HOUSE OF COMMONS

Justice Committee

Oral evidence: Public opinion and understanding of sentencing, HC 305

Tuesday 13 December 2022

Ordered by the House of Commons to be published on 13 December 2022.

Watch the meeting

Members present: Sir Robert Neill (Chair); Janet Daby; James Daly; Maria Eagle; Paul Maynard; Dr Kieran Mullan; Edward Timpson.

Questions 74-149

Witnesses

I: Lord Justice William Davis, Chairman, Sentencing Council for England and Wales, and Steve Wade, Chief Executive, Office of the Sentencing Council for England and Wales.

II: Rt Hon. Edward Argar MP, Minister of State for Justice, Ministry of Justice, and Claire Fielder, Director of Youth Justice and Offender Policy, Ministry of Justice.

Written evidence from witnesses:

Sentencing Council for England and Wales (OUS0020)

Ministry of Justice (OUS0021)

Examination of witnesses

Witnesses: Lord Justice William Davis and Steve Wade.

Chair: Welcome to this session of the Justice Committee. This is the final evidence session in our inquiry into public opinion and understanding of sentencing.

I will welcome our guests in a moment. First, members of the Committee have to declare their interests. I am a non-practising barrister.

Maria Eagle: I am a non-practising solicitor.

James Daly: I am a practising solicitor and partner in a firm of solicitors.

Edward Timpson: I am a barrister with a current practising certificate.

Chair: Thank you. Welcome to Lord Justice William Davis. Sir William, thank you very much for coming to give evidence to us. I think it is the first time that we have had the pleasure of your giving evidence to us since you became chairman of the Sentencing Council for England and Wales.

Lord Justice Davis: Yes.

Chair: Congratulations on your appointment. I hope this will be the first of a number of constructive discussions that we will have.

Lord Justice Davis: Thank you.

Q74 **Chair:** You took over on 1 August, as I recall. What are your initial perceptions? You have been in the Court of Appeal and had a long career at the criminal Bar, which as you know is where I practised as well. What is your assessment of how sentencing is functioning? Is it too complex? Do you think it is working effectively or efficiently?

Lord Justice Davis: Let me start by putting in a perspective. As you point out, I have been practising criminal law for 45 years. I first sat as a part-time judge in 1992, 30 years ago. I had five years as the senior judge in Birmingham Crown court and, as you say, sat in the criminal division of the Court of Appeal for quite a number of years.

So I look back over time and, without in any way wishing to be complacent, I think where we are now is a huge improvement from where we were even 20 years ago. The consistency of sentencing is real and something that simply did not exist, certainly when I was at the junior Bar. The prominence given to victims and their experience of the offending is far different now to how it was 20 years ago. My view is that the sentencing process functions by no means perfectly but in ways that, generally speaking, meet its purpose.

What problems are there? First, there is the difficulty of the public perception of sentencing, which I am sure you will come on to—indeed, that is the whole purpose of this inquiry. That is difficult and complex for us as judges to deal with. You are undoubtedly right that there is a great deal of complexity in sentencing that there probably was not 20 years ago. If I may respectfully say so, that is not the fault of the judiciary. The entirely justified, genuine and proper public interest in sentencing means there is a focus on judicial decisions that there probably was not 20 years ago, so to that extent it is more difficult.

Q75 **Chair:** As you rightly say, it is not the judiciary that changes the legislative framework. It looks as if we have had a Bill or an Act of Parliament affecting sentencing virtually every other year for the past 30 years or more. As a practitioner over that whole period, one way or another, what is the practical impact of that repeated change and updating to sentencing practice or, more accurately, the legal framework?

Lord Justice Davis: For the sentencer, the first practical impact is that sentencers, entirely unwittingly, not infrequently make mistakes. They pass unlawful sentences; they try to impose sentences that potentially do not even exist. That is the difficulty for the judiciary and for the practitioner who has to advise the victims as to what may happen as a result of the offence committed against them and, of course, the defendant. It is a significant problem.

We like to think that the Sentencing Code, introduced in 2020, has achieved a great deal in stripping away many of the difficulties, but of course that was 2020. Even now, new subsections are added to the Sentencing Code just to make sure we are all on our toes.

Q76 **Chair:** Is it helpful?

Lord Justice Davis: Absolutely, yes. There is absolutely no question at all about that. When it was in preparation, the then Lord Chief Justice was enormously supportive and the entirety of the judiciary would say that it can be nothing but a good thing.

Q77 **Chair:** Understood. Against that background, and with that complexity and the pressures that these repeated changes place upon sentences and practitioners, never mind the people they have to advise, what about the other objectives of the Sentencing Council? Obviously, you have got the objective of achieving greater consistency, which you referred to. I think we would all agree that it has been a considerable improvement from the way it was. One of the other objectives is to work to strengthen confidence in sentencing by improving public knowledge and understanding, which is exactly what we are interested in today. Has that improved over the time that you have been involved in the criminal justice system, perhaps even in the time that you have been sitting on the Bench?

Lord Justice Davis: It is terribly difficult to measure, as no doubt you are discovering. We conducted research. The research was done in 2018, published in 2019. We have conducted a further research project, which

was literally published only yesterday seeking to see what public confidence in sentencing and the criminal justice system as a whole is, and how it is affected. Just in that short period, there has not been any significant change.

Going back, it really is very difficult to say how confident people were in sentencing. My personal view is that it has to do with the amount of information that people get about the criminal courts. We may think it is more, because it is on the television and the radio, but the effective death of the local newspaper means that the population of any substantial centre of population, a city or conurbation, simply do not see the daily diet of what has been going on in their courts. They could if they went online, but I don't think people do in the same way. Certainly, when I was growing up, the local newspaper in Leicester reported practically every single case in the Crown court—not in huge detail, but sufficient to give people a flavour of what was going on, and I don't think that is there any more. And if you don't know, you have less chance of having confidence.

Q78 **Chair:** Yes, I understand that. Against that background, what is the Sentencing Council doing to discharge that objective, which is set upon it by stature?

Lord Justice Davis: I may have to call on our head of office in a moment to flesh out the detail. We have an outward-facing website, which we like to think is user-friendly, which publishes all our reports and consultations, and we get a significant number of hits or visits to that, in the tens and hundreds of thousands. We are particularly keen on seeking to engage with young people, because it seems to us that given our limited resource, we have to look at the best way to create long-term confidence. So we engage with schools and the Citizens Foundation to get material out to the schools as part of citizenship training in schools. We do what we can in terms of speaking at conferences and so forth, but it really is a matter of resource. I will ask Steve to fill in the detail that he will have and I don't.

Chair: Steve Wade is joining us remotely—he is chief executive of the Office of the Sentencing Council. Good to see you again, Mr Wade. Perhaps you could pick up where Sir William left off.

Steve Wade: As the chairman said, our main issue is that it is such a big subject and, as has been rehearsed with this Committee and its predecessors, a relatively small office with a small budget. We do what we can with the resources available. One of the areas that we have tried to use as an opportunity to increase awareness of what we do and our individual guidelines is each time we go out to public consultation and each time we launch a definitive guideline, to do what we can to generate interest among the press, particularly given that our research suggests that is one of the main areas where people get their knowledge of the criminal justice system and sentencing. Inevitably, even if we manage to make a relatively good sized splash and get a lot of coverage, one of the problems we have is that the types of things that are of interest to newspapers and their readers are not necessarily the somewhat measured—I dare say prosaic—considerations that we tend to want to

bring to people's attention when we launch our guidelines. That is one of the areas that has been a big focus over the years.

More recently, we have been doing a lot of work with the police and their family liaison officers, so that the information they can give out to people at the sharp end properly reflects sentencing guidelines and what we do, which means that expectations are realistic. I think the Chair has mentioned the work we have done with Young Citizens to support their work in schools as part of the PHSE elements of the school curriculum, and we do what we can with our website on areas where we think there may be particular misconceptions or particular areas of public interest, to try to explain things in as clear and concise a way as we possibly can.

The other area that is worth mentioning is our social media presence. I dare say we will get on to social media later in this hearing, but that is an area where inevitably it is difficult to get your voice heard, particularly when you have limited resources.

Q79 **Chair:** Help me a little, Mr Wade. How much resource do you have? What is the Sentencing Council's budget?

Steve Wade: Our total budget now is £1.75 million, which is probably a slight increase from when we last met you. I dare say that your calls on our behalf may have helped get that up a little. On the comms and confidence side, there is a total of three people working in that area, but realistically, given all the other things they have to do, it is probably about two full-time equivalent staff.

Q80 **Chair:** Are there things that you would do in your outreach work and public understanding work that you cannot do because of the resource? If you had more resource, are there specific things that you would like to be doing that you are not doing at the moment?

Steve Wade: From my perspective, one of the issues is around social media. Increasingly, that is one of the areas where people get information—rightly or wrongly—about sentencing and it gets disseminated quite quickly to a very wide range of people. The difficulty is there are so many social media channels that it is difficult to be able to monitor all of them and to know which ones are the most relevant. One of the big things that we have all seen over the last couple of years has been an increase in hyper-local social media networks, where people have perhaps come together to speak to others in their area who they would not have spoken to beforehand as part of the local support networks that sprang up during the pandemic. They are now areas where there is quite often a constant diet of low-level messages about things people have seen in the areas, various crimes they have heard of, or suspicious circumstances.

It is an area that would be very difficult to police because it is so very local, and it is difficult to know what kind of impact that is having. I would imagine it is quite significant, because it is very local and people are hearing on a daily basis about what is going on. But being able to try to come in and understand all the different ranges of information that people

are accessing, how we might be able to shape or influence some of them, and which are the ones where we might be able to get the biggest impact is one area that we definitely want to look at. Looking at our website and the information that we have available there, and being able to produce even more resources than we currently do at the moment, would be very helpful.

Q81 **Chair:** Sir William, are there any areas where you think you should be doing more? What can be done to improve the groups that you reach out to? Are there specific groups that you should be targeting or are targeting?

Lord Justice Davis: The research would tell us who we have to target, and then they identify older people and women. Frankly, the groups are so huge that it is unrealistic.

Steve mentioned our website. Until relatively recently, there was a facility on the website for people to test out their views of sentencing on the somewhat unfortunately named "You be the Judge"—well, I think it is unfortunately named anyway. We are hoping, subject to the usual cost negotiation, to set up a new set of scenarios that will be reasonably attractive to look at and will convey the message: here's the offence; here's what is said about the offence on either side; now, you be the judge. Then you find out, gosh, you've sentenced about three years less than the real judge.

