HOUSE OF COMMONS

Justice Committee

Oral evidence: The work of the Sentencing Council, HC 1184

Tuesday 2 February 2021

Ordered by the House of Commons to be published on 2 February 2021.

Watch the meeting

Members present: Sir Robert Neill (Chair); Paula Barker; Rob Butler; James Daly; Miss Sarah Dines; Maria Eagle; Kenny MacAskill; Andy Slaughter.

Questions 1 - 50

Witnesses

I: Lord Justice Holroyde, Chairman of the Sentencing Council; and Steve Wade, Head, Office of the Sentencing Council.

Examination of Witnesses

Witnesses: Lord Justice Holroyde and Steve Wade.

Q1 **Chair:** Good afternoon. Welcome to this evidence session of the Justice Select Committee. Welcome to our two witnesses, Lord Justice Holroyde and Steve Wade. It is good to see you both. Thank you very much for coming, gentlemen. We shall come back to you in a moment, but first we have to go through the regular formality of declarations of interest. I am a non-practising barrister.

Maria Eagle: I am a non-practising solicitor.

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

Andy Slaughter: I am a non-practising barrister.

Chair: Rob Butler will be joining us. He is a former magistrate member of the Sentencing Council, and he would want to make that declaration before we start. Mr MacAskill will also be joining us. He is a non-practising solicitor in Scotland. That has put our form in, as we might say in the circumstances.

Sir Timothy and Mr Wade, it is good to see you. Mr Wade has appeared before us before. Sir Timothy, it is the first time you have appeared in front of us as chairman of the Sentencing Council.

Lord Justice Holroyde: It is.

Chair: I ought to say that you and I know each other pretty well through Middle Temple, where we are both Benchers of the Inn. We will own up to that straightaway as well. It is very good to see you in this place.

Lord Justice Holroyde: And I know Mr Butler, who has just appeared on the screen.

Chair: Indeed. Rob, we have just made your declaration for you.

Sir Timothy, as I recall it, the last time your predecessor came to give evidence was shortly before the handover in 2018.

Lord Justice Holroyde: I think that is right.

Q2 **Chair:** He gave some evidence to us. We have had some conversations since you have been in post, for which I am very grateful. Perhaps we can talk about some of the issues and see how we can work together as organisations going forward.

To kick off, the Sentencing Council has passed an important anniversary, and you have taken that opportunity to have a consultation as to where you go next. That is a significant milestone. A lot of people may still not be clear as to the role of the Sentencing Council within the criminal justice system. It might be as useful to our fellow parliamentarians as anyone else if you would encapsulate what that is—it is obviously a statutory role—and where in particular you see the added value that the Sentencing Council can give, and why.

Lord Justice Holroyde: An important part of our role and, we would say, to date the most important part of our role, has been to produce sentencing guidelines for use by judges and magistrates who have to sentence persons who have been convicted of criminal offences. The aim of the guidelines is to increase consistency in sentencing; that is to say, taking a consistent approach to sentencing cases, not necessarily leading to the same outcome because the circumstances of offences always vary. The guidelines are also a considerable aid to transparency in sentencing and, we hope, are accessible to anyone interested—members of the public, lawyers and others—through the information we publish on our website.

We have other roles: to increase public confidence in sentencing; to consider the effectiveness of sentencing; and to conduct research and analysis relevant to sentencing. As we will probably come on to in relation to other questions, one of the issues we are considering at the moment, and on which we have sought views through our public consultation, is the way we should balance those various roles for the years ahead. Up to now, as I said, we have focused mainly on producing and revising guidelines. Our provisional view is that that will continue to be the lion's share of our work, but we are very conscious of other aspects of our work, which we would certainly like to undertake if we had the resources, and we are consulting on views as to how best to apportion the resources we have.

Q3 **Chair:** That is helpful. Mr Wade, you may be able to help us on that. What are the resource and organisational constraints that might make it not possible for you to do everything that is at least in theory within your remit under the 2009 Act?

