doubt their vetting status, that

happens in real time, and our vetting systems should be good enough to pick them up in real time as well. We cannot wait for periods of time.

I used to be responsible in England and Wales for firearms licensing, and that period I was responsible for saw a shift in doctrine from revisiting a licence every three or five years to revisiting someone's safety to hold a weapon 24/7, 365 days a year. Our approach in principle, while complying with the code of practice and the authorised professional practice on vetting, is that there will be time thresholds for hard stops on renewal, but in my opinion and assessment, there is an expectation that vetting should be under constant review.

Q108 Alex Norris: Do you think that is technologically possible?

Andy Marsh: I do.

Q109 Alex Norris: Andy Cooke, is the inspectorate of a similar mind to the College on this?

Andy Cooke: I am fully supportive of the College's desire to license vetting officers to practise. As you are well aware, the vetting inspection we conducted not too long ago had more recommendations than any inspection previously done. It showed policing in a pretty poor light. Some forces were doing okay, but overall it was not sufficient to protect the public or the reputation of policing. If policing cannot be sure it has the right people in it, that is a sad indictment on the force or forces across the country. There needs to be a continued focus on this area of policing. Licence to practise will assist in that, and the inspectorate will continue to look at these issues right across the forces across England and Wales.

Q110 Alex Norris: Andy Cooke, clause 19 allows entry, search and seizure without a warrant under certain circumstances. Do you have any concerns over that power and how we can have confidence that it is being exercised properly?

Andy Cooke: It is a power that will need to be closely monitored, but it is a power I am supportive of. The ability to recover stolen property in such circumstances is a real issue if policing is going to catch the people it needs to catch, particularly around the likes of mobile phone theft, which is endemic across large parts of the country. The inspectorate will obviously keep a close eye on it as part of the legitimacy of policing and the ethical context in which policing is conducted. It will form part of future inspections when necessary.

Alex Norris: Thank you very much.

Q111 Chris Philp: Welcome Andy Marsh and Andy Cooke. Let me take the opportunity to say thank you for all the work you and your teams do supporting policing across England and Wales. It is very much appreciated by all of us, both in Government and in Parliament.

Andy Marsh, can I continue the line of questioning about the warrantless power of entry where it is necessary to recover stolen goods when there is no time to get a warrant? Andy Cooke just mentioned that the inspectorate would keep a close eye on whether that power, if granted by Parliament, is being exercised properly. Could you confirm for the Committee's benefit whether you would in due course, if this were passed, produce some authorised professional practice to make sure that police forces exercise the power in a way that is responsible?

Andy Marsh: Minister Philp, as you are aware I am strongly supportive of police officers conducting all reasonable lines of inquiry to catch criminals and keep communities safe. It caused me great frustration as a chief if ever a letter landed on my desk to say, "My bike's on sale on eBay, my daughter's phone is in a house and you said you couldn't do anything".

We have already started our plans to hardwire this new power into our guidance, our training and our standard setting to do our very best, along with working in partnership with His Majesty's inspectorate of constabulary and fire and rescue services to ensure that we use this power consistently in two respects. I do not want to see circumstances where the power should be used, where it is not and people could be caught and property returned; and I certainly do not want it to be used in such a way that would undermine confidence in policing. As in many things in policing, we need to get this just right. The College has a fundamental role in achieving consistency and getting it just right.

Q112 Chris Philp: So do you, like Andy Cooke, support the inclusion of this measure in the Bill?

Andy Marsh: I do.

Q113 Chris Philp: And are you confident that, with the right guidance and inspection regime, it can be implemented in a reasonable and proportionate way?

Andy Marsh: I am.

Q114 Chris Philp: Thank you. Let me ask Andy Marsh again, about the statutory ethical policing code contained in clause 73, which includes a statutory duty of candour, which was one of Bishop James Jones's recommendations following Hillsborough. Can you tell the Committee what kind of impact you think that will have on police conduct in general and, specifically, the duty of candour going forward?

Andy Marsh: It should be a very significant moment in policing. The first code of ethics was put in place in 2014. I could explain to the Committee why we think we are able to improve on that, but we have to talk about why it is going to make a big difference. The College is able to put a code of practice in place which requires a chief constable to have due regard.

We wanted to make that code of practice as strong as possible around a duty of candour, but there were many other things in it—for example, a duty on a chief constable to ensure ethical behaviour in a force, through their processes, policies, reward recognition, promotion, application of the victims code, challenging unprofessional behaviour, looking after staff welfare, dealing with misconduct and vetting properly.

Even before we get to the duty of candour, which is very strong, this is the strongest lever the College of Policing can pull in order to bring about cultural change around standards in policing. We will be working with the launch of the second two parts of the code in January, which is different from the legal code. We will be working on supporting policing over a change programme to secure that cultural change, over many months—possibly years.

Q115 Chris Philp: Great, thank you. May I ask Andy Cooke and Andy Marsh each in turn a question which has arisen a few times, both in this Committee's proceedings today but also over the last year or two? It relates to the question of whether there should or should not be a separate offence for the assault of a retail worker.

As you know, we made assaulting a public-facing worker a statutory aggravating factor for other assault offences in the Police, Crime, Sentencing and Courts Act 2022. We have already created a separate offence of assaulting emergency workers. Some people now say that we should have a separate offence for assaulting a retail worker, to give it more prominence. Others say, "Well, where do you draw the line?" You could have an offence for assaulting a teacher, a local councillor—and so it might go on. What is your opinion about whether there is any use in creating that separate, stand-alone offence?

Andy Cooke: I think I am right in saying it is an offence in Scotland, but I do not know how much that has resulted in a change in offending behaviour. I have not particularly looked at that point. It is a question of where you draw the line. The key issue is not whether a new offence should be constructed for assaulting a shop worker. It is more about how well, or not, policing is dealing with assaults, full stop; and how well police officers are dealing with the offence of shoplifting and the ancillary offences that sometimes go with that. I am aware that the National Police Chiefs' Council is doing an awful lot of work around this at the moment, working with the PCC for Sussex and yourself, Minister.

Certainly, there has been a large reduction in the number of positive outcomes or detections for shoplifting over the last five or six years. That is not acceptable. It is in line with an awful lot of the other core charge and outcome rates that we have seen across policing. This is more about ensuring that the police across England and Wales treat this more seriously, particularly where there are aggravated offences alongside, such as assault. That is what Chief Constable Amanda Blakeman is attempting to do on behalf of the National Police Chiefs' Council. Rather long-windedly, to come back to your initial question, without seeing the evidence for how that reduces offences or increases detections, I would not necessarily be in favour of a separate offence.

Q116 Chris Philp: Before Andy Marsh answers the same question, you referred to the recently published retail crime action plan, which Chief Constable Amanda Blakeman authored in close consultation with me as Police Minister and with the Home Office. You highlighted the unacceptably low charge rates, which I agree with. What level of confidence do you have that that retail crime action plan will deliver those results? To what extent will you be able to follow that up in your regular PEEL inspections and your "all reasonable lines of inquiry" thematic next spring to make sure that that action plan, which is good on paper, is actually delivered in practice and delivers the results, which are more detections and arrests?

Andy Cooke: All those issues will be captured by the police effectiveness, efficiency and legitimacy inspections that we do every two years on every police force across England and Wales. We will look at reasonable lines of inquiry particularly and at the overall outcome rates—not just charge rates, because the out-of-court disposals are important as well, as it is whatever is the best sanction to fit the individual and the community at the end of the day. We look right across that to ensure that policing is doing what it should be doing, as we do every week of the year, and will continue to do so.

This is a really important issue for me, because these are crimes that strike at the heart of communities and neighbourhoods. It is really important that policing gets confidence and trust back. Whether that is the confidence and trust of shop workers or across neighbourhoods and communities, whichever way it is, a large part of getting that confidence and trust back is by the police showing themselves to be effective in what they do. The police need to increase their efforts to do so.

Q117 Chris Philp: I completely agree, as you know. Without the zero-tolerance approach, there is a risk of escalation. Andy Marsh, may I put the same question to you about the utility or not of a separate offence?

Andy Marsh: The College is supporting policing with guidance around dealing with retail crime, particularly persistent offenders. I agree with everything that has been said: much more needs to be done in order to deal with this crime type.

In relation to the specific offence, I can see that there are two purposes to it. The first is that it might well act as a deterrent. The College of Policing holds the evidence base for policing. We cannot categorically tell you there is an evidence base for deterrence, but that would be one of the reasons for putting it in place. I think the second, more important reason is for Parliament to signal its concern about a particularly disruptive crime that damages the fabric of our communities and society. This sends out a signal that the police need to do better. I am supportive of the proposal.

