

Justice Committee

Oral evidence: [Coronavirus \(Covid-19\): The impact on prison, probation and court systems, HC 299](#)

Tuesday 19 January 2021

Ordered by the House of Commons to be published on 19 January 2021.

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Members present: Sir Robert Neill (Chair); Paula Barker; Rob Butler; Maria Eagle; Andy Slaughter.

Questions 244 - 294

Witnesses

I: Justin Russell, HM Chief Inspector of Probation, HM Inspectorate of Probation; Charlie Taylor, HM Chief Inspector of Prisons, HM Inspectorate of Prisons; Kevin McGinty, HM Chief Inspector of the Crown Prosecution Service, HM Crown Prosecution Service Inspectorate; and Sir Tom Winsor, HM Chief Inspector of Constabulary and HM Chief Inspector of Fire and Rescue Services, HM Inspectorate of Constabulary, Fire and Rescue Services.

Written evidence from witnesses:

– [Add names of witnesses and hyperlink to submissions]



Examination of witnesses

Witnesses: Justin Russell, Charlie Taylor, Kevin McGinty and Sir Tom Winsor.

Chair: Good afternoon and welcome to this evidence session of the House of Commons Justice Committee. Welcome to our guests who are giving evidence. We will come to you in just a moment, but I am sure that many of you are familiar with the fact that at the start of all these meetings we have to make declarations of interest. I am a non-practising barrister.

Maria Eagle: I am a non-practising solicitor.

Rob Butler: Prior to my election I was a non-executive director of Her Majesty's Prison and Probation Service and a magistrate member of the Sentencing Council. It is also relevant in the context of this meeting that I served four and a half years on the Youth Justice Board, and for roughly the final year of that Charlie Taylor was the chair of that board.

Andy Slaughter: I am a non-practising barrister.

Q244 **Chair:** Having put in our form, as you might say, let us get on with the evidence. As other Committee members join us, I will bring them in.

I will ask the four witnesses to say quickly who they are and which inspectorate they head up, and then we will go straight into the questions.

Kevin McGinty: I am chief inspector of the Crown Prosecution Service.

Sir Tom Winsor: I am chief inspector of constabulary.

Justin Russell: I am chief inspector of probation.

Charlie Taylor: I am chief inspector of prisons.

Q245 **Chair:** Mr McGinty, I think you chaired the panel that drew up the report of the four groups.

Kevin McGinty: Yes. We all form part of the criminal justice chief inspectors group. Chairmanship moves around, but currently I am the chair.

Q246 **Chair:** I will start with you and then come to your colleagues. Have you done a joint inspection report of this kind before?

Kevin McGinty: We have. Some years ago we used to extract all the information from each of our individual reports that dealt with victims within the criminal justice system and published an annual report, but we have not done that for some time. We carry out joint inspections, mostly bilaterals. I would more often work with Sir Tom in HMICFRS than with any of the others, but joint inspection does take place.



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Given the unusual circumstances we are under with Covid and the fact we have all done some individual work on how our agencies are dealing with the pandemic, we thought it would be useful to compile a report based on that work over the year to give an overview of the system.

Chair, we are very grateful to you and the Committee for giving us the opportunity to come along and talk about it today and try to answer some of the questions. With your leave, I will make some brief introductory remarks.

Q247 **Chair:** If you want to do an introduction, but perhaps you will talk about your own inspectorate as well.

Kevin McGinty: I will do that very briefly and hand over to Justin Russell, who will highlight the key points of the report.

With your leave, starting with Sir Tom, myself, Justin and Charlie Taylor, we will indicate in brief the impact it has had on the specific agencies we inspect, and then we will open ourselves up to any questions you may want to ask.

May I start by recognising the efforts that everybody in the criminal justice system has made to keep the system running? Closing down was not an option. You will see in the report that there have been some impressive examples of joined-up working, but we have to recognise that people have fallen ill and some have died. However safe we can make the courts, we have to recognise that social interaction increases risk. I think it is right for us to thank the staff in the agencies we inspect in the court service and the judiciary, solicitors and the Bar, who have worked to keep the system running. We all know the impact that the criminal justice system has on the general public, and we also need to think of the additional impact this pandemic has on victims, witnesses and jurors who attend court.

Secondly and lastly by way of introduction, all I would say is that the figures we have published in our report are based on projections taken from CPS figures. We do not inspect the court service. Those were the figures that were available to us.

Each agency keeps figures for its own management purposes and varies in the way it analyses the figures. I know as a fact, because it has communicated with me, that the court service would not agree with some of the figures we have come up with.

The important point is that everyone recognises there is an enormous backlog of cases in the system, that it has grown phenomenally since the pandemic started and that it is having an impact on everybody within the criminal justice system.

We are not here to argue about the precise size of the backlog. What we do want to talk about is the impact that that backlog is having on each of the agencies we inspect. With your leave, I will pass on to Justin.



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Justin Russell: All four of our criminal justice inspections have been looking at the impacts of the coronavirus pandemic on their respective services, and in parts they have been profound. We have identified some common themes in the report that we publish today, which we will speak about in detail in a minute. To give a summary of those themes, the operating models of all the criminal justice services had to adapt very rapidly to the requirements of operating under pandemic conditions and make very radical—often overnight—changes to those operating models. We pay tribute to staff and service leaders for the commitment they showed in doing that and in keeping services going in a very professional way. For example, the Prison Service had to implement very rapidly quarantine measures to prevent the spread of infection in prisons. In the service I inspect, the probation service, 80% to 90% of appointments with people on probation were done by phone rather than face to face as soon as the pandemic started.

On technology, the pandemic provided a burning platform to accelerate the roll-out of very important video and case preparation technology, including the cloud video platform, which has now been rolled out to all courts; pre-recording of video interviews with vulnerable victims for court appearances; and much greater sharing of digital evidence between prosecution and police. Some aspects of the roll-out of technology were not so swift. We comment on the roll-out of video visit systems in prisons, which had not yet been well taken up by some of the prisoners we spoke to.

Staff welfare is another key theme. We found good efforts to maintain the welfare of staff across all the criminal justice services. Staff are encouraged to work from home wherever possible and make use of the laptops that had been rolled out over the previous couple of years. Staff generally reported good support from their managers and significant investment in making office buildings secure.

In relation to the people the services were supervising, or the public they were working with, provision was a bit less satisfactory in some ways. In particular, prisoners have suffered very restricted regimes since March. I am sure that Charlie can say a bit more about that. The provision of education for young people in custody was very poor, even non-existent, during the first lockdown period, and in the community almost half of young people on YOT caseloads were not able to access home-schooling because they did not have the necessary equipment or broadband connections.

On interactions with the public, the police switched from face-to-face to remote interaction with the victims of crime as they took statements and crime reports online.

More use was made of out-of-court disposals by the police to speed things up, but victims and witnesses who have cases coming to court have had to wait much longer for a court outcome.



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Although all of us as inspectors have reported on the successes and shortcomings of the services we inspected, there was one issue on which we were united: our grave concern about court backlogs. Court closures and the 50% reduction in the number of cases the Crown courts were dealing with in the first lockdown between April and June relieved short-term pressures on prisons and probation but stored up serious longer-term issues for the criminal justice system. CPS figures that we publish today from December show that Crown court workload is now 44% higher than it was prior to the pandemic. Court service figures show waiting times for Crown courts have increased by 25% since last year and by 35% for defendants entering a not guilty plea. We are now seeing cases being listed well into 2022.

In conclusion, we recognise the significant additional resources that the Government have invested to deal with the consequences of the pandemic and increase capacity in courts and the rest of the criminal justice system, but the long-term impacts could be profound and will last well beyond the pandemic, with victims and witnesses having to wait longer to be heard and prisoners having to face far longer on remand as they await trial or sentencing. We say this will have serious ripple effects across every agency, which will have to be dealt with to ensure fair justice for victims and defendants.

Q248 Chair: Thank you very much for that. You are now going to move into each of your particular areas. A lot of the publicity we have had for your report today and a lot of the comments you have made focus on the one area you do not inspect: the courts. How does that come about? Is it the central thing that knocks on everything else, or is there some other reason?

Justin Russell: I think part of it is that there is not a courts inspectorate. Kevin might want to deal with that.

Kevin McGinty: Chair, as you probably remember, the Courts Service inspectorate was abolished in 2010. At that time, the power to inspect the court service was handed to each of the remaining criminal justice inspectorates. We all have the power to inspect the court service, provided—there is a limitation—it is in connection with an inspection that we are doing, in my case the CPS.