Q82 **Chair:** One perception that we will come back to is that very frequently when people do it, they underestimate sentencing in practice, don't they?

Lord Justice Davis: Yes. Whether the fact that they pass a lesser sentence means that they have more confidence in the judge perhaps is a moot point. The concept that judges are too lenient is something that we can address by that particular vehicle.

Q83 **Chair:** We will come back to that, but is that misconception something that you regard as important and potentially damaging to confidence?

Lord Justice Davis: Absolutely.

Q84 **Chair:** Understood. Do you do anything to particularly look at groups who come into contact with the system? Your duty is, in theory, to the whole general public's understanding, but do you do anything to target victims or people who have been involved in the justice system—witnesses or anything like that?

Lord Justice Davis: As Steve says, we work with the police and, via the police, the family liaison officers. One of our members is the chief officer of Victim Support. We have a member on the Council from Victim Support. I am quite sure that she feeds back material from us through Victim Support.

Q85 **Chair:** Although you have a majority of judges, the Council are not purely judges.

Lord Justice Davis: No, it is 8:6 in favour of those with other interests in the justice system.

Q86 **Maria Eagle:** In 2017, David Lammy did his review of the criminal justice system and recommended, as part of the court modernisation programme, that all sentencing remarks in the Crown court should be published in audio or written form. Unless you're in court, it is quite difficult to get hold of the sentencing remarks to even understand in a particular case how the judge has come to the conclusion that he has on the sentence. What is the Council's view on whether all Crown court sentencing remarks, subject to the relevant legal exceptions, should be published? At present, they are not.

Lord Justice Davis: They are not. First, there are huge logistical problems with that. Approximately 70,000 cases were sentenced in the Crown court last year. Very many of them were sentenced by judges who were sentencing 10 or a dozen cases in the course of a day. The practical prospect of getting a written set of sentencing remarks in every case is hugely problematic. I am not saying that it is not a good thing—David Lammy said it certainly was because it informs those involved in the case and those outside.

Very many more cases have sentencing remarks published now than they used to, so significant cases are published on the outward-facing judiciary website. There are not huge numbers of them because they are the cases that are very high-profile. When I sat in the Crown court in any case of any substance, where I was delivering remarks that I had prepared, and then adjusted depending on what happened during the hearing, I would publish them in the sense that I would provide them to the local news outlet, and of course to those in the case. That is done with reasonable regularity by Crown court judges.

But you cannot realistically expect every single case to have written sentencing remarks, because the logistics of it make it impossible. The Sentencing Council is not there to tell judges the mechanics of how they sentence. We are there to give them guidelines as to what the outcome should be. The Judicial Office and the Lord Chief Justice do encourage written sentencing remarks wherever possible, but—with very great respect to David Lammy, who I have met and I respect—we have to keep our feet on the ground as to what is possible.

Q87 **Maria Eagle:** I realise that there are practical difficulties, but in theory, what difference would doing that make to the Council's work? Would it make it easier to explain sentencing to the layperson?

Lord Justice Davis: It would make the Sentencing Council's work very much easier in terms of monitoring its work and assessing consistency, because at the moment, in order to find out what is being done in Crown courts, we have to do one of two things. The first is conduct surveys of judges, which we did on a universal basis at the start of the Council's life, but then we had to cease, because it was simply too onerous for all concerned. It was onerous for the judges, but it also meant that the

Council was bombarded with data that we simply did not have the capacity to deal with. We do that on a periodic basis for particular offences.

The other way in which we try and find out about what is going on is by just commissioning transcripts of sentencing. Now, if we had sentencing remarks in every case, we would have a huge resource that would be enormously beneficial, so to that extent, the Sentencing Council would be very much in favour. But as I say, we have to come back to practicality.

Q88 **Maria Eagle:** I understand that. Aside from sentencing remarks, then, are there other areas where the quality of available data on sentencing—the stuff you do your day-to-day work based upon—could be improved? Is there other data that could be better that would help you to do your job more fully?

Lord Justice Davis: I will ask Steve Wade to come in in a moment. In its various forms, His Majesty's Courts and Tribunals Service and the Ministry of Justice have a lot of data, and if it were all in one place and easily accessible, you would say that there is more than enough.

The one aspect of data that causes us difficulty—it is causing us difficulty at the moment, because it is a particular concern of ours at the moment—is data about diversity. The system at different points records diversity in different ways and by different means, and it is hugely problematic getting accurate diversity data. If you subscribe to self-identification, you immediately run into an issue with trying to find out the various aspects of diversity within the system, so that is a big problem for us, particularly with the current concerns that there are about the treatment of different ethnic and other groups within the system. Steve can come in with more detail on the nuts and bolts of data collection.

Steve Wade: Ethnicity is definitely one of the areas where more data would be very helpful. Also, even when the data is recorded, there are gaps in it: it is not just the universality of it, but making sure that it is consistently collected as well.

The other areas that would always be useful are the specific elements of different offences as they relate to guidelines, which are not always recorded in a uniform way, if at all—for example, whether or not an offence has been committed in a domestic setting. The various requirements for community orders or suspended sentence orders are not routinely recorded in a universal way, but that would enable us to do much greater and deeper analysis than we are able to do at the moment. It may well be that some of linking up with the common platform, which is an area that we are exploring at the moment, would be able to get us access more seamlessly to some of the data that is already there, but it would not necessarily fill some of those gaps in data that is not recorded at the moment.

For us doing our job, the biggest area of data that we need is, frankly, what was going on in the judge's or the magistrate's head at the time that they sentenced. Certainly, as we were discussing a moment ago, if

transcripts were more widely available, they would be helpful in that area, but it still would not negate the need for the information that we ask for on a semi-regular basis when we go out to sentencers. It would not negate our need to do that, because that is the information we want. The difficulty is that, whichever way you look at it, it is an onerous exercise to do.

Ideally, I would love for us to be able to reinstate something like a census-style survey, like the Crown court's sentencing survey in the past, because that was an incredibly rich source of data. Unfortunately, even if we had significant additional resource, it would be unrealistic in terms of the demands it would place on courts' and judges' time, particularly in the current climate where the courts are focusing on trying to reduce the backlogs that have built up. Inevitably, any additional data we could get would certainly help inform the development of guidelines and our evaluation of how effective they have been.

Q89 **Maria Eagle:** Finally from me on this point, routinely, members of the public seem to think that judges and courts are not tough enough on offenders, when the reality is that sentence length has been generally going up, for various reasons. This does not indicate that the entire system has been conveying this very readily to members of the public. Obviously, part of your role is to try to do so. What more do you think could be done to get across to the public what is actually happening in respect of sentencing over time?

Lord Justice Davis: The starting point, and our primary function, is setting the guidelines for particular offences. We now have guidelines for pretty well every offence; we are coming towards the end of the offences for which a guideline can sensibly be said to be necessary. What we have to do, by all the means we have been talking about—social media, our website, "You be the Judge"—is explain, "Here is what the guidelines say. Judges are obliged by law to follow these, save in very unusual circumstances, and the fact of the matter is that they do follow them." We have to communicate that, in the hope that that will demonstrate, "This is what judges actually do."

Q90 **Edward Timpson:** Your last answer touched on some of my questions, which are to do with the sentencing guidelines and, in particular, how they in themselves affect public understanding of sentencing. Some of the surveying that was done by the Council suggested that around two thirds of the public are aware of them in some way, shape or form, but you see quite a mismatch between what they believe to be the guidelines and the reality of what happens in court. Perhaps the most obvious example is a statutory maximum sentence for an offence, which is often reported as "the sentencing guidelines".

Accepting the limitations on the resources you have and your ability to myth-bust a lot of that misinformation, what role do you think you can have, with the revision and development of the guidelines, in improving public awareness of what they are there for and how they are used by judges to sentence criminals?

Lord Justice Davis: I was first on the Council as an ordinary member in 2012, for three years. Then, and doubtless now—I only say "doubtless" because I have only been chairman for three months and we have not actually had a consultation exercise begin in the time I have been there—every consultation exercise involved the issue of a draft guideline. When I was on the Council, every issue of a draft guideline was accompanied by press releases and quite a lot of broadcast coverage—television and certainly radio. I can remember more than once spending two hours in a cupboard in the Mailbox centre at BBC Birmingham, talking to local radio stations all round the country. By that route, we said, "Here's what we're consulting on. Here's the proposed guideline." One aspect of that was, "Please tell us what you think, if you want to tell us," but more particularly, "Here's the sort of sentence we're talking about," thereby telling people, "This is what the guidelines look like and this is what they mean, should somebody commit an offence of this particular kind at this particular level."

We still do that, to some extent. I know, from what I have been told, that, for instance, there is an animal cruelty guideline coming towards fruition. When that went out for consultation, the circuit judge who is the Council lead on that conducted a number of media appearances. That is the most immediate way that we can communicate what is in the guideline. You may say, "Ah, but it's not; it's only the consultation," but I suspect that the public think that it is the guideline and, to be fair, in large measure, it is. Obviously, we will adjust, but the structure of it is what it will eventually end up as.

You are absolutely right, and it is a function particularly of newspaper reporting, that newspapers or online channels will report, "X was sentenced for this, and the judge complained that the guideline was only—" when in fact he is a judge complaining about the maximum sentence, usually for dangerous driving. We deal with that by approaching the relevant outlet and asking for a correction, and we do get it. That in itself is helpful, if people are then told, "Ah, so the guideline's something different."

We come back to this: we have pretty limited resource. We cannot engage in the kind of full-blown exercise that, say, the Government can when they are trying to communicate some particular piece of legislation. We simply don't have that resource. What we do is what we do, and we are not in any way holding back from what we can do.

Q91 **Edward Timpson:** You mentioned earlier that one of the improvements in the sentencing process over the last 20 years has been in the consistency of sentencing in our courts. Alongside that, there has been an increase in the amount of sentencing guidelines that are available. In my all-too-brief tenure as Solicitor General, doing unduly lenient sentences, trying to navigate it, even in that environment, was not always straightforward. Has the increased complexity of some of the sentencing exercises contributed to the difficulty for the public to understand the overall sentence and the way that is then communicated?

Lord Justice Davis: I suspect that the variety of sentences that there are—particularly custodial sentences, although community sentences as well—does make it difficult for the public to follow. If I were to go out into the street now and say to 10 people, "Please explain to me what an extended determinate sentence is," none of them would be able to tell me. More particularly, if I were to ask them, "What does a life sentence mean?"—this is courtesy of our research; people don't understand. They think it is however many years the judge has set as the minimum term.