Q118 Chris Philp: It is not a proposal; it is from the Government—it is an idea that has been floated from time to time.

Moving on to a proposal contained in clause 21, which relates to giving police access to driver licence records—particularly the photograph—which currently are only readily accessible for road traffic purposes. The idea is that they can be used for facial recognition searches, where an image is retrieved from a crime scene from CCTV. That might include a shoplifting offence. This would make the DVLA driving licence database searchable by the police, in the same way that other databases are, including for facial recognition purposes. In your view, both Andy Marsh and Andy Cooke, would that assist the police in investigations? Is that a measure you would support?

Andy Marsh: I am supportive.

Andy Cooke: Yes, I support it. What goes alongside that is ensuring that the actions of the police on facial recognition are ethical and lawful. I am a big supporter of facial recognition used in the right way, and I think that opening up that database would benefit the detection of crime.

Q119 Chris Philp: Excellent. My final question relates to clause 74, which is concerned with the appeal mechanism after a misconduct hearing. At the moment, if an officer is dismissed by the panel—which remains an independent-majority panel with the chief chairing it—the officer

who has been dismissed can appeal to the police appeal tribunals. If the officer is left in post, however, there is no appeal the other way, so if the chief constable wants to sack the officer for misconduct and disagrees with the panel, there is no right of appeal. This clause would introduce such a right of appeal.

Do you agree with the Met Commissioner, Sir Mark Rowley, in saying that this measure will help chief constables better to manage their workforce and root out officers guilty of misconduct where appropriate and where necessary?

Andy Cooke: It would certainly help in relation to that. At the moment, the only recourse is judicial review, which as we know can be exceptionally expensive and difficult, so I see no problem at all in having that right of appeal for a chief constable.

Andy Marsh: The code of ethics, which we have just been talking about, puts a responsibility—in fact, a duty—on a chief constable to discharge their responsibilities around standards, conduct and behaviour; and I have been in a position, as a chief, where I have not been able to do that because ultimately I haven't had the decision on who I ultimately have serving alongside me as a police officer. They are not employees—they are servants of the Crown. I have found that to be a deeply unsatisfactory position, so I am supportive of this.

Chris Philp: Good. Thank you.

Q120 Jess Phillips: My first question is to Andy Marsh on the issue of vetting, which he very eloquently said needs to be a constant. Do you not think, then, that there needs to be at least some guideline in law about the regularity of that vetting?

Andy Marsh: Yes, I do. That is a periodic hard stop, let us say, where there is a full review, but there should be a number of different control measures, both automated data searches and a duty—a responsibility to report and self-report—that will occur in real time between those vetting periods.

Q121 Jess Phillips: Okay. What sort of timeframe would you put on that hard period?

Andy Marsh: Whichever timeframe you chose, you could see reasons why it wouldn't be right.

Q122 Jess Phillips: Ten years is currently the suggested—

Andy Marsh: Ten years is the current one. I think to change that without massively increasing the capacity of vetting units would be to, let us say, write a cheque they couldn't cash.

Q123 Jess Phillips: So currently, even if we were to legislate that the vetting had to be improved—

Andy Marsh: If you were to legislate then the police would have to find the money, and it is often—

Jess Phillips: And it is currently not available.

Andy Marsh: Difficult choices.

Q124 Jess Phillips: Difficult choices would have to be made in order to ensure that vetting was happening. I appreciate your honesty.

Andy Marsh: I would say, "What is the best way of ensuring a trusted, ethical workforce that actually is enforcing highly frequent—I would debate highly frequent—more frequent, hard-stop vettings which would be very costly, with back-office capability?" That might, in my opinion, not be the best way of doing it. I would rather move to a more agile, 21st-century—

Q125 Jess Phillips: Automated.

Andy Marsh: Yes, automated.

Jess Phillips: Database, AI and so on.

Andy Marsh: Yes. So many of the searches that are required for vetting can be put into robotic processes, with ultimately the human being making the decision at the end.

Q126 Jess Phillips: Of course. You talk about there being an automated system. I have asked everybody who has sat in front of me today this question. Currently there is no crossover between behaviours found in courts in the United Kingdom; so in family courts, in civil courts in our country, that would not currently be being used in the vetting. Let's say a domestic abuser was found to be a multiple domestic abuser of various different women, in the family courts in this country. Would that come up in your vetting?

Andy Marsh: To directly answer your question, I don't know. Possibly not.

Jess Phillips: The answer is no. I do know.

Andy Marsh: But actually, if you had a multiple domestic abuser, I am pretty confident that they would be flagging on other systems.

Q127 Jess Phillips: Except that less than one in five people come forward to the criminal justice system.

Andy Marsh: Excepting that.

Jess Phillips: Okay. Excepting the four in five that don't come forward.

Andy Marsh: I take your point.

Q128 Jess Phillips: Okay. But an automated system that had all of that data on it for vetting would be helpful?

Andy Marsh: Yes.

Q129 Jess Phillips: What is your view on the suspension issue? I have unfortunately heard of a case where a police officer was suspended for safeguarding concerns, shall we say, and was put on paper-based duty, and the thing they were doing was the vetting. Do you think that officers who are under suspicion of issues of domestic abuse, sexual abuse, child abuse and safeguarding-related crimes should be suspended?

Andy Marsh: Will you permit me a little commentary, rather than a yes to that?

Jess Phillips: Go for it, mate.

Andy Marsh: I will tell you an anecdote, which I think will explain why this is dangerous. People can use the police complaints system for reasons other than simply securing justice and fairness for having been treated unfairly. As chief constable of Avon and Somerset, I became aware of two reports that I had in fact—and you will be shocked by this—raped the police and crime commissioner, Sue Mountstevens. I certainly had not, and the lady reporting that was in a mental ill health institution, but the crime recording rules required the police force to record that there was a rape, and I was named as a suspect. I would have thought that it would be farcical, wouldn't it, for me to be suspended under such circumstances, given that there was not a grain of truth in that? There is a danger—

Q130 Jess Phillips: But it would be very easy for a professional person to initially triage such a case, for example, and do some very clear due diligence about somebody's mental ill health, the likelihood and the timings. If there were any sort of case to be investigated and answered, do you not think that the person should then be suspended?

Andy Marsh: Fairness and justice are for everyone, particularly victims of violence against women and girls; if you look at everything I have said and done in my career, you will see that that is what I genuinely believe. However, I believe that an automatic suspension would be swinging the pendulum way too far. I have given you a very simple example, which is of course ridiculous. What I have learned through 37 years in policing is that there are many, many different shades of ambiguity around situations.

Jess Phillips: I too will give you—

Andy Marsh: Very rarely do we find right and wrong.

Q131 Jess Phillips: Of course, of course. It is funny that often it is only on this issue that there are only grey areas. A police officer in my police force—in West Midlands police—was put on light duties after he was considered a risk to children, and he used that to access the data. He went on to abuse, and has since been convicted of abusing, around 19 teenage boys. He used the powers of being put on desk duties in the police force to do that.

Andy Marsh: That is shocking and disgraceful, and it should never have been allowed to happen.

Q132 Jess Phillips: I am afraid that I could probably come up with many more examples similar to that. You do not think that, in those circumstances, there should be a suspension.

Andy Marsh: In the circumstances that you just described, of course. But I will say to this Committee that I think each case should be treated on its merits, with a very low threshold for suspension.

Q133 Jess Phillips: On the basis of it being currently treated on its merits, which we cannot necessarily legislate for, how many do you think are being suspended, left in police forces on separate duties, such as vetting, or, of those on that sort of suspension—as was the case in I think the Metropolitan police; it was definitely a police force—are training the new officers?

Andy Marsh: I can write to you with that information, but I am afraid that I do not have it to hand.

Q134 Jess Phillips: Okay. That would be very helpful, thank you. Confidence that anything can be implemented is undoubtedly vital. Your eBay example was a good one. You stated that you were confident that all this could be implemented; however, you just said that the police would need to write a cheque, or that a massive cheque would have to be written for some of the ethics and standards things. If everything in the Bill were implemented—I invite you to comment, for example on how you think the drugs testing would be rolled out—how it is possible that everything will be implemented at the same time as prioritising violence against women and girls crimes in every force? How will it be implemented so that confidence is not lost?

Andy Marsh: I do not think I said that I was confident that all the powers in the Bill could be implemented. I was answering the question about traceable property and the power to gain entry—that was the element that I was confident about.

Q135 Jess Phillips: Oh, specifically—apologies. Do you think that everything in the Bill could be implemented?

Andy Marsh: I am supportive of the measures in the Bill. Some will undoubtedly come with a requirement to increase the resource.

Jess Phillips: Such as?