There is a bigger problem—I guess it is one of the reasons the Courts Service was abolished—which is that no inspector can look at judicial discretion. If the court service does anything that is touched by judicial discretion, we cannot look at it. I would love to look at listing, for instance, because it has a huge impact on the effectiveness of the system, but that is outside scope.

In many ways I feel sorry for the court service. Although it may not want an inspectorate, it is a shame that there is not someone here to represent its views today, because it is very easy to blame the court



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inspectorate for any number of things that are not necessarily within its power to correct.

Q249 **Chair:** That is helpful background for many who may not know the history. Have you had the chance to discuss your findings with, first, Her Majesty's Courts and Tribunals Service?

Kevin McGinty: I did mention that we were in dispute over some of the figures.

Q250 **Chair:** What is the extent of the dispute?

Kevin McGinty: We perhaps did not clear it with it, or at least let it have sight of the report as soon as perhaps it would have liked, but we do not inspect the court service.

Chair: I understand that.

Kevin McGinty: Essentially, what is in our report is a compilation of what we found in our own inspections during the course of the year.

Q251 **Chair:** Have you had the opportunity or sought to discuss any of these issues with the senior judiciary? As you say, listing is a judicial function.

Kevin McGinty: No. I repeat that this is a compilation of reports. They may well want to speak to us later. I do not know. We are perfectly happy to co-operate in any way we can.

Q252 **Chair:** I imagine that the judiciary, the court service and other partners would have had the report under embargo.

Kevin McGinty: Yes.

Q253 **Chair:** Let us go through each of the inspectorates.

Sir Tom Winsor: First, I think it is important from the police point of view to make it clear that the police have made enormous efforts to cope with the consequences of the pandemic, and in many respects the quality of service has been of a very high order.

The coverage of today's report has been focusing on court backlog—that is the principal point in the report—and its impact on the criminal justice system.

We should also acknowledge that before the pandemic, the criminal justice system was in a severely distressed condition. Criminal defence resources were weak; legal aid rates are at chronically low levels. There were very severe delays already, decaying buildings, a crumbling infrastructure, understaffing and inadequate resourcing in all sorts of respects, and the pandemic has made things worse. The police have tried very hard to cope with the consequences of the pandemic.

I recall that the first version of the statutory instrument containing the lockdown restrictions was about 25 pages long; it is now 148 pages long. I read it all and I understand it, but I am a lawyer. How is the ordinary



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copper going to be able to do that? The answer is that the ordinary copper is not going to read a statutory instrument, but needs good-quality guidance from the College of Policing, the National Police Chiefs' Council in particular and principally chief constables.

Mistakes have been made. We have seen drones in Derbyshire; two ladies taking exercise outside perfectly safely were challenged and fined, although the fines were withdrawn.

The point I have made to the college and the NPCC—they have accepted it—is that for lawyers the principle is that you interpret an instrument with regard to its purpose. Its purpose is perfectly plain: it is to prevent the spread of the virus. If you interpret it and approach the lockdown restrictions in that context, things like the drones, outside exercise and so on just would not have happened. That is important.

It is also very important that there is nothing in these regulations that uses the word "essential" and nothing in them that in any way prevents many of the things people will do, even though they are not specific exceptions. The principle in going out of your house and staying out is whether you have a reasonable excuse. That, in conjunction with the principle of preventing the spread of the virus, makes it a great deal simpler.

The inspectorate of constabulary is concerned that court backlogs are having a reverse flow pressure effect on the police. We are currently preparing our final report. An inspection commissioned by the Home Secretary—we will publish it next month—on the police response to the pandemic will cover the period from March to November 2020. We are also doing one for the fire service. It is still being finalised, but generally we found that policing of the pandemic has been pretty well organised.

There have been significant changes in the way in which the police have worked in relation to moving staff to home-working, taking witness statements online and making physical changes to custody suites to ensure separation and that people are protected. For some, it is just not possible because they are in grade I listed buildings. For example, with Bishopsgate police station it is just not possible; in other places it is easier to do.

Reported demand on the police initially fell during the first lockdown and then rose. It has fallen back again since the current lockdown. I can give you some figures in relation to the changes in reported crime over the 45-week period ending recently. Murder has gone down by 6.3%—that includes attempted murder, but other categories of murder have fallen by 15.6%; manslaughter is down by 57%; serious violent crime is down by 20%; violence with injury is down by 14%; cyber-crime is up by 23%, because that is something you can do from anywhere; domestic burglary is down by 26%; burglary of all kinds is down 36%; and shoplifting is down by 36%, as you might imagine because the shops are closed. Other offences—for example, domestic violence—have gone up. That is a



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matter of very great concern. These are returns we have received from 29 out of 40 forces so far.

The other point to mention is that staff sickness levels have had an effect. They were moderate in the first lockdown, but they have been more severe in the second lockdown, with people self-isolating and becoming sick.

We have other findings to make—I think you will come to this, so I will not take up time—in relation to the use of out-of-court disposals and its effect on justice. There are other aspects of the court backlogs, but I think those things will come up in questions, so I should stop there.

Q254 **Chair:** Will you explain what you meant when you said the backlog in the courts had had a reverse flow effect on the police? Precisely what does that mean?

Sir Tom Winsor: For example, more out-of-court disposals are being used. Police officers realise that the courts are so clogged up and the delays are as great as they are that they are looking for other ways of administering justice to get some kind of finality for the victim and the accused person and keep cases away from the courts because of the backlogs and people's safety.

Chair: Who is next?

Kevin McGinty: The Crown Prosecution Service was in a good position when the pandemic began. It has invested over the years in digitising all of its cases. There is no paper any more in the CPS; all case files are in digital form. Every member of staff has a laptop that they can connect remotely. With CPS staff appearing in courts daily, they have been working remotely in that sense for a very long time.

All staff had to start working remotely. The systems were there to enable them to work from home, so there was a smooth transition from working in offices to working from home. They began well in the first lockdown. They managed to clear a backlog of charging decisions, but as the backlog has increased, the strain on the CPS has become greater and greater. For example, at paragraph 4.2 of the report we point out that as of 13 December last year magistrates courts' caseload is 83% higher, which is a 57% increase since February 2020.

As for the Crown court, there has been a 65% increase since February 2020. What that backlog means for the CPS is a very large increase in the number of live cases that each individual eye has to deal with. These are not cases that, once they are looked at, can be put aside until they are listed for trial. It does not happen that way. The CPS is under an obligation to keep every file under review. Things do change, and as time passes victims may lose interest in supporting the prosecution. They have to deal with questions from defence solicitors and, therefore, answer questions from the police.



Q255 **Chair:** There is an ongoing duty of disclosure, for example.

Kevin McGinty: Absolutely. These are continually live cases and they are struggling. They have brought out of the magistrates court all CPS prosecutors. They have been kept back doing file work. They have withdrawn all advocates from the Crown court. They have asked for recently retired prosecutors to come back to help on the backlog. The pressure this time round on them is very high and is having a toll on their wellbeing and mental health.

The CPS was in a good position. It has utilised the advantages it has had and it has worked very closely with other agencies to try to ensure smooth progress, but there are a lot of pressures on it at the moment.

Q256 **Chair:** Sir Tom spoke of the police's difficulty in the early days in interpreting the regulations, with fines being issued when they should not have been. There were one or two quite well-publicised cases in the first lockdown of people being charged with offences when they should not have been charged at all. One assumes they had gone through the CPS and the convictions had to be quashed and the summonses withdrawn. Was that perhaps early days? Has it been a problem since, or did we ever find out what the issue was and how it was or was not rectified?

Kevin McGinty: I may need to be corrected on this, but my memory was that a lot of those cases were being taken to court by the police themselves. The CPS carried out a review of some 200 cases. I think that nearly all had been wrongly brought by the police, which I think underlines Sir Tom's comments about the complexity of it.

Q257 **Chair:** It underlines Sir Tom's point and gives credit to the CPS for having picked it up when involved. That is one way of looking at it. We do not seem to have had that repetition thereafter, unless I am wrong.

Kevin McGinty: I think that is right.

Justin Russell: To update you on probation and its response to Covid and our inspection findings, essentially there have been three phases to its response since the end of March. The initial phase covered the first lockdown from April to June. We found that overnight it had to change radically its operating model. There was a strong central control to that; there was a single exceptional delivery model from the centre. A gold command was set up, and we found it did that very professionally and efficiently.

There was a big reduction in the work that the courts were undertaking, and that reduced pressure on court teams. Effectively, it became almost impossible to deliver accredited programmes, which are normally delivered face to face in groups, and very difficult to deliver unpaid work orders. Therefore, the delivery of both those things fell to very low levels during the first lockdown, and that has led to significant backlogs for both accredited programmes and unpaid work, which now have to be worked through.