Steve Wade: To set the context and go back a little bit, originally, in 2010, we started with a budget of about £1.77 million. That figure was the bare minimum that the then head of office and chair thought necessary to carry out the statutory functions. They had asked for about £200,000 more than that as their starting de minimis bid.

The council launched right at the start of the financial crisis, so we instantly entered a period of austerity. Successive cuts and, more recently, flat budgets being carried over in real terms for the past couple of years have seen our budget reduced to £1.495 million now. That is a real-terms cut of about 35%, which is not dissimilar from the cuts that the Ministry of Justice more widely has seen over that period. It has meant that we have had to cut our cloth accordingly.

As the chairman said, we have focused on the core function of producing, evaluating and monitoring guidelines. It has meant we have had to cut back on pursuing some of the other areas as fully as we might want to. Not only have we seen the budget reduce; we have seen our workload increase. Even if we were to continue to produce guidelines at more or less the rate we have been, it increasingly places pressure on our analytical team, who not only need to continue to support the

development of guidelines but have an ever-increasing number of guidelines in the background to evaluate and monitor.

I would say that we have managed throughout the last 10 years increasingly to work more slickly and efficiently as better working practices bed down and we tweak them. We have shifted to digital working, which has meant that we have been able to reduce paper costs. As you know, we have shifted from our large-scale Crown Court sentencing survey to bespoke surveys to use our analytical resource in a more focused and precise way. With the budget as it is at the moment, particularly if we were to go into a period in the next financial year when we still ended up with a flat budget, it is now starting to bite in terms of what the council is able to do, even in carrying on as it has over the past couple of years, let alone being able to do anything else.

Q4 **Chair:** It was about the same level of reduction that the Ministry required of its other arm's length agencies, but you are starting from an immensely small base compared with HMCTS or prison and probation, aren't you?

Steve Wade: We are, and it makes it even more difficult. In an organisation the size of ours, a relatively small cut in absolute terms, which is a drop in the ocean to the Ministry of Justice, is a pretty big percentage cut. A figure of something like £100,000 is 1.5 members of staff and getting on for 7% of our budget, whereas for some of the larger ALBs and organisations £100,000 here or there, although every penny counts at the moment, has a relatively smaller impact.

Q5 **Chair:** What percentage of your budget goes on staffing costs? It is overwhelming, isn't it? Could you do the calculation for me?

Steve Wade: Of the just under £1.5 million, staffing and associated costs, including the relatively minimal costs of our paid council members, and other fixed costs that we have to bear, mean that we have about £200,000 left, which is what you might call discretionary spend each year, to be allocated to additional research projects, IT improvements or communications outsource work.

Q6 **Chair:** It is overwhelmingly fixed costs, almost 99%.

Lord Justice Holroyde: Perhaps I might add one or two small points. From the figure of about £200,000 that Mr Wade mentioned, we have to pay the costs of maintaining our website. Although that is not quite a fixed cost, it is in a similar sort of category, if I have understood the position correctly.

Another point about the balance between workload and resources is that legislation does not stop, if I can put it that way. We cannot take a fixed block of legislation and decide how many guidelines we want to produce. As each year goes by, there is more legislation, which may give rise to the need for fresh guidelines to be produced.

Q7 **Chair:** Understood. We talked about it being 10 years since the council was set up. The background is that before the council was set up, and perhaps during our time in practice, Sir Timothy—yours was rather grander than mine—there was an attempt by the Court of Appeal to set guidelines in certain types of case. There had been a growth in that practice led by the judiciary. Am I right in thinking that the idea was to put it on a rather more formalised basis?

Lord Justice Holroyde: Yes. If I could give a very brief history lesson, from about the mid-1980s, as you say, the Court of Appeal gave occasional guideline judgments, which were explicitly judgments dealing not only with the case before the court but giving guidelines for other similar cases. In the nature of things, there were not very many of those, so the extent to which they could provide guidance to other judges and practitioners was limited.