Andy Marsh: The drugs testing would be a good example. I do not believe that there is currently a latent capacity waiting to do that.

Jess Phillips: There is currently not the capacity available to do that.

Andy Marsh: No.

Jess Phillips: I didn't think there was. Okay, thank you.

Q136 Mark Garnier (Wyre Forest) (Con): Andy Marsh, can I continue with you? I have an observation, following on from Jess Phillips, about what sounds like a nightmare, where you were accused of rape by somebody. Just as an observation, were that to happen to a Member of Parliament, you might find yourself being asked to stay away from the House. You might lose the Whip from the party you are a member of. It is an interesting observation that in this place, there is almost a presumption of guilt before anything else when it comes to this type of crime, where in theory Members of Parliament can have access to vulnerable people. It is an interesting dichotomy, I suppose, that where the police have access to vulnerable people the whole time there could be this same problem. As I say, that is more of an observation than me necessarily asking you to respond to it—

Andy Marsh: Well since you make the observation, I am not sure, as a police officer, that most police officers would agree that the standards of conduct in Parliament are necessarily higher than the standards of conduct for a police officer—if you don't mind me saying.

Q137 Mark Garnier: It is about the response to the standards of conduct; it is not necessarily the standards of behaviour, but the response to them and how Parliament responds.

Andy Marsh: The College of Policing is responsible for a number of different products to support the professional standards that are maintained within policing. In relation to violence against women and girls, we conducted a super-complaint review in partnership with the Independent Office for Police Conduct and His Majesty's Inspectorate of Constabulary and Fire & Rescue Services, and we found a number of weaknesses and flaws in the way that, for example, allegations of domestic abuse against police officers were dealt with.

We are working very hard to tighten up those shortcomings and make improvements. In fact, the lead for the violence against women and girls taskforce, Maggie Blyth, is now working as my deputy and using all the levers at the disposal of the college to hardwire those standards into the way we go about our business. I would challenge any suggestion that we have a soft attitude to violence against women and girls.

Q138 Mark Garnier: No, no—I wasn't trying to suggest there was a soft attitude. I was just trying to say that there are lots of different examples.

I wanted to follow on from Minister Philp's questions earlier about powers of entry, because I was fascinated by your response. You mentioned that you might see that somebody obviously has an iPhone in their house—it has been stolen and then found on the Find My iPhone app, so there is very hard evidence that it is definitely there, but a police officer cannot do anything about that. You mentioned similarly a bicycle that could be for sale—a daughter's bicycle for sale on eBay, for instance. You talked about how you would give guidance to police officers on how they go about enforcing this, but I came away slightly more confused; this is more me as a layman, trying to understand how you go about doing your business.

What struck me is that at the one end of the scale through the Find My iPhone app, you are looking directly at a bleep that says, "This phone is in the front bedroom of this bloke's house in Walthamstow" or wherever—other constituencies are available. You know for a fact that it is there because the electronic signature is there. If someone has a bicycle up on eBay, it is probably there because that is where the person is advertising it from, but you do not necessarily know for sure. At the other end of the scale, you have a hunch that somebody may have some stolen goods in their house, but you would obviously then get a search warrant. If you are writing the guidance, how do you find the point at which one side is very clearly, and the other is very clearly not, eligible for the powers of entry?

Andy Marsh: There is a continuum of reasonable grounds and belief, which is written into this proposed legislation, that is actually very strong. It is about as strong as it gets in the judgment of a police officer. We will give forces written guidance, probably in authorised professional practice, and we will give them material on which they can be trained face to face in the classroom and material that can be used online.

Without a doubt, there will be some scenarios that will need to be debated among the groups of police officers engaging in professional development. We will also put this in the initial training curriculum. I am sure, given my confidence that we can introduce some guidance and training that would ensure consistency, that we will see a testing, through the judicial process, of what that belief actually means. At some stage, I am pretty confident that we will end up with a consistent interpretation of what it means under different circumstances.

Q139 Mark Garnier: There are different forces across the country. Some could be a bit more punchy about it, and some could be a bit more reticent about it, but eventually through legal testing in the courts you would come to a—

Andy Marsh: It is my job, through the college, to ensure consistency. Within a bandwidth—Mr Cooke's inspection reports show this for pretty much any aspect of policing—you will see forces that do more of something and less of something. Actually, it is my job to ensure that the good practice from the inspections conducted by HMIC is fed back into our guidance.

We have a practice bank which turns that good practice into examples on our website—I would welcome you all looking at that—for a range of things. That will be one of the ways in which we help forces interpret this. But I would not subscribe to any suggestion that it will be the wild west out there, and that you will have one force doing something completely different from another.

Q140 Mark Garnier: No, I am sure that is the case.

Andy Cooke, there will be a number of people who are going to be worried that the police may take advantage of these powers in order to get around the trouble of getting a search warrant. How would you reassure my constituents that that is not going to be the case and that we can be confident that this is going to be used for the legitimate reasons, which I am sure Andy Marsh will lay out? How can we be confident that that is not going to be broken?

Andy Cooke: I think the first stage is the fact that it is an inspector's written authority to do it, and it can initially be given verbally, but then the inspector has to put the name to that action and fully understand what the reasonable belief is to ensure that to happen.

Secondly, we will consider this as part of our inspection regime. When we look at the legitimacy of policing and at the powers of policing, we focus on stop and search and on use of force. We focus on the legitimacy of the powers that the police are using in any particular way. As this is a new power as well, if it is passed by Parliament, it will get particular attention from ourselves.

Q141 Mark Garnier: And you are both confident it will be safe.

Andy Cooke: I am confident it is the right thing to do and the right law to pass. Will mistakes be made? Of course they will. Police officers are human like everyone else. Is there a danger of it being misused in a very small number of cases? Potentially—but that is the same for any power that policing has, which makes it so important that the right people come into policing.

Mark Garnier: That is really helpful. Thank you very much.

Q142 Laura Farris: I just want to pick up on one point about the suspension issue that Jess Phillips, who is no longer in her place, was raising with you, because I did not totally understand your answer. What is the threshold for the suspension of a police officer?

Andy Marsh: To explain the process, when a complaint is raised, internally and externally, the chief constable will have a delegated appropriate authority, which tends to be the deputy chief constable. They will have a pretty much weekly meeting, but sometimes it is a real-time daily meeting if something crops up that they need to consider.

The first thing that would happen is that a complaint would reach a threshold of gross misconduct or, indeed, criminal. Once it has reached that threshold, the deputy chief constable—the delegated appropriate authority—needs to make a decision about what should happen to that person. Should they be suspended? Can they continue with their duties? Should they engage in some degree of protected-type duty? What I can say, from my experience of working with police forces across England and Wales, is that the threshold and the tolerance before suspension has dropped substantially.

Q143 Laura Farris: That does engage quite a significant issue because it is so different from what would happen in the ordinary workplace. Under the Employment Rights Act 1996, let us say an allegation of serious sexual harassment—maybe not a criminal offence, but misconduct—was advanced. The employer has a duty in law to sort of establish the basic facts. In the example you gave, if both the complainant said, "That never happened," and everybody said it was not true, it would not meet the threshold. But if it does meet a threshold where there is, as I think Jess put it, a case to answer, in any normal workplace that would ordinarily result in suspension on full pay, pending a disciplinary process, at which the member of staff may end up exonerating themselves. But this system seems quite nebulous.

Andy Marsh: No, I am not expressing it clearly, because if it would appear to be a substantial complaint—a complaint which would undermine the trust and confidence of the public should that officer remain serving—then they should be suspended. Actually, I can reassure you, in all the cases that I am aware of and that I look at where there are allegations of violence against women and girls, I see a very low threshold for suspension, so if I have misled you at all, I am sorry.

Q144 Laura Farris: But what if it was just sexual harassment?

Andy Marsh: Then they are very likely to be suspended, and I am really happy to write to the Committee and share the guidance and information—

Q145 Laura Farris: I am not putting you on the spot; I am just trying to establish where the threshold sits.

Andy Marsh: It is very low. If I was accused of any form of domestic abuse, verbal or physical, or coercive control, I can guarantee you that I would be suspended.

Laura Farris: Okay, thank you.

Q146 Alex Cunningham: I want to take you back to the shop workers issue. Minister Philp, in his comments, clearly demonstrated that the Government are a bit shy of having a specific charge related to assaults on shop workers. For the record, can you tell us why shoplifting and related crime does not get the attention it requires and that the public, shop workers and the USDAW would like it to have?