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The staff we spoke to said they were well supported through the lockdown. About 2,000 staff with Covid symptoms were self-isolating during that first period, which is about 20% of the workload, but because they had been equipped with laptops about 1,100 of them could work from home and continued to do so.

Five of the approved premises closed, but the rest kept going, although at reduced capacity because they could have only single-room occupancy and had to implement Covid-secure arrangements in those approved premises.

Since July we have moved on to a second phase—a recovery phase—where the service has been following what it calls a recovery road map. There is less complete central control over this. Regional directors have more discretion over the exceptional measures they put in place, and there is a RAG rating system according to local infection rates and how many staff are available. There has been a clear effort to try to see more offenders face to face than previously. By the autumn, about a third of National Probation Service caseloads were being seen face to face and a slightly smaller proportion of CRC caseloads.

As for the implementation of unpaid work, delivery levels certainly increased during the recovery period. They found safe ways to deliver unpaid work in smaller groups or tasks people would do at home. Just before Christmas, unpaid work delivery had got to about 60% of pre-Covid levels. They also found safer ways to deliver accredited programmes either virtually online and one to one or in much smaller groups socially distanced on probation premises. Delivery of accredited programmes had reached about 70% of pre-Covid levels before Christmas, so there was a big push to get delivery back to normal.

Since January we have gone into another lockdown. Probation's response feels rather different from the first lockdown. There is a real push to try to keep the essential service going. Probation offices are staying open; they are trying to see high-risk offenders face to face where that is possible and safe to do so. They are trying to continue to deliver some accredited programmes online, although they have stopped all face-to-face group delivery of unpaid work and accredited programmes and will review that again on 25 January.

Therefore, there is a different feel with this lockdown from the past one, with an effort to keep things going. For example, all approved premises have stayed open this time, but it is another challenging time for the probation service.

Chair: That is very helpful.

Charlie Taylor: May I begin by paying tribute to my team at the prisons inspectorate and to Prison Service governors and staff, who should be credited for supporting our inspections at a time when the whole estate



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has been under considerable strain? We provided information to you in June, so what I will do is talk about what we have seen since.

When the restrictions began to be lifted in the summer we saw prisons start to restore essential services at very different rates. For example, in Bristol we found that almost half of prisoners were out of their cells for various forms of activity, while at places like Erlestoke and Lindholme we saw regimes that continued to be heavily restricted despite a large fall in community infection and risk.

Prisons are now in stage 4 of lockdown again. In the adult estate, this means there is very little face-to-face education and extremely limited opportunities for rehabilitation work or release planning. In our surveys between April and December over three quarters of prisoners told us they were unlocked for less than two hours a day, often sharing a cell in cramped conditions with unscreened toilets and poor ventilation.

All face-to-face social prison visits were cancelled again; legal visits were often conducted by video link, which is not always reliable, or telephone. The proportion of prisoners now on remand has gone from 12% in March to more than 15% in September, and we are seeing adults and children waiting for more than a year for their cases to come to trial.

We have been very pleased to see the roll-out of video calling, and some prisoners have told us that this has been a lifeline. It is also good to see that the number of in-cell phones has been increasing. However extremely useful, it is important to note that technology does not become a substitute for face-to-face education and rehabilitation work or, indeed, family visits.

During the current lockdown, the youth custody service is aiming to have children out of their cells for a minimum of five hours a day, and they are continuing face-to-face education and social visits. We have just announced an inspection of Wetherby YOI, so we will be there next week.

When we visited Rainsbrook secure training centre in October, and then in December, we saw that new arrivals were being locked up for very long periods—23.5 hours a day—and in one case we could find no record of a girl having come out of her room for two days. As a result, we and Ofsted were so concerned that we invoked the urgent notification process to the Lord Chancellor.

Since the restrictions began last spring we have seen reductions in violence largely because prisoners are locked in their cells for so long, although in some prisons such as Whitemoor and Preston we have seen rates beginning to rise. Prisoners have told us that violence is not always being noticed because it often goes on behind cell doors.

We will be publishing a thematic report in February that involves interviewing men, women and children from six different prisons. We want to find out about their experiences in lockdown. We found a deep



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malaise among a population that is chronically bored and frustrated. Some prisoners are turning to drugs to cope, and many have told us that their mental health is suffering. They are feeling helpless and without hope and are often unable to make progress with the sentence or get education, training or rehabilitative work that will help them to settle when they get out. Prisoners frequently describe themselves as feeling like caged animals.

As restrictions are eased in the next few months, we in the inspectorate will be watching closely to make sure that prisoners quickly get access to education, training, rehabilitation and leisure activities as soon as it is safe, and that lessons are learned from the summer. When the time is right, we in the prisons inspectorate will return to our full inspection framework.

Q258 Chair: Can you give your assessment of how effective or otherwise the prevention of infection has or has not been within the prison sector?

Charlie Taylor: As I said at the beginning, I think the Prison Service deserves a lot of credit. As we said in our earlier submission to you, this came largely out of the blue. The Prison Service reacted very quickly and was able to put restrictions and reverse-cohorting arrangements in place which meant that new prisoners were much less likely to bring in the virus, or it was more contained.

As a result, the predictions of more than 2,000 deaths that came out at the time thankfully have not happened. There is a spike at the moment, not surprisingly, usually brought in from the community by officers who go back to their families in the evening. As of 11 January, I think there are infections in about 60 prisons. Nevertheless, the Prison Service tends to be on top of this very effectively and is able to make sure that these do not spread, although at times we have seen things like mask wearing and social distancing that is not as good as we would want it to be.

Q259 Chair: Thank you very much. All of you highlight system backlog as the major risk going forward. Why is it that? Are there any obvious immediate remediations that could be put in place to reduce it?

Kevin McGinty: It is a truism that justice delayed is justice denied. The courts and criminal justice system require or depend on victims and witnesses being prepared to support prosecutions. The situation even before the pandemic struck was that there were significant delays in getting cases to court. That is now a lot worse. It is more and more challenging for victims and witnesses to continue to take an interest in a case if it is delayed. It may also have been listed on a number of occasions.

It is the responsibility of the court service to try to make as much use of available courts and judicial resources as it possibly can. Trials when listed sometimes collapse. It is in the nature of listing to list floating cases so that if one case collapses, there is another to take its place, but



for every floating case there will be a number of police officers; there will be one or more victim; and there will be witnesses dragged from home, usually, to attend court only to be disappointed, so the impact of that is significant in encouraging them to continue to support the prosecution.

The CPS, which was beginning to get a real grip on the work before it, is now struggling to deal with the vast increase in the number of cases that it has to deal with that are going nowhere. It will take a long time to recover from that. It has increased the number of staff. It had a very successful recruitment campaign during lockdown. Nevertheless, it has had to recall Crown advocates and prosecutors from the courts to continue to deal with this growing burden of work.

Q260 **Chair:** Sir Tom, you referred to the back flow pressure, if you like. Is that your key concern?

Sir Tom Winsor: Yes. The police are coping with very significant additional responsibilities, and the backlog in the courts means that the delays in justice could very well lead to denials of justice. There are delays to court hearings; there are short-notice cancellations and other difficulties, as Kevin has said. For example, Norfolk constabulary has had a 40% increase in the backlog of outstanding Crown court trials since March 2020. There are 546 outstanding trials at Ipswich Crown court in Suffolk—an increase of 75% since March 2020. These are real concerns.

The principal concern is that serious cases have been cancelled at short notice, causing witnesses, victims and suspects significant difficulties. Our concern about the lack of timely consequences could very well mean that cases fall apart; they do not proceed. People are unwilling to give evidence and just want to move on with their lives; the delays are too bad. Therefore, the deterrence to further offending is diminished, which will leave vulnerable victims susceptible to further offending. It is extremely important that this reverse pressure is released as soon as possible.

Q261 **Chair:** Mr Taylor, is the pressure of remand a key issue here?

Charlie Taylor: The difficulty is that remand prisoners are often themselves very unsettled. They have a huge amount of uncertainty hanging over them because they do not know the outcome of their cases, but because they are on remand and not convicted they are not able to access any of the programmes of support that would be available to them if they were convicted. What it means is that you have a growing group of prisoners in custody but not able to get any of the support that the majority of prisoners would be able to get, particularly where support programmes were operating.

Q262 **Chair:** Mr Russell, from the probation end, is it the throughput of people coming through, or what?

Justin Russell: Probation may be a bit later once people have been released from their prison sentences.