In the late 1990s, the Sentencing Advisory Panel was set up to advise the Court of Appeal as to areas in which it might usefully issue guidelines. In the 2003 Criminal Justice Act, the Sentencing Guidelines Council was established, which, effectively, took over the roles of the advisory panel and the Court of Appeal in that regard, and began to issue its own guidelines, and from 2010 we replaced the Sentencing Guidelines Council. Through that period, there has been a steady growth in the availability and reach of guidelines, but it is certainly right to say, as you indicated, Sir Bob, that when I started in practice, there were, effectively, no guidelines, with a consequent lack of consistency.

Q8 **Chair:** To what extent do you think you have been successful over that time in improving consistency in sentencing? Are there statistics on it?

Lord Justice Holroyde: There aren't at the moment. We plan to publish later in the year research that we hope will provide some information about that. It will be difficult to point to any clear statistical evidence of an improvement in consistency; it is a difficult thing to measure, precisely because so many features of individual cases vary and, therefore, individual sentences necessarily and properly vary, even though the same approach to sentencing has been adopted.

Perhaps I may be forgiven for lapsing into anecdote for a moment. If you compare the position now with the position in the early years of my practising experience, there is a huge improvement. To spell out a feature of the guidelines, although the guidelines may be departed from in the interests of justice, what an individual sentencer cannot do is simply substitute his or her own scale of sentencing. An individual judge cannot say, "I just don't agree with these guideline levels of sentencing, so I'm going to ignore them." There may be a departure from them for a proper reason in an individual case, but not a general personal sentencing scale being operated.

Q9 **Chair:** It is fair to say that, if you look at any hearings before the Court of Appeal Criminal Division today, a good number of them will depend

upon whether the sentence was too harsh or unduly lenient in light of the guidelines. That is now pretty central to a criminal appeal.

Lord Justice Holroyde: Absolutely so. Yes.

Q10 **Chair:** Given that we do not have firm details but we have a sense that I think most people would agree with, apart from a move towards consistency, are there any other principal achievements of the council since it was created?

Lord Justice Holroyde: An important part of it is now the almost complete acceptance by judges and magistrates of the value and benefit of guidelines.

Chair: The concept.

Lord Justice Holroyde: If you go back to when guidelines first started to be introduced, there was from some quarters of the judiciary a fair amount of harrumphing going on: "How dare anyone tell me what sentence to pass?" That has gone, in part because those who are being appointed now are people who have spent most of their practising lives working with guidelines and are very familiar with them. I think it is also because their benefit is widely recognised.

In recent times, we have started to try to devote such resources as we can to areas other than the simple production and revision of guidelines. We have started to look, for example, at areas of disparity in sentencing. That is a difficult topic and we are looking at it primarily from our limited perspective. Do our guidelines in any way cause or contribute to disparity? That is an important step that we have taken in the fairly recent past.

With some of our overarching guidelines, I think we have very helpfully tackled some difficult broad areas of sentencing. The most recent overarching guideline is to help sentencers deal with cases of offenders who suffer from mental disorders of one sort or another. A few years ago, the guideline on principles for sentencing children and young persons was very valuable, as was a guideline on principles relating to the sentencing of domestic abuse cases, emphasising the seriousness of the domestic aspect of those offences. If you go back a number of years—again forgive me for lapsing into anecdote—in the early part of my career, it would be quite common to hear offences of violence being treated rather dismissively on the basis of, "Well, it was only a domestic." I am glad to say we have moved away from that.

Q11 **Chair:** We had all heard of that in the criminal courts. There has been a big change. Are there any areas, in frankness, where you think things have not gone as well as perhaps were envisaged at the time?

Lord Justice Holroyde: We are very conscious that we have not been able to devote as much time and effort as we wanted to areas of research, areas of effectiveness and work on improving public confidence.

Those are all very important aspects of our work, but because of the resource limitations that have been mentioned there is only so much we can do. We have regarded it as our priority to issue new guidelines and revise the ones we have. As Mr Wade rightly said, the more successful we are at producing new guidelines, the more guidelines we give ourselves to keep under monitoring and review and, therefore, the more work we have to do in that regard.

Q12 **Paula Barker:** Could you outline the thinking behind the "What next for the Sentencing Council?" consultation?