Andy Marsh: In explaining this, I am in no way seeking to justify a lack of attention, but when a call is made to a police control room, they will triage it and they will use something called a threat, harm and risk matrix. If the offender has left the scene and no one is at immediate risk, that is unlikely to secure an immediate deployment. There is more likely to be a follow-up investigation. The retail crime action plan and guidance on our website, and all the focus on the use of images and facial recognition and on persistent offenders, is bringing a much sharper focus to an area of standards and police response that has slipped to an unacceptably low level.

Q147 Alex Cunningham: You are saying that in recent times the police have not responded to shop crime in the way that they ought to have.

Andy Marsh: Yes, that is very often the case. For example, if on the one hand you had an incident of shoplifting where the offender had left the scene—let's say the items stolen were less than £50—but on the other hand you had a report of a domestic violence incident or some antisocial behaviour happening on the street right now, those two calls would be prioritised above the shoplifting.

Q148 Alex Cunningham: How much of it is a resource issue? If there were more neighbourhood police, would that sort of thing get the attention everybody believes it deserves?

Andy Marsh: When you look at the changes in crime type over the last decade, we have seen a very significant rise in what I would call complex crime and vulnerability. The answer is that the police need to be able to respond to complex crime and vulnerability, and they need to be able to secure the confidence of the public in their ability to deal with shoplifting. I am a big supporter of neighbourhood policing. We intend next year to introduce a professionalising neighbourhood policing programme, which will give neighbourhood officers, for example, not only the training and skills to deal with shoplifting, but the new powers on antisocial behaviour to keep their communities safe.

Q149 Alex Cunningham: That is helpful. I wonder if either of you could educate me in another area. If somebody comes into your home and bashes you, is that level of crime higher than if it happens in a public place or a shop? Is the law different?

Andy Cooke: No, the law is not different. The aggravating factor is that it is inside your house, not in a public space. People may consider that one is worse than the other, but at the end of the day the offence is the same, unless there is a weapon involved, as it obviously becomes a different offence after that—in private and in public—but both are equally serious.

Q150 Alex Cunningham: Is there not the same level of aggravating factor if somebody goes into a corner shop, where someone lives over the shop, and bashing that person?

Andy Cooke: The law would not necessarily say so. It would depend on the circumstances, on the weapons used and on whether it was a public or a private place. An open shop is, to a great extent, seen as a public place.

The point I am trying to make is that an assault on a shop worker in a shop is a serious issue, and policing needs to do better to respond to these issues. I do not think there is any chief constable in the country who would disagree with that.

You asked if it was a resource issue. If there were more police officers, then they would be able to respond to more issues. Part of it is around prioritisation; and chief constables are responsible for the prioritisation that they choose. Have chief constables across the board got that prioritisation right? In my view, no, because a lot of the neighbourhood crimes we see—the thefts, car crime, burglaries, robberies—for some time have not been given sufficient credence, nor sufficiently tackled, as we have seen from the very low charge and disposal rates.

Q151 Alex Cunningham: You said a few moments ago that the aggravating factor in a corner shop situation would not necessarily apply. Is there not a case for strengthening the law to protect the corner shop keeper or the person in Marks & Spencer who is assaulted? Should the fact that they are being attacked within their workplace not be an aggravating factor?

Andy Cooke: I understand fully the point you are making. I think it might strengthen the response from the police, as opposed to strengthening the law. The question of whether there should be a separate offence for teachers or other people in the community has been asked already. There are enough laws to deal with this. It is the response from policing that needs to improve. The response from some of the retailers themselves—that is, the bigger retailers, who can afford to put more money into this—also needs to improve.

Alex Cunningham: Thank you.

The Chair: If there are no further questions, I thank our witnesses for their evidence. We will move on to the next panel. Thank you very much, the two Andys.

Examination of Witness

Dame Vera Baird KC gave evidence.

3.22 pm

The Chair: We now hear oral evidence from Dame Vera Baird, former Solicitor General and former Victims' Commissioner for England and Wales. For this panel we have until 3.50 pm. Could the witness please introduce herself, for the record?

Dame Vera Baird: I am Vera Baird. As the Chair has just recited, that is my background. I am very pleased to be here; thanks for the invitation.

The Chair: I just gave the very briefest background.

Dame Vera Baird: Well, I've lived a long time—let's be careful.

Q152 Alex Cunningham: You are very welcome, Vera. I think this is the third or fourth Bill where we have taken evidence from you, when myself and Minister Philp have been in the room.

You are aware that the Victims and Prisoners Bill is still going through Parliament; it is hoped that it will be improved somewhat in the Lords. Can you offer a general comment on how you see this Bill providing additional solace for victims?

Dame Vera Baird: I think there are some bits of it that are good and perhaps will be very helpful to victims. The real problem with the Bill, if I may be really clear about it, is that it does not really contribute to solving the key criminal justice issues of the day, which are that charging has collapsed, prosecutions are few, there is a backlog of 65,000 at the courts—which has got worse, not better, since the end of the pandemic—and the prisons are full. There is no coherent strategy or provision in the Bill that is tackling any of those issues. Fine, there is some change to sentencing, but you have to appreciate how few people get as far as sentencing these days. I wonder whether we are not starting at the wrong end.

However, having said that—and I do say that, very strongly; and in that sense, the Bill is a disappointment—there are some bits of it that are very welcome.

Q153 Alex Cunningham: Which ones?

Dame Vera Baird: I think that rationalising the way intimate images are dealt with is very good. The Law Commission has done a really good job of doing that. I think there are a couple of missing bits, which I could come back to later. Probably some of the aggravating sentence provisions are good, but I am worried about the fact that the Wade review has not been implemented as a whole.

There is a risk with the aggravations of sentence in domestic abuse without the mitigating factor in the Wade review. If someone strikes back after suffering coercive control for a long time, that should be a serious mitigation. I can easily see some of the aggravating provisions catching women, who will not be protected by the mitigation. Although some of the aggravations are fine, that is a real problem for women victims of coercive control—coercive control is 90-odd per cent. men on women; there is no doubt of that. That is the classic model of male-on-female, spousal domestic abuse. I am worried a little bit about that, but the basic provisions are reasonably okay.

I am pretty worried about prisoners going abroad. The problem with that is that it is permission without really knowing what permission is being given for: we do not know what kind of prisoners will go, whether it will be in the middle of their trial, whether it will be while they are still on remand or any of it. That is a little worrying. It is a bit of a mixed bag.

Q154 Alex Cunningham: We will move on a little. Given what you have said, do clauses 23 and 24 about the aggravating factors in grooming and the end of relationship go far enough?

Dame Vera Baird: I am not sure what the grooming one adds; I think it just broadens it. If grooming is involved, it is already taken into account as an aggravating factor in sentencing. Perhaps we can do that with a person who might have abused a groomed child directly. Perhaps this provision broadens it so that if the person who fixes up the child is also groomed—perhaps become someone has gone through him, grooming is in the

environment and so it will enhance the sentence. The Bill broadens this a little; if it does, it is a good flag to wave because we want to tackle grooming and make sure it is taken into account. But I do not see it as a major change.

The problem is where there is a victim of someone abusive, and the killing is brought about by the victim's decision to try to leave—or to leave. So we are looking at aggravating the sentence of an abusive person when the victim has said she is going to leave. That is a classic model, which Jess knows all about: the eight steps to homicide. That has been well researched. Professor Jane Monckton-Smith talks about this: when the victim says she is going to leave is the most dangerous time. That is the time when killing happens, so it is appropriate to aggravate the sentence because of that position being there—it is commonplace.

The worry is that sometimes women who have been coercively controlled for a very long time and have suffered badly are also aware that their husband is being unfaithful with someone else. He says that he is going off with the other woman, and that can trigger her to kill him. Without the protection in the Wade review—to say that if she is being coercively controlled, that is a mitigation—what you will have done is to aggravate her sentence through this change, which is not a thing that anyone intends. It could do with just another quick look at how it will work.

Q155 Alex Cunningham: Clause 30, which addresses the assessing and managing of risk posed by coercive behaviour in offenders, refers to an "intimate or family relationship". Is that wording of the clause clear enough? The expression "intimate" opens too wide an interpretation —or perhaps too narrow an interpretation.

Dame Vera Baird: I am honestly not sure about that; I have not given it much thought. It sounded like what we would expect to be there, so I do not think I have much of a comment.

Q156 Alex Cunningham: There are two other things. The first is clause 22, which compels a defendant to attend court for sentencing. I think we all realise that that will be challenging to implement, but what are the benefits and pitfalls of that proposal in relation to the victim?

Dame Vera Baird: As I am sure the Ministers know very well, this adds absolutely nothing to the current law. A judge can order somebody to come into court. If they do not, it is a contempt of court.

Q157 Alex Cunningham: The clause actually talks about using "reasonable force".