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Chair: Indeed.

Justin Russell: At the moment the main impact is on the court teams that probation operates to provide reports. They are struggling sometimes with the volumes they are being asked to deliver.

Q263 **Chair:** It is the volume of reports to be produced.

Justin Russell: Yes.

Q264 **Maria Eagle:** In everything you have said so far, despite emphasising how well the individual parts of the system have done, particularly initially, to cope with this terrible shock, you have painted a picture that is extremely concerning about the medium and long-term consequences of the pandemic and what has happened. You have all set out instances in your own areas where the consequences of the pandemic are presenting extremely serious challenges to the proper administration of justice.

I wonder to what extent each of you thinks that the current plans to recover from this shock will work, particularly given that we have subsequently seen two further lockdowns. A mutation of the virus that has presented extra challenges because of enhanced transmissibility means that measures already set out might not be sufficient to deal with the virus in its new form, and consequently there is an increased risk of more people getting sick at the same time, with the challenges that presents for the administration of justice.

Do you think the recovery arrangements set in place will be adequate? To what extent do you believe that the consequences of this pandemic will be with us for many years to come and challenge the capacity of the system to provide justice? Mr McGinty, as you are at present chair of the inspectorates perhaps you would go first.

Kevin McGinty: Let us not underestimate the challenges that the court service faces in trying to deal with an unprecedented challenge. There has been increased funding of the court service; additional courts have opened.

The most promising development is remote hearings. Remote hearings are not ideal. For instance, this appearance before the Committee is perhaps not the same as going to a Committee room and doing it face to face, but it is a good substitute. The problem with CVP to date is that there has been patchy uptake. I have to be very careful here in case I find myself being summoned before the senior judiciary rather sooner than I would hope. There is a wide difference in response by judiciary across the country in whether a case can be heard remotely or whether people are required to appear in person. I know that for a national organisation like the CPS, it is a struggle sometimes to deal with a differing approach sometimes within the same area. I am not suggesting for one moment that judges are not doing the best they can to ensure that justice is met in their particular courts, but a different approach does make it more difficult. That is a problem the court service faces, too.



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We do not know what is going to happen. If there are further lockdowns and variations of the virus, the backlog may well get bigger and bigger. At that stage, the Government may well have to take some deeply unpalatable decisions about how they might deal with that. You could remove the right to elect trial; you could keep more cases in magistrates courts; you could look at alternatives to jury trial. All of these have been raised in the past and largely they will not be welcome, but if the alternative is a backlog that goes on for years and years, as politicians you may be required to think about some of the more radical measures to get justice done more quickly.

Sir Tom Winsor: Ms Eagle's question is about whether the current recovery plans will be okay. It is impossible to tell. Let us not be entirely pessimistic. There are plenty of reasons to be pessimistic, but there are also reasons to be optimistic, because the ways in which the police have been able to adapt to the lockdown arrangements have borne some benefits.

The first umbrella point to make is that there has been very welcome political support for the police. Of course, that is a good thing because they are trying hard. Nobody is trying to make life worse for people. There have been well-publicised mistakes and millions of interactions with the public that have not gone wrong, but some efficiencies as a result of the pandemic should be held on to. Taking witness statements remotely in many cases is a great advantage. This reduces the number of personal interactions, which slows spread of the virus, but it is also a much more efficient use of case time.

On safeguarding meetings where vulnerable people are being discussed—child protection conferences, multi-agency public protection arrangements and risk assessment conferences—forces are reporting increased attendance and engagement of the various public sector partnership agencies because they can do them, as we are now, on Zoom or some other platform. That is effecting significant savings in time and cost, and there is greater productivity and enhanced safeguarding activity as a result. That is a great thing. Let us hang on to that.

Remote investigations are possible in many respects, but essential investigative actions that require an on-the-scene physical presence receive those responses clearly in the most serious cases. There is a need to evaluate these changes, and there are benefits to hang on to.

Other technology-related things have gone in the other direction. I have said on many other occasions, but not to this Committee, that in relation to digital forensic services the average family household has nine digital devices. They may all have to be seized and interrogated in an investigation. While the police have now acquired—it has been a long time coming—some really clever kit to draw data from these digital devices, real people, police officers or police staff, still have to read what is on them. The average iPhone produces 5,000 pages of data. How long



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does it take a real person to read that? What the police have not yet done and should do rapidly is develop the use of artificial intelligence, which can read these devices with a higher degree of accuracy than any person, particularly someone who is very bored and tired, and much faster. Therefore, the use of additional technologies spurred by the pandemic is to be desired.

On the wider point you make, when we get back to normal—whenever that may be and whatever normal really is—in my view it is not a desirable objective to get back to where the criminal justice system used to be, because it was already in a parlous state. We need investment and political support to make the criminal justice system far more efficient and effective than it ever has been.

Justin Russell: The probation service was making good progress on its recovery plans. The new national lockdown will mean that, unfortunately, it is likely to go backwards on some issues. It will be difficult for it to deal with its unpaid work and accredited programme backlog, but I think it has learnt the lessons of the first lockdown. It has learnt how to keep the services going, and that has been impressive to see.

The big challenge for probation is having to deal with the latest lockdown and the ongoing pandemic, as well as preparing for transition to the new unified probation structure in June. That is a huge change programme that the leaders in the service have to embark upon and is picking up momentum at the moment. The challenge for them is keeping the day job going and dealing with the pandemic while planning for the next six months in that transition. That will be a big challenge for it.

Charlie Taylor: There is an opportunity here with the roll-out and use of technology, which is very positive, but my concerns are, first, the long-term effect on prisoners, both those doing long sentences and those due for release.

The second thing is that there is already a large cadre of new officers who know nothing different from the estate as it is currently. That is a potential challenge in the future, but in the longer term, as prisons begin to unlock—we will watch the pace of that closely—greater police numbers are likely to lead to more people ending up in prison, so we will also want to keep a close eye on greater capacity and the risk of crowding.

Q265 **Maria Eagle:** Do any of you have a view on the sustainability of the current approach to custody time limits?

Kevin McGinty: I think they were a necessary evil for the particular time we were in. In a sense, you would think that preparing for custody time-limited applications in an increasing caseload for the CPS adds work, but a downside to the increased period is that the CPS still has to persuade the court that all due diligence has been taken in the investigation of the offence. The longer it takes to get that hearing, the more difficult it is to show that all that time has been spent diligently in continuing to prepare



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the case, so there is a downside to the Crown Prosecution Service, too. Given the pressures on the court, it was probably a necessary evil at the time to try to deal with the issue.

Sir Tom Winsor: I am a Scotsman and I want to make one nationalistic point. In Scotland, we have had the 110-day rule, which can be extended to 140 days. It is to be recommended in England because it concentrates the mind enormously, but it requires investment. I read in *The Times* recently a letter from a permanent secretary at the Foreign Office that said that a policy without resources behind it is no policy at all; it is merely an aspiration. That is a good policy.

Chair: Quite a strong theme coming through from all the witnesses is investment.

Q266 **Andy Slaughter:** I have two specific points on the back of your earlier answers, which may be the same.

We have raised jury trials a number of times with the Lord Chancellor—indeed, it is again the subject of a question in the Commons tomorrow—and have been told that the backlog is no worse than it was six or seven years ago. The latest figures we have are from the end of November. Less than 200 trials and tracked trials were being dealt with a week, yet in 2014, when there was a similar backlog, the courts were dealing with more than three times that number. You correctly identify this as perhaps being the engine room of the problem. What is the solution to upping that number?

The second one, which is a counterpoint to that, is: how safe are courts? I saw today a report in *The Law Society Gazette* about a solicitor who had contracted Covid from a client at Highbury magistrates court, although several staff were also sick there. Although we have heard of judges being off with Covid or self-isolating, lawyers are in court premises without in many cases proper protection—ventilation, screens and things of that kind. Have you considered those, and what do you think are the solutions?

Kevin McGinty: Without trying to be too simplistic, there are only two ways to deal with a backlog. One is to take cases out of the backlog and the other is to have them heard. The only way you get them heard is to have a court, a judge and the necessary lawyers and juries to deal with them. Under current circumstances with social distancing, that will be difficult in live cases. There is no way around that. You can increase the number of courts—that may reduce it—and you may be able to take some cases out of the process, but other than that, that is the only way the backlog can be dealt with.

We do not inspect courts. The court service has been saying to date that courts are Covid-safe. Anyone who follows social media and listens to what the Bar and solicitors are saying about going into courts knows that that is not necessarily what they feel. There is a variety of courts. Some seem to be safer than others. The precautions they have managed to put



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in place can vary according to the court. All I can say is that I would not wish to be in court at this time.

