

Justice Committee

Oral evidence: [Evidence in sexual offence cases](#), HC 1436

Monday 10 July 2023

Ordered by the House of Commons to be published on 10 July 2023.

[Watch the meeting](#)

Members present: Sir Robert Neill (Chair); Tahir Ali; Maria Eagle; Dr Kieran Mullan.

Questions 66-151

Witnesses

I: The Rt Hon Edward Argar MP, Minister of State, Ministry of Justice; Jerome Glass, Director General Policy, Ministry of Justice; and Amy Randall, Director, Victims, Vulnerabilities and Criminal Law, Ministry of Justice.

Examination of witnesses

Witnesses: The Rt Hon Edward Argar MP, Jerome Glass and Amy Randall.

Chair: Welcome to this session of the Justice Committee, looking at evidence in sexual offence cases. Welcome to our witnesses, the Minister and his officials, who I will ask to introduce themselves in a moment. First, we have to declare our interests. I am a non-practising barrister and a former consultant to a law firm.

Maria Eagle: I am a non-practising solicitor.

Q66 **Chair:** Thank you. Minister, can you introduce yourself and your team?

Edward Argar: Thank you very much. I am the Minister of State with responsibility for victims and sentencing. To my left is one of my senior civil servants, Amy Randall, who is a director in the Department, and Jerome Glass, who is director general. If it is helpful, they may wish to say a little bit about exactly what their portfolios cover.

Chair: Why don't we do that to start with then?

Amy Randall: I am Amy Randall and I cover victims' policy, vulnerabilities and criminal law.

Jerome Glass: I am Jerome Glass, and I am the director general for courts, and access to justice policy overall.

Q67 **Chair:** I will start with the Minister, and then the officials can come in as and when necessary. Section 28 pre-recorded cross examinations have been debated for some time. There were some pilots, there were some early movers, and then an evaluation was taken. The Government decided in 2021 to move from an initial stance of using such cross examinations for child witnesses, to a general roll-out. What was the thinking behind that overall roll-out?

Edward Argar: You will be aware of the 2016 evaluation of the pilot that was commenced and the changes that were made in 2013. The decision taken by the then Secretary of State was to initially pilot this, which was successfully done, and then, last year, undertake the process evaluation. We may talk more about the nature of that in due course.

Given the limited data available it was decided that it was the right time to roll this out more broadly, and to subsequently undertake a fuller evaluation, which is what Professor Thomas is doing, and we are then also doing later this year. One of the reasons for that, and for the approach taken with the process evaluation, is the relatively small number of cases that came through during that time—given the length of time that those cases take—as well as the challenges of disaggregating the data between those who would be captured by the new measures, and child witnesses and vulnerable and intimidated witnesses, as Professor Thomas set out. There is an inability to disaggregate that clearly.



HOUSE OF COMMONS

- Q68 **Chair:** When the decision to use section 28 was made, as a matter of principle most people agreed with it. There was a general buy-in that this was a good thing from lawyers, victims' groups and others in the criminal justice system. Even at the beginning, however, there were concerns raised about the practical implications, weren't there?

Edward Argar: You are absolutely correct, and some of those concerns came out in your evidence session on 26 June. There were concerns about whether, in giving evidence in this way—this was anecdotal—that it could have a negative impact in terms of the ability to convince a jury, or the jury's ability to judge the calibre and quality of that evidence.

The counterpoint, if I may say so, was that we took the view, and certainly the previous Secretary of State took the view, that this may well encourage to come forward larger numbers of victims, witnesses and complainants who, if they were required to go through the in-court process, would simply not have come forward. So, notwithstanding some of the anecdotal suggestions about what this does and the outcomes that it generates, the counterpoint is the hypothesis that it means that you get more people coming forward who otherwise would not have done so. But it is very hard to prove that.

- Q69 **Chair:** So what was the evidence that the previous Secretary of State had for that?

Edward Argar: Again, this was anecdotal evidence. There is—this is the key point, which I suspect your Committee will get at—no statistical qualitative evidence around this. That is partly because, as you will see from the process evaluation—I think it was Ms Eagle who raised this before—there were only 13 victims or witnesses. That was notwithstanding two months of attempting to get a lot more, but they were simply not willing to come forward or co-operate with that evaluation. Therefore yes, the evidence base is limited. I do not know whether Ms Randall wants to add to that.

Amy Randall: Yes, may I add to that? I think we will come on to cover the 2023 process evaluation, but a process evaluation was conducted in 2016 as well and was published. That, while limited in nature, was slightly larger than the 2023 evaluation; it included a quantitative analysis of 200 cases, so it was slightly larger than this year's evaluation. It had limitations, but it did give us really positive indications. For example, it showed that trials using section 28 were slightly shorter. It showed that there was a higher prevalence of early guilty pleas, thus sparing the victim the need to go to trial at all. There were fewer cracked trials. And what it did say on convictions was that, broadly, between the 200 cases that were looked at under section 28 and a comparative—other—200-case set, there wasn't any difference in convictions; it was broadly around a 50% conviction rate. As I say, it was limited, but that 2016 evaluation did give us positive signs, which I think informed Ministers' thinking.

- Q70 **Chair:** In 2021, the Lord Chief Justice came and gave evidence to the Committee that basically said, "Be careful." He said that everybody



HOUSE OF COMMONS

agrees this could be a good and valuable tool in principle, but there are “quite fundamental questions about it to which everybody ought to know the answer.” It seems that the former Secretary of State ignored all those questions, then.

Edward Argar: I would not put it in those terms—that was a typically direct question, Chair. I think the former Secretary of State weighed up both that 2016 evidence—okay, it was relating to an earlier cohort in a different context, but he none the less believed that on balance it was the right approach to take. There are a number of issues, which we continue to work through, including with the judiciary, around things like listing and similar and which came up in your previous evidence about quality of evidence. We may touch on those subsequently.

Q71 **Chair:** Lord Burnett made the point that he is a lawyer and “I like to proceed on evidence”. And the evidence either way for the speed of the roll-out—leaving aside the principle—was pretty thin, looked at objectively, wasn’t it?

Edward Argar: I think it was right that we piloted this, but right that we expanded that roll-out in order to get the evidence base and be able to undertake this second evaluation, which will inform how we can continue to proceed in this way or whether changes are needed to it. That’s the key—

Q72 **Chair:** Why not do the second evaluation first and have a better evidence base?

Edward Argar: Because the numbers on the pilots were simply too small, we think.

Q73 **Chair:** Well, that is all the more reason for making sure that you gather more as more comes through.

Edward Argar: We needed to expand it in order to get an evidence base to see whether there were other issues.

Q74 **Chair:** Can you help me, then? What was the consultation with the judiciary prior to this roll-out?

Amy Randall: There was plenty of consultation with the judiciary prior to both the different pilots. Obviously, we work hand in glove with the judiciary on things like this. We consulted with them prior to the decision in December ’21, as you say, but ultimately it is a decision for Ministers. So we had discussions with the judiciary around the practical considerations of how to make this work, but it is a decision for Ministers at the end of the day.

Edward Argar: In terms of the process evaluation, as you will have seen from previous evidence, we reached out to the Judicial Office. They stated that they were unable to engage with that, but they did submit some written feedback, which you will have seen, I suspect.

Q75 **Chair:** Indeed. Of course, the reason why they said they were unable to engage, Minister, was the pressures on listing. You had already been



HOUSE OF COMMONS

warned that rolling out section 28 without other, mitigation measures would make the pressures on listing worse, so why do that?

Edward Argar: There are challenges with listing. I think a reference was also made in the previous evidence to—for want of a better way of putting it—research and consultation fatigue, because of the amount of things on which the Judicial Office are being consulted. There is a challenge there, but there is, equally, a balance. I appreciate the pressures they are under, particularly in the current context, but equally—I suspect quite rightly—you would think it remiss if we had not reached out to them to seek to engage with them.

Chair: Absolutely.

Amy Randall: The 2016 evaluation did involve the judiciary. On the point about listing, it is interesting that that evaluation essentially—I think it would be right to articulate it this way—described listing as challenging but doable. Yes, it was a different cohort and a smaller subset, but the evaluation did not recommend that any large changes were needed to the process of listing in order to accommodate section 28. So, again, we did have signs that—

Q76 **Chair:** Did it not dawn on you, Ms Randall, that the world had changed completely since 2016? You had had covid and a massive surge in backlogs. In terms of those things, the 2016 evaluation was of no relevance any more, was it? It was so out of date as to be worthless.

Amy Randall: I would say that many of the listing processes are still the same, and the hard work of listings officers to make the courts run efficiently is the same.

Edward Argar: I would slightly take issue with that. I do not believe it was useless or irrelevant. I believe that the reasons it highlighted the potential benefits from section 28, particularly by looking at this through the prism of victims and witnesses and seeking to make it easier for them to give their best evidence—that premise remained valid.

On the challenge you highlight about listing, you are right to say that what happened during the pandemic, and subsequently the Bar strike, made that even more challenging. But equally, I know you will be aware that last year, given the responsibility the judiciary have around listing, they set out a new criminal practice direction that seeks not to solve this, but to mitigate the impacts with their understanding of how the listing process is best managed.

Q77 **Chair:** I am interested in what processes are being done to make sure these approaches are joined up. To mitigate some of those issues, for the reasons that we just talked about, probably requires talking to the other parts of MoJ and their agencies about what funding is made available—for example, on sitting days, advocates' fees, investment in technology and so on—to make sure that what everybody agrees is a good idea, but which some are concerned has been brought in too fast, is going to work properly in practice. I would be interested to know what the mechanism



HOUSE OF COMMONS

to join those things up is.

Edward Argar: I think that is absolutely correct. I do not know how far you want me to shade into things like investment in technology, courtrooms or sitting days at this point, because you as a Committee may want to come to it. But I can touch on it, and you can stop me if I am going too deeply into rabbit holes.