Dame Vera Baird: But you can already use reasonable force. As long as it is proportionate and necessary, the Prison Service is entitled to use reasonable force to fulfil the orders of the judge. If the judge says, "You must come" and you do not come, it is, No. 1, a contempt of court. And guess what the maximum sentence is for a contempt court? It is two years, exactly as it is in the Bill. If a person does not want to come and the officers regard it as necessary and proportionate to use force to bring them, they are entitled to do exactly that to fulfil the judge's requirements. There is really no change here.

I well understand the sense from a victim that they want this moment—"Right, he's going to face what he's done now and I'm going to get some benefit from that." But the reality is that you cannot capture somebody's mind, can you? There are always risks that people who are dragged into court might be a nuisance. You can just imagine what could be done there. So it is a very difficult one to get right, although I understand the impulse to try to do this.

I think it was the former Lord Chief Justice John Thomas who suggested that a better way was to make sure that if the person does not come out of the cell, he is in a cell to which the sentencing can be broadcast. He cannot get away and the victims know that he has, as it were, faced his moment. Whatever he is doing—whether he is listening or he is not—they do not know, and that is the time passed.

Q158 Alex Cunningham: That is very helpful. This is my final point. Clauses 11 and 12 address the offence of encouraging and assisting serious self-harm, and of course there are plenty of victims in that sort of category. Are those clauses fit for purpose or could they be improved?

Dame Vera Baird: I think they probably need to be strengthened quite a lot. I do not think there is anything in there that could criminalise somebody who provided a means for doing it as opposed to encouraging it. So if someone provides—I do not know—a knife or some drugs, I am not sure there is provision for that, and I think that is a big miss. This is a really worrying area and we need to legislate, and that is one of the good things in the Bill.

Q159 Laura Farris: I just wanted to clarify something. A statutory instrument is going through the Lords today on coercive control as both an aggravating factor and a mitigating factor, to deal with exactly the point that Clare Wade was driving at. Some of what we have done in relation to Clare Wade is not in this Bill. This is not the entirety of our implementation of the Clare Wade review, and I just wanted to provide that reassurance. Not all of that requires primary legislation.

In that context, coercive control is making its way through in different forms. I have a narrow question about what you thought about the use of MAPPA—multi-agency public protection arrangements—in relation to the management of a serious coercive control offence.

Dame Vera Baird: I think it is good to state that formally. I am sure that it happens now quite a lot.

Q160 Laura Farris: What difference do you think it will make when that person is out of custody?

Dame Vera Baird: It is a strict regime and it is very carefully managed. The probation service is aware of the high level of risk. It is definitely beneficial for dangerous offenders, and the probation service has recognised domestic abusers. Even when they have not committed domestic abuse offences, it still recognised them as presenting that danger, if they are already in MAPPA. I am sure that the most coercively controlling offenders already go into MAPPA. It is not a closed box that you can only fight your way into through these five categories of offending. It is much wider than that, but let's do it—fine.

Q161 Laura Farris: In relation to that, just because it is not possible to look at domestic abuse without being a bit more holistic, how do you think domestic abuse protection orders, when they begin the pilot scheme in the spring, will interact with MAPPA management?

Dame Vera Baird: That is a very interesting question, but they are better and they have positive bits to them, don't they?

Laura Farris: A DAPO does allow GPS monitoring, for example.

Dame Vera Baird: That is an improvement on the current model. There will have to be close working between those who apply for the DAPOs and those who are running MAPPA to make sure that there is no overlap or missing bits and so forth. This cross-boundary working is going to be particularly important with that. But they are both good steps. I do think MAPPA is slightly redundant, but let us do it, and the DAPOs and those positive requirements are definitely a big step forward. What you said about the statutory instrument is really interesting—

Laura Farris: Lord Bellamy, today in the Lords—

Dame Vera Baird: Yes, that is really good to hear, but these are going into statute. Why is the protection for women only going into a statutory instrument, which frankly fewer people will ever get to know about? Why is it being done in that way? Why is it not in here with these?

Laura Farris: I will have to revert to the Committee on the answer to that, because I actually do not know.

Dame Vera Baird: Anyway, I am not supposed to ask you questions—*[Laughter.]*

Q162 Laura Farris: No, that is fine. Just going back a bit, I am interested, as you can tell, in the combination of the MAPPA management and the DAPO scheme; we are at the brink of its inception. If you took together a wider application of DAPOs and then the MAPPA arrangements that are going to be formalised in this legislation for serious coercive control, do you think that creates a better blanket of public protection in relation to this nature of offence?

Dame Vera Baird: I think it is bound to, yes. I have felt since their inception that DAPOs, because of those positive requirements, were likelier to be more effective than just the negative nature of whatever they were called—I forget what they are called currently.

MAPPA is an effective mechanism. You raise very interesting questions about how they will interact, and I just think it is about cross-working, really, between police and probation in particular. They have to work in IOM anyway, so they must have ways of working together that ought to be reasonably effective. But I hope that you will, as it were, as a Government draw to their attention the need for an understanding of how those mechanisms will work together, because that would be an important way to point out that it needs to be done effectively.

Laura Farris: Thank you. That is all I had.

Q163 Jess Phillips: On the point about DAPOs and MAPPA, do you think that MAPPA currently covers all those who are suffering serious domestic abuse and then go on to be murdered, for example?

Dame Vera Baird: No.

Q164 Jess Phillips: You have said that this legislation is good—"Yes—do it." Do you think that it makes any real difference on the ground to the issue of domestic abuse—policing and probation monitoring?

Dame Vera Baird: I think it is a good piece of flag waving, and it ought to be something that ups the attention of the relevant parties. A lot of people do not get protected sufficiently by MAPPA.

Q165 Jess Phillips: The vast majority do not get protected, would you say?

Dame Vera Baird: I do not know about the numbers, but it is not a foolproof system. When it works, it works well, I think, and it can be quite subtly tuned for particular kinds of offender. But I do not know that it works so well with domestic abuse generally. In fact, what does?

Q166 Jess Phillips: You said that you were pleased with the parts about intimate images. Do you foresee that this will increase and encourage victims of that particular crime to come forward?

Dame Vera Baird: I hope so. It is pretty straightforward. It started off with a nice private Member's Bill, and it was good for upskirting, but it was very taken with the intention of the individual. Taking a photograph and upskirting—frankly, if you do it, it is a crime, I would have thought. Struggling to find out whether they had done it for their own sexual benefit or to sell it online or whatever: I do not think that matters. I think the Law Commission have got to, "If you do it at all—make an intimate image—it's an offence. If you do it with that intention, it's worse. If you do it with this intention, it's worse," and that looks as if it works well.

I do not know why deepfake is not banned. Everybody knows what that is. The Minister will tell me there is a Standing Order going through. You just gave me a shocked look. Deepfake is not in the Bill, is it?

Jess Phillips: No, deepfake is not in it.

Dame Vera Baird: So that is where you could have possibly even a performative person doing deliberately provocative, maybe naked actions. You can take their face off, put mine on instead and put that online. That is dreadfully, dreadfully damaging—every bit as much, possibly more, because of the potential bravado of the act, which would then be blamed on you. That needs making unlawful, and it needs dealing with.

The other problem is that there are no orders to get rid of the stuff that is online already. I asked Penney Lewis—who is coming presently, so she will tell you—why they did not try to tackle the question of taking down stuff. She said that their terms of reference relate to criminality, not the civil orders. My view is that there should be a new look at that, because the pain of being a victim of intimate images is knowing that they are online.

There is a heroic academic at Durham called Professor Clare McGlynn who has done a huge amount of work on this. The impact on somebody of knowing that there is a naked picture of them somewhere online makes them withdraw: they cannot face anybody new, because they think that inevitably they must have seen them online and will have a poor view of them. That is how it gets internalised.

So it is urgent. If the Law Commission was not asked to look at taking stuff down, which I understand is done effectively in Canada, it should be asked to look at it again, or you must find another mechanism for it. The pain is from knowing that it is still up.

Q167 Jess Phillips: Turning to some of the amendments proposed to the Bill, could I ask your opinion on the issues around removing parental responsibility for men convicted of sexual offences against children? What is your view on that?

Dame Vera Baird: Now that I understand that the mitigation relating to being coercively controlled will go into law, at least at a lower level—although I do think it should be in this statute—I am less worried. There is some possibility, isn't there, if it is about murder or manslaughter, because a lot of victims who have been coercively controlled and strike back are convicted of manslaughter—

Jess Phillips: Losing their parental responsibility, you mean?

Dame Vera Baird: Yes. That would be a woman who had been persecuted. You are talking about sex offences?