Lord Justice Holroyde: We thought our 10th birthday was a good opportunity to do something. One thing was to look back at what we had achieved, but another thing was to look forward and see what we should concentrate on for the future. We launched the public consultation identifying a number of broad areas, in particular our work of producing and revising guidelines, considerations of effectiveness in sentencing, and considerations of increasing public confidence. We have sought views from those who are interested in how best we should allocate our resources and workload for the future, including analysis and research. We hope to be able to report on this in the summer.

In very broad terms, there is quite a lot of support for our provisional view that we will still need to spend a lot of our time and effort on the core work of producing and revising guidelines, but there are also calls for us to branch out much more than we have done into other areas. I am sure the Committee is familiar with the work we published fairly recently on disparity in sentencing in some drugs offences. Quite a lot of people have picked up on that as an area of work that we ought to seek to develop in the future. We were just opening ourselves up to suggestions as to how best we should work in the years ahead.

Paula Barker: Mr Wade, is there anything you would like to add?

Steve Wade: No.

Q13 **Paula Barker:** Sir Timothy, you have just touched on the revision and development of guidelines remaining your primary focus and you talked about branching out into other areas. Is there any rationale as to why it is your primary focus? I know you talked a little bit about it, but apart from the obvious disparity in sentencing on drugs, is there anything else that you see as the focus going forward?

Lord Justice Holroyde: The view has been taken that producing guidelines for the assistance of sentencers in all the courts of the land—all the courts of England and Wales, to be more specific—was the most useful way of using our resources, because the desire for consistency and transparency in sentencing is a very important consideration. To put it bluntly, you do not do very much to achieve consistency and transparency in sentencing by issuing a handful of guidelines covering a small range of offences, and then calling it a day. We have taken the view that we should devote a lot of effort to that.

We might come to other aspects of data collection later, but there is a practical problem with research and analysis, in that in some areas of our work, however much money we had at our disposal, we would be limited in what useful data we could gather. If there is an offence that comes before the court only 100 times a year across the whole of England and Wales, it may well be that you could never gather enough data about it for the statisticians to say, "That's enough for us to produce statistically reliable analysis." Essentially, it has been a question of allocation of resources. That is our provisional view as to how we should continue in future, but we are very open to other suggestions.

Q14 **Rob Butler:** I apologise that a few technological glitches meant I was not here to declare my interest at the start of the meeting. I am sure Sir Bob has done it, but in the interest of openness I should say that I served on the Sentencing Council when Mr Wade was head of the office and Lord Justice Holroyde was the chair. It is very nice to see you again, gentlemen, albeit in a different guise on my part.

To pick up where Ms Barker left off, on the balance between guidelines and other roles, in statute there are other aspects of work that the council is asked to do, including, as you mentioned, Sir Tim, the need to promote public confidence and to look at relative effectiveness in preventing reoffending. To ask a slightly provocative question, why do you think that part of the statute is less important to follow than the part that says you should compile the guidelines?

Lord Justice Holroyde: The statute does not set any priorities; it puts guideline production and revision first, if we can read anything into that, but it is a view we took as to where we would give the best value for the public money that is spent on us. The other areas are undoubtedly important and, if we could, we would very happily spend more time on them.

Q15 **Rob Butler:** Do you think the council has performed the role that was originally envisaged in the Coroners and Justice Act 2009?

Lord Justice Holroyde: I believe so. I believe that the listing of guideline development first in the statute carries significance. That was probably seen as the core role. I may be wrong about that, but that is my feeling.

Q16 **Rob Butler:** Do you feel that, as was set out in statute, the council should continue to have a majority of judicial members? If I recall correctly, it is eight out of 14. Does that feel right to you?

Lord Justice Holroyde: It does feel right. As you say, it is set in statute and, therefore, in the end a matter for Parliament. It feels right to me. The non-judicial members bring very valuable learning and viewpoints to the process, and the production of guidelines undoubtedly benefits very greatly from them, but the presence on the council of a number of judges covering the full range of the judiciary, from lay magistrates to lords

justices of appeal, has a very valuable role in contributing to acceptance of the guidelines by those who have to apply them.