We entirely recognise that in terms of listing and how that is managed, obviously that is a judicial function, but what you have seen from the current Lord Chancellor is that we have continued with the Nightingale courts, we have those additional super-courtrooms, such as my local one up in Loughborough, and we have lifted the limit on sitting days. You will know that one of the things that the Lord Chancellor—you may ask him about this next week—has highlighted is his intention to focus on the capital and the infrastructure, including the technology, for court maintenance going forward. I do not want to pre-empt what he might say to you in Committee, but we are joining up across those different elements of it, including, for example—this is slightly outwith the section 28 process—things like the SSVS measures that we are piloting in Snaresbrook, Newcastle and Leeds. Those are separate but linked to it. We are looking at this in the round, but I am happy to answer more detailed questions.

Jerome Glass: May I add to that? You mentioned advocate fees, and I think it is important to say that that was another area where we had explicitly made the link. As you all know, as part of the agreement with the Bar in October and November last year, we explicitly drew out an additional fee for section 28 hearings. You may wish to ask us about that but, again, that is another part of the picture and I think it is all joining up.

Q78 **Chair:** We will come on to those, but is that actually being paid as of now?

Jerome Glass: As you will know, it applies only to representation orders from the beginning of February this year, so not a huge number of them will have come through. I do not have figures on whether any of them have actually been paid out at this point, but it is a very short period of time for it to have applied. But there may well be some—I do not have the figures on how many specifically.

Q79 **Chair:** I understand. The only problem is that the majority of the RASSO section 28 cases that are in the current backlog or waiting for a decision may have had their section 28 examinations done, but those waiting for a trial will not have those uplifts.

Jerome Glass: If the representation order is before the beginning of February, they will not. However, of course, they will benefit from the 15% uplift because that was backdated.

Chair: Okay, thanks. We may go into some more detail later.

Maria Eagle: It is good to see you again, Minister.



HOUSE OF COMMONS

Edward Argar: I will see you again tomorrow, I suspect.

- Q80 **Maria Eagle:** You will—in a different Committee. The MoJ published its process evaluation of section 28, which you have already referred to, in April this year. Could you explain how the MoJ decided on the methodology for this evaluation?

Edward Argar: If it is appropriate, Ms Eagle, I will give a headline answer at a political level and then invite Ms Randall to answer. The approach taken was to use Ipsos, which did this as an external body, with 29 practitioners or others engaged on that side of the system, be it police officers or be it in the legal context, and 13 witnesses or victims.

I have already highlighted the challenge faced, which was that it took, if I recall, two months of searching and trying to persuade people to come forward. It only managed 13 because, in a context like this, there is often a challenge and a reluctance for victims and witnesses, having been through this, to then want to give evidence to an academic study. That was a challenge, and it would be wrong of us not to highlight that to the Committee. We were very explicit that this was looking at the process and not at outcomes or direct impacts. In that context, we were not able to speak to jurors, for example, to understand whether the fact that it was on a video link, pre-recorded, as opposed to someone sitting like this in the courtroom, impacted their decision. There are significant limitations to that.

The desire was to do it quickly, which we did, followed by a rather more detailed piece of analysis, which would seek to get into a number of those questions, ideally disaggregating more of the data and looking at that alongside Professor Thomas's work.

- Q81 **Maria Eagle:** What did it cost?

Edward Argar: I do not have that figure to hand, but I am happy to write to the Committee if that is helpful, Ms Eagle.

- Q82 **Maria Eagle:** That would be helpful. It seems to me that if you have not—for understandable reasons—spoken to any jurors, and you have not spoken to any judges, because they would not co-operate with you for various reasons, all of which are no doubt very good and understandable, you have managed to speak to 13 witnesses and three in-trial advocates. What possible value is there in an evaluation like that?

Edward Argar: I would say two things. First, alongside those three in-trial advocates, there are also the other 26 practitioners of different backgrounds and different parts of the system, which I think has a value, so I would not downplay that. But we have been very clear about the limitations on this and the challenges of doing this. It is partly also the length of time—again, we may touch on this—that it takes from the inception of such a case to it coming to a conclusion, and the fact that it would not be appropriate to engage with people in cases that are still in flight.



HOUSE OF COMMONS

Therefore, the number that it is possible to engage with is already a very small number. Of which, anecdotally, a large number of victims and witnesses do not wish to participate in this, and a large number—we can get you more information on this—was reached out to and declined. The challenge then is, do you undertake no analytical research even at this level and simply proceed and roll out, and then two, three years down the line, you do it, remembering that the next stage will be able to report and will be published next year, or do we try to get some outlines, which we did? I think it was Professor Thomas who said there is value to it as a foundational piece of research, not necessarily detailed analysis—

Maria Eagle: She may have been being kind.

Edward Argar: Maybe kinder than you on this one, Ms Eagle, but none the less, I think she did highlight that. I would share that view that there is value. It has limitations, but it is still a step forward in terms of the research. Also, to the point the Chair made, given that 2016 was the last piece in a slightly different context and possibly—you could say—in a different age, this is a useful step, but it is by no means the end of the story.

Q83 **Maria Eagle:** Given that you have already decided you are going to roll out section 28 everywhere anyway, what possible value could this have had?

Edward Argar: As you will have seen, Ms Eagle, from my engagements with the Committee that we are both currently sitting on in a different context, it is always important to continue to build that evidence base, because we are always willing to look at whether tweaks or changes need to be made. This is the first step in that, and I think it will be important to see what both Professor Thomas's and the MoJ's analytical research does. If your contention is, and I may be putting words in your mouth—

Maria Eagle: I wouldn't let you do that.

Edward Argar: I would be very brave were I to do that. If the contention was that given the limitations, we simply should not have done it, I would challenge that because I think there is still value in this. It may be limited and caveated, but it is still important. I don't know whether Ms Randall wants to add anything on the granular level.

Amy Randall: I am happy to take any specific questions, but if I could add to that, we never intended that all victims in the eligible cohort would use section 28. It was supposed to be an option available to people. Therefore, I do think that continual learning and evaluation is useful, even if it is at small scale in this process evaluation, because the importance of informed choice comes across strongly in the process evaluation and in lots of our work on victims. I think that being able to equip police officers and the CPS with the information to allow victims to understand what the pros and cons might be is really valuable, so that they can choose whether opting into section 28 is the right thing for them.

Q84 **Maria Eagle:** When you have three at-trial advocates and 13 witnesses,



HOUSE OF COMMONS

you cannot possibly draw any robust evidence from that, can you? It is all anecdotal. You could get anecdotal evidence by doing a Twitter survey.

Amy Randall: But it is precisely that it is qualitative rather than quantitative. The Minister is absolutely right; we tried hard to get a bigger sample of witnesses. It is worth saying that when we were thinking about what good looked like, we were probably only looking to get towards 20 or 30. That, to us, would have been the right kind of witness sample size for this. We did not do that because, exactly as the Minister has set out, we could not get that uptake, but it would always have been small and deep in nature, rather than large and broad.

Q85 **Maria Eagle:** So you wouldn't have considered cancelling the contract when you couldn't get enough people involved to make it robust.

Edward Argar: No, because I have to say I don't think that this would ever have been able to achieve the degree of robustness that you might seek, because it is not quantitative. It was qualitative; it was anecdotal; it was to seek to get perceptions of it.

Let me also say gently, on the point that you made earlier, that this was not a Twitter survey or similar; these had to be people who had first-hand experience of the system and were willing to do this. That is one of the challenges in getting them. You and I have worked on this previously in another context. For a lot of people, going through the court process is a big thing, and they may say, "I've done it. I don't want to relive that through an academic piece of work." Therefore, I don't think that that in any way diminishes the value of it.

The final point that I would make is about the cohort. We heard from Professor Thomas that since, I think, August 2020, around 3,300 people had been through this, but that was not a disaggregated figure of the new cohort used; that was children and adults cumulatively. The number of adults using this under the new provisions is very small. I may be corrected by Mr Glass, but I think that, in the past three months for which we have data, it was 94 individuals—

Amy Randall: Yes, for adult rape.

Edward Argar: For adult rape. That is a very small number, and therefore you are dealing with the challenges that I have set out, but also a very small pool in which to seek that. I do not think that that undermines the value of this, but it is important that we caveat it with those points and look at it in that context.

Q86 **Maria Eagle:** All right. You have been very clear; I am not going to press any further.

The Judicial Office's submission to the process evaluation raised concerns about the increasing burden on the courts in respect of listing and scheduling. That is something that you have acknowledged, but what is your own assessment of the practical problems caused by the increasing use of section 28, for example in terms of the timeliness of cases?



Edward Argar: In terms of timeliness—I am happy to be corrected by officials if I get this wrong—we will need to wait and see the analysis that is to be done by Professor Thomas and others to have a robust and clear answer to that, but I am not seeing anything in this process that appears to contribute to additional delays, nor, I hasten to say, am I seeing anything to suggest that it means that cases are progressing more rapidly. There are other factors externally that, I suspect it is fair to say, are having a greater impact on the timeliness of cases.

That is not to diminish the point made by the Judicial Office and others that it makes their job a lot more complex in terms of the scheduling and listing of these cases, but thus far I do not believe that I am seeing anything that suggests a lengthening of case times directly linked to this. There are other factors, such as court backlogs and a whole range of other things, which the Chair and others may come on to.

That is where we are at the moment, but I do not diminish for a second the point made by the Judicial Office about the complexities of what they are having to grapple with in the nature of scheduling these cases, or the challenges from the initial assumption, which was that, ideally, it would be the same advocates and the same trial judge for all stages. I think that there has been a degree of flexibility added into that, with that criminal practice direction, but, again, that is a challenge.

Q87 **Maria Eagle:** Do you accept that introducing section 28 for adult intimidated witnesses has a much greater potential pressure in respect of timeliness, because of the extra time it takes to do cross-examinations and re-examinations of adult witnesses rather than child witnesses? This scheme, when it was thought up so many years ago, was basically aimed at protecting vulnerable child witnesses. Are you sure you have got it right, in terms of the impact on timeliness of spreading this process to all adult intimidated witnesses?