Jess Phillips: Yes, specifically sex offences. That bit of law is in the Victims and Prisoners Bill—the law on murder and manslaughter, which I believe has some carve-out. Not to inform the Minister of this, but that is the reason why it is going through the Lords today: the carve-out, which is in that Bill, not this one. But what I was talking about was a proposal to take parental responsibility away from men convicted of sexual offences against children.

Dame Vera Baird: I am less convinced by that, because the definition of a sexual offence may be quite a wide one. I think it needs some reflection. I appreciate that if there is a sexual risk order, you can have a man who is banned from being in touch with all children except his own.

Jess Phillips: I think that's the problem.

Dame Vera Baird: That is the point, so it needs tackling. But just sex offences—does it apply to flashers or people online? I do not know. I think it probably needs tuning a bit.

Q168 Jess Phillips: There are two amendments on the issue of the criminalisation of women who have an abortion. Do you have any views on those?

Dame Vera Baird: It is long overdue to be decriminalised, as it is in Northern Ireland. This Parliament decriminalised it in Northern Ireland. Why on earth is it still a criminal offence to do what is a tragic thing that nobody wants to do, and have a late abortion? The last time the offence was in play was quite recently: it was about six months ago. The Court of Appeal was amazingly benevolent towards the woman and accepted entirely that she needed support, not criminalisation. The Court of Appeal seems to be ahead of this Parliament on that at the moment. You used to have women from Northern Ireland coming over here for help with abortion; now, women from here go over to Northern Ireland to avoid the risk of criminalisation if they are a week late. It is quite odd.

Jess Phillips: Thank you.

The Chair: As there are no further questions, may I thank you, Dame Vera, for your evidence? We will move on to the next panel.

Examination of Witness

Jonathan Hall KC gave evidence.

3.46 pm

The Chair: We will now hear oral evidence from Jonathan Hall, the independent reviewer of terrorism legislation, who is joining us via Zoom. For this panel we have until 4.10 pm, so could Members keep an eye on the clock?

Q169 Alex Cunningham: Good afternoon, Jonathan. We have exchanged questions and answers a few times on Bills in recent years. What measures in this Bill will make our country safer from terrorists?

Jonathan Hall: There is only one measure that deals with counter-terrorism. It has to do with allowing released terrorist offenders of a certain category to be subject to polygraph measures. In principle, I suggest that polygraph measures for released terrorist offenders are a good thing; there was an evaluation by the Ministry of Justice in October that tends to support that. However, there are some significant reservations about the way the provision is being put before Parliament, which involves—impermissibly, I think—giving the Secretary of State powers that should belong to judges. This is a slightly technical point, but if you will give me a moment, I would like to explain it.

Q170 Alex Cunningham: I think you expressed reservations about a similar set of circumstances when we were considering another Bill a couple of years ago. Are you saying that the provisions in clause 31, subsections (4) to (6), are insufficient?

Jonathan Hall: What I am saying is that normally it is for judges to decide whether a person is a terrorist. That is what they do: either someone is convicted of or pleads guilty to a terrorism offence, or the judge makes a special determination that their offence, which could be something like robbery or assault, was done either in the course of terrorism or for the purposes of terrorism. But this clause would allow the Secretary of State to do that exact exercise in relation to people who were convicted pre-2009. You might well have someone coming up for release who went to prison having been convicted of a non-terrorism offence, but now finds themselves converted into a terrorist offender by a decision of the Secretary of State. The view I take is that that is really a function of judges.

In fact, if you look at the wording of the Bill, the Secretary of State will be allowed to be "satisfied"—not beyond reasonable doubt, just satisfied—on exactly the same test that currently applies to judges. There is obviously a fundamental issue there, which I can expand on, but there is also a really practical issue, because what is a terrorism offence is not always very obvious. Can I give you an example, so that this does not sound pie-in-the-sky and theoretical?

Alex Cunningham: Yes, please.

Jonathan Hall: I do not know whether the Committee recalls the Liverpool Women's Hospital bombing, but there was a gentleman in 2020 who blew himself up in a taxi, and it looked like a classic terrorist attack. He was a Muslim, although it appeared that he had converted to Christianity, and he had a suicide vest packed with explosives. The police did a two-year investigation—he killed himself, so there was no prosecution—and they concluded that in fact it was not terrorism at all. He was simply affected by a grievance to do with not being granted asylum.

That shows you how difficult it is. I would be really wary about the Secretary of State being allowed to go back in time to look at all these old offences and say, "I decide that this was a terrorism offence." The Bill does not give a right to be heard to the person who is going to find his conviction converted into a terrorism offence. It does not give the prosecution a right to be heard, which is actually quite important because the prosecution will often understand these things very well. It would allow the Secretary of State, I think, to act on the basis of intelligence that is not even shown. In principle, it seems to me wrong.

This issue has arisen before. I do not know whether the Committee is aware, but you will have people who were convicted of terrorism offences abroad; if they are British nationals, they will perhaps be deported to the UK after they have served their imprisonment. There is a provision in the Counter-Terrorism Act 2008 that allows the chief officer to go to a judge and say, "Look: we think that this person was convicted of a terrorism offence that is the same as a terrorism offence in this country. Can you please certify that that is the case, or can you certify that the offence was committed in the course of terrorism?" If the judge says yes, that allows all the post-release measures—such as polygraph measures, with which this clause is concerned—to be applied. So there is a model that already exists for old foreign offences. Slightly ironically, the power that Parliament is being asked to create here would make the protections available to a domestic offender less than those that apply to a foreign offender.

Q171 Alex Cunningham: So it may even be challengeable under the law at some future stage. I am looking forward to our line-by-line discussions in Committee, after the evidence that you have just given. Finally, do we need to add any new measures to better manage terrorist offenders on release?

Jonathan Hall: No, I do not think so at the moment. I am in constant contact with counter-terrorism police and the Home Office. I am not aware that the Government are looking for yet further types of measure; if they were, I think they would have sought to bring them in within this Criminal Justice Bill. All that this particular measure does is allow an existing measure, polygraphs, to be applied to a wider range of people. My beef with that is that it allows it to be applied to people who have never been convicted of terrorism, without it going in front of a judge. So I think that the answer is no.

Q172 Laura Farris: You have made some very important points about cohort and how that is determined, and obviously the risk of a borderline case—or a case where, in fact, a judge may not have found a terrorism offence—being brought into scope. More widely, what is your view on the efficacy of polygraph testing? How useful a tool is it in the detection of risk?

Jonathan Hall: I was in favour of polygraph measures after Fishmongers' Hall. It was partly on the back of one of my recommendations that polygraph measures were brought in. They always, or at least for a long time, existed for sex offenders. You will recall Usman Khan, who was clearly a very deceptive man. My view was that polygraph measures could be useful.

Q173 Laura Farris: Can I just stop you there? That intimates that you are suggesting them as a sort of risk assessment tool. How would that have worked as a matter of practice? What flows from this provision that would prevent another Fishmongers' Hall?

Jonathan Hall: Let us say that someone is in the community. They could be asked about their daily routine. The most likely outcome is that someone who is subject to a polygraph measure would feel that they have to tell the truth, and the evidence is that people who are subject to polygraphs make admissions. You could say, "Are you in touch with the well-known terrorist Jonathan Hall?", and the effect of polygraphs tends to be that people go, "Actually, I am," because they are worried about giving it away through the polygraph measure. That would give counter-terrorism police an amazing source of information to show that, contrary to what that person had been telling his probation officer, he was still in touch with the dangerous terrorist Jonathan Hall. That would allow new licence conditions, for example: if Jonathan Hall lived in a certain part of Birmingham, a licence condition could be imposed that prevented that person from going there.

Q174 Laura Farris: I see. So they accurately temper behaviour, not only in the way the individual responds to the fact of polygraph testing, but in terms of what the police glean from questions that may not go directly to the nature of the offending?

Jonathan Hall: Yes. You are completely right. This is not about extracting evidence that can be used in a criminal trial; it is about extracting information that is relevant to the management of offenders. If you think about a released terrorist offender who is now serving their sentence in the community, what you want to know is what their pattern of life is, who they are meeting, where they are going and what their objectives are. Are they visiting shops that sell knives, for example? Usman Khan must have gone to a shop to buy knives and tape to create the weapons used to kill two people. There are lots of factual matters that they can be asked about.

One of the benefits of the polygraph, I suppose, is that ultimately it is not covert. While MI5 and the police may have covert monitoring, it would be quite hard for them to put that information to the suspect. If the suspect has made an admission—"Yes, I am going to meet Jonathan Hall, the well-known terrorist," or "Yes, I am going to visit knife shops"—that can be put to the offender, and you can work on rehabilitating the offender.

Laura Farris: That is very helpful. Thank you.