Q17 **Rob Butler:** Do you think that is what naturally leads to the prioritisation of guidelines? Do you think the judicial members feel more comfortable with that aspect of the remit than they might be with certain other aspects, such as increasing public confidence or judging effectiveness?

Lord Justice Holroyde: I don't know that it is a matter of feeling more comfortable. You may be right that the judicial members may more readily see the benefit of having more guidelines.

Q18 **Rob Butler:** Do you think that if, for example, you had more lay members, they might be more tempted to suggest that other aspects of the remit might be more significant? For example, I would not for a moment suggest that you have parliamentarians, but parliamentarians sometimes do not have faith in certain sentencing decisions; victim groups may not. For example, you have one representative of victims through the chief officer of Victim Support, but if, for argument's sake, there was also the Victims Commissioner, do you think that might start to skew the way the council believes it should exercise its role?

Lord Justice Holroyde: I find it difficult to answer that because I suppose it would depend in large part on the personalities involved. I do not think one could ever see any reason for stopping work on producing and revising guidelines. It would only ever be a question of how best to prioritise limited resources. One of the problems about the analytical and research side and consideration of issues such as effectiveness in sentencing is that they are potentially huge topics. You could spend a lot of money and time, and not necessarily be able to get to concrete answers.

Q19 **Rob Butler:** I absolutely take that on board, having served with you, but what was quite interesting in the responses we have seen to your consultation was that, for example, the Sentencing Academy, Transform Justice and this Committee suggested that perhaps the time is ripe to refocus, not to get rid of looking at guidelines—we all accept that—but to devote more time to some of the priorities. There seems to be perhaps less enthusiasm on the part of the Sentencing Council itself. I am trying to get to the root of why that might be.

Lord Justice Holroyde: As to whether there is less enthusiasm, one will have to await the outcome of the consultation process, and see what conclusions we may reach in the months ahead.

To go back to something I said earlier, legislation continues. If there is new legislation affecting issues of sentencing, inevitably that will be a matter for us to consider in the context of whether or not we need to provide new guidelines or revise existing guidelines. Some legislative changes involve quite a lot of work for us. With a small body and budget, that is a significant inroad into what we can do overall.

Q20 **Rob Butler:** As part of that work, and the balance that you say has to be struck, how has the pandemic affected your working practices? I recall that when I was on the council we spent a whole day sitting in one big room. All 14 of us were together, plus advisers and the brilliant staff of the office, who deserve a lot of credit for the work they do behind the scenes. How are you operating now? Has that slowed down any of the work you have to do?

Lord Justice Holroyde: It has not really slowed it down at all. Everything is remote. Mr Wade will correct me, but I do not think anyone has physically entered the office for many weeks. Our regular monthly meetings, which we have for 10 months of the year, have been conducted for several months via Teams. Those meetings are rather shorter than the ones you remember, Mr Butler, because, as is common experience, doing everything on screens is more wearing than being in the large room with the rather eccentric thermostat, which you will remember fondly or otherwise.

Our monthly meetings are a bit shorter. For that reason, this year we are departing from the normal practice of having 10 meetings during the year and making it 11. With those changes, the work has continued, frankly, as if nothing had happened. You paid tribute to the staff of the office. They are a wonderful team. I am immensely grateful to them for all they do. From my perspective, quite genuinely, there is no indication at all that they are working in different or more difficult conditions. At a personal level, working from home, and being isolated to a great extent, affects some more than others, as one would expect. I am sure there are many personal stories to tell, but in terms of the output and quality of work I do not believe there has been any lessening at all.

Rob Butler: That is all from me for the moment, other than to say that, while I miss the thermostat, perhaps not with much affection, I sadly miss the fantastic cakes provided by one of the judicial members. I will save their blushes by not naming names.

Chair: I am sorry that the Select Committee's catering arrangements are not up to that.

Lord Justice Holroyde: We, too, miss out. That is a real drawback of the remote meetings. We have to supply our own.