Edward Argar: There are two parts to that. We believe it is the right approach to roll this out. I mentioned the relatively small numbers who have taken this up in the last quarter—94, as I say. That is an almost doubling of the steady state before the national roll-out. It was about 55, I think, in the three months of the quarter prior to this. You are seeing about another 40 coming through, but that is still a relatively small number.

Am I totally confident without a shadow of a doubt that this will not impact timeliness or have other impacts that we need to be cognisant of or alert to? No, because it is absolutely right with something like this, where you change a process, change eligibility or introduce a new process, that you keep that under review. Often, it will be some years before you see the steady-state impact of something like this.

Do I believe that doing this is another element of what we are seeking to achieve—we saw it in some of the announcements this morning—in terms of trying to bring more victims and witnesses forward who are willing stay the course and go to court? Does it help with that? I believe it has the



HOUSE OF COMMONS

potential to do so. Again, though, Ms Eagle, I would say that this is anecdotal—that is one of the points you were coming at in previous evidence sessions—but that is why I think these two additional pieces of analytical research will hopefully give us more information on that, particularly on victim attrition. That is a dreadful phrase, but you know what I mean in that context.

Q88 Maria Eagle: What about the technology that is used? Are you satisfied that all of our court estate is capable of having screens that work well enough and are large enough to enable juries to evaluate the evidence they are being given?

Edward Argar: Again, I think this line of questioning came up in a previous session—not just about the kit in the courtroom and its sound and visual quality, but, at the other end, the kit doing the recording, to make sure people can give their best evidence and that it is consistent, and access to locations in which that could be done.

Mr Glass may want to come in, because this goes to the Chair's point about how we join up across different parts of the Department—both me on victims and sentencing, and HMCTS in terms of capital investment in the kit. As you will be aware, each courtroom is different, and the ability to take standard kit is not always there. We are investing in a programme over time to upgrade both the infrastructure of courtrooms and the tech in courtrooms to make sure it is of the standard we would wish. That is not a small project, though, so I caveat it with that.

In terms of the other end of the lens, there were two elements to the previous evidence. One was how you actually set up the room and—not coach, because that is a bad word in the context of witnesses and victims, but how you enable them to do things like look over the camera so as to give the best and most impactful evidence, to look at it and not to look around, and so on. If I was a witness in a courtroom, I would be looking at you as the jury and directly engaging with you. If you are talking to a camera, that is very difficult to do.

There is also a point about the actual recording technology. The contract for that is with Vodafone, as you will probably be aware, and we are working with them at the moment to look at how we can continue to evolve and develop the quality of that offer. There are a number of factors in that. For example, at any one time you can only have 100 concurrent recordings or playbacks. That is the limit of the licence. That is potentially a constraining factor. I think it is important to highlight that to the Committee, as it may be relevant to your reflections and, possibly, your advice. That is something we are looking at. I am also keen that officials work more broadly to look at longer-term improvements and directions of travel on this.

My final point is around locations. I am conscious that at the moment the facilities are available in courts, but I think there are only three external remote locations where this is available—SARCs and an NHS one. I think there is one in Leeds, one in Durham and one in London. Given the



HOUSE OF COMMONS

numbers I spoke about, it is worth evaluating how those remote locations work and so on, but on the broader context of looking at improvements to technology—that broader work with Vodafone and others inside the Department—that is something I am also keen that we look at.

A final caveat: that 100 concurrent that I mentioned is not just, for example, the 94 I mentioned in the last quarter who are adult rape victims and witnesses. That concurrent number applies to the overall case load of people who are eligible for this, including child witnesses and so on. I will be honest: I think that is a limiting factor, but it is one that we are looking at. I don't know whether Mr Glass wants to add any technical details.

Jerome Glass: I can help a little bit on the overall numbers. Clearly, spending on capital refresh and audio visual equipment is for HMCTS. I am slightly limited in the sense that they are about to lay before Parliament their accounts for the year to which this refers, so I will have to be a bit vague on the specifics of the numbers, but, broadly speaking, they spend about £10 million on tech equipment refresh, of which about 80% is specifically on audio-visual refresh to make sure that, precisely as the Minister says, the equipment is up to scratch to allow these sorts of hearings to take place. I am slightly limited in how much I can say ahead of them publishing their accounts.

Q89 Maria Eagle: We have heard from other people giving evidence that quite often it is not possible for juries to really hear or see the evidence in chief. This often takes place in police stations or wherever—perhaps in slightly nicer places than your typical police station interview room—but people are not mic'd up, so it is not recorded particularly well, and perhaps the camera is in a corner hidden away, for good reasons, but none the less it does not make for very good evidence in chief. Are you convinced that you have got this way of doing things right? It is only cases that begin like that that can even have section 28 later for the cross-examination and the re-examination if necessary. If you are starting out with very poor quality sound and visuals, how helpful will that be to conviction rates or making sure that best evidence is in fact given?

Edward Argar: There were a number of points there. I think it came up in the previous evidence session how jurors often end up reading the transcript rather than actually looking at the video and the facial expressions and how the individual is giving their evidence. There are different elements of this process. I think it was Mr Riley who set out very coherently in the last evidence session the different stages, processes and hearings. What we are talking about here is that initial evidence in chief. That is recorded, but that is dealt with by the police, not by HMCTS, the MoJ or a barrister, and therefore that reflects different kit in different police stations. There is a challenge—

Q90 Maria Eagle: It still ends up looking and sounding poor in court. It does not matter whose police station it is in or if it is somebody else's budget. Aren't you supposed to try and join these things up?



HOUSE OF COMMONS

Edward Argar: You are, but you also have to remember that there is—learned counsel will correct me if I am wrong—a slight tension in that process. It is the tension between its being an investigatory process by the police—that first main interview, keeping the evidence, recording it—and how that evidence plays back and works in a court context. In a sense you are trying to do two different things with it. I think that is something that counsel have previously brought up by saying, “Is that the most effective? Would that be better for counsel?”

I fear that there could be—I will look at what the Committee writes on this—an irreconcilable tension between those two in some ways. There is the investigatory approach, it being a police process, but ultimately it becomes a key part of the prosecution’s case and potentially the defence’s case as well. I know that across the Home Office and policing there are investments in improving the capital estate and technology, but this—it may be something that the Committee goes to—is an area where, in a sense, the process and the opportunities afforded by technology are moving ahead very rapidly. The upgrades to that technology perforce sometimes take a little longer.

Q91 **Chair:** I am grateful, Minister, for the fullness of those responses. It was very helpful, and you have clearly looked very carefully at the transcript of the evidence by Mr Riley and Ms Prior KC. You pick up on a point that I think troubles a number of people. Accepting the desirability of the intention—that you want to make it as easy as possible for complainants in these cases to give evidence in the best way that they can—isn’t there a problem that needs to be grasped, which is that police officers are not equipped, by training or their circumstances, to present evidence to juries? The prosecuting counsel is. With the section 28 examination in chief, you have actually cut the prosecutor, who may have years of experience in eliciting answers from a witness in a way that will be helpful to the jury, out of the process. That is a pretty fundamental issue that needs to be addressed, isn’t it?

Edward Argar: I will defer to you on this as a former practitioner, as well as in your parliamentary role. That is why I highlight that I think there is an inherent tension there. The police will be approaching this from an investigatory perspective, I suspect—

Chair: Yes—perfectly properly, from their perspective.

Edward Argar: Which is their job, because they want to find the evidence to create a robust case. A prosecutor, when undertaking this, would look at it from the perspective of how each of these answers—this examination in chief—is going to assist in building a convincing case to the jury and the court. Notwithstanding the actual subsequent section 28 measures, the cross-examination and similar, which give counsel an opportunity, I take your point about the potential inherent tension there.

My challenge—and I know that it is not for me to challenge the Committee, but I will read the report with care—would be about how you resolve that tension between the investigation and that. Would the



HOUSE OF COMMONS

suggestion be to split the two, or in doing that, would the police evidence still constitute a significant part of their investigatory and evidence function? I suspect that that may be something that the Committee will look at. It is certainly something that I am prepared to reflect on.

Q92 **Chair:** So the Government are open to looking at how we achieve this.

Edward Argar: I am happy to reflect, as always, on anything the Committee puts before us, because I know it will be carefully considered. You may wish, equally, to test a similar point with the Lord Chancellor—I think you have him before you next week. But I suspect that he would take the same view: he will always consider carefully anything this Committee recommends to him. We may come on to that in a different context shortly.

Q93 **Chair:** I am sure we will. I just want to nail it down, because one of the other bits in Mr Riley's evidence came back to the point that was made about backlogs, and whether they have had an impact. For what it's worth, Mr Riley and I did these sorts of cases against each other 15 or 20 years ago, when we were much less advanced in our treatment of witnesses than we are now, so he knows that of which he talks.

There is this real concern—inevitably, because of the pressures on listing officers—that once you have done the cross-examination under section 28, the evidence is, in Mr Riley's phrase, "in the bag", and then it goes to the back of the queue, or lower down in the queue, in terms of the many priorities that listing officers have to juggle. Therefore there is a greater risk—coming back to Mr Glass's area of work—that that is when you get the pressures of people having to return the cases, because counsel simply will not be available to be taken out of the other trials they are doing. That is when you then get the Criminal Bar Association and others coming along and saying to you, "Well, sorry, but the fees aren't enough to attract the best people we want to have on both sides to do this type of work." How aware is the Government of that real issue? In trying to do a good thing, we may create more problems that have unintended consequences that may equalise or outweigh the good.

Edward Argar: Undoubtedly, as you will be aware, Chair, the backlogs have had an impact on a range of Crown court cases, and on the length of time it takes for a case to be listed. One of the points that was highlighted in your previous evidence session was that if you wish to have the same judge and the same advocates, that is increasingly challenging given the pressures on the availability of counsel more broadly. Then we come to the fee point, which I think you touched on, Ms Eagle, in the previous evidence session—not only the £670 uplift but the disparity in the starting point for defence and prosecution.