The Chair: As there are no further questions, I would like to thank the witness for giving evidence.

3.56 pm

Sitting suspended.

Examination of Witness

4.2 pm

Professor Penney Lewis gave evidence.

The Chair: We will now hear oral evidence from Professor Penney Lewis, commissioner for criminal law at the Law Commission. We have until 4.30 pm for this panel. Could you please introduce yourself for the record?

Professor Lewis: I am Professor Penney Lewis; I am the commissioner for criminal law at the Law Commission of England and Wales.

Q175 Alex Cunningham: You are very welcome this afternoon, Penney. What does the Law Commission see as the major benefits of this Bill in better serving justice?

Professor Lewis: We are extremely pleased that there are measures from four of our projects in the Bill. Those are the provisions that I can speak about today. Those four projects are intimate image abuse; modernising communications offences; corporate criminal liability; and confiscation of the proceeds of crime. If I say a little about each of those—*[Interruption.]*

Alex Cunningham: I beg your pardon—my phone was making a noise.

The Chair: Can we all check that our phones are on silent, please, and that they haven't got a mind of their own?

Professor Lewis: I will start with confiscation, because that is the largest area of the Bill; the provisions are in schedule 4. The review aimed to simplify, clarify and modernise the post-conviction confiscation regime—in other words, the confiscation of the proceeds of crime after someone has been convicted.

We know that the current regime works in some cases, where it can result in funds being allocated to victims through compensation that can be paid out of confiscation, but there is still a fairly strong consensus among stakeholders that the current regime is inefficient, overly complex and in some cases ineffective, with weak enforcement methods. Our recommendations were aimed at improving the current system to give courts more powers to enforce confiscation orders and seize offenders' assets, but also to limit unrealistic orders that can never be paid back and to speed up confiscation proceedings, thus allowing victims to receive compensation more quickly.

I will touch on the other three projects, which have a smaller number of measures in the Bill. As I think most of you will know, some of the recommendations that the Law Commission made on intimate image abuse were implemented in the Online Safety Act 2023: the offences of sharing an intimate image without consent and with no reasonable belief in consent; and threatening to share an intimate image. The other recommendations that we made were taking an intimate image without consent; and installing equipment in order to take an intimate image without consent. Those offences could not be included in the Online Safety Act because they are not communications offences, so this is really the second half of the implementation of our recommendations.

We aimed to provide a clear, coherent and cohesive set of offences that would cover all types of sharing and taking without consent, that would have one consistent definition of an intimate image and that would reflect different motivations that defendants might have for sharing and taping intimate images without consent, including cases where the defendant apparently has no motive. We recognise more serious culpability with motives of intending to cause humiliation, alarm or distress, or for the purpose of obtaining sexual gratification, but we also recommended criminalising cases where those motives cannot be proven. We are very pleased that those offences have now been included in the Criminal Justice Bill.

Briefly, corporate criminal liability is another example of the completion of implementation—something that we discussed in our options paper. It was not a full report, so it did not have recommendations, but it had a number of options. One was reform of the identification doctrine. You may know that the Economic, Crime and Corporate Transparency Act 2023 included reform of the identification doctrine, which allows for the attribution of personal criminal liability to the corporation in certain circumstances where the person is a senior manager, so it expands that form of attribution. That could only be done in relation to economic crime in the Economic Crime and Corporate Transparency Act, so the reform in this Bill basically expands that to include all types of crime for which a corporate liability may be appropriate.

Finally—yes, I am getting to the end of my answer—one offence in the Bill, which is encouraging or assisting a serious self-harm, is again the expansion of something that was the implementation of a recommendation for the Online Safety Act from our modernising communications offences project. That offence was included in the Act insofar as it was a communications offence, but it is also possible to encourage self-harm by handing somebody a knife, so this expanded offence in the Criminal Justice Bill includes that kind of more physical assistance. It is not restricted to assistance by way of communication.

Q176 Alex Cunningham: That is a pretty full answer, thank you. May I ask you about clauses 23 and 24 and the aggravating factors in relation to grooming and the end of relationship? Do they go far enough?

Professor Lewis: Those clauses are not the implementation of any Law Commission recommendations, I am afraid. The Law Commission does not take a position

on those parts of the law that we have not had the opportunity to investigate or to speak to stakeholders about. I am afraid I cannot help on that.

Q177 Alex Cunningham: I assume that the same applies to clause 30 on coercive behaviour offenders, where the language in the Bill refers to an "intimate or family relationship". I was going to ask for your view on whether that expression is too wide—the intimate relationship. Is that something you would comment on or not?

Professor Lewis: It is not something we have looked at in relation to that clause. I would take a very small opportunity here to mention that we are about to start a project on defences for victims who kill their abusers, so we will be looking at the kind of relationship that should qualify in relation to defences. We are aware that if, for example, one restricts it to intimate-partner violence, then one risks excluding "honour-based" killing, which can also happen in a family context. We are planning to look at that, but we have not looked at it yet.

Q178 Alex Cunningham: Have you done any work on homelessness and people on the streets—aggressive beggars and things of that nature? I wanted to ask you your opinion on whether the measures proposed by the Government—I think there are 30 clauses in this particular area—are proportionate, workable and fair. Is that something you would comment on?

Professor Lewis: I am really sorry to disappoint, but it is not something we have looked at. We did look at homelessness as a possible protected characteristic for the purposes of hate crime law when we did the project on hate crime law a few years ago, which you may remember. That was a really interesting and revealing experience, because when we first started talking to stakeholders, some of them, including Shelter, were quite opposed to the idea of including homelessness as a protected characteristic—they thought that it entrenched homelessness when we should be trying to remove it and prevent it.

When Shelter spoke to homeless people on our behalf, which was really helpful, and when we spoke to homeless people, they actually described a lot of very horrific criminal behaviour perpetrated against them, and they experienced that as a hate crime. They experienced it as involving hostility towards them because they were homeless. We have some experience of looking at that. Ultimately, we did not recommend the expansion of hate crime law; as you may remember, there was a lot of opposition to its expansion. But we certainly saw the benefit of making sure we spoke to homeless stakeholders in order to really understand their lived experience.

Q179 Alex Cunningham: You will not comment on the begging issues?

Professor Lewis: I am afraid that is not something that we have looked at.

Q180 Chris Philp: Penney, welcome to the Committee. Thank you for joining us this afternoon. Sorry if you got stuck in security downstairs. Can I start by asking about the proceeds of crime measures referred to in clause 32 and expanded on in the extremely long schedule 4, which takes up about 38 pages? Can I just check that those follow your recommendations and that you are happy with them? Can you give the Committee some sense of the impact you think the Bill will have if passed?

Professor Lewis: Many paragraphs of the schedule do implement our recommendations. We are extremely pleased to see our recommendations implemented extremely swiftly. This project only reported over a year ago. We obviously do think that the changes we recommended would make a difference in the ways I mentioned earlier, which included improving enforcement and the ability to seize offenders' assets, limiting unrealistic and in some cases unfair orders, and allowing victims to receive compensation more promptly.

We estimated at the time that the reforms could lead to an extra £8 million in funds being retrieved from criminals in England and Wales every year. That obviously helps to return more money that can be used on public services, for instance. I am happy to talk in more detail about specific recommendations if that would be helpful.

Q181 Chris Philp: Were there any in particular you would like to draw the Committee's attention to?

Professor Lewis: One of the things we thought was most important, in addition to trying to make the system more efficient, was to balance it with also making it more fair. In terms of efficiency, we recommended things like expediting the setting of a confiscation timetable, which is in paragraph 12, and creating a settlement process, which already happens informally—we call it EROC, which stands for early resolution of confiscation. That has been implemented in paragraph 13. We note also that better enforcement will improve the recovery of funds.

There have been several recommendations that have been implemented in order to improve enforcement. Enforcement plans, which largely implement our recommendations for contingent orders, are in paragraph 16; and allowing enforcement to take place in the Crown court as well as the magistrates court is in paragraph 17. We think that those will make the system much more efficient and will radically improve enforcement.

In terms of fairness, it is really important that orders accurately deflect a defendant's benefit from crime. There are two ways in which we have recommended, and the Government have introduced clauses to implement, improving the fairness of confiscation orders. One concerns where someone has made only a temporary gain—for example, a money launderer who allows their bank account to be used to transfer £1,000,000 but gets paid £10,000 for doing that. When the gain is only temporary their benefit from crime is not really £1,000,000, given that they do not get to keep that. At the moment, orders can be made in the amount of the temporary gain and that recommendation has been taken up. I will find the paragraph for you in a moment.