Those very basic sentences are not understood, and community sentences can be hugely complex. People with complex problems, if it is thought that they can be dealt with in the community, will get a whole range of requirements and treatment orders, and they have to be explained to the defendant. One suspects that even the individual sitting at the back of court listening to it carefully would find it quite difficult to follow when they are not being assisted by a lawyer to tell them what is going on.

Q92 **James Daly:** May I ask one brief question, Sir William? Do extended determinate sentences fall within your remit or role?

Lord Justice Davis: Not strictly speaking, because, as you know, they are a sentence based on a finding of dangerousness. The old Sentencing Guidelines Council provided a guideline in relation to dangerous offenders at the time that the 2003 Act came into force.

The general guideline that we have on custodial sentences obviously refers to dangerousness, but that is a—how can I put this? It is not an add-on, but it is an extra. If somebody is thought to be deserving of a custodial sentence, then the judge has to go on to consider whether he or she is dangerous, and then the dangerousness sentence. We do not provide guidance as such about when a person is or is not dangerous, because that is a matter entirely for the judgment of the sentencing judge.

Q93 **James Daly:** Of course, the IPP sentence has been abolished now, hasn't it?

Lord Justice Davis: Yes, but the concept of dangerousness lives on, in terms of both extended determinate sentences and discretionary life sentences.

Q94 **James Daly:** Earlier you said that it was your view, or perhaps the view of your committee, that the public do not understand the sentences that were being talked about. Is that generally your view of IPP sentencing?

Lord Justice Davis: As you rightly point out, IPP sentencing does not exist any more. It is not so much my view; it is what the research tells us. They ask people, "Do you know what a life sentence is?" A very significant majority say, "Oh yes, we do." Of course, the next question is, "Well, please explain it to us," at which point the percentage who are able to give a coherent explanation drops dramatically. That is the research that we published yesterday, confirming what we published in 2019.

James Daly: That is very helpful. Thank you.

Q95 **Dr Mullan:** Picking up on that point about life sentences, it does not surprise me that people do not understand them, because very often they are reported as, "Jailed for life." That is a headline I read frequently in relation to life sentences, which is obviously completely incorrect. We had a roundtable with the Sentencing Academy, and I think we reached a consensus that it is not a useful phrase full stop; it is not illustrative nomenclature for what it actually is.

Lord Justice Davis: In terms of the mandatory sentence for life for murder, with which the Sentencing Council is not concerned because it is mandatory and all the minimum terms are set by statute, it has to be called life because it replaced the death sentence. That was the basis upon which it was introduced.

Now, you are quite right that, save in very exceptional circumstances, the person convicted of murder will not actually spend the rest of his or her life in prison, but they will none the less be subject to a life sentence because even the most minor infraction will lead them to go back inside. If you look at the current prison figures, there is a very large number of recall prisoners. Not many of those will be life prisoners because there are not huge numbers of life prisoners, but there will be a significant proportion.

The other form of life sentence is the discretionary life sentence, which is what is now imposed in the absence of an IPP where the sentencer thinks, "We simply have no idea how long this person's going to be dangerous for." Again, that is there to ensure that, for life, he or she—usually he—is under the control of the Parole Board.

Q96 **Dr Mullan:** Do you consider that someone being on parole for life is similar to them being jailed for life? It is completely different.

Lord Justice Davis: I am not saying that it is similar, but it is a very significant restriction of liberty. It depends very much what offence you have committed, but being on parole is not simply a case of ringing up your probation officer once a month. Particularly in the case of people who have been found to be dangerous, there will be really quite significant restrictions on them for a very significant proportion of their life. I am not in any way suggesting that putting somebody in a prison cell and having somebody subject to significant parole conditions is identical, but it is a misconception to think that being on parole is simply walking around and you might occasionally have to see somebody.

Q97 **Dr Mullan:** That may be a misconception, but I think it is still a credible position to hold that it is a huge way from being in prison. That would be a valid argument.

Lord Justice Davis: Well, you will forgive me; I am not going to engage in adjectival debate. It is different. I am perfectly prepared to accept that.

Q98 **Dr Mullan:** Yes, so I am not sure that it is a helpful phrase in public understanding, particularly when it is so frequently misreported as jailed for life. I have spoken to people who expected the person to be in prison

for life, and we know that the average sentence is way below that. Obviously, it depends how long somebody lives, but they are very far from being in prison for life on most occasions. It is certainly nothing like the death penalty. I am just not sure that it has been a helpful phrase. The academic we had from the Sentencing Academy suggested saying something like, "A determinate sentence"—whatever that might be—"with an extended period under licence." Why do we need to say "life sentence" in a way that confuses people?

Lord Justice Davis: You have to say something that communicates that, for the rest of their life, they are under the control of the state. That is what it comes to. If you say, "A determinate sentence and so much licence," that immediately becomes finite.

If I may respectfully say so, we are getting slightly off the point. The notion of the life sentence undoubtedly needs explanation. Please rest assured that every time a judge passes a life sentence—I have done so many times—they explain in very considerable detail what it actually means. We do so because we are very concerned that the victims—quite often the family of a deceased—understand what it means.

Q99 **Dr Mullan:** Why do you think it is so frequently misreported?

Lord Justice Davis: I am afraid I am not able to answer that. I hope it is fairly obvious why not.

Chair: Indeed, you cannot. That is perfectly fair.

Q100 **Paul Maynard:** You have both been commendably open with how you are reaching out to people to explain the work of the Sentencing Council. Looking at it from the other end of the telescope, how do you receive public opinion, and how does that affect what you do?

Lord Justice Davis: The most obvious way we receive public opinion is when we go out to consultation on a guideline and people respond. For instance, we are in the middle of consulting about a new guideline in relation to motoring offences, principally—offences that cause death or serious injury. You will not be surprised to learn that that has excited quite considerable interest, not just from representative bodies but from individuals. We get responses, and we are obliged to consider them. Our consultation response is obliged to explain, at least in outline, why we have or have not adopted whatever responses have been received by way of consultation.

In a body that statutorily sets its guidelines by a consultation process, it seems to me—I may be being naïve—that the most obvious and sensible way to get the public view of what you are seeking to do is to ask them and then see what they tell you. I will be the first to acknowledge, again, that we do not have the resource of a large Government Department. We post our consultations on our website, we publicise them as best we can, in the way I have already described, and we have to hope that we get a response that way. It does not seem to me that, on this strategic and

generic form of sentencing guidance, we can find a better way to deal with it.

Obviously, individual sentences are—I hope I am not being controversial—not a matter for public opinion. That is an individual judge's decision on an individual case, and the rule of law requires a sentence in a case to be passed by an independent judge exercising his judgment—obviously, taking into account the interests of the victim and, in some cases, the wider public if some community impact is demonstrated, but the individual sentence is a matter for the individual judge.

Q101 **Paul Maynard:** I agree with that. I welcome your comments about the guidelines on dangerous driving. They will have undoubtedly excited public interest.

Allow me to probe a little more, because your written evidence was a little bit at variance with that. Forgive me if I sound rather populist—I don't mean to, and I don't normally—but you almost suggest in your written evidence, and I am paraphrasing here, that you get lots of letters from the public in which they are mostly moaning about specific circumstances or decisions that are made.

I quote precisely: "The Council does consider all responses to consultations carefully and it has certainly been the case that even a lone response, if it makes a particularly cogent point, can cause the Council to reconsider an aspect of a draft guideline." With respect, that sort of communicates to me a bit of Olympian disdain for the views of the general public. If it is a "cogent point", as you call it, that means that you are making a decision that it is the quality of the point made, rather than the quantity, that might govern the response of your organisation and how you take the point into account. Does the weight of public opinion matter at all versus the quality of a single response that alights upon an issue you maybe had not considered before?

Lord Justice Davis: First, the blunt truth is that we do not get the weight of public opinion in that sense. We don't get thousands and thousands of letters. We simply don't.

Q102 **Paul Maynard:** Would you like to, though, and would you pay attention to them if you did?

Lord Justice Davis: We would certainly pay attention to them. The more we are informed about what people think about sentencing, the better we can understand whether we are able to create the confidence that the public must have. I am not saying that if 1,000 people wrote in and said something about a particular form of sentence we would adopt it, because the consultation process involves us saying, "This is what we propose. Do you agree with it? If not, why not?" I am paraphrasing and being very simplistic, but we are asking for some reasoned response. We do get letters from people complaining about particular sentences, which of course we cannot do anything at all about. I will ask Steve Wade if he has anything he wants to add on this.

Steve Wade: You are absolutely right. I think we have had about 300 responses for motoring, which is probably at the upper limit of the range of responses we get. That is one of the ones that were most likely to generate responses, I think.

Quite often, if you do get a large number of responses on a particular guideline, they are not always commenting on things that are within our control. That is not necessarily because they are talking about individual cases, but because the respondents have misread what the guideline is intended to do; they will be asking for sentences of 10 years when the statutory maximum is five years. In the case of public order, we had a lot of write-in responses from the US complaining that we were banning free speech, when that clearly wasn't the intention of the guideline and never was.

Where we find there is a significant body of opinion that makes itself known to us, our experience to date has been that it has been the result of a misconception about what the guideline is intending to do. We try our very hardest when we go out to consultation to explain what the guideline is intended to do and what it cannot do, but that does not change necessarily the way those consultations then get picked up and reported on, and the range of responses they generate.

The other point I would make is that it would be fantastic, as the chairman has said, for us to get a large range of responses from the public for each consultation, but even if we had significant additional resource, we would need to be realistic. Most people are not going to be sitting down and putting pen to paper for four or five Sentencing Council consultations each year, however much we might like them to be more interested in these topics, because they are, as we have all been discussing, of great import to everyone in the country.

Q103 **Paul Maynard:** You might be surprised at how many of my constituents are quite happy to sit down and write four or five, or indeed 45 or 55, greatly considered letters on quite detailed matters—but anyway. If you are not going to get masses of written replies, and given your resource constraints, are there other ways you might consider going about trying to elicit where public opinion sits on particular guidelines you are consulting on—citizens' assemblies, opinion polling and that sort of thing?