Another factor to consider alongside the backlogs, which may be a consequence of them, is the desire set out in the approach to listing. There are a number of criteria—you will be familiar with them—including vulnerable and young people, who get higher prioritisation. There is a whole range of factors that listing officers consider. Equally, they aim to ensure that a trial of this nature is not a floater and has a fixed listing, but



HOUSE OF COMMONS

the backlogs inevitably mean that sometimes that is further down the line to make sure that you have it fixed, rather than risk it being a floater. I suspect there is an oblique link, if not a direct cause, with the challenges around backlogs and delays. But equally, I am not sure that any of us would wish to see the approach being to list a number of them as floaters, because that does not provide the certainty, particularly in these sorts of cases. That is the challenge, so it is a fair challenge, Chair.

- Q94 **Chair:** Perhaps Mr Glass can help here, or you may have the facts yourself, Minister. Going back into the £670 uplift, you remember that Ms Prior KC, when asked whether that would make a difference to the availability of counsel, said no. I think I am right in saying, Mr Glass, that the CBA is currently saying that the £670 uplift, or the bolt-on as it is sometimes called, was to be reviewed in spring 2023. Is that happening at the moment?

Jerome Glass: That is happening exactly right now. One of the issues we have in conducting that review is precisely the point that I was making earlier. There is a relatively limited evidence set because this has only been in effect since the beginning of February. So that is going to make it hard from a review point of view, but we are looking at it. We are of course aware of the position of the Criminal Bar Association and we will look at that carefully. We set that fee of £670 based on an assumption of the number of cases that are coming through. One thing that is quite important for us is to see how many cases are coming through and whether there has been an increase.

May I come back to the previous point that the Minister mentioned? When considering anything to do with the impact on listing, timeliness and so on, it is really important that we get the evidence base to conduct the review that we are doing. There are a lot of very well-informed but still anecdotal views on this. We hear lots of views. We hear the views that have been expressed by Mr Riley, and we hear different views as well. It is really important that we do not all leap to a conclusion about it.

- Q95 **Chair:** I am with you on that, hence my criticisms of the decisions of the former Secretary of State, but that is not for you to comment on. I understand why you want to get the best evidence. In terms of that best evidence, you must have some data that will show the number of section 28 hearings there have been, both so far and since the review?

Jerome Glass: In terms of the roll-out of section 28, the latest public data is in our national adult rape data delivery dashboard. As the Minister mentioned, there has been a significant increase in the last quarter of 2022. In Q4 2022 we were at 94, and I think in the previous several quarters we were at 50 or so. That is adult rape specifically. We do not have any sort of hard data—certainly not that I could share with the Committee—since February and the impact of the roll-out. Obviously, that is exactly the sort of review that we are undertaking so we have some sort of indicative evidence coming through. My concern with the review that we are conducting right now is whether it is meaningful, given the limited



HOUSE OF COMMONS

amount of time that has elapsed. The short answer is that we do not really have any more information.

Q96 **Chair:** And what about since the £670 deal was originally agreed on?

Jerome Glass: That is what I mean—we have very limited evidence since then.

Q97 **Chair:** Wouldn't it be enough for you to know and to be able to tell this Committee that, in fact, the number of section 28 hearings is significantly lower than the assumptions that you made at the time of the deal for £670? That is the case, isn't it?

Jerome Glass: Again, I do not think we are in a position to say. Clearly, there has been a ramp up; we would have expected there to have been a ramp up. This was the point that the Criminal Bar Association made—that its assumption is that it is lower than the assumption we had made in our impact assessment. I think it is reasonable for us to assume that it will ramp up as well. That is my concern about the timing of this.

Q98 **Chair:** But at this moment is the CBA's contention that you have referred to correct—that it is lower than your initial assessment?

Jerome Glass: I think it is fair to say that it is not quite yet at the level that we expected it to be at.

Q99 **Chair:** So it is lower than you expected; you think it may ramp up, but it is lower than expected.

Jerome Glass: As of this moment, it is lower than the assumption we put into the impact assessment.

Edward Argar: The only caveat is that the assumption put into the impact assessment was of the level once it had reached a steady state, not during the initial months. My point is that I suspect this is something that we should look back on another few months down the line.

Q100 **Chair:** We also know that £4 million was set aside for this—I hope people recognise that—in the spending round up until spring 2025. How much of that money has been spent so far?

Jerome Glass: I'm afraid I do not have those figures, because of course they are related to the figures on ramp up. Also, the critical thing is that it only applies to the representation orders from February, so there will be a very limited number at this stage, but you would expect it to be a slow start and then quite a fast ramp up in due course. The short answer is that I do not know the answer to that question.

Q101 **Chair:** Do we know how many sex offences trials have been adjourned due to a lack of a prosecution or defence advocate over this period?

Jerome Glass: I do not have those figures.

Edward Argar: Not that I am aware of. I am happy to look into that, Chair, to see if such data is available.



HOUSE OF COMMONS

Q102 **Chair:** That would be helpful. We have been provided with some information; you ought to have the chance to check it. It suggests, for example, that there has been an 18-fold increase in the last four years in ineffective trials due to the lack of a prosecution or defence advocate, and that 34 sexual offences trials were adjourned due to a lack of a prosecution advocate last year compared with one in 2019. They are not large figures in toto, but these are significant increases on the face of it. You may have data that says otherwise.

Jerome Glass: Chair, if I may, can I just check that that number refers to all trials as opposed to section 28-specific trials? Or is that section 28-specific? If it refers to all trials, of course there are a number of things that have happened since 2019, not least the pandemic and the Bar strike, which will have had a material impact. If the numbers refer to 2022, you would expect the Bar strike to have had quite an impact on that.

Chair: In a sense, we are probing you because you are the people best placed—yourselves and HMCTS—to gather the data in an objective fashion. I just wondered what steps had been taken to capture that.

Edward Argar: Again, to Mr Glass's point, is that overall rape and sexual offences trials, or is it section 28-specific ones?

Chair: That may be overall.

Edward Argar: I just wanted to clarify. If we are going to clarify, I wanted to check that we are clarifying the same thing, as it were.

Q103 **Chair:** It would be very good if we could disaggregate the two, ideally, and then there wouldn't be any confusion between the two.

Edward Argar: With your permission, could we approach your Clerk to get that information and then we can test it?

Chair: Of course.

Amy Randall: We do have that data; I'm afraid I just do not have it to hand.

Q104 **Chair:** We understand. If you are able to send it to us, that would be fine. Not everyone can have everything at the tips of their fingers all the time.

The only other thing I wanted to raise about the section 28 fees broadly was this: you are obviously engaged with the CBA, but another point I wanted to raise with the Minister was about how the contract with Vodafone works. Most of us had not heard about it before. Were either the judiciary or any practitioners—prosecutors or defenders—actually involved in the setting up of and design of the contract?

Edward Argar: Not that I am aware of, but I think it is an historical contract, rather than one designed specifically for this process. Let me revert to the Committee with as much as I am able to share around that. That may be helpful to your deliberations.

Chair: That would be helpful. Thank you very much.



Q105 Tahir Ali: The Judicial Office's submission to the evaluation stated that the expansion of section 28 could lead to an increase in the acquittal rate. What is the Ministry of Justice doing to investigate the effect of section 28 on acquittal rates?

Edward Argar: I am grateful for the question. I always take anything that the Judicial Office says very seriously, but I highlight that, as you say, it "could" lead to that. This is anecdotal, and we have heard other anecdotal evidence about the use of section 28 that says more witnesses and victims have come forward who would otherwise not have engaged with the process. I caveat it with that note of caution—this is anecdotal. We are looking at this in our more detailed evaluation, which we have just started, alongside Professor Thomas's work. She, of course, will have access to not just the statistics but juries and simulations. It is not an exact trial, because you cannot replicate a trial twice with different circumstances, but in a sense it is a mock trial to get some impression of how jurors are impacted by different types of evidence.

I think that it is too early, and I am always wary of drawing any generalisations or conclusions from a limited evidence base on something like that. I note the anecdotal evidence, but I am afraid we will probably have to wait until next year, when Professor Thomas's work reports, and our own work reports, which will then be published, to see whether we are able to get a greater level of granularity.

The challenge that we face of course is that you can look at the statistics on whether someone is acquitted or convicted, but you cannot necessarily look into the minds of individual jurors and see what convinced them on a particular verdict. There are challenges with that, but we are doing our best to look at it in the evaluation that we are going to undertake.

Amy Randall: Also, the 2016 process evaluation that I referred to, with caveats around the small sample size of around 200 cases and that type of thing, showed no difference in acquittal or conviction rates between the section 28 cohort—I accept that that was for vulnerable rather than intimidated witnesses at that time—against the comparator cohort. You have heard from Professor Thomas, and there is academic research including from, I think, New Zealand. A lot of it is just inconclusive. As the Minister says, this is exactly what we want to get at with our impact analysis over the course of the next 12 months, so that we can start to bring some concrete facts to something that is dominated by anecdote at the moment.

Q106 Tahir Ali: Professor Thomas raised concerns with us about the quality of the data being collected by the MoJ on section 28, particularly in terms of cases involving single defendants facing multiple charges. Do you recognise those concerns?

Edward Argar: Yes. I read the transcript of your evidence session on 26 June with the professor, and there are significant challenges in essentially disaggregating the data around this. First, we have talked already about vulnerable versus intimidated witnesses, and in some cases someone can



HOUSE OF COMMONS

be both at the same time. Similarly, the data we have is very limited because of the length of time that this has been going on for as a full roll-out. A large number of these cases may well have started but they certainly will not have concluded. We therefore have to be careful about drawing conclusions.