Q182 Chris Philp: While you are looking, Graeme Biggar raised a question in his evidence earlier today. I may have misunderstood his point, so perhaps you can clarify. He raised the concern that there was an absence of deadlines and an absence of penalty if a payment deadline is missed. He cited a case where an order was made in 2018 that got paid only earlier this year—five years later. Is that your understanding? Is there anything in here that addresses that, because he seemed to suggest there is not?

Professor Lewis: I am happy to address that. The temporary gain issue is in paragraph 8. The other improvement to the calculation of benefit is in circumstances where the defendant has already disgorged some of the proceeds of their crime—so, for example, that may have been forfeited or seized by the state already. That should not be double counted, so that the defendant then has to pay back something that has already been seized by the state. That is in paragraph 5. We are very pleased to see those fairness recommendations, as well as the efficiency gains.

In terms of deadlines, ultimately there is a deadline: it is called the default term of imprisonment. When a confiscation order is made against a defendant, a term of imprisonment in default is set. The defendant may end up serving this period of imprisonment if it is activated by the court, on the basis that the defendant has demonstrated either wilful refusal to pay the confiscation order or culpable neglect in failing to pay it. The defendant can of course secure release from the default term by paying the confiscation debt. In the consultation paper we cite a case where, as the person is being taken off to prison, finally the confiscation debt is settled. So, we do know that that does work—at least, anecdotally.

In the consultation paper we provisionally proposed something that would be even more stringent than that. At the moment the defendant is released halfway through the default term. After that, there is no more threat of imprisonment. We provisionally proposed that the defendant should be released only on licence, similar to the way in which life prisoners are released, for example. I think that was probably our most controversial proposal. There were some people who were in favour of that, but lots of people thought it extremely draconian; another sector thought that it really would not work, and within that was His Majesty's Prison and Probation Service. In other words, probation is not really designed to get people to pay their confiscation orders; it has another purpose. It has a rehabilitative purpose.

Ultimately, we decided that there are better ways to try to ensure enforcement. So, yes, there is the default term that remains, and that is a real threat to defendants. However, we also recommended confiscation assistance orders, requiring the defendant to attend enforcement hearings after the default term has been served and requiring the provision of financial information with penalties for non-compliance or providing false information. The first two of those—assistance orders and requiring the defendant to attend enforcement hearings after serving the default term—are both in schedule 4.

Q183 Chris Philp: That is very helpful, thank you. I have one further question on a different topic. We have discussed at different times today whether there is any merit in creating a separate offence of assaulting a retail worker. Obviously, in the past we have voted for a separate offence of assaulting an emergency worker, and in the Police, Crime, Sentencing and Courts Act 2022 we made the victim being a public-facing person a statutory aggravating factor. Some people will say that we should go further and have a separate offence for assaulting a retail worker. The contrary argument is clearly that it is already a criminal offence, and where do we draw the line? What about assaulting a teacher or local councillor? You could carry on almost without limitation. What is the Law Commission view on that?

Professor Lewis: Again, we do not have a view; it is not something that we have looked at. Obviously, in our hate crime project we looked at circumstances where sentences were aggravated because of hostility towards a protected characteristic, and we recommended equalising the protection that the various protected characteristics carry so that every protected characteristic would have aggravated offences, as well as enhanced sentencing for those offences that do not have aggravated versions. However, we have not looked specifically at the individually aggravated offences such as the ones for assaulting a police officer and so on, I am afraid.

Q184 Chris Philp: So you do not have a corporate view, or a personal view, on whether creating extra, specific and bespoke assault offences is merited.

Professor Lewis: We do not have a corporate view, because we have not done work on it. You are right to worry that one is drawing very fine lines, and once one has added one offence, there is another group of people who are not included in the bespoke offences. One ends up with a proliferation of bespoke offences for different categories of function.

Q185 Chris Philp: Taking all that together, what would be your personal view on the question—speaking for yourself, not the Law Commission?

Professor Lewis: I do not think that I would go further than that. I think that concern should be considered, but I do not think that I am in a position to have a personal view, having not looked at it in any depth.

Chris Philp: Thank you.

The Chair: I call Jess Phillips. Just be aware of the clock —you have eight minutes.

Q186 Jess Phillips: You are very, very defined in the things that you will say, and I appreciate that. What has the Law Commission suggested of late, in one of the things it has written about, that is not in the Bill? You have been grateful for the things that are in the Bill, but what is missing?

Professor Lewis: Missing from the projects that are implemented or missing from other projects?

Q187 Jess Phillips: For example, just to go to your point about hate crime and the aggravated factor, has that been realised in the law?

Professor Lewis: No. We are still awaiting a Government response on the vast majority of our recommendations in the hate crime report.

Jess Phillips: For example, women—

Professor Lewis: No, that is the one they responded to, because we recommended that sex or gender not be added for the purposes of aggravated offences or enhanced sentencing. You may remember that there was a statutory requirement for the Government to respond to that, and they responded accepting our recommendation not to add it. They have not responded to the rest of the recommendations, including our recommendation that there should be an offence of stirring up hatred on the basis of sex or gender as well as equalising the treatment of all the other protected characteristics in relation to stirring up hatred.

Q188 Jess Phillips: For example, that could have been in the Bill, but it is not.

Professor Lewis: I cannot comment on whether it could have been in the Bill.

Jess Phillips: You can put anything in it if you want—I am going to.

Professor Lewis: It is not in the Bill, and we await a response from the Government on the vast majority of our recommendations.

Q189 Jess Phillips: So you are awaiting a response. Therefore, although you are pleased to see quite a lot of things in the Bill, there are quite a lot of examples of things that the Law Commission has done pieces of work on that do not feature in a Bill—this Bill, the Sentencing Bill or the Victims and Prisoners Bill, which have all been going through at the same time.

Professor Lewis: I have to accept—in fact, I am pleased to accept—that in terms of projects that I have worked on, more than half of them have been implemented in the last year. The implementation rate of Law Commission criminal law projects at the moment is—

Q190 Jess Phillips: High?

Professor Lewis: Yes. It is fantastic.

Jess Phillips: That is good to hear.

Professor Lewis: We are really pleased to be able to work with the Government to implement our recommendations in so many projects; I think it is five in the last year.

Q191 Jess Phillips: Okay. Going back specifically to the issue of confiscation, how do you foresee this working with the resources on the ground? I speak as somebody who, in the break between the morning sitting and the afternoon sitting of this Committee, received an email telling me that somebody was going to pay me some compensation for perpetrating crimes against me. Like every other time that I have received such a letter, I have absolutely no expectation of seeing a single penny, nor have I ever seen a single penny of that money.

Professor Lewis: Compensation for victims is a really important issue and one of the things that we recommended in the confiscation project, because compensation was not part of that project directly, is that there needs to be a separate review of compensation for victims.

None the less, we made recommendations where there is overlap. For example, we described it as giving priority to the payment of compensation. We recommended that where a compensation order is imposed at the same time as a confiscation order, the Crown court should be required to direct that compensation should be paid from the sums recovered under the confiscation order. At the moment, that happens only if the defendant does not have enough money to pay both orders, but we recommended that, even if the defendant does have enough money, the first lot of money should go on compensation.

Similarly, when multiple confiscation orders are imposed, priority should be given to the payment of compensation and after that to the confiscation orders. Paragraph 11 of schedule 4 basically implements those recommendations, saying that the court "must direct" that

"sums recovered under the confiscation order"

be applied to " priority order (or orders)". Priority orders are defined in the Proceeds of Crime Act 2002 as including compensation orders. Therefore, although you may not see the word "compensation" in that paragraph, it very much is in there, and the paragraph prioritises the application of funds to victims, whether that means that you as an individual victim are seeking compensation funds—

Q192 Jess Phillips: I find it highly unlikely. So, you think there needs to be a further review of compensation for victims.

Professor Lewis: Yes.

The Chair: Thank you very much. That brings us to the end of the time allotted for the Committee to ask questions. On behalf of the Committee, I thank the witness for the time that she has given us today.

Ordered, That further consideration be now adjourned. —(*Scott Mann.*)

4.28 pm

Adjourned till Thursday 14 December at half-past Eleven o'clock.

Written evidence reported to the House

CJB 01 Dr Chris Millard

CJB 02 Manifesto Club

CJB 03 Society for the Protection of Unborn Children

CJB 04 ICANN Business Constituency

CJB 05 Crisis

CJB 06 Margaret Hunter

CJB 07 Dr Tim Coyle

CJB 08 Will DeFraine

CJB 09 Monica Bell

CJB 10 Ann McCloskey

CJB 11 Stop Domestic Abuse

CJB 12 Make Space, Self Injury Support, National Survivor User Network, and Battle Scars. Joint submission.

CJB 13 Dr Josephine Friederich-Thomas