Q267 **Andy Slaughter:** I do not know whether anybody else wants to comment. Perhaps it is not your job to give solutions, but we desperately need solutions. The Law Society has asked for a two-week pause in non-custody work, which would make matters worse, but people are often putting themselves at risk by going to work. What does that require? Is it just that the buildings are inappropriate? Is it a lack of investment?

In talking about clearing the backlog, should we be looking at triaging and plea bargaining schemes? Judges suggest that to me as a way of perhaps having some intelligent intervention in the process, because at the moment, looking at the number of cases coming on and being dealt with, the backlog is simply rising.

Kevin McGinty: The more cases that can be dealt with remotely, the less risk there is. Obviously, if you do not have to leave your home to go through the court process you are a lot safer. As Sir Tom mentioned, in many ways it is a more efficient way of dealing with cases, in the sense that people do not have to leave home and spend so much time travelling.

The court service has inherited an estate that is not ideal. A lot of the buildings are old. A number of them are listed and a number are very expensive in terms of upkeep. A number of them cannot easily be adjusted for social distancing; a number are not suitable for wi-fi. This is not a short-term problem; it has been a long-term problem that has been building up for a very long time and the pandemic has brought it into stark relief.

You mentioned plea bargaining. There are dangers here. As I understand it, at the moment there are some CPS cases involving so many defendants that there is not a court in the country that can hear them; they are just too big. There is sometimes subtle pressure to try to reduce the number of defendants and reorganise the way in which the prosecution takes place. That may weaken the prosecution and it may not be the best way of prosecuting that case, and it may not bring justice for the victims of that offence. I think we need to be careful about manipulating cases to try to make them easier for the courts to deal with.

Sir Tom Winsor: There is a distinction to be made between remote hearings in relation to remand applications and full trials. Virtual remand hearings have been carried out, but the current position is that all but three forces in England and Wales are withdrawing from virtual remand hearings whenever they can because they are expensive.

The cost of the virtual remand hearing process has been passed almost entirely to the police. It is costing them significant sums of money because they have to staff the whole thing. They have to have police



officers running things; they do not have any other agencies to help. The Metropolitan police have told us that as many as 45 people are managing just the virtual remand hearing process, and they estimate it is costing them an additional £2 million a year to employ additional people to run these virtual hearings. Norfolk, which is a much smaller operation, is spending over £100,000 a year more on it. So if we are to have virtual remand hearings it is necessary to have a whole-system approach and for all the relevant agencies to contribute fairly.

I make another point in relation to remote trials. I recoil in horror at the idea of trials being carried out remotely. How can a jury or, in a summary case, a judge determine the credibility of a witness via a video screen when there is contested evidence? Remote hearings and trials can keep you safe from the pandemic, but they do not keep you safe from injustice.

Q268 Chair: Use is made of remote links for individual witnesses—for example, vulnerable persons, and pre-recorded cross-examination of complainants in child abuse cases. Do you draw a distinction in trials like that as part of the process?

Sir Tom Winsor: Yes, because those are very special circumstances. Terrorism and child abuse cases are the obvious ones.

Q269 Andy Slaughter: Given that we have been focusing a lot on courts, do you think there is a need for a court inspectorate to be reinstated, notwithstanding what you said about judicial discretion?

Kevin McGinty: I suspect we would say yes to that. An inspectorate is not a negative thing. If it is operating correctly, you build up a degree of trust with the organisation you are inspecting. The purpose of an inspectorate is to try to help the agency improve its own performance. If there is trust, inspection is welcomed. I have been very careful with the Crown Prosecution Service not to try to add to the burden it currently has under this pandemic by additional inspection. It has encouraged inspection during this time because it finds it useful.

Yes, I think that a court inspectorate would be a good idea. I do not think that giving us the powers and expecting us with limited resources to do it is the answer, and, with some justification, I do not think the court service would feel it would get a fair hearing when our main inspection work, for instance, is the Crown Prosecution Service, but that is a different matter.

Sir Tom Winsor: Endorsing everything that Kevin has said, the police have been independently inspected by the organisation of which I am the present head since 1856. They have not always enjoyed it, but they have benefited enormously from it, because we the inspectorate and all the other agencies and bodies that are there to assess the efficiency and effectiveness of the police are not competitors, rivals or adversaries. All



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of us have one single objective, which is to improve the efficiency and effectiveness of, in my case, the police.

The police in the main—there are some resisters, and police and crime commissioners are a whole separate subject—welcome independent experts and professional inspection according to objective public interest criteria and no political criteria. We say what we think and, if it upsets politicians, that is too bad, but we have to say what we find.

My inspectorate was given responsibility in 2017 for inspecting the fire and rescue service. I have to tell you that the chief fire officers of England are absolutely delighted that there is an independent inspectorate coming up with highly reliable, trusted data in relation to their efficiency and effectiveness, because it helps them to improve and to make a case for additional resource where we say they just do not have enough.

Chair: Thank you very much. Mr Taylor, you have had quite a quiet time, but that might change because I know Mr Butler has some questions that fall within your areas of responsibility.

Q270 **Rob Butler:** I would like to pivot back to prisons and probation, specifically education and rehabilitation provision. We have heard from providers about the immediate effect, or how they have reduced services, but I wonder how from an inspectorate perspective you judge the effect of changes to education and rehabilitation as a result of the pandemic. Let us start with Mr Taylor and prisons.

Charlie Taylor: Ofsted is our partner on inspections. It inspects the education part, but we look at purposeful activity as a whole.

We have been very concerned about prisoners' lack of access to education during the pandemic. Almost all education was withdrawn in March or April. It began to come back during the summer as local restrictions were reduced. Nevertheless, it is nothing like the rate it was before or one we would want.

It is extremely concerning that prisoners are not getting the opportunity to do qualifications and learn the skills that will help them go on to lead crime-free lives—particularly children, who were getting access to very little education. It is heartening to see that the youth custody service is to keep face-to-face education going during this lockdown. That is a sign of progress and people learning from the last one, but in the adult estate there is now very little face-to-face education at all and lots of in-cell learning packs being used.

There have been some attempts to make these more effective, and with some sorts of skills and qualifications they can be very useful, particularly where individual prisoners are well motivated, but I know very well the sorts of children who are in the youth custody estate. Many of them will have had a troubled time during education. The idea, therefore, that they



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would be sitting happily in their cells working their way through education packs is, to some extent, fanciful.

Q271 **Rob Butler:** I recognise you were not personally in post at the time, but do you have recommendations based on what you observed during the first lockdown on how the Prison Service might better address those problems this time round—the pure education, as you say, inspected by Ofsted, but also the workshops and other purposeful activity that can exist in prisons, all of which has been severely curtailed?

Charlie Taylor: Absolutely. There seems to be something about the ambition of individual prisoners and individual governors to really make progress here. In some places that we have been to, progress has been quite quick, and that appears to be independent of what is going on in the community. Sometimes, it has been particularly difficult where places have been in tier 3 lockdown for long periods, but nevertheless, we have seen some prisons make really good progress. What we will be looking for at the end of this lockdown will be how quickly prisons can learn from what happened last time and how quickly we can begin to see education, purposeful activity workshops and rehabilitation work pick up again. We hope the lessons will have been learnt from the summer and that things will happen more quickly this time.

Q272 **Rob Butler:** Mr Russell, what is your assessment of the various programmes that have had to come to an end in the probation service—both in the CRCs and in the National Probation Service—and the impact on offenders?

Justin Russell: There are two aspects to that in relation to offending behaviour programmes and accredited programmes in particular. A lot of work has gone into trying to adapt those for safe use, and an alternative delivery framework was launched in September, which means that the programmes will now be delivered one to one, face to face, online or in small groups. We do not know whether that will be effective. They are designed, by definition, to be group programmes and to involve a group dynamic, so we do not know whether they will be as effective if delivered one to one.

Before Christmas, delivery levels were back up to about 70%. That is still short of the numbers being given out in court at the moment, so they need to push on and increase capacity. That means training up some more facilitators, and there is a six-month lead-in time to train up a new facilitator. A lot of work needs to be done around that.

The other aspect of preventing reoffending is supporting people with their basic needs—mental health, substance abuse, accommodation. We found difficulties in accessing mental health and substance abuse services in particular during the first lockdown. That has got a little better over the six months but still is not back up to normal. There were significant efforts made to improve accommodation. That is important particularly for people leaving prison, and money was invested in providing up to two



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months' temporary accommodation after people left prison. There has been good work between the probation service and local councils on that. That is due to stop on 21 January—this week—so a really urgent decision is needed on extending it to last beyond the rest of this pandemic, and I hope a decision will soon be taken on that.