I appreciate that it will be frustrating for the Committee that it will probably have to wait until next year to get more data, but as part of that analytic piece one of the things we are looking at is how we can be more granular in our interpretation of the data. There are some fantastic analysts in the MoJ—I spoke to some of them this morning—who are working on this, and who are very enthusiastic to try to use their skills to disaggregate the data more and get a clearer picture, but I do not want to underplay to you the challenges that are posed by that.

Amy Randall: One of the particular challenges is that you have two different datasets. We have already talked about Vodafone. You have the Vodafone booking system, which essentially gives us quite detailed data, but then we have the HMCTS case-management data. Our issue is not a scarcity of data: it is matching up the two datasets so that we can speak meaningfully about what is happening in any given case. That is exactly the process that the impact analysis is going through. As the Minister said, it is frustrating that there is a wait for it, but it is about bringing all that data into something that is robust, reliable and ultimately able to show something that is statistically significant.

Q107 **Tahir Ali:** Professor Thomas told us that the first part of an evaluation of section 28 will be published in September this year. Will you commit to writing to us with the Government's response to her findings when they are published?

Edward Argar: That is an easy question to answer, Mr Ali: I am very happy to do so. I may caveat my response, given that it is only the first slice, but when I have had a chance to read it I will be happy to give my initial reflections, suitably caveated, to the Committee via the Chair.

Q108 **Tahir Ali:** Thank you. Does the Government have an evaluation framework to assess whether the roll-out of section 28 has achieved its objectives?

Edward Argar: In a sense, that is the piece of work that Ms Randall has just been talking about. We have been talking about the work that will be done over the next year and a half or so. You have to remember that there are a number of objectives in this, some of which are subjective rather than objective. It is about ensuring that people feel they are able to give their best evidence. I am always cautious about drawing conclusions or setting targets for conviction rates, because those are case dependent and juries make decisions in particular ways. It is about the ability to bring a case to court and ensuring the CPS has a robust case. We address things such as victim attrition, so we see more people sustaining that process.

Those are all important things, but we are to a degree dependent on the analytical research that we will do. We will start trying to get less at the



HOUSE OF COMMONS

good foundational research—Professor Thomas limited it to that, in terms of the process evaluation—and more at things such as timeliness, outcomes and victim attrition. Again, the numbers at the moment are too small, if I am being honest, but in the adult cases you can disaggregate the intimidated witnesses and victims from the vulnerable—the existing cohort that has been going through the system for some time.

Q109 Chair: Talking of multi-hatted defendants—I go back to Mr Glass—in a review of the £670 uplift and the fees, I think I am right in saying that the top-up to £670 was per case. Is that right? It is suggested to me that that is per case, and it does not take account of how many witnesses there are in a case.

Jerome Glass: That is my understanding as well. Yes, I think that is right.

Q110 Chair: Does it strike you that it may be a problem if you have a number of victims—complainants—all of whom qualify for section 28? That will mean more than one section 28 set of examinations in chief and cross-examinations. Has that been fed into the parameters of your review? Does that fail to reflect the demands and complexities of having to do several of these procedures within one case?

Jerome Glass: It is certainly something we can look at. Indeed, we probably will take a look at it as part of the review.

Chair: Clearly, what is a reasonable uplift for one will be very different in another if you have the complexities of several complainants.

Q111 Dr Mullan: I want to ask a couple of questions about the Law Commission project on evidence in sexual offences prosecutions. Obviously, the Government asked the Law Commission to do that because you recognise there is a problem. I would be interested to understand how big a problem the issues it raises are, and what you are hoping to achieve.

Edward Argar: I can give a headline, and then Ms Randall may want to come in subsequently. This is an important piece of work—you heard from Penney Lewis about this—and we go to the Law Commission, as the Chair will be aware and as Ms Eagle will have seen in the past, when there are particularly complex areas of law. This is a very complex area of law. We set a number of terms of reference, or areas we wish them to cover, and Professor Lewis has quite rightly widened that a little in some areas, as she set out. We think that is entirely appropriate. I don't want to prejudge what she is going to recommend, because the consultation will possibly throw up a number of questions, not just on those topics but more broadly.

We are looking at misconceptions—so-called rape myths—and the evidence base around that. We are looking at whether the most appropriate way of dealing with that is through directions from the bench in relation to how juries should approach it. We are looking at section 21, on provisions of sexual history evidence or sexual behaviour evidence, which is a particularly contentious area that gives rise to strong feelings. We are also looking at disclosure and admission at trial of complainants'



HOUSE OF COMMONS

medical, counselling and other records. We expanded that to include all personal records, because we thought it was important to look at this issue in the round.

One of the things I have found in doing this job around sentencing and around criminal law is the risk of looking at something too narrowly and creating unintended consequences in other parts of the criminal law or procedure. Character evidence is another thing that Professor Lewis is looking at and of course the legislative framework governing special measures. So she is considering not so much the roll-out, which is one of the things that I know this Committee is looking at, but whether the framework is the right one. She has also undertaken in appendix 1 a very useful literature review of all the previous reviews, but she thinks it is worth looking at more radical options, and I think that is right.

We have to strike a balance between enabling people to have the confidence to give their best evidence, to make sure that the matters looked at are relevant, proportionate and follow a reasonable line of inquiry—you will have seen, Dr Mullan, new clause 4 of the Victims and Prisoners Bill, which moves some way in this direction, but I don't want to pre-empt what Professor Lewis is going to say—and equally you have to set that against the right to a fair trial and the absolute importance of a fair trial, and where something is directly relevant to that trial there must still be the ability for the judge or others to access it.

So I think it is the right scope. I know there are some things that she has mentioned that we have already expressed particular views on—for example, the Scottish experiment in juryless trials, on which the Lord Chancellor has been clear. The work is huge and hugely valuable, but I do not want to prejudge it.

Q112 Dr Mullan: Thank you for that context. At present, how much of an issue do you think, for example, rape myths are? It must have been something of an issue for you to be asked to look at it. Is it a severe problem or a minor problem? How much does it worry you?

Edward Argar: Again, I will invite Ms Randall in a minute to add to this if she wants to. The challenge with this is that in a lot of this space there is a lot of anecdotal evidence, on both sides: some arguing that actually an effective direction from a judge to a jury does have an impact; and in other cases concern about so-called rape myths or misconceptions as more of a reflection on some societal attitudes that may still exist.

There is a mixed picture. We have seen different pieces of research in recent years, arguing, to a degree, different things or looking at the issue from different perspectives. That's why we felt it was important to look at this. I have worked with Penney Lewis on a number of things since I have taken this portfolio. I am confident that she will approach this with academic and legal rigour. But in a sense, if you will forgive me, I do not want to directly answer your question, because I don't think we know, which is why we want to do this research. I don't know if Ms Randall wants to add anything to that.

Amy Randall: No.

Q113 **Dr Mullan:** Let us turn to timing, then. Obviously this work has only just gone out to consultation and is not due to report back until autumn 2024. There was a statement in the House today around these issues, because they are of such prominence and concern to the public. I know you will mention new clause 4, but are you satisfied that you don't need to take any short-term steps to tackle some of these issues ahead of anything the Law Commission might recommend?

Edward Argar: Professor Lewis has set out provisional proposals which I think are already shaping the debate. She was clear that she believes the evidence that there are rape myths is fairly incontrovertible, but to her it is about how you define them, for example, and that is a key question.

Am I comfortable that there is nothing more to do here, in a sense, and that it's fine to take this from an academic perspective? No, I'm not, but in this space I would point to two things. One is that this is a complex area of law, particularly in terms of disclosure and what a reasonable line of inquiry is, and it is right that, in so far as we can in this House, we seek to get that expert advice from the Law Commission and others.

That is not to say that we are saying, "And by the way, everything is frozen in aspic now until we've done that", because I mentioned new clause 4, which we have tabled to the Victims and Prisoners Bill and you will have seen—although this is only one part of the approach we are adopting to tackling the challenges around increasing prosecution rates and charges, and cases successfully coming to court around rape and serious sexual offences.

This is an element of it; this is the court element. You will have seen today the Lord Chancellor highlighting the work of Operation Soteria, but also that since 2019—before the pandemic, so in a sense you slightly disaggregate that odd period from it—police referrals were up by 134% and CPS charges were up by 93%. Cases coming to court were up by around 162%, and prosecutions were higher than in 2010. It is important that we highlight that, because we want to encourage people to come forward and know that the system is there for them, but—directly to your question—is that satisfactory? I think it is great progress, but there is a lot more to do, so the job is by no means done.

Q114 **Dr Mullan:** Okay. To move on, we have mentioned a couple of times these issues around disclosure of information about victims. I will ask you about new clause 4. In practical terms, how do you think it will operate, based on your proposals?

Edward Argar: It builds on existing guidance and guidelines and an existing approach, but it makes it clear. It puts very clearly into statute what police forces—and other law enforcement; it is not just the police, I hasten to add—should consider a necessary, reasonable line of investigative inquiry. In practical terms, will it solve all the challenges? Will it satisfy every group campaigning on this? I suspect not. Is it another important step forwards, seeking as always to tread that very careful line



between supporting victims and witnesses to give their best evidence and feel confident to come forwards, and to avoid unnecessary intrusive requests, while at the same time not compromising the right to a fair trial? I think it strikes the right balance, but again I do not want to prejudge what Professor Lewis may conclude. Ms Randall, is there anything you wanted to add?

Amy Randall: I don't think so. Clause 4 puts the necessary and proportionate nature in law for the first time—what is currently in guidance for the police. Alongside that there will be a code of practice, which I think the Home Office is planning to publish alongside the passage of the Bill, so it brings a more robust framework to the police element of this for the first time.

Q115 **Dr Mullan:** In terms of enforcing it or an individual person saying, "Actually, I am a victim, and they have put forward a request that I do not think is reasonable or in line with the code of practice," what is a practical way in which a victim could say, "Actually, this is not right"?

Edward Argar: There is a number of things. One is more broadly in the Victims and Prisoners Bill and the work we are doing. There is debate in that Bill Committee as to where the appropriate balance should be struck, but about further empowering victims and witnesses to know their rights and know how to press them. I know that in this context, some have advocated some sort of model of the provision of independent legal advice to such individuals.