Steve Wade: We do significant work to engage with particular groups with an interest in each guideline. One of the things we spend a lot of time doing while developing it is trying to understand how we can get to groups that would be more representative of the issues that are being raised. The example that most immediately springs to mind is when we produced our domestic abuse guideline. The policy lead and the Council lead at the time spent an awful lot of time sitting down with representatives of groups who support or advocate for survivors of domestic abuse. That was a significant aspect of the way we shaped and developed the guideline.

Similarly, for other offences, when we were looking at producing guidelines relating to drug offences, one of the reasons that we had a

slightly broader approach for so-called drugs mules was that we did a lot of work interviewing people who had been coerced or subject to undue influence, and that was the reason for their offending. It was a significant aspect of the input into that particular guideline.

The way that we fill the gap, when we do not have significant numbers of members of the public responding, is to do all we can via the bodies, groups and routes open to us to ascertain the views of those with an interest in the area, alongside our more general work, which tries to elicit opinion more broadly on sentencing as a whole—for example, the confidence survey that we published yesterday, as we have at points over the past few years. That is the broad area.

The other area is that we seek the views of the Justice Committee as a statutory consultee. I think that one of the roles of the Committee is to represent the broad body of parliamentary support, as you would see it, for the guidelines. We always treat the Committee's response with very great regard when looking at the responses to consultations.

Paul Maynard: We are all tribunes of the people on this Committee—

Chair: We are tribunes of the people who have quite a bit to get through, so we will have to speed up a bit.

Q104 **Paul Maynard:** I will ask my final question. You mentioned the debates on social media, and you are suggesting that the quality of public debate is low. How would you go about improving the quality of that public debate? Would it be a role for you, necessarily, given your resource constraints, or for some other body or structure outside yours?

Lord Justice Davis: I am not sure that, in a real sense, we are the body to improve public debate. As the Chair pointed out, we are by a small majority a judicial group and, as you will be aware, it is not the function of judges to engage in or instigate public debate in the context of some wider policy debate, which is really what this has to be about, it seems to me. We can provide the raw fuel for the debate, in the information, but creating the debate is for the people around this horseshoe and those beyond.

Q105 **Janet Daby:** Lord Justice Davis, one of the things you said was that some of the basic sentencing and community sentencing can be quite difficult for the public to understand. Would you therefore say that sentencing policy language can sometimes be too complex for the public?

Lord Justice Davis: The sentencer who is imposing the sentence has an obligation statutorily to explain it in ordinary language. As someone who sits in the Court of Appeal and reads many sets of sentencing remarks, generally speaking, I think they do a reasonable job. The complication comes with the interaction between different orders, requirements and treatments, and the ability of the media—be it local newspaper, online or some broadcaster—to communicate, "This is what it all means."

The headline, or byline, that always, frankly, annoys me if I see it, is, "X walks free from court", when he or she has been made the subject of a community sentence with a variety of conditions or requirements. That person has not walked free; for the next two or three years, they have got to engage in quite a lot of work, which will be far beyond what they are used to. If it works, then it has genuine rehabilitative effect, and it if does not, then back they will come. It is the "They walk free" that I always find really rather irksome.

Q106 **Janet Daby:** Yes, the media portrayal of things can often lead to misunderstanding for the public. Do you have any thoughts on how you could make sentencing more accessible to the public, to enable them to understand the severity of sentences?

Lord Justice Davis: As your colleague pointed out, there is a recommendation on the metaphorical table that every set of sentencing remarks should be published, and obviously that would be the way to communicate that. The Sentencing Council is in the process of revising what is called the imposition guideline, which is directed at cases where somebody might go to custody or might not, depending on whether there are reasons pointing towards them having some kind of rehabilitative sentence or requiring a sentence involving punishment. In the context of our revision of that, there certainly will be scope, I hope, to emphasise not just to sentencers, who in one sense hardly need telling, but to the public, who will have that guideline available to them, what the actual meaning of community sentences is, how it affects individuals and what they would have to do. Steve Wade may tell me I am being vastly too optimistic about the potential effect of the revision, but that is one feature of it.

Q107 **Chair:** You do not dispute that, Mr Wade, by the sound of it.

Steve Wade: No. The difficulty is that this is primarily guidance for judges, so that they are able to make a decision that has full regard to statute. I think we should absolutely make it as simple as possible, but there are limits to what we can do on that score.

Chair: Fair enough.

Q108 **Maria Eagle:** You have referred on a number of occasions to the research that you commissioned on the effectiveness of sentencing. Could you explain why you commissioned the work and what it concluded in broad terms?

Lord Justice Davis: Do you mean the research that was published in September?

Maria Eagle: Yes.

Lord Justice Davis: We commissioned it because one of our statutory responsibilities is to consider the effectiveness of sentencing. They are very, very broad conclusions, and it is a significant report. It is not original research, but it is a review of a vast amount of literature. I do not want to in any way misrepresent it, but in very broad terms, its conclusion was that short prison sentences were not, generally speaking, effective in the

sense of deterring people from committing crime. There was a good body of evidence that, for persons who might otherwise be subject to a short prison sentence, some form of community sentence had probably a better chance of either deterring them or turning them away from whatever path they were on. That is an oversimplification, but that is very broadly what it said.

The other broad point that was made—and this is outwith judicial control—is that it is not so much the length of a substantial custodial sentence that matters; it is what happens to the person when they are serving the sentence. You will understand immediately why that is outwith judicial control—we have no control at all as to what happens when somebody is sent to prison; we simply send them to prison for whatever the period is. Those are the two very broad conclusions of a quite detailed report reviewing all the literature on the effectiveness of sentencing in a whole variety of ways.

Q109 **Maria Eagle:** The Council is under a duty to have regard to "the cost of different sentences and their relative effectiveness in preventing re-offending", as set out in the Coroners and Justice Act 2009. To what extent do such statutory obligations impinge upon your decisions on where the custody thresholds are in particular guidelines? When you are taking into account the cost of a sentence and the range of sentences you might be setting out in guidelines, to what extent do you take into account things like available prison resources, which we have a bit of a tight squeeze on at the moment? My memory of being a Prisons Minister is that there were extremely full prisons when I was doing that job. To what extent does that impinge upon your thoughts when you are creating the guidelines? Is it there, or do you ignore it?

Lord Justice Davis: Every single guideline we produce comes with a resource assessment, which does not necessarily match the assessment of others. We are in the middle of the motoring guideline. It may or may not be that our resource assessment—in other words, how many more prison places are going to be needed—will differ from the Government's; that certainly has happened on previous occasions. That is the most obvious way in which we try to assess what the impact of any given guideline is. We do not—indeed, no judge in sentencing does—consider whether there is a prison place. The offence for which we are sentencing has a sentence of imprisonment potentially attached. If it is a serious offence, we know that we should send that person to prison, and that is what we do. It is for Government to provide the place to meet the sentence that we, in accordance with the law, have passed. I am not aware—Steve will correct me if I am wrong—that the Sentencing Council considers and assesses the availability of prison places, but it most certainly assesses the impact on resource; namely, how much is all this going to cost?

Q110 **Maria Eagle:** You obviously do not take into account, as I would expect you to say, whether or not there is a prison place if your decision is to send that person to custody; it is for the Minister and the Government to make sure there is a place. But do you take into account the cost of a sentence? You know that a particular sentence is less costly than another

sentence. Does that impinge upon where you set custody thresholds in your guidelines?

Lord Justice Davis: Broadly speaking, we consider our sentencing guidelines and where levels should fall within the different ranges based on statutorily the factors of culpability and harm and the aggravating and mitigating factors. We do not start thinking, "Should we be avoiding custody here because it's going to cost a lot?" None the less, because we have our resource assessment, we do have to consider cost; that is part of it. A prison place costs a lot more than a community place.

I cannot say what the imposition guideline, to which I have referred, will say because we are still in the development stage, but in its original form, it was intended to have the effect to make people think very seriously before they imposed a prison sentence of up to two years, and I have no doubt that will be developed further and not wholly unaffected by political reality. The Sentencing Council does not exist in a complete vacuum, any more than judges do. I take the example of what the Lord Chief Justice said when covid hit and particularly affected prisons in relation to what judges could take into account when they were sentencing people who otherwise would have gone to prison for a relatively short time—maybe they could suspend the sentence, given the particular conditions facing prisons. So it is not something that is completely ignored, but at root, you are quite right that if we send somebody to prison, it is for the Government to provide the place.

Q111 **Dr Mullan:** Obviously, the other element of effectiveness is punishment.

Lord Justice Davis: Yes.

Dr Mullan: You talked about the evidence that you have collated on reoffending and on sentencing being effective in that regard. Have you done any research on whether you are effectively delivering punishment?

Lord Justice Davis: First of all, we have not done this research; what was published was a review of the literature. The literature is able to consider deterrence in a very wide sense—does doing this stop people doing things?

Q112 **Dr Mullan:** I understand that, but not deterrence: punishment.

Lord Justice Davis: On punishment, the survey that we publish does not immediately address that. If I as a sentencer, not any more but until relatively recently, wanted to punish somebody and I considered that the statutory test was met—namely that nothing else other than custody would do, and that is a statutory test, not judge-made—I would say to myself, "How long is needed to punish?" The only punishment available in that context, if only custody will do, is prison. What prison does in terms of punishment is obviously a matter for the people who run the prisons.

Q113 **Dr Mullan:** I am asking more about how you decide whether that is effective, and who judges whether a year for an offence is an adequate and effective punishment or whether it should be 10 years. It is very easy to define and measure the other elements that you focus on. How do you

attempt to equate that with a similar measurement of effectiveness in regard to punishment?

Lord Justice Davis: I am speaking now as a once sentencing judge. If you decide that somebody has committed an offence that is so serious that only custody will do, and therefore that has to be the punishment, you assess by reference to the guideline how culpable they are and how much harm they have caused. The greater the culpability, the greater the harm and the longer the sentence. That is a very simplistic way of putting it.

Q114 **Dr Mullan:** I am asking more about calibration.

Lord Justice Davis: I could speak for about three hours on how I calibrated sentences. Judges attend sentencing seminars that last two days that are engaged principally in how we calibrate.

Q115 **Dr Mullan:** But how would you compare that with what the public might think about whether you are using the correct yardstick and whether it is in line with public sentiment?

Lord Justice Davis: Culpability and harm are statutory factors, which I am assuming the public—because this is in statute and has been for many years—understand are the two elements. In each individual case, a judge has to do his or her best to say how great the blameworthiness—the culpability—is and how severe the harm is. In a sense, how severe the harm is is easier to measure, because you can tell whether somebody has lost a huge amount of money or been very badly injured, or whatever. Culpability is inevitably subjective, to a degree.