Briefly on education—we inspect youth offending teams as well, and it is a big issue for them—it was very disappointing in the first lockdown how few children on YOT caseloads were getting any sort of education. Even if they qualified as vulnerable children, they were not going into school. In terms of home-schooling, they did not have the laptops, tablets or the broadband connection to be home-schooled, and less than half were. I have been reading about YOTs over the last week to see whether things have improved. They have a little bit. Directors of children's services have now accepted generally that children on YOT caseloads qualify as vulnerable and, therefore, should be eligible for laptops or tablets as they are rolled out, but still very few children are going into school even though they should qualify to do that, and there is evidence that they never went back to school in the first place in September when the schools reopened. This is still a really big area of concern for us.

Q273 Rob Butler: I want to pick up on youth justice because it feels in the report as though the youth justice system is worse off in many aspects. You have touched specifically on education. On access to digital at home, even if they have the laptops, there may not be the broadband supply. You mentioned in the report communication between institutions such as communication between the YOTs, which are in the community, and the youth secure estate—the youth custody system.

Justin Russell: There have certainly been issues communicating with youth custody, and resettlement workers and YOTs have found it difficult to contact case managers in YOIs to discuss resettlement plans.

Communication with partners in the community has been significantly better. Tom has already mentioned that child protection and case conferences have been working far better during lockdown because they can happen virtually and they can be called much more quickly, and people are actually turning up for the meetings. Some aspects like those virtual case conferences will probably continue after the pandemic has finished.

Q274 Rob Butler: Mr Taylor, what is your perspective from the youth custody estate side of this and the reasons there may be for the inadequate communication with the youth offending teams? What recommendations would you have as a result?

Charlie Taylor: Services have been inevitably disjointed and, wherever there are any cracks within the system, they have been made more difficult to manage as a result of lockdowns. For example, youth offending teams have been unable to do the face-to-face contact with young offenders institutions or secure training centres that they would



have done in the past. That inevitably makes things like resettlement more difficult. It is a difficult one to solve because even with video links, particularly for children, building up personal relationships with good and authoritative adults is essential in making progress, and that has been extremely difficult to do.

Q275 Rob Butler: Mr Russell, one point you make in the report more specifically about adults is that there are too many individuals whose sentences expire before they have developed the skills necessary to move away from future offending. That is almost an obvious result of what you have been saying. What impact do you think that is going to have ultimately on reoffending and, in turn, on public and judicial confidence in sentencing? We know that there has already been a degree of nervousness about sentencing to community orders as it is.

Justin Russell: To be honest, that will be difficult to know, and we will not know for some time because reoffending rates do not get measured for two years in terms of convictions and cautions. It will be slightly confused by the fact that crime rates have come down during the pandemic. There is less recorded crime and potentially less opportunity for people on probation to commit further offences. It will be quite a confused picture. It is certainly true that more people are reaching the end of their sentence without completing accredited behaviour programmes or even sometimes perhaps starting them.

We were already finding in our inspections quite long delays before people were getting on to some of those programmes, and those are likely to have increased. In practice, the probation service is prioritising the highest-risk offenders. They are prioritising delivery of sex offender accredited programmes and they are prioritising the building better relationships domestic abuse programme and focusing in particular on people who have already started those programmes to make sure that they at least complete them before they end their sentence.

Q276 Rob Butler: One of the ways the justice system tries to reduce reoffending is by out-of-court disposals. Sir Tom, you mentioned those briefly in your earlier comments. What are your thoughts, gentlemen—Sir Tom, Mr Taylor and Mr Russell—about how diversion and out-of-court disposals have survived through the pandemic and the consequent impacts?

Sir Tom Winsor: There has been an increase in the use of out-of-court disposals for the reasons I gave earlier to reduce the pressure on the courts and to provide swifter justice, but there are limitations and difficulties with them. There is a danger that someone will accept a caution that will appear on their record when in fact perhaps they ought not to, and that is a serious difficulty. Sometimes people do not realise that accepting a caution will have those kinds of effects. It needs to be proportionate, and it should not be driven by difficulties in the courts. It should be driven by the justice of the individual case.



Q277 **Rob Butler:** Mr Russell, do you have a view on out-of-court disposals and diversion, particularly mindful of the youth justice system?

Justin Russell: We do not inspect out of court with adults because, by definition, it does not involve the probation service, but we do inspect it in youth offending services, and it is an increasingly big part of what youth offending teams do. Perhaps 60% of caseloads are now out-of-court disposals, and those have kept going during the lockdown. They have continued to run out-of-court disposal panels to decide what disposals people should get, and they are running them virtually between the police and youth offending teams.

Our inspections generally show a lower quality of work being done with children on out-of-court disposals in assessing their wellbeing or the risk of harm, and a particularly low quality of work with the informal community resolution type of out-of-court disposals. That has been an ongoing concern, and it was still an issue in last year's inspections. We will get a better idea for that quality when we go back in and start inspecting local YOTs from this spring in terms of their work this year.

Q278 **Rob Butler:** Mr Taylor, is there anything you want to add on that? I realise it does not fall under your remit as chief inspector of prisons, but, having spent so much time in the youth justice system, do you have any observations on diversion and out-of-court disposals during the pandemic?

Charlie Taylor: I do not think I would be qualified to say, to be honest. Having left the youth justice board in March just as lockdown restrictions were coming, I am not in a position to comment.

Q279 **Rob Butler:** There is one other point I want to pick you up on. You talked about boredom in prisons leading perhaps to some drug use. Have your inspections come up with any suggestions about how widespread drug use is, given that there has been a pause in face-to-face visits in many establishments? At least one route of drugs coming into prisons has been somewhat curtailed. It is not possible for many prisoners to get outside in the way they used to be able to pick up throw-overs and the like. What insight can you give us about drug use?

Charlie Taylor: We do not have the up-to-date data on that, but we suspect that some of the drug supply may have been curtailed. Nevertheless, we are still hearing from prisoners that there are plenty of drugs around in prison, but the price might have gone up, and that may lead to prisoners getting into greater debt and, therefore, potentially putting themselves at greater risk. Some of the mandatory drug testing programmes have also been suspended during lockdowns, so prisons are not always aware of the extent to which drug taking is going on. Those have been ramped up in the months before Christmas.

Q280 **Maria Eagle:** I want to ask a few questions about the impact of all this on staff who work for various organisations in the criminal justice system. Can you each tell me what the key challenges for staff have been in each



area, but also in the context of what the impact of the pandemic has been on staff absence and staff safety, and the challenges that that has left the system with?

Justin Russell: I will start with the probation service, on the last part of your question about the impact on absences. During the first lockdown period, about 2,000 members of probation staff were self-isolating because of Covid symptoms. About 1,100 of those were able to work from home anyway. The conversations I had with the probation service last week showed that the levels of staff sickness this time round from Covid are lower. The numbers are not as high as last time round, maybe because testing has enabled people without Covid to get back to work quicker and people have become more used to working from home.

In terms of non-Covid sickness, our recovery thematic of looking at the situation in September showed that non-Covid sickness was lower than before the pandemic, and I think that might be a pattern in some other services. We are seeing resilient staff having to completely change the way they work—work from home, work with their children at home sometimes as well, worried about relatives—and become increasingly tired, basically. We are seeing a Covid fatigue setting in with staff. Some of them feel increasingly overwhelmed by what they are being asked to do, although that is not translating into the quality of the work they are doing. We are actually finding that some of their casework is better than it was pre-Covid. Certainly, after 10 months of this, it is starting to get to staff, and they are feeling pretty exhausted in some areas.

Sir Tom Winsor: A great deal of policing has to be out there with the people who are at risk and suspects and so on. At the beginning of the pandemic, over three quarters of the 43 forces in England and Wales reported difficulties with getting the required personal protection equipment. The National Police Chiefs' Council worked very hard to build up national supplies, and it improved significantly and really quite quickly.

A lot of people have been able to work from home in the ways that we have discussed, but access to certain force systems and computer systems—for example, in relation to the management of registered sex offenders—simply cannot be accessed from a non-secure environment, and the same is true of other serious crimes, terrorism and organised crime, in particular. There are some things where they just have to go into secure places in order to work. As much home-working as has been practicable has been achieved, and forces have provided technology and equipment.