Dr Mullan: I will come to that.

Edward Argar: I suspected you might. Do you want me to pause there so that you can come on to it?

Q116 **Dr Mullan:** I will come to independent legal advice, but of course independent legal advice is of no use if there is not a mechanism through which you can say, "This is not in line with the code of practice. You are not doing what you should do." What is the actual consequence for a police force of not following the practice? You might tell me that they get inspected at an overall level, but what would an individual who is having something requested outside the guidelines do about that?

Edward Argar: That goes to one of the key points we debate in the Victims and Prisoners Bill Committee, which is about what is essentially the recourse or the remedy for an individual in this context. They have the option to take that up as a formal complaint. There will be the transparency aspects, which we have highlighted, about performance data, the number of complaints being published, the role the inspectorates will have in being able to go in and inspect, but also the role of the Victims' Commissioner, when one is in post—or the office of the Victims' Commissioner; I say that before Ms Eagle makes the point to me, as she has done on a number of occasions previously—and where you start seeing a pattern form.



HOUSE OF COMMONS

We have taken the view in this legislation that it would not be proportionate or appropriate for an individual to be able—for want of a better way of putting it—to pursue an individual officer or an individual person within the system. More broadly, in the nature of what we are putting through in this Bill, I appreciate the caveats about complexity and cost, but the usual public law remedies are available.

Q117 Dr Mullan: On the issue of legal advice, the Law Commission's consultation makes a similar proposal. Again, if you do not really understand what you should expect—you know, it is new clause 4, but that is quite extensive.

Edward Argar: It is a lengthy clause, yes.

Dr Mullan: How do you know if you might have grounds to lodge a complaint if you do not get advice on what we have all agreed throughout this session are complex issues?

Edward Argar: One of the things we would expect, assuming the successful passage of this legislation, is that when those requests are being made, people are informed of their rights.

On the independent legal advice, I note the Law Commission's recommendation. I am conscious of the pilot in Durham, I think, done by the previous PCC, subsequently the Victims' Commissioner. She set up a system for giving independent legal advice. That is something others have campaigned for and called for, and it is something we reflect on carefully, but it is not a simple thing to do.

For example, hypothetically, what is the most appropriate model? Dame Vera, the PCC in Northumbria—rather than Durham, sorry—who set it up, used her office and engaged local lawyers who were specialists, because she thought that was the most effective local model. Other arguments might be about whether we should have a national model, who should provide it and the extent to which it should be provided; there are legal complexities as to how that might interact with the aspects of the system; and, I will be honest with the Committee, there would be a cost consideration, which as a responsible Government we would have to look at. I am afraid, therefore, I have to say that I will continue to reflect on it carefully, but I cannot give you any more than that at this point.

Q118 Dr Mullan: I assume that you are ruling out any kind of judicial oversight of whether a request is appropriate.

Edward Argar: The view we have taken is that, ultimately, a judge will take a view in a case as to whether things have been conducted properly. If we went to what I think is the New South Wales model that some have talked about as to what is proportionate and right, I am always cautious about adding to the obligations on our colleagues in the judiciary. They are doing an amazing job, but under considerable pressure, so my only caution is about adding another judicial check, because we risk adding significantly to their workload.



HOUSE OF COMMONS

Q119 **Dr Mullan:** Thank you. Do you know when the Government will publish their response to the enhanced support for victims of rape, which we were told was due to be published shortly?

Edward Argar: I do not have a publication date—[*Interruption.*] The legal support consultation?

Dr Mullan: Enhanced support for victims of rape—that is the Government consultation.

Amy Randall: I believe that is on legal support.

Edward Argar: It is on independent legal advice and legal support, essentially. That is something we continue to reflect on. I do not have a date for you, Dr Mullan.

Q120 **Dr Mullan:** We have touched on the victims Bill. The Committee recommended that in some places it should say “must have” rather than “should have” when it comes to victims’ rights, but the Government said that that would remove flexibility. Will you reflect on the fact that in Committee Ministers argued that having principles gave flexibility? That works both ways—if it is just principles, surely those are things that we must have, rather than just should have.

Edward Argar: I am grateful to you, Dr Mullan, for reading the transcripts of our Committee deliberations. We took the view that “should have” has significant impact and that having the four principles on the face of primary legislation is the right approach, with the victims code and the approach being set subsequently through regulations, which are consulted on. As you will have seen from the debates in Committee, we believe that we have struck the right balance in the approach that we have adopted, but that it was hotly debated—that might be the best way to put it. I suspect that it will be returned to on Report. Ms Eagle has been through all this once.

Maria Eagle: It was a whole afternoon.

Q121 **Dr Mullan:** To reiterate, when it comes to the individual enforceability of any of the rights, not just this information area, you think it is public law for the individual.

Edward Argar: We believe that there are existing complaints processes and other ways to escalate it. You will also be aware, Dr Mullan, that one of the things that we have done in the legislation, if passed, is to remove the MP filter to the PHSO, to allow an individual—if the internal complaints processes have not worked—in a sense not to have to go through that filter and to be able to go directly to the PHSO. We had a debate as to the pros and cons of that: increasing access was a positive, but—I think it was Ms Eagle who highlighted this—often the involvement of an MP can strengthen the case put forward by an individual to the PHSO. On balance, we think that doing this is the right approach, but there is always that ultimate legal backstop.

Q122 **Dr Mullan:** I have a final question for now. Again, the Committee



HOUSE OF COMMONS

recommended that victims should be entitled to receive sentencing remarks for Crown court hearings. The Government said that they do not think that is necessary. Think about the gravity of what may have happened to someone. People are entitled to a copy of a gas bill or a broadband bill, or to an FPN if they are unlucky enough to get one. That the Government do not think that a victim should be entitled to see the judge's Crown court sentencing remarks, which are of such huge importance to the victim, really does not sit well with me, nor probably with most—if not all—members of the Committee.

Edward Argar: There are a number of points there. If I recall correctly, this matter came up when I previously appeared before this Committee. We agree that victims, including bereaved families, should be able to access information and documents about their case in a format that is accessible to them, which is why all victims whose cases are tried in the Crown court are already able to request a transcript of the judge's sentencing remarks. For most victims, that involves a small fee of around £40 on average. Bereaved families, of course, are entitled to a free copy of the judge's sentencing remarks to be made available to them.

In a certain small number of cases, it may not, for whatever reason, be appropriate for the victim to receive the transcript of the judge's sentencing remarks. There are also some exceptions where the court can take the decision as to whether to provide the transcript. It is right that the judges have that degree of discretion. Victims are also entitled to appeal to a judge and make a case to a judge that the judge order that a transcript be made available at public expense. We think that that strikes the right balance. I recall that when we last discussed this in this Committee, the Chair went to the heart of it, saying—without putting words into my mouth—that there is of course a cost factor, and he was right. It is about striking the most appropriate balance.

Q123 **Dr Mullan:** Realistically, what is that cost? You are talking about the cost of printing out pieces of paper and posting them to somebody, although I accept that there is some admin burden on top of that.

Edward Argar: It is a not insignificant admin burden given the number of cases that go through a Crown court. It does come at a cost, particularly if it is not a universal—if it is people requesting it and then being sent it and so on. That is quite an administrative function. We believe that we have struck an appropriate balance, including access to information but with an appropriate fee. The Committee, in its sentencing inquiry and more broadly, may take a different view from the Government on that.

We also believe that those safeguards, including where families are bereaved, enable access. There is also always that backstop—for want of better way of putting it; sorry, that cast us back to a different debate in a different age some years ago—of the appeal to the judge. I suspect that were such a request to a judge made, the judge would consider it very carefully.

Dr Mullan: I imagine that perhaps only a couple of appeals to a judge



HOUSE OF COMMONS

would outweigh the cost of just giving it to people.

Edward Argar: No, it is a request to a judge; I don't think that that would come at a huge cost. That is essentially a request being made.

Chair: You would envisage a written request.

Edward Argar: A written request and a judge making that decision. I suspect that, having judged the case and sentenced it, most judges would be able to make a pretty swift decision.

Q124 **Chair:** I have a final point on the Government's new clause 4. Do the Government envisage any concern that either the provisions of new clause 4 or the codes of practice that come afterwards might in any way undermine the prosecution's obligations in relation to disclosure, which of course are ongoing throughout all of the case?

Edward Argar: We do not believe so, which is why we have drafted new clause 4 as we have. It does not go as far as I suspect some might wish it to, but in my opening remarks I made a point about fair trial; that includes, exactly as you say, disclosure obligations. We think this provision strikes an appropriate balance in terms of victims, in terms of a fair trial and in terms of that disclosure.

Equally, I suspect that new clause 4, although it only goes a certain way forward, may well be something that Professor Lewis considers more broadly when she looks at this, and she might recommend changes. We believe that we have struck an appropriate balance between all obligations. You, Chair, may take a different view as a practitioner; and, were the Committee to do so, of course I would look at it.

Q125 **Chair:** I don't know whether the situation had been posited under disclosure obligations where something which, perfectly reasonably, the police do not believe to be relevant to a line of inquiry at the time that they make a request for other matters becomes potentially relevant in the light of what the defendant may say, either in their first or subsequent interviews or in the light of what may appear in the defence statement when it serves as it would have to in the Crown court—or, indeed, what other prosecution witnesses who they then go away and inquire might say. Are you satisfied that there is enough flexibility to cover that eventuality, where you might have to go back and make a second request, in effect?

Edward Argar: We believe so, with the guidelines that will support it. If I am being very honest, then as with all these areas of policy, if I may put it this way, the proof of the pudding is in the tasting. We will see when it is used in practice. But we believe, on the best advice we have got, that we strike the appropriate balance.

Q126 **Chair:** You think there is enough to deal with that. Okay, thanks very much. If I may, I will move to broader sentencing matters—

Edward Argar: I thought you might, Chair.