Q116 **Chair:** As a sentencer, you will have heard the evidence and the mitigation.

Lord Justice Davis: Particularly if you tried the case, you have a genuine feel not just for the defendant, but for the people who have been affected by the crime.

Dr Mullan: I understand all that. My question was about how that relates to what the public might think of the outcome as a result of that exercise—but we are pressed for time.

Q117 **Chair:** Should a judge be troubled about what the public think of the outcome? Is that your job? Dr Mullan raises an interesting issue.

Lord Justice Davis: I am only one judge, but I would be deceiving you if I said that when I was sentencing, I never thought about what the reaction would be, particularly of those immediately involved in the case and, via them, what others in their wider circle would think. Gradually, you move out and then that is the public. What the judge must not do is try to second-guess what the public would do.

Chair: That is the distinction. Okay, that is fair enough, and it is very helpful. Thank you very much for your time and your evidence, Lord Justice Davis; it is much appreciated. This is not an easy subject to nail down, but we are very grateful for the way that you and Mr Wade have

assisted us today. I am sure that we will have occasion during your period of office to have evidence from you again.

Lord Justice Davis: I hope so, very much indeed.

Examination of witnesses

Witnesses: Edward Argar MP and Claire Fielder.

Q118 **Chair:** Mr Argar, welcome back to the Department.

Edward Argar: You are very kind, Chair. It is a pleasure to be back.

Chair: It is nice to see you again, and congratulations on your return, now as Minister of State responsible for these areas of policy. You have been very patient in listening to us, and I am grateful to you for that. Perhaps it is helpful if I start off with a topical, in a sense. You heard Lord Justice Davis making the point that, from the judge's perspective, his role and any judge's role when sentencing is to pass a sentence that they, applying the appropriate statutory tests, deem appropriate according to law. It is for the Government to provide the resource to carry out the sentence. If that means imprisonment and it warrants imprisonment according to the law, then it is for the Government to provide the prison places. Are we doing very well on that at the moment?

Edward Argar: You will have seen the statement to the House made a week or two ago by the Prisons Minister, Mr Hinds, setting out the pressures there currently are on the custodial estate in terms of capacity versus demand. The latest figures I have to hand—forgive me if I am a little bit out of date—are that the overall budget for the Department was around £9.1 billion in 2020-21, which was none the less up from where it was on 2019-20. That is not in any way to take away from the pressures that Mr Hinds set out to the House and the steps that have been put in place to manage those pressures. I met previously with Lord Justice Davis, and he is right that it is for judges to sentence within the context of the sentencing guidelines, and it is for us as a Government, or any Government, to address the consequences down the line of what that is, be it for custodial estate places or for community sentences to be properly carried out.

Q119 **Chair:** How long do you think we are likely to need to use prison cells to deal with the immediate pressures?

Edward Argar: You tempt me to speculate, but you will have heard that what the Minister for Prisons set out in the House is a temporary measure, and there is a range of elements. You tempt me into speaking on a portfolio that is not my own. Four years ago, in my previous role in the Ministry of Justice, I had responsibility for the female estate and the youth justice estate. There are a number of measures that can be put in place, including around maintenance and a whole range of things, to bring more places on-stream.

Q120 **Chair:** You have an official with you. Could you introduce yourself?

Claire Fielder: Sorry for being a moment late. I am Claire Fielder, director for youth justice and offender policy.

Q121 **Chair:** That is very helpful; you deal with the policy side. We might come to you in due course, but I just want to move on, Minister. You also heard what Lord Justice Davis said about public awareness of sentencing, and that is what we are particularly interested in today. One of the issues that was ventilated when Mr Hinds made his statement—you were on the Treasury Bench, I think, at the time—was that we lock up an awful lot of non-violent people compared with other jurisdictions, and that may be one of the causes of the pressure. It is not for judges to decide what use is made of prison and what alternatives there might be. Do we need to recalibrate where prison sits with the other punishments that might be available in our justice system?

Edward Argar: I was not on the Bench for that statement, but as you would expect, I read the *Hansard* transcript, so I am aware of the point you are raising. One of the strategies that I was responsible for back in the day was the female offenders strategy. I would differentiate between the adult male and the adult female custodial populations, because there are different circumstances and very different pictures. We were looking at the use of short sentences and whether there were alternatives that may be more effective in the context of looking at the five purposes of sentencing.

Politicians need to be aware that the public rightly and understandably expect to see those who commit violent crimes—crimes for which, going back to what the Lord Justice was talking about, there is a high degree of harm and a high degree of culpability—receive a custodial sentence. We are cognisant, of course, that among the five objectives are the protection of society and the punishment point, which Dr Mullan alluded to in his questioning. Equally—this came through in your oral evidence with the academics and the Victims' Commissioner for London—members of the public also want the rehabilitative element because they do not want to see repeat offending. They want the punishment elements to be there, but they do not want society to be paying—in every sense, whether it be financially or in human cost—for the impacts of reoffending.

It is a very difficult balance to strike. The Sentencing Council and the independent judiciary consider all those aspects very carefully, as the Lord Justice was saying. It is also important that we, as a Department and a Government, make sure each of those sentencing options is effective for the purpose for which it is intended.

On your point about public perception, Chair, the Sentencing Academy's report from January 2022 made the interesting point that although the public perception is that custodial sentences are getting shorter and we are lenient, for want of a better way of putting it, in this country, actually the average custodial sentence length for 2021 in England and Wales was 20.4 months, which is almost five months longer than in Italy, well over double the German equivalent and just under double the French

equivalent. In relation to your inquiry, we all face the challenge of improving the debate in this area.

Q122 **Chair:** That is very helpful. One of the other things that politicians have to think about is public confidence in the systems we put in place, be it the prison system or the alternatives. One of the aims of the Government's White Paper "A Smarter Approach to Sentencing" was to improve public confidence in non-custodial sentences, where they are appropriate. What progress do you think we have made there?

Edward Argar: I think we have made progress. I know that, were he here, Mr Hinds would be talking about the progress on education and rehabilitation and the opportunities around that. Again, it is not my portfolio, but I think it would be fair to say that the impact of the pandemic was felt in this context, in terms of the reduction in association and educational opportunities during that period. It was for legitimate public health reasons, but there was an impact.

In terms of public confidence, we see very significant sentences handed down for very serious crimes, but we collectively need to do more—the Government, Parliament and commentators—to lead an informed public debate on this issue, based on the stats, the facts and the evidence. I get the impression that there is a lot of public interest in this issue. There is an understandable public desire, which I share, to see effective punishment, but also rehabilitation.

I think it was the Sentencing Council report of 2019—I confess to the Committee that I have not yet read the one they published today on their research, but I will do—or the Sentencing Academy report that said that the vast majority of people got their information about the effectiveness of the criminal justice system and sentencing from short clips on broadcast media or the internet. The Lord Justice touched on that at the end. Inevitably, there is a chance that, in trying to communicate quickly in a one or two-minute piece on a regional or national news programme, the complexities and nuances are not always able to be conveyed, so it will be done in shorthand: "X walked free from court." Understandably, people will watch that two-minute piece and form a view of the overall effectiveness of the system. Importantly, often the cases that make that two-minute clip are some of the most complex and the most emotive, and some of those in which you see the greatest degree of harm and the greatest degree of culpability, so there is a challenge—I think for us all—in how we build the debate around this.

Chair: Understood, thank you.

Q123 **Edward Timpson:** To talk about effective punishment a little more, particularly around what the White Paper set out in its programme to reduce reoffending and the reliance on short sentences, what progress has been made in reducing the use of short sentences? We heard earlier that perhaps covid has helped to accelerate some of that. Has there been a change in the way that those sentences are being used, bearing in mind that many of those who are the recipients, if I can put it that way, of

short sentences tend to be the ones who bounce in and out of the prison estate with very little change to their pattern of criminality unless there are effective inputs to some form of rehabilitation? What progress has been made and how is that being reflected in the way the public view short sentences as a way to get the balance right between punishment and rehabilitation?

Edward Argar: There are two things there. One is about how the public view that, but it is also about judicial confidence in opting, for example, for a community sentence or electronic monitoring or a variation on a theme. They will want to be confident that it is effective as well. I think we are seeing that confidence growing both publicly and within the judiciary. There will always be, however, a case in the most severe offences for a custodial sentence. That goes back to what the Lord Justice was saying—that will be expected where there is only, sometimes, one option for one of those five sentencing reasons.

On short sentences, I go back a little to when I did run a part of the custodial estate, which was the female aspect of it. We found that often, at that time and with that particular cohort, a short sentence did not necessarily achieve its purpose because it was short enough totally to dislocate someone's life, their family relationships, their job and so on, but often insufficiently long such that while someone was in prison, there was a real opportunity to help to turn around either a drugs habit, an educational challenge or a behavioural issue.

The only caveat I would add is that sometimes—we have seen this with sentencers—they impose a short custodial sentence for what will appear, if you just read the case, to be a "relatively trivial" or "minor" crime, but often, if you read the entire sentencing remarks, it reflects the fact that a whole range of crime sits beneath that. They had tried x and tried y, and tried various other sentences be they community or rehabilitation focused, but those just hadn't worked. Often, the judge would have reached the point of saying, "I have no alternative left because we have tried everything else."

I should have said this, Chair. Once I have answered a question, I should ask my senior official, who has much more experience than I do in this Department, whether there is anything to add.

Chair: Do you want to come in, Ms Fielder?

Claire Fielder: I wonder whether it might be helpful to touch on a couple of the initiatives that have been under way on the non-custodial side since publication of the White Paper. To cut to the short answer to your question, it is possibly too soon to say and to give evidence of the impact of some of those, but since March 2021 we have been running a pilot on pre-sentence reports, which is now running in 15 magistrates courts in England and Wales. That is a training and targeting pilot, testing whether investing in training of report writers in any way changes outcomes. Does it increase the number of written pre-sentence reports being requested by the courts? Does it have an impact on the sentences imposed?

Pre-sentence reports are most frequently requested when people are on the cusp of custody, when a short custodial sentence is one outcome that might be appropriate, although there might be a non-custodial alternative. The pilot is due to make official findings early next year. That is one of the areas in which we have been looking to test whether investing in a particular bit of the system might drive different outcomes.