As has just been said, people are getting very weary—very, very weary—because those of us who can work at home are finding that we are working longer and harder. There is no downtime between one meeting and another, no travel time, no decompression time, and the result is that people are getting very, very worn. I do not miss travelling up to London on the Southern railway. Who would? Nevertheless, the days are



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longer, and the pressures in some respects are harder. Some forces have found that their occupational health units have been unable to or have struggled to cope with the demand for medical and psychological support as a result. Some of those occupational health units had been struggling before the pandemic, and the pandemic has made it worse.

Charlie Taylor: Similarly to other people, prison officers have worked unbelievably hard in extremely difficult conditions, and I absolutely pay tribute to their work and to governors as well. They are very tired. They are particularly tired by the uncertainty with lockdowns coming and going, and the nervousness they have about potentially bringing infections back into their families as workers who are on the frontline.

As I said previously, there is also a group of officers who have never seen prisons operating as normal. Recent recruits over the last year do not know what a normal prison regime looks like or feels like. For governors, there will be some training work to be done to make sure that happens.

Kevin McGinty: As far as the CPS are concerned, the initial response to the first lockdown was very positive, as I have explained. They found a move to working from home very easy to do. The CPS made it their key aim to try to ensure that communications during that first lockdown ensured that staff understood that staff welfare and safety was an absolute priority for the CPS. When we carried out our inspection late last year on how they had dealt with Covid, staff told us again and again that they felt that they had been fully supported by management through this process, and, to be fair, staff engagement in the civil service staff survey has improved this year for the CPS, which, given the challenges of the year, is a significant achievement.

This time round, it is slightly different. People have responded to the lockdown differently, perhaps more negatively. Workload has increased significantly for CPS staff. We have just started another inspection on response to Covid, and this time we are hearing about people's worries and concerns. It is a combination of overwork and trying to deal with home-schooling like so many people have to do. Some managers have been telling us about more and more people ringing them up and being in tears from trying to keep everything together. In some ways, it is a more challenging lockdown this time than it was last time.

Q281 **Maria Eagle:** There are some increasing concerns about staff safety, and the longer this goes on and the more lockdowns we have, the more concerns there will be about the cumulative effects on staff of what has happened. Can you tell us what additional support you have noticed that has been available to staff to deal with some of these challenges, and what the main priority in respect of staffing ought to be in the recovery phase from the pandemic?

Kevin McGinty: I will be very brief on that one. Virtually all CPS staff are currently working from home, so the risk of infection is not work-related as such. There are difficulties in working from home. Not everyone has an



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office from which to work. Not everyone has a proper desk or a proper chair, so the CPS has been very responsive in ensuring that staff are provided with what they need to be able to work comfortably.

In terms of recovery, it will be very interesting. Sir Thomas mentioned earlier that the new normal will probably be very different from the old normal. I suspect there will be more people working from home, but we will see.

Q282 **Chair:** Are there any other observations from anybody?

Sir Tom Winsor: As I mentioned, police officers, by the nature of their work, have to be out there face to face. Sometimes they have to approach people quite closely, and sometimes they have to take hold of them and restrain them. Those things carry risks of infection. We also hear of instances where people are actively trying to cause injury through the infection by coughing on people or spitting on police officers as they interact with them or try to restrain them. As far as possible, police forces are trying to minimise the risk, but it can never be eliminated particularly when you will be potentially struggling with someone who is, by definition, resisting. You have to get very close to somebody to get hold of them and subdue them.

Q283 **Paula Barker:** Sir Tom, I was interested in what you said about some occupational health units having struggled with support. Could you expand a little more on that and what back-up plans have been put in place? If there are members or employees who are struggling, the first point of call is the manager and then occupational health to provide that support. If they are struggling, what is plan B?

Sir Tom Winsor: Plan B is to increase resourcing as far as possible. I do not have data for you as to exactly what those plans are at this stage, although when we produce our later reports on the policing of the pandemic we will be able to address that. It comes down to resources. The mental health of all workers, but especially police officers and police staff, is always at risk because of the appalling things that police officers and police staff have to deal with. They take their work home. You cannot go to a road traffic accident, a cop death, an unexplained death or all the other dreadful things that police officers and police staff have to deal with without it having a profound, lifelong effect on you.

The police take the mental health of their officers and staff extremely seriously. That needs to be intensified because of what is going on now, particularly those staff workers who are working from home on things like child sexual exploitation and abuse, because it takes a very considerable amount of resilience to watch images of the things that some people will do to children and to know that this is not a film; this is real. I came across, a long time ago, a female member—I think she was a police officer or police staff, it does not matter—who had spent 17 years in the child sexual abuse section of Greater Manchester Police. The normal rule is that you should spend no more than two years doing that kind of work



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because of the severe effect. She did not complain about it because she had the professional determination to catch people and to prevent children coming to harm. It seems to me that that was a failure of the force to allow somebody to do that work for so long. Nevertheless, the mental health implications for the kind of work the police do is already very acute, and more is needed.

One of the innovations that we have introduced into policing, which is an innovation from the world of economic regulation, which is my background, is called force management statements. They are modelled on network management statements from the other regulated industries. We are not regulators, but the principles and some of the techniques are the same. That requires the force to project future demand and to know what resources they will have.

In terms of the assets, which are predominantly people—85% of the cost of the police is the pay bill—they need to understand the condition, capacity, capability, performance, serviceability and security of supply of those assets. That means they have to look after their people. They have to understand the conditions of their people, how those people are developing, the stresses and strains that they are under, and to make an annual assessment that they have to give to the inspectorate—we are in year 3 of this new system—to show how they are looking after their people. In this pandemic year—and hopefully there will be a post-pandemic year—we will be able to assess how well that has happened. The pandemic demands and is driving an intensification of focus on the welfare of their people.

Q284 Andy Slaughter: I want to ask some questions about the impact on service users. We may have covered some of this in the introduction and what you said about courts. An issue that comes up quite a lot for us now is prisoners with physical or mental health problems. Sir Tom said we were not in a terribly good position before Covid. The IMB report for Wormwood Scrubs came out last week showing that, in the year up to March of last year, two thirds of group sessions were cancelled for mental health.

A letter this week from a wheelchair-bound prisoner who suffers from PTSD and depression says there is no access to any mental health therapy—one- on-one or group sessions—and says that is the case throughout the prison they are in. You mentioned Rainsbrook and the quite appalling conditions that persisted there. What, if anything, can be done at the moment? It seems some of these conditions are quite purgatorial for prisoners at the moment, including young people.

Charlie Taylor: We have seen healthcare providers in prisons really doing their best to try to keep a level of mental health services going. Prisons have been aiming to maintain their key worker schemes, particularly for the prisoners they have identified as the most vulnerable. There is a real effort being made. You are absolutely right: things like group programmes and interventions are not available, and that means



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that the service being provided is not what we would want in more normal times. It is worth saying that there has been a huge effort, particularly from health services, to try to maintain mental health services within prisons.

Q285 Andy Slaughter: I quite agree. As you say, before Covid, there were issues around staffing and the ability to simply run services then. It sounds like it is storing up problems for the future. Do you see any positive indications in mental health issues in particular being addressed or services being restored?

Charlie Taylor: We saw the introduction of programmes happen more quickly in some places than others. Sometimes it seems to depend on the local health provider. In Peterborough jail, which we visited recently, people were waiting 40 weeks for a chance to see the dentist. In other places, waiting lists are much lower. You can see that different providers are able to provide different levels of service, and mental health is just one of those. It is an ongoing concern, particularly where prisoners are locked up often together in a very small cell for very long periods of time. One has to worry about the cumulative effect on their mental health, particularly those who are already mentally fragile.

Q286 Andy Slaughter: That begs the question about levelling up, to coin a phrase. What can be done? Can you recommend or intervene at all, if conditions are particularly poor, to say that they should at least be getting up to the levels of the average or better providers?

Charlie Taylor: Where we see treatment not happening and where we see healthcare provision not as good as we have seen elsewhere, we will always flag that up. In my conversation with the Prison Service, one of the things I frequently talk about, as restrictions begin to be lifted, is if we can try to aim for what the best prisons are doing and to push the envelope in the services that are offered.

Q287 Andy Slaughter: Mr McGinty, are you seeing an effect on witnesses' ability to engage with the criminal justice system, or are compensatory measures being taken?

Kevin McGinty: It is inevitable. Before I answer that, it may be of interest to you—and Justin will correct me if I get the detail wrong—that it is very rare for all four criminal justice inspectorates to work together on an inspection, and even rarer for all four to join together to use our powers to inspect the court service. We have just commenced an inspection on how the criminal justice system deals with defendants with mental health issues end to end. I cannot remember offhand when it is likely to report.