HOUSE OF COMMONS

Chair: In the remaining time that we have. We had this interesting situation where the Government switched on and switched off magistrates court sentencing powers, which hasn't ever happened before, to the knowledge of most practitioners I know and probably most Members of this House. The power went from six months up to 12, and back down again in March of this year. That was not done because the Government had any concern about the way magistrates sentenced, was it?

Edward Argar: If I may, Chair, I will, at the beginning, just highlight the gratitude I have, and I think we all have, for the work done by magistrates up and down this country. They are the backbone of our legal system in many ways. And day in, day out, they do a fantastic job. I say that not just because my best man at my recent wedding has just become a magistrate and he would think it remiss were I not to mention the amazing—

Chair: I do not know what experience caused him to think that was a good thing.

Edward Argar: To your specific point, Chair, the Government was always clear, when it set this up, that we needed flexibility to vary magistrates court sentencing powers. That is why we took the power to do so in the way we did in the Judicial Review and Courts Act 2022. It won't surprise the Committee to know that we are currently experiencing some downstream pressures in the criminal justice system, including pressure from higher-than-expected flows into the sentenced, recall and remand populations. There is as well the impact of the Criminal Bar Association strike in the summer, which increased the remand population, as cases were not flowing through the courts.

So, while increased magistrates court sentencing powers are not the only factor behind these pressures, we believe it was right to temporarily reduce those powers to six months, so that the Crown court retains power over decisions in respect of longer sentences, and to allow us the opportunity to reflect on what we saw and the lessons to be learned from when those powers were turned on.

I can turn, if you want to subsequently, to what effect we think that is having, but perhaps it is better if I let you question me, Chair.

Q127 **Chair:** Well, the first thing I wanted to ask was this. It is not being suggested, I think, that in reality the magistrate would necessarily sentence differently from the way the Crown court judge will. If a matter is committed for sentence, the Crown court judge may well impose exactly the same sort of sentence as the magistrates court did.

Edward Argar: It will not surprise you to know I am not going to stray into comparative sentencing between magistrates and Crown court judges, but I think the point you make is not an unreasonable one.

Q128 **Chair:** It is not one you dispute. Doesn't that lead us to the inevitable conclusion that the real reason for this is that it delays the arrival of those people into custody? They are going to go to prison either way; it



HOUSE OF COMMONS

just means that they go to prison later, because they have to wait for the Crown court to send them to prison, rather than the magistrates court sending them to prison. It's a sticking plaster to buy time so that somebody else gets let out of the prison, which is overcrowded anyway, before they go in. In layman's terms, that is what it is all about, isn't it? Let's not pretend otherwise.

Edward Argar: As I said in my remarks, Chair—you will read into it as you will—we are, as you will be aware, experiencing downstream pressures in the criminal justice system, including acute pressures, which the Secretary of State has spoken about and I suspect you may ask me about next week, in other parts of the system. But just in terms of the impact that that change, that rolling back of those powers, has had, the reduction back to the historical time limit of six months came in only on 30 March, so it is probably too soon to tell what direct impact that has had, although modelling showed it may have an impact on the outstanding case load, which I think is one of the premises underlying your point. But there are difficulties in identifying any specific impact, due to the complexity of the CJS and, in particular, external factors, like the Bar strike, and the impact that they had. We will continue to look at this very carefully and review it.

Q129 **Chair:** I'll put it less elegantly than you have, Minister: somebody had to do a trade-off between pressures on the prison capacity and pressures on the court capacity, and prison capacity has won out this time.

Edward Argar: It is fair to say that in looking at how the criminal justice system functions we look at all aspects of it and all the pressures within it. Our aim remains throughout to deliver an efficient and effective criminal justice system for those using it as victim, witness or practitioner.

Q130 **Maria Eagle:** When I was a Minister at the Department, we also had full prisons at that time, and I can recall when we were considering policy decisions always having some thought as to what the impact would be on prison populations. To what extent is that still happening in the Department, admittedly a few years after I left? Do you consider prison capacity when deciding on sentencing policy?

Edward Argar: I am grateful for that, Ms Eagle. I will answer, then perhaps Mr Glass will want to come in. As you will know from your time as a Minister, when considering sentencing or policy changes, a whole range of factors are considered. That includes, as much as anything else, impact assessments to understand the impact on prison places and what that might lead to in a particular scenario. More broadly, I would highlight that we are committed to a sentencing framework that takes account of the true nature of crimes and targets specific groups of offenders accordingly. That is why we adopt the approach we have.

That overriding commitment is evidenced in the reforms we introduced in the Police, Crime, Sentencing and Courts Act 2022, which see serious criminals and those who are a danger to the public receive tougher punishments and spend longer in prison. When considering policies, one of course considers all the information one has at one's disposal. I have to



HOUSE OF COMMONS

say that the evidence from that piece of legislation—for example, the announcement in March this year by the former Lord Chancellor that we would make overkill and a history of CCB statutory aggravating factors—all shows that we also look at this more broadly in the context of policy and the appropriate punishment to fit the crime. Mr Glass might want to add to that.

Jerome Glass: I have nothing to add.

Q131 **Maria Eagle:** I do not understand why you made the decision to extend magistrates' sentencing powers without realising what the impact of that would be—that they would sentence more people more quickly to longer than six months in jail. Surely that was part of your consideration. Was it not a monumental muck-up to go ahead with that policy simply to have to reverse it 10 months later?

Edward Argar: I do not accept the premise of that, Ms Eagle. It was always made clear when this policy was put in place and the mechanism was used to deliver it that essentially it gives Ministers the power to vary those powers. It was not a fixed primarily legislative point. It gives Ministers that varying power, which reflects the fact that from time to time we will see different pressures in different parts of the system.

Q132 **Maria Eagle:** So you are not embarrassed at all about the fact that having given that extra sentencing power, you then had to take it away a mere 10 months later?

Edward Argar: I think that was always envisaged—

Q133 **Maria Eagle:** Envisaged? It was a policy aim, was it?

Edward Argar: Policies can be varied and changed. If we were not considering the possibility that we may have to vary that power, the Government would not have included the ability for a Minister to vary it in the legislation. That reflects that we see, from time to time, varying pressures within different parts of the criminal justice system. That builds that flexibility into it. I believe that the approach adopted has been a reasonable one.

Q134 **Maria Eagle:** Okay. Do you have any other plans to change the use of custodial sentences to try to relieve pressure on the prison population? Do you have any plans to do anything with custodial sentences of less than 12 months for non-violent offences, for example?

Edward Argar: You will be aware of the broader approach through the sentencing White Paper and the approach the Government have adopted in terms of, for example, the youth estate and the female offender cohort. The approach we are adopting to sentencing—for want of a better way of putting it, but linking to prison capacity as you wish—is clearly set out in the approach adopted in the PCSC Act, which I mentioned earlier. Where we think it is appropriate for a crime, we will ensure that the courts have at their disposal the appropriate powers. We always keep all aspects of sentencing and criminal law under review. Perhaps Mr Glass wants to add to that.



HOUSE OF COMMONS

Q135 **Maria Eagle:** I want you to answer, Minister.

Edward Argar: Well, I have. I said we continue to keep matters under review, and I think the approach adopted by the Government is as—

Maria Eagle: These are physical decisions, really.

Edward Argar: As I set out earlier, the approach is that commitment to a sentencing framework that takes account of the true nature of crimes and gives the court the power they wish. If you are asking whether we have an intention to abolish short custodial sentences, no.

Q136 **Maria Eagle:** I wasn't asking that. I was asking whether the prison population and the pressures on it are having any impact on those sorts of decisions. That is what I was asking.

Edward Argar: The point I make—I addressed it in my first answer to you—is that, as you will be aware from your time as a Minister, among the many factors when you look at changing a sentencing provision, introducing a new offence, or changing something in primary or secondary legislation, you will understand the cost of it, the prison place impact and a whole range of other factors. But what drives and guides the ultimate decision is our commitment to a sentencing framework that takes into account the true nature of crime and the impact on individuals.

Q137 **Maria Eagle:** I understand your general point about sentencing and what your aims for sentencing are, but you seem to be saying that the prison population pressures at the moment are not driving specific initiatives that were designed primarily to reduce that pressure on the prison population.

Edward Argar: One of the key challenges with prison pressures—there are a number—is FNOs. There is, as you will be aware, a huge amount of work being done with the Home Office to improve processes and the numbers of FNOs being deported. Similarly, the other big pressure that is actually driving those prison numbers is around remand and the increased numbers on remand, which we are looking at very carefully.

Q138 **Maria Eagle:** What effect has that reduction in sentencing powers in the magistrates court had on the Crown court backlog? One of your colleagues, a Commons Minister, said in terms that it was partly about reducing pressures on the prison population.

Edward Argar: I have highlighted that, in the round, one of the factors is about how you address downstream pressures and demand in this, but I'm afraid my view is—

Q139 **Maria Eagle:** Have any of those numbers come through yet?

Edward Argar: I could be wrong—I will look at Mr Glass—but I think later this week we will get the latest Crown court backlog statistics around that, so I do not want to pre-empt those. I do not know whether he will thank me for this, but I suspect that you will have them before you see the Lord Chancellor next week.



HOUSE OF COMMONS

Q140 Maria Eagle: I don't suppose he will thank you for it. That is interesting, but the latest quarterly statistics for the Crown court show that the number of outstanding adult rape cases and sexual offence cases are continuing to increase. What are the Government doing to reduce the number of outstanding RASSO cases in the Crown court and ensure that they are heard in a timely fashion?

Edward Argar: There are two elements there, Ms Eagle. One of them, of course—and you would expect me to caveat it—is that the listing of those cases is a matter for the judiciary and the listing officials. As I highlighted earlier, first of all, these are often very complex cases, and therefore the desire will be not to have them as floaters but to have them fixed, which means that they are listed further in advance, to guarantee, or seek to guarantee as much as one can, that fixed slot.