Another area where there has been a significant commitment to increase availability of particular non-custodial disposals is in relation to community sentence treatment requirements. This goes back to what we are doing to support offenders and rehabilitate. There has been quite a good amount of progress made in that space. Alcohol treatment requirements and drug rehab requirements are now available in every court, and primary care mental health treatment requirements are available in around 50% of the country. It is too soon to say, but those are some of the things that have been really invested in and trialled since the White Paper was published.

Q124 **Edward Timpson:** May I request some further written information about the community sentence treatment requirement? That is something the Committee is interested in.

Edward Argar: *indicated assent.*

Q125 **Chair:** If you could do that for us, that would be very helpful.

I want to take you back to the increase we have seen over the last 20 years, and particularly the last 10 years, in the average custodial sentence length. Minister, you alluded to a statistic from 2020 that put us five months ahead of Italy, double Germany and nearly double France. In England and Wales, the average custodial sentence length has gone from 11.8 months in 1998 to 21.9 months in 2022, so our own figure has almost doubled within that period.

Your overarching impact assessment for the White Paper said that offenders spending a longer time in custody "may strain familial and community links, could limit offender motivation for reengagement in rehabilitation, and ultimately increase the likelihood of reoffending". It would appear, on the face of it, that the assessment of the White Paper is set against the public perception that sentences are actually going down, the interpretation being that they would like to see them going up. How do we square those two scenarios, and what role do you and your Department have in trying to improve public understanding and awareness of what prison is there for, what it can achieve and how your policies are trying to improve the prospects of reducing reoffending?

Edward Argar: You are absolutely right to highlight that. The starting point has to be us being clearer about what has happened over the past 10 or 20 years. You can go back further. In your oral evidence session with the academics and Claire Waxman, they went back to the early 1990s, citing the Criminal Justice Act 1991 as one of the turning points when we started seeing sentences increase and the responsibility of all political parties for supporting that, under the Home Secretary at the end of the Conservative Government, Michael Howard, and then under Tony

Blair's premiership and also when he was shadow Home Secretary. They cited a political narrative of "be more severe, be more severe, be more severe in the sentencing".

The starting point is that we need to do more collectively to have an informed debate on this subject. The average minimum for the crime of murder was 12 years in the early 2000s. It is now 20 years. It is slightly snapshot stuff, but the Sentencing Academy report found that only 2% of people knew that or appreciated that it had gone up significantly. Similarly, the average rape sentence for an adult male over 21 committing rape is now nine years. Previously, it was just over five years. So I think we are seeing that happening. There is a role we all have in participating in that debate and engaging as politicians with our constituents but also more broadly societally.

I think what you are getting at—correct me if I am wrong—is that that is where public opinion is. That may not always be conveyed, but public opinion is saying, from what we read in the research, that it wants to see more and more tough custodial sentences and longer custodial sentences for the most serious crimes. At the same time, some of the research showed that the public also want to reduce the fear of crime and reoffending and the costs to the public purse of that. We have to provide the facilities and the programmes for that, but that is where it comes down to a judge, with their expertise built up over many years, looking at the sentencing guidelines, but also judging on the facts of the case and the circumstances of the individual, what is the most appropriate sentence to try to balance those five sometimes seemingly contradictory purposes to sentencing, to both punish but also to get that rehabilitative effect.

The counterpoint to saying that a longer sentence means that those ties are broken and it is much harder for someone to be rehabilitated is that, equally, as we found with female offenders, a short sentence, or a sentence that was too short, achieved, to a degree, the same effect in terms of dislocation but didn't give enough time for education programmes, retraining programmes or drug and alcohol treatment programmes in prison. Each individual is slightly different, which is why it is right that a judge will look at that and, independently on the facts of the case and of the individual, come up with the appropriate sentence.

Q126 **Maria Eagle:** As someone who used to look after the whole prison estate, not just the female prison estate, and was responsible for implementing the Corston review in the first place, I recognise some of what you are saying about length of sentence. Anything under a year is not going to lead to much rehabilitation. That was certainly the evidence when I was a Minister; I don't suppose it has changed enormously, although you might be able to tell me that it has.

To what extent does public opinion inform sentencing policy? We heard from the academics about the ratcheting arms race in levels of sentence, although that, I think, if you'll forgive me, Chair, does ignore the other half of the mantra, which was, "Tough on crime, tough on the causes of crime." You have to do both, and I think that was a rather more balanced

policy than some have set out in the evidence that we've heard. To what extent does public opinion inform sentencing policy at present in the MoJ?

Edward Argar: There are a number of points. In terms of the evidence, briefly to pick up your point, I am not aware of any significant changes to that evidence base. I remember working on trying to implement in that review Jean Corston's work and some of the elements of that. I suspect the argument would be progress, but not enough. That might be the gentle nudge I would get back. I think we did make progress around that.

In terms of public opinion, there are two things I would say. We have to be cautious about public opinion in the context of there being a single public view. What we saw in some of the research from both the Sentencing Council and the Sentencing Academy was very different views—again, it's a snapshot—depending on different demographic or other characteristics of the population; the severity, or perceived severity, of the crime; whether harm was involved; or whether it was deemed to be essentially exploiting someone's vulnerability. A range of factors were there. At a macro level, as politicians we reflect on public opinion, as everyone around this table will have done, because you wouldn't be a politician very long if you didn't. Equally, the law is complex, which is one of the challenges in explaining this. I suspect that even experienced barristers such as the Chair, and even experienced judges, will find sentencing policy complex, for very good reasons. That is why the Sentencing Council did its consolidation exercise, which took us a significant way forward, but it is still incredibly complex.

The second thing I want to bring in to that, which we haven't mentioned yet, although it was in the previous evidence session in November, is the victim's voice and the victim's perspective on this. We have made significant progress, although again, I suspect that you would nudge me gently, or perhaps not so gently, to go further. I think we have made progress in ensuring that the victim's voice is heard. In us formulating sentencing policy, of course we look at all those things. We look at the coherence of the sentencing framework, but we also try to frame it—again, through those five objectives. Yes, we want to see, and colleagues around the table want to see, appropriately severe punishments for appropriately severe crimes. That will reflect public opinion, but we also—

Maria Eagle: So—

Edward Argar: Can I just finish the point? We also want to achieve what the public want to see and what comes out in the research findings, which is a reduction in crime overall, a reduction in reoffending and value for money. Therefore, you have to strike that balance between rehabilitation and punishment.

Q127 **Maria Eagle:** The question was to what extent does public opinion inform sentencing policy in the MoJ. How does the MoJ gauge public opinion on sentencing? You have said that it is all very complex and people have different views, but that is not really an answer to the question that I asked.

Edward Argar: My answer to the question is that, as politicians, we are aware of public opinion. There are consultations. We—

Q128 **Maria Eagle:** So the MoJ just has it in the back of its mind? It is aware of it but it's very amorphous and difficult?

Edward Argar: If you would let me finish, we undertake consultations and we also ask the Sentencing Council to look at guidelines. We have heard how it considers public opinion when looking at individual sentencing guidelines. But it is not the only factor that is considered.

Q129 **Maria Eagle:** All right. How does the MoJ identify and respond to shifts in public opinion? For example, public attitudes harden on particular kinds of offences such as domestic abuse. It is fair to say that public opinion will have hardened on that over the years and might have softened on some other areas of sentencing. How does the MoJ take those shifts into account when sorting out policy?

Edward Argar: You will see that both the representations of parliamentarians and the research that we look at from the Sentencing Council and others reflect public opinion. We are all aware of individual campaigns in Parliament about particular crimes, sentences and criminal offences that are often reflective of a broader mood within society. You raised a particular point about domestic abuse and domestic violence, for example rape and serious sexual offences. We have seen the reaction from the Government to that, both operationally and in terms of how we speak about it and the support we put in place. You will have heard the Secretary of State speak a lot about Operation Soteria.

I think the crux of what you were talking about was sentencing rather than the operational response. Based on pressure from the public and from Members of this House and the other House, the Department will—at regular intervals, as we have seen—request that the Sentencing Council look at and review sentencing guidelines for particular offences. We look at the research that is done on public opinion. It is mixed, I have to say. The Sentencing Academy fulfils an incredibly important role in that space, which wasn't always there. Four weeks into this job, I have asked to see the Sentencing Academy to talk about the value of its work, and the Sentencing Council. I don't know if I'm missing what you are trying to get at.

Maria Eagle: No, I think you have been very clear that you ask them and they ask you. We are going around in a slight circle, but that is not because you have not tried to answer the question.

Chair: Mr Daly wants to come in, then Ms Daby.

Q130 **James Daly:** Regarding the points that Ms Eagle has just made, I want to talk about one specific type of sentence. Can you tell me what public consultation the Department has undertaken with respect to IPP sentences?

Edward Argar: With respect to IPP, I am conscious of the outstanding report from the Committee that we need to respond to. I will invite Ms

Fielder in a minute to talk about the specifics of that. I appreciate it will be frustrating to you and the Chair, but I am conscious that we have not yet formally responded to it.

James Daly: That is not—

Edward Argar: No, I don't want to prejudge what we are going to set out in that—how we have reached our conclusions and the evidence on which we have based them. To a degree, that links to your point about reflections of public opinion. I don't know if there is anything that Ms Fielder wants to add.

Q131 **James Daly:** Can I just put it into context? Sorry, Ms Fielder. The reason I asked the question is that this Committee meeting is about public knowledge and perception of sentences. The clue is in the title: all sentences that are available to the court. Approximately 4% of people in custody in this country at the moment are on IPP sentences. I do not think the public knows that. The IPP sentences are a unique group of prisoners who have been sentenced in a certain way. Minister or Ms Fielder, I wonder whether, because of their unique status, some work is going on or there is some evidence to show that the view of the public has been taken, and whether you can prove that the public are being told what IPP is and the impact of IPP on the people who are serving these sentences.

Claire Fielder: I do not have evidence that I can directly show you that the public understands what the IPP sentence is. In some respects, it gets a high degree of coverage. There is an ongoing interest in Parliament and driven by Parliament in particular, as well as some very active stakeholders and families, that probably gives it quite a high degree of awareness relative to other types of sentence. Whether that equates to understanding what is a really complex sentence, I would not want to say, if I am totally honest.

Edward Argar: If I can come back very quickly on that, Mr Daly. I am not aware of any direct IPP-specific polling or research that we have done. On your broader point, and I would agree with what Ms Fielder said, it is of course not a sentence that is available to courts now. It was brought in by David Blunkett when he was Home Secretary and subsequently has not been available since 2012. But the point you make, and you make in your report, is that there are—I am going to get this slightly wrong—around 3,000 people currently on them.