Justin Russell: We have not quite started. We will pilot soon and then do the field work in the summer. We should be able to report back to the Committee in the autumn. As you say, it will involve following a cohort of people right through the system who are identified with mental health problems. We will also be inspecting each individual part of the system.



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Kevin McGinty: In answer to the question you posed to me, I mentioned earlier the concept that justice delayed is justice denied. Fortunately, a very small proportion of the population gets involved in the criminal justice system. Nobody wants to get involved in the criminal justice system. Any witness will suffer anxiety about the role that they will have to play in the court process—a process that may be deeply unfamiliar to them. Like anything unpalatable, if you have to do it, the sooner it is done, the easier it is. Delay is going to make things worse.

The CPS will try to keep witnesses and victims engaged and informed about the process, but there is only so much you can say when all you are saying is, “Not yet, not yet, not yet.” That is perhaps the most serious risk to the criminal justice system caused by this pandemic, which is that witnesses, victims and the general public will lose confidence in the ability that we have to deal with criminal offending. That is a very serious risk because we depend on their enthusiastic co-operation in order to run the systems that we have.

Sir Tom Winsor: I would like to echo and add to what Kevin has said. I said at the beginning of my remarks that the criminal justice system was not in great shape even before this pandemic. There is a much wider point about the state of the criminal justice system that I think is worth making now. It has suffered for a very long time with severe levels of underinvestment. The reality is that, in general and with significant exceptions, policy makers—politicians—have recognised that there are no or very few votes in criminal justice. There was the Michael Howard “prison works” speech from 1992. Prison does not work. We know this.

The danger is and the problem is that, in too many respects, policy makers are uninterested or insufficiently interested in and committed to the criminal justice system until their lives are touched by the criminal justice system or the lives of people close to them or people whom they know, either as suspects or victims or witnesses. By that time, the chronic underinvestment and ineffectiveness of the criminal justice system comes home to them, but by then, for them, it is too late. That needs to change.

Justin Russell: From a probation point of view, we interviewed some people on probation about their experience of supervision during lockdown. They were generally positive about it. People who are in a stable position and have a stable home life welcomed being supervised by phone, and that was quite popular with some people.

People who were more vulnerable and had mental health problems and more chaotic and complex lives missed the face-to-face contact with their probation officer. It was very difficult for a probation officer without that face-to-face contact or without being able to do home visits to see how that person was getting on, whether they were looking after themselves or whether there were things that needed to be helped. There is a real



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issue about the more vulnerable part of the probation caseload and how they are supported during this pandemic.

There has been an understandable focus on the highest-risk cases being the priority for face-to-face contact, and I understand that, but they also need to support people who are vulnerable. I understand the probation service is in discussions with a major volunteering charity about providing volunteers who can support the more vulnerable people on probation, mentor and befriend them. That is a welcome initiative, and we need more things like that.

Kevin McGinty: I will mention one thing on the basis of what Sir Tom said in terms of funding the criminal justice system. The pandemic has not only affected the criminal justice system. It has affected the country's economy very significantly. I fear that either this Government or any other Government for some time is going to be awash with funds. There will be a lot of competing calls for funding from other agencies. There is a risk that the criminal justice system will again fall lower down the list than it needs to be.

Chair: Fair enough.

Q288 **Andy Slaughter:** Thank you very much for that. That is very helpful. In terms of Covid outbreaks in prison, I assume that you are reliably informed about where these are and the severity of them. It has generally been a success story in terms of containing them and certainly in terms of fatalities. Are you aware at the moment of any significant outbreaks, and do you feel that we are going in the right direction on that or we are maintaining a situation of relatively low infection levels?

Charlie Taylor: There are up to 60 outbreaks currently happening in prison at the moment. There seems to be a slight downward tick, as there is in the community, of cases. What we see generally is that the Prison Service has efficient processes in place for isolating people when they start to show symptoms and getting them tested. They have also introduced testing for officers now, which is very important and means that they can pick up cases more quickly. We now know more than we did in March and earlier in the year, and, therefore, the Prison Service is able to act quite quickly in bearing down on cases. What tends to happen is that they flare up and are usually borne down on quite quickly. In places where there are high levels of infection in the community, it is not surprising that we see rates go up again in prisons.

Q289 **Chair:** You mentioned the use of video and digital in prisons to some degree and the take-up of it. Will anything be done to improve, for example, the use of video social calls and so on to improve morale and prisoners' behaviour and rehabilitation?

Charlie Taylor: Absolutely. Interestingly, what we have seen is that the take-up and roll-out of the purple visits, as they are known, which are the video calls, has certainly varied across the estate. We were in



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Huntercombe recently, where everybody who wants to take advantage of video calling gets an opportunity to make a phone call every week or at least every week. In Swansea, in our survey, only 5% of prisoners said they had access to video calls. Some prisoners do not want to use video calls. They find the degree of separation very frustrating.

There have been some technical glitches where the camera was shut off— for example, if a child appears in the video, because they have various settings to prevent unexpected people turning up in the video. Many prisoners' families do not have access to technology that is efficient enough to be able to do that. It is a great opportunity in the future to look at ways that video calling can be used and to understand why it has not been used as much as one might have thought.

Q290 Chair: Are there security issues that need to be addressed? You talked about the settings that will be added in some respects. Are there aspects of security that need to be overcome?

Charlie Taylor: The Prison Service has been very careful about making sure, for example, that the person who is supposed to be on the call is the person who is on the call. They are very keen to bear down on things like nudity as well. One of the things they are looking at is if they have the level of risk right, because you do not want to have a system that glitches the whole time. At the same time, we have some very high-risk people in prison, and you certainly want to be extremely careful about the sort of things that could go on in a video call.

Q291 Andy Slaughter: We have been concerned this week with the deletion of the 400,000 criminal record files. Since we are talking about increased use of digital and IT processes, are there any lessons to learn from something that you are likely to be looking at, and have you made an assessment of how serious it is?

Sir Tom Winsor: We have not made an assessment. The news has only just broken. We have not received a commission from the Home Office or anyone else to inspect the issues concerning this failure. Until we fully understand the exact cause of the problem, it would be inappropriate to comment further. The glib answer would be to eliminate all possibility of human error, but that is impossible.

Q292 Andy Slaughter: Are we resolved that it is human error here and not anything that could be part of the systems or processes?

Sir Tom Winsor: It looks that way, but we do not know yet. The police national computer contains many millions of pieces of data. It has to be routinely spring-cleaned to eliminate data for GDPR and other reasons. The systems that are designed have until now proved to be reliable and effective. Something has gone badly wrong here, and there will be an investigation and an internal Home Office investigation as well.

There is a wider issue, which is probably not for this afternoon, on the quality of Home Office technology and the plans to improve it. We have a



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system that will eventually take over the PNC, the police national computer, and the police national database, which is getting on for four years late and over £3 billion over budget. Those are serious problems. If you have ever looked at the police national computer, it takes you back in some instances—and this is not in all instances—to a winking green screen on a black background that is reminiscent of the 1980s.

Q293 **Andy Slaughter:** Would you expect to be asked to look at matters like this? It is not unique in terms of IT concerns across Government by any means. Does it fall within your purview?

Sir Tom Winsor: I do not expect so because the Home Office runs it, and the Home Office is unlikely to ask us to assess that. The Home Office's internal investigation is highly likely to be objective, competent, probing and efficient.

Q294 **Chair:** Thank you very much, everyone. Gentlemen, thank you very much for your time and for your evidence today. It has been extremely helpful to us, and the reports have been extremely useful, too. I am sure we will share your sentiments in thanking those involved in the system in the administration of justice in the various areas of responsibility that you have dealt with—the prisons, probation, courts and police—for what they have done, and your own inspection teams.

Finally, Mr McGinty, this is probably the last time you will be giving evidence before us as I know you are due to retire from your post shortly.

Kevin McGinty: My successor, whom you saw last week, takes up his appointment on 1 April, a very special date.

Chair: I will not ask whether you arranged that deliberately between you. On behalf of the Committee, I thank you very much for the courtesy and consideration you have always shown us when giving evidence and thank you for the work that you have done in the very important role of chief inspector of the probation service, which you have done to a very high and professional level indeed. It is much appreciated by us.

Kevin McGinty: I would like to thank you too for the interest of the Committee in all the work that the inspectorates do because it is very important for us. Thank you for giving us the time today.

Chair: It is a pleasure. Happy retirement, if it will be much of a retirement, because I suspect you are going to keep yourself busy in one way or another. We look forward to coming across you in other spheres, Mr McGinty. Thank you very much, everyone.