In terms of what we are doing more broadly to address the challenges faced by the Crown court system, we have continued with the Nightingale courts. We have got the super-courts, for want of a better way of putting it—for example, my local one in Loughborough—and we have lifted the limit on sitting days. We are recruiting more judges. We are taking a whole range of measures in terms of that court space—HMCTS space and with the Judicial Office—to try to increase the capacity to hear those cases.

Behind your point is a very important one, which is the timeliness of these cases being heard is a key factor in how that victim or witness can move on, but also—jumping back to what we are doing with section 28—how they can seek, even where they have done that, to give their best evidence and their best recall. I was speaking to Claire Waxman, the London Victims' Commissioner, a few months ago. She highlighted a case in which—you never know what would have happened, because you cannot predict a case on a hypothetical—she believes that, if that case had come forward a year earlier, the individual would have been able to give much more detailed evidence, whereas a year later their memory had faded and they were not able to give that. So they are the measures we are taking to increase capacity to help tackle that courts backlog.

Q141 Dr Mullan: I want to make a general point. You have talked about policy formulation and impact assessments.

You will be aware that I paid close attention to the extension of early release to 180 days. The thing that really struck me is that—I am interested in officials' comments on this, because we know that in reality they prepare these documents—the impact assessment for that policy made no mention at all of the impact on a victim of seeing someone get out of prison early. It builds on some questions that I had for the permanent secretary when she was last here about the fact that the annual report also does not talk about whether victims feel that justice is being done, and it is not measured as far as I can see.

We talk about wanting people to feel like justice is done, but you do not measure it, and if you are not measuring it how do you put it, at least in the theoretical sense, in an impact assessment about the consequences



of a policy?

Edward Argar: I will give a brief answer and then invite senior officials to comment. There is a challenge. Standard impact assessments—the sort of thing that we see published with legislation and so on—are difficult because they often seek to quantify, either in financial terms or in other terms, what the impact is, the burden on a business, the cost on prison places and so on. They are, in a sense, quantitative.

We regularly undertake work with victims and victims' groups to get anecdotal evidence of impact and how they feel the system is or is not working for them, but it is harder, because it is, to a degree, anecdotal. You can look at some bald stats like victim attrition—how many people drop out—but it is hard to reference it in that way.

Q142 **Dr Mullan:** Is it hard just to say to victims, "Do you think that justice was done with that sentence, yes or no, or—quantitatively—certainly or probably?" and then measure that? That is not a hard thing to define at a population level.

Edward Argar: Whether you call it polling, surveys or feedback, you could not necessarily look for every single person in every single case afterwards, but do we ask victims, with samples, with individual groups, and with representative groups, about how they feel the system works, yes.

In terms of the victims code work that we are doing at the moment, and the Victims and Prisoners Bill, we have consulted very widely on, "Do you feel that this works for you?" in a whole range of spaces. On the victims code, we are publishing a draft-draft, if that makes sense. We have to publish a draft for statutory consultation in due course, but we are publishing a pre-draft so that we can ask, "Do you think that you get justice from the system? What bits of this need to change?"

It is still, to a degree, qualitative, if that makes sense, rather than quantitative. You can pick up on some things, like victim attrition and why people dropped out, and we seek to do that with rape and serious sexual offences. On the victim attrition rate at different stages, there is a lot of work that Sarah Crew and Avon and Somerset Police are doing to try to understand that and get statistical as well as qualitative and anecdotal data.

Q143 **Dr Mullan:** If I draw a contrast, there is a lot of effort to ask people, "Do you feel you were well supported throughout the trial and do you think that there is more that we could do to make you stay on as a witness?" We attempt to measure the experience of people through the justice system, and the annual report talks loads about the experience of the justice system as if that is a measure of how effective the justice system is. You could just as easily be asking similar cohorts of people, "Do you think that the sentence ultimately reflected justice from your point of view?" There is a gap between perfect measurement and no measurement.



HOUSE OF COMMONS

Edward Argar: Research has been done—I think that it came up in the sentencing hearings that we had here—that was about exactly that. The challenge there was also to what extent people had a comparative yardstick with which to compare. Many people think that sentences are a lot shorter than they are, but I do not think that it would be practical in every case to say, “Do you think that justice was done? Was this a fair sentence?”

Q144 **Dr Mullan:** Let me go back to that point. The first time you are a victim is the first time you are a victim and the first time you have ever been in court. You have no comparable reference, but we still think that it is helpful to ask you, “What was that experience like and how could we improve it?” Again, I am not saying that you have to ask everybody, and I am not talking about the wider public view. I am talking about why we do not make an attempt to ask victims of crime whether the sentences that our system produces on some level are or are not satisfying people, and to what extent.

Edward Argar: We do that anecdotally. I meet regularly with victims and victims’ groups and do that, but I do not think that we would want to codify that and have a standard system of asking victims every time.

Q145 **Dr Mullan:** Why?

Edward Argar: I do not think that it would be practically possible to do it in that way, other than as snapshots. You may want to ask officials that point, but I do not think that it would be practically possible to do it as standard every six months or year.

Jerome Glass: It is certainly not something that we include systematically in impact assessments. We have to be very careful for each individual person. Clearly, sentencing is a matter for the judiciary rather than for the Government. Yes, the maximum sentence and the sentencing framework and so on are set by the Government, but the specific sentence that is given is for the judge. It is a slightly precarious area for the Government to get into to asking individual people whether they thought that the sentence that the judge passed was fair.

Amy Randall: Adding to that, there are the Sentencing Council guidelines as well. When it produces guidelines on any given offence, it consults publicly, which provides that opportunity to feed into the independent Sentencing Council and for victims to say, “I was a victim of that crime and I did not feel the sentence was sufficient.”

Q146 **Dr Mullan:** Okay, but you really have no idea whether the British public who experience the justice system consistently feel justice is or isn’t served.

This is a major policy area and a major area of Government spending, and you have some informal stuff where you chat to people and people can feed into sentencing guidelines, but we have no handle at all in any consistent way on whether we are way away from public satisfaction and what they might think if they have experienced a crime, or pretty close to



HOUSE OF COMMONS

it. Do you think that is satisfactory as policy makers at official or ministerial level?

Edward Argar: Personally, I think it is right that we have to consider in the round a whole range of factors, and of course some of what you talk about is available: we see polling and a range of other things. But do I think we should basically say, "Do you think x number of years is right? You don't—right, let's change it"? No, I don't. I think we have to consider a whole range of other factors.

Q147 **Dr Mullan:** Of course, but this is not a blip: at the minute, we do not know what victims of crime who have seen their perpetrator sentenced think. We pay huge amounts of attention to their experience of the justice system, but we pay almost no attention at all to what they think of the sentence—which our polling shows is the second most important thing for the public and for victim satisfaction. We have no clue at all.

Edward Argar: It also goes to Mr Glass's point—that essentially in each of those cases you are going to have someone saying, "Here is my view: I think the judge got it wrong." As a Government, we would not wish to stray into the territory of looking at individual sentencing decisions by judges.

Q148 **Dr Mullan:** No, but you would look, in relation to crime, at an aggregate level of whether people are as a whole satisfied or not satisfied with the system. That is what we do when we say, "Actually, we're going to increase maximum sentences," because we get a sense at population level that it is not doing what it should—but we do that on a hunch, really.

Edward Argar: I don't think that is true. Going back to Ms Randall's point, when we look at maximum sentences and the Sentencing Council in legislation, we look at that through the consultations that the Sentencing Council undertakes. That reflects not just victims of crime but also broader society, who may not have been victims of crime but who will have a view themselves on what is appropriate. That is an appropriate mechanism for looking at this while still maintaining that slight separation from an individual case and an individual judge's decision.

Q149 **Chair:** Minister, did you ever have the pleasure of meeting the late Lord Brown of Eaton-under-Heywood?

Edward Argar: I am not sure that I did.

Q150 **Chair:** He was one of the last Lords of Appeal in Ordinary and he died over the weekend. He was a friend of mine. Late on in his career in the House of Lords, he took up the case of IPP—imprisonment for public protection—prisoners, and I wanted to pay tribute to him as well as raising the issue. It has been raised in the course of the Victims and Prisoners Bill and you are the Bill Minister.

The Lord Chancellor said on Second Reading that the Department was looking afresh at how to respond to our Committee's report in relation to IPP prisoners and the issue around resentencing. Does that remain the



HOUSE OF COMMONS

case, and if so what steps are being taken?

Edward Argar: The short answer is that at this stage we have not given any consideration to using the Victims and Prisoners Bill as a mechanism to make changes in this space. However, as you rightly allude to, the Government welcomed the report that you and the Committee undertook, and they responded to that under the previous Lord Chancellor.

That report provided a valuable opportunity to look at areas for improvement within existing processes, and a number of the recommendations were responded to in that vein, but it also went further and looked at one of the central tenets around resentencing and the approach to this. We have seen the number of IPP prisoners reduce from 6,000 to 3,000; of those 3,000, about 1,500 are prisoners who have been recalled.

The Lord Chancellor, as you allude to, was very clear when he took office that he had considerable concerns—I think he said he saw the IPP system as a stain on our judicial and moral conscience—and therefore he is carefully reconsidering your Committee's report. It would be premature to speculate on what he concludes from that because he continues to look at it.

Chair: We will no doubt ask.

Edward Argar: I suspect you might try him next week.

Q151 **Chair:** Will you be dealing with the Bill on Report?

Edward Argar: I will be doing half of it. I will be doing victims part 1 and the independent public advocate part 2. So far I have had a lot of constructive interaction—I hope it continues in that way—with Ms Eagle. I suspect that the Minister with responsibility for prisons and probation will handle part 3 on Report. So, without prejudice, were anything to be tabled by way of an amendment in this space, the Minister responding would depend on which part of the Bill was involved.

Chair: That was swerved in a way that gets us to the next test. Minister, Ms Randall and Mr Glass, thank you for your very full evidence today. I am grateful to you. The session is concluded.