James Daly: I understand that. Can I just—

Edward Argar: But I don't think there is a broad public awareness of them. That is the short answer.

Q132 **James Daly:** This is important for the record because there are lots of poor families out there. When you look at the impact assessment for the White Paper, and this goes back to Mr Timpson's question, it says that offenders spending a longer amount of time in custody "may strain familial and community links, could limit offender motivation for

reengagement in rehabilitation, and ultimately increase the likelihood of reoffending." I want to put it on the record, Minister, that all the evidence you have suggests that the public knows nothing, really, about IPP, apart from people like this Committee going on about it. It suggests that it is a disastrous sentence that is impacting thousands of people. As it is on the record, I would ask that you take that away and look at it in the context of all the things we are talking about, as well as all the evidence from the White Paper and other things, and think carefully about resentencing these people. It is a very important thing.

Edward Argar: I will respond very briefly, if I may. I am conscious that, and I know this will possibly frustrate Mr Daly, it is one of the central recommendations—if not the central recommendation—of the Committee's report, which we will be responding to directly, as is the normal practice. I think you are right that it is a sentence and a cohort of people that the broader public probably has little idea about or awareness of, unless they are an active parliamentarian or campaigner on this subject, or one of the victims of one of those individuals, the families of one of those individuals or one of those individuals themselves. It is a very complex space, and many—I don't want to generalise too much—of those people may be deemed, for example, by the Parole Board to still be dangerous. I take the point that came through clearly in the Committee report, and I think that is what you want me to take back, that—to paraphrase the Committee—if there is no end in sight or no route to rehabilitation, that has an impact on not only the individual, but their ability to become a reformed member of society. I have read the report carefully, but I do not want to pre-empt exactly what we will say to the Committee.

Q133 **Chair:** Point taken, and we look forward to the response—hopefully sooner rather than later.

Edward Argar: I take your point, Chair.

Q134 **Janet Daby:** This Committee has taken submissions from organisations like Transform Justice, the Howard League and Clinks on an evidence-based approach to the development of sentencing policy. Can you say what evidence base the MoJ draws on when developing sentencing policy and how the aims of sentencing policy are determined?

Edward Argar: On the aims of sentencing policy, I come back to the purposes of sentencing, which are clearly set out and, I think, broadly accepted by the public and those of us in this place, who are sent here by the public. They are about rehabilitation, deterrence and reducing crime, punishment, protecting society, and giving something back—restorative justice. I think that they are broadly accepted as the right principles. The challenge faced is one we have talked about, which is finding the balance between each of those in any particular sentence. Sometimes you will be able to achieve a sentence or a policy that reflects all of them. In other individual cases, you will see a different balance given to different ones. In terms of that framework and the principles, I think they are right, and I think we are in the right place. The challenge often comes with difficult

individual cases, as we all know, and they are often the ones that make the news and inform views of particular crimes.

I think the second part of your question was around the evidence base and how we look at this. There is one point. I know that Ms Eagle has gone, but I highlight that we undertake our own polling and our own research and consultations about public attitudes. But there is sometimes an inherent tension there, which goes back to those five points. Looking at the evidence in a particular case or particular crime—going back to the point about short sentences and some of the points Mr Daly made—you may say that, if you want to prioritise reducing reoffending and reducing the long-term societal cost, sentence x is more likely to achieve that outcome. But then you come back to the broader public opinion point—the point that Dr Mullan was making as well—which is: what is an appropriate punishment for the worst crimes? I think it was used in your previous evidence session when someone talked about justice by consent. That is not public opinion informing or having to agree with every judgment, but it has to perceive the system to be fair and effective.

Ms Fielder may want to come in in a minute, but we undertake assessments, as we did when I was producing the female offender strategy, of the outcomes of short sentences versus community orders and similar in terms of rehabilitation. We are looking here at perceptions of public opinion about whether it is an adequate punishment. As Lord Justice Davis said, what the most effective and appropriate punishment is, to a degree, subjective. I do not know if the Committee wants to explore this later, but I just want to put it on record because I am also the victims Minister: it is important that the victim's perspective is also taken into consideration in this context. I do not know if Ms Fielder wants to talk about the evidence-based approach.

Claire Fielder: I was just going to say a little. Of course, the vast majority of sentences are non-custodial, and it is only a small minority that end up as custodial sentences. When we are looking at evidence of what works in sentencing policy, a big focus is on what works to reduce reoffending and to rehabilitate in the context of community sentences. In that vein, we obviously look at the headline measure of, ultimately, controlling for different factors, the reoffending outcomes. The challenge we have with that, of course, is that it is a really long-term measure to establish whether something is working to reduce reoffending.

What we have been trying to do more recently is look at what the interim indicators are that we can point to. For example, we know that factors such as having a job, having a home and so on have a material impact on people's reoffending outcomes, so we are measuring those interim things to say, "Have we improved the number of offenders going into employment or having stable housing?" Further down the line, we will be able to link that to the reoffending outcomes. We cannot do it straight away. I think it is important, when talking about what the evidence is, that we are looking at the evidence of what works to reduce reoffending and what works to support people most effectively on all those different

routes. As you would expect, we will draw on evidence from experts and from colleagues working in the NHS, for example, delivering health interventions, and on evidence and insight from stakeholder groups. One of the Minister's ministerial colleagues was speaking just this afternoon to some of the third-sector organisations with an interest in this space and in reducing reoffending, so we draw on quite a wide range, but I think there is almost more scope in the context of those that are non-custodial than those that are custodial, much of the time, given the focus on punishment for the custodial sentences.

Janet Daby: Thank you.

Q135 **Dr Mullan:** Minister, I just want to pick up on the discussion around short sentences. Towards the end of the discussion, you alluded to the fact that it might be that people have a short sentence because the judges tried everything else, but my understanding is that that is probably the dominant factor when it comes to people receiving short sentences. You might not know the figures off the top of your head, but could you supply the Committee with an outlay of that so that we can truly understand how short sentences are used in practice? My understanding is that they are nearly always used as a measure of last resort, when people have tried many other things, rather than that being just a small part of their use, but I could be wrong.

Edward Argar: I am very happy to do that. Dr Mullan, you are quite right, I am afraid I cannot give you that off the top of my head. What I will commit to is this, if it works. I will ask my officials to liaise with your Committee Clerk to ensure that what we get you is what you are actually after, if we can—if we can disaggregate in that way.

Q136 **Chair:** If you could, if the details are there about how often people would be subject to alternative—

Edward Argar: I am happy to write to the Committee afterwards with that and anything else that Members wish to ask for.

Q137 **Dr Mullan:** We have discussed understanding, and there has been reference to the fact that the public's perception of sentencing is that it is less harsh than it is, as if to suggest that if they only understood it, they would not think that sentencing was lenient. However, it could also be that two things are true: the public do not understand the correct sentencing, but even if they did understand it, they might still think it was lenient. Is that a fair point to make?

Edward Argar: I am always cautious, as I suspect you are, about making assumptions about my constituents or anyone else's and about what they think, because I have discovered that they tend generally to have quite well-informed views; they know what they think, and woe betide any Member of Parliament who thinks that they know better. You are absolutely right, and if I was not clear, I apologise. I am certainly not suggesting that it is a case of: if people knew more, x would be the consequence.

I think there is an inherent societal and public good in us continually having a public debate about this. In my previous role in the Department of Health, everyone had a view on health policy and the local hospital, because that directly impacted on them, so that was probably coloured by experience in a positive way. The challenge that we have in this space—I think it came out in the research—is twofold: first, those who had had direct contact with the criminal justice system, either as a victim or as an offender, have a greater awareness; and, secondly, those who work in or around the system, including third-sector organisations and so on, have a greater awareness.

I take your point, however, in that I do not think that we should necessarily presume what would flow from that public debate. It might have everyone turning around to say, "No, no; gosh, we're too tough!" I suspect that it would probably be quite a nuanced picture. Particularly, I think, we would have members of the public and victims of some of the most heinous crimes involving children, domestic abuse or violence, death or harm, saying, "Yes, we want rehabilitation, but we want to see what we consider to be appropriate punishment"—that goes to your earlier point.

In other cases—we see this in some of the research we have so far—we might have people saying, "Actually, for what might be deemed a 'more minor' crime, we are quite content with a community sentence." It is a complex picture, and I am wary of generalising.

Q138 **Dr Mullan:** In terms of understanding, you will have heard the discussion about life sentences. On the helpfulness of the term—I should have quoted this at the time, but I will quote it now—the Howard League conducted some research on how effective "life sentence" was as a term for people to understand. They stated: "The researchers concluded that the term 'life sentence' causes confusion and undermines confidence in the system, as the public are not opposed to fixed-term minimum sentences for murder but do not understand why this is referred to as a life sentence". I have talked about how the term is frequently misunderstood by the media. There is the suggestion that the media do not understand things; my suggestion is that it lends itself to confusion. Do you think "life sentence" is an effective and easy-to-understand term for what we actually do in that regard?

Edward Argar: Again, I have two points to make. Alluding to my previous point, we should all be very wary of saying, both with the media and the public, "Oh, if only they understood." The media have a job to do, which is to communicate, often in relatively short pieces of text or short bulletins, an outcome or story to individuals. I would not for a moment, therefore, suggest, "Oh well, must do better"—beyond all of society doing so. We should all take greater interest in this, so similarly with the public.

On terminology, I will come back to the "life sentence" bit, but there was another example I was going to use, which I suspect makes the same point. That is "released on licence" or "released on parole". I think this came up in some of the written evidence, or possibly some of the oral evidence, which said that, actually, it would make more sense to say,

"released with restrictions on liberty" or "released with conditions", which is less legalese, for want of a better way of putting it. It is much more retail language.

The Lord Justice made a point earlier about the statutory obligation on a sentencing judge to explain in clear, everyday language what the sentence actually means, but I suspect the reality is that even very few of us will routinely look at the sentencing remarks of a judge about a particular case. I may read law reports and case law occasionally—I am getting back into the habit of it after a sojourn reading *The BMJ*—but let me turn to your point about whether we can still do more to explain things.

There will be legal reasons for technical purposes, but on the life sentence, I may have caught only part of this, but I think the point that Lord Justice Davis was making was the right one. It is a life sentence; it is not necessarily a life custodial sentence, but it then goes on to being on parole and having conditions imposed. It is about clarity of the term. Some people may see a life sentence as a lifetime in custody as opposed to some time in custody.

Q139 **Dr Mullan:** That is the evidence.

Edward Argar: I think there is more that all of us can do to explain it, but I am inherently cautious about changing the legal terminology. There may or may not be merit in it, but I am always cautious about doing that. I do think that there is more that we can do about clear language and clear explanations.

Q140 **Dr Mullan:** Picking up on some of the questions that you had from Ms Eagle, how does the MoJ determine what the statutory maximum sentence should be? You picked up on some of the other stuff about sentencing policy, but how do you decide what the maximum should be?

Edward Argar: I will ask Ms Fielder to give the technical answer, and then I may give you a political overlay on it, if that is appropriate.

Claire Fielder: There are a number of factors. Over the years, I am sure that some of Lord Justice Davis's predecessors would have given a much more articulate version of the judicial view of the ladder and the hierarchy of different sentences. In considering proposals to change maximum penalties—in reality, the majority of proposals that are externally driven are for higher maximum penalties—the maximum penalties for other broadly comparable offences will be looked at. Where maximum penalties have been changed, one of the factors that will have been taken into account is that they were potentially a bit of an outlier. From time to time, of course, over time, public perception—this will be much more on the Minister's side—will shift significantly. A big part of the history of what has happened to the maximum penalties for sexual offences has been about recognising the greater seriousness of those offences over time.

Other factors will have an influence, of course. It would be misleading to pretend that major campaigns over a sustained period of time are completely irrelevant. There have been a few examples in recent years of

where campaigns have resulted in changes to maximum penalties. The Government consulted on dangerous driving following a campaign many years previously, and ultimately changed the law to increase the maximum penalties. There are a range of drivers, but we are always mindful, as policy makers advising Ministers, to point out that balance.

Q141 **Dr Mullan:** That is really helpful evidence. You have touched on changes over time to particular sentences. There was a recent change on child murder. Prior to our changing it to a whole-life tariff for significant premeditation, the system would have told us that the punishment that was being given in a traditional custodial sentence was perfectly adequate and well up to the job. We have now changed it and said, "Actually, it should be a whole life tariff in certain circumstances." On the questions we have asked about public opinion, my interest is that I think that that is probably reflective of what the public think should be the punishment for that crime.

How do you know whether or not, in many other areas across the board, we are way off public opinion? If you do not formally measure it or seek to proactively understand it, as you have accepted the Department doesn't really, there could be three or four other areas where we are way off what the public think is adequate and are therefore not delivering effective sentencing in relation to punishment. How do you, as a Department, look across sentencing policy and know that broadly the public think that we are delivering effective justice in relation to punishment?

Edward Argar: There are two points there. I go back to the point that I made that punishment is an important one of those five things, but it is not the only one. Therefore, there can sometimes be a tension between a number of them.

Dr Mullan: Yes, of course. But you have to at least understand—

Edward Argar: To your point about understanding it, Dr Mullan, there are a number of points there, and Ms Fielder raised a number of them. We do undertake polling. We undertake research and consultations around specific offences where there is pressure, and there are different ways that that pressure manifests itself. It can manifest itself from this House. We have seen particular laws. We have seen public opinion. I think there are—the Chair will correct me if I am wrong—six categories of offences that have minimum sentences, particularly around knife crime, for example, and carrying a bladed weapon. Again, that reflects both reducing and preventing crime and also public perceptions of those offences, and other spaces around sexual offences, domestic abuse, rape and serious sexual offences, which Ms Fielder alluded to. That also reflects greater societal understanding of those offences and the long-term trauma that they cause, and society's attitudes therefore change. They have changed in the last 30, 40 or 50 years across a range of these, rightly, and that has informed the approach that Governments of both political complexions have taken around those issues.

We do have, as we see in some of the papers relevant to this Committee, the Sentencing Council's work in 2019 and its work just published today that looks across the piece. But I think there is—I will be very honest with the Committee—a challenge with saying, whether it is annually, once a parliamentary term or whatever, that we will undertake research across the whole piece of sentences for a whole tariff of offences in tune with public opinion. To a degree we see that pressure, where there is something out of kilter, manifested through parliamentarians and campaigns around particular laws, sometimes catalysing around a particular individual tragic case or a particular offence, and we see it in the media as well. Sometimes it is easy in this place to say that the media give you a bitesize chunk that does not go to the complexity. I would also pay tribute to the media in many cases because they often highlight particular issues, causes or campaigns where there is a dissonance, or perceived dissonance, between public opinion and sentencing and what is a criminal offence or an aggravating factor. There are a range of ways to do it, but I do not think there is necessarily an easy, scientific way of saying, "Is there a dissonance there or not?"

Q142 **Dr Mullan:** I think you're right, but the tension exists. The other elements of sentencing are very well evidenced around reoffending and all those things. You measure those robustly; they are a part of the statistics that you get to see all the time, but you do not have a similar, equitable approach when it comes to the public's view of punishment. That is my concern.

Edward Argar: I take that point. Some outcomes are objective—does offender X stop offending?—although they might have a long lead time, as Claire said. What we are talking about here is subjective, because it is about people's opinions that will change over time. That is much harder to measure or gauge in this space. You can look at the ComRes or YouGov polling for various surveys that look at particular elements, but it is very hard to get beyond a snapshot of changing perceptions over time, unless you go back to the same control group every time. I do not want to be unfailingly negative about the suggestion. I am just cautious about how it would be done.

Q143 **Dr Mullan:** I have another quick question. What is the Government's position on whether all Crown court sentencing remarks should be published?

Edward Argar: Made public? As you will be aware, sentencing remarks and transcripts are available to victims. I know there is a debate, which this Committee had in its previous session, about whether the £30 fee should exist.

Q144 **Dr Mullan:** We are talking about publishing them publicly for everyone to see.

Edward Argar: In certain key cases, things have been made available, but it is still early days and very limited.

Q145 **Dr Mullan:** So what is your position on whether it could be done more

widely?

Edward Argar: Well—

Q146 **Chair:** Is it a resource issue?

Edward Argar: There is a couple of factors here. Resource is one, but setting that aside for one moment, it is not a simple task. I don't think it would be a simple task, given the volume of cases in Crown court at any given time. I think where you are coming from Dr Mullan is about their role in increasing the understanding, awareness and sense of what a sentence actually means. The Sentencing Code means, as I said, that the judge has to explain how they have determined a sentence. Crown court proceedings are all audio-recorded, and that is available on request; a written transcript can be provided. While in some high-profile cases sentencing remarks are published on the judiciary.uk website, at the moment that is at the discretion of the sentencing judge. There is still an element of judicial discretion in this space. I think 54 have been published so far, give or take. We launched in April this year the Find Case Law service, which helps to build this picture. I think it is probably too early to say that we should publish them all.

Q147 **Dr Mullan:** Can you see that there is a tension if you don't publish them? Anyone—any Tom, Dick or Harry—can go and sit in a court and listen to the sentencing remarks without any checks, because members of the public are entitled to go and listen to court hearings; but afterwards if you want to know what was said, you are not allowed.

Edward Argar: Save in those high-profile cases. I take the point, but I do think there is an inherent resource tension there. Off the top of my head, I don't know the number of Crown court cases where sentencing remarks are produced on an annual basis, but there is an inherent challenge there, particularly in a resource-constrained environment.

Claire Fielder: I do not have the numbers, but it is worth saying that we are exploring with the National Archives and the judiciary what further scope there is to expand the Find Case Law service, noting as the Minister said that these are early days. As part of that, we are looking to incorporate Crown court sentencing remarks into the service.

Chair: That is helpful. Two final questions from Mr Timpson.

Q148 **Edward Timpson:** Brief, succinct answers will help us to finish before everyone has to go. Regarding information available to the public on sentencing and knowing that crime statistics in themselves can be a bit of a minefield and can be interpreted depending on what narrative you are trying to provide in terms of criminal justice statistics—the British crime survey against recorded crime being a prime example—I'm sure you will be aware that in the not-too-distant past there were the Home Office digests of criminal justice statistics. We have been given evidence that they provided sentencing trends that were accessible and helpful to the public's understanding of what was happening in sentencing. Is that something that the Ministry of Justice, or the Home Office by proxy in this

instance, would consider looking at reintroducing—or an equivalent—to try to bring about a similar possibility for the public to engage with those statistics in the same way?

Edward Argar: We currently have the quarterly crime statistics and trends. In the oral evidence, Professor Hough, I think—I could be wrong—cited that the format was easily accessible. I come back to the point I made about resources, and how in the current climate they need to be used where they are most effective. Should the Committee be minded to make recommendations on that, I am always happy to look at them if there is a way it can be done that avoids those resource constraints, and without prejudging the views of the Lord Chancellor or the Home Secretary on that. As a broad principle, if we can make the way we publish data more accessible, that is a good thing.

Q149 **Edward Timpson:** Last, going back to the Sentencing Council's duty to promote public confidence in the criminal justice system as it develops its guidelines: on the point about resources, there has been some frustration in the evidence today, and in other evidence we have received, about the ability and capacity of the council to fulfil that duty. Today we heard that it has two people to do its whole comms and competence operation. Do you think that the Sentencing Council is sufficiently resourced to undertake its work, particularly in that regard?

Edward Argar: I think there are two aspects to that—I will be very brief, as I am conscious of the Chair's admonition. First, confidence in what the Sentencing Council does is not just driven by comms; it is about its approach, consultations and the rigour with which it approaches its role of creating coherent sentencing guidelines, which reinforce, through their outcomes, confidence in the criminal justice system.

Secondly, we always consider very carefully the appropriate resourcing for individual organisations. I highlight that we have committed significant funding to help the Sentencing Council build on the level of education and information it is able to provide. I think that is a key role. But it is not only the Sentencing Council's responsibility; it is our responsibility, as well as the Ministry of Justice's and this building's. Everyone within the system has a role to play in building greater awareness and driving public debate—as Bishop James Jones talked about in his remarks.

I have to be honest that we do face a challenging financial context, as colleagues here will know. We have to look at any requests for additional funding, or to grow the work of an organisation, in the context of that broader financial and economic picture.

Chair: On that note, thank you very much Minister for your time and evidence. The report will no doubt be on its way to you in the new year at some point.

Edward Argar: I will endeavour to ensure that we respond in a timely fashion.

Chair: We will be very grateful.