Q21 **Chair:** You are dead right there. On the point you were making about the membership, it was born of judicial initiative, wasn't it? It was the idea of the guideline cases which then developed into the advisory body. I suppose the argument is that, to a degree, it does not infringe judicial independence because it is of the judiciary in its broad sense. That was the rationale or the theory behind the way it was constructed.

Lord Justice Holroyde: I would agree.

Q22 **Maria Eagle:** Now that the main high-volume guidelines have been produced and completed over your first 10 years, how will the council

decide which guidelines need to be revised when? You now have an extra role. You have completed the new guidelines, but you now have to make sure that you keep them up to date and revised, as well as everything else you are going to do. It is an extra bit of work. How will you decide which order to do them in and when they need doing?

Lord Justice Holroyde: It is a very good question, if I may say so. There is a paradox. Where an offence is one that is commonly prosecuted, there is an obvious strong argument for saying that we need a guideline for that one, because there will be lots of judges and magistrates who have to deal with it. Conversely, where an offence is rarely prosecuted, there is a strong argument for saying that the average judge or magistrate may only see one of those cases every couple of years, so there is all the more need for guidance in that niche area. That is one of the balances we have to strike.

Another balance is the introduction of new offence-creating legislation, or new legislation that alters maximum penalties for a particular offence. Some of those may not necessitate any new work; some may necessitate a comparatively modest amount of work; and some may necessitate a good deal of work.

To interrupt myself for a moment and give an example, in the 10-year plan to replace all the existing Sentencing Guidelines Council guidelines, the one we have not dealt with so far is the guideline relating to causing death by motoring offences. That has been in need of revision for a considerable time. We have been very conscious of that, but for a considerable time we have also known that legislation was on the way that would make a big difference to the way the guideline is drafted. It is in the White Paper; it is a subject to be included in the forthcoming Bill, so we anticipate that we will fairly shortly be setting to work on that guideline. It will be a big guideline from our point of view. It will have to cover a number of offences, it will raise some very important issues, and it will take a lot of work.

Equally, if legislation makes a substantial increase in the maximum penalty for a particular offence, it often calls for quite a lot of work in reviewing that guideline. If, for the sake of argument, Parliament doubles the maximum sentence, it might be tempting to think that you just go for a guideline that doubles everything. Job done. I am afraid it is not as simple as that. There has to be calibration within the guideline, and we have to keep an eye on other guidelines. We do not want a situation in the courts that there are issues as to which offence somebody would be willing to admit based on what one might call loosely guideline shopping: "I'll be better off pleading to offence type A because the guideline there is more favourable for the same sort of behaviour than if I plead to separate offence type B." All those are aspects of the work that may come from new legislation.

As to reviewing, we think about how long a guideline has been in force. We think about whether it appears to be working, whether there are any

reasons to think it is not working, and whether there are cases coming before the Court of Appeal that have raised issues about the application of the guideline in practice, and we make an overall decision as to which one to give priority. I am afraid it is difficult to be more precise than that, unless Mr Wade wants to add any particular considerations I have overlooked.

Steve Wade: The only thing I would add is that the council has a number of criteria in the background. For example, if there was a large body of opinion that suggested a particular guideline at least needed to be looked at, that is the type of thing that might be taken into account. We have a specific duty to consider requests from the Lord Chancellor, the Lord Chief Justice or the Court of Appeal, if they recommend that we look at guidelines. Our terrorism guideline would be a good example. It was already in the workplan for the council, but after a request from both the Court of Appeal and the Lord Chancellor we expedited production of that guideline. Those types of factors are in the background that the council considers, alongside all the other areas that the chairman indicated.

Q23 **Maria Eagle:** You have described quite a complex series of very interlinked considerations, which is understandable. Do you think you have the data you need to inform the process of deciding what comes next and which guidelines ought to be revised, or are you working in the dark to some degree?

Lord Justice Holroyde: The short answer is that we would always like more data. There is an element of chicken and egg. If we had lots of data, it might well suggest that a particular guideline was not working. If we did not have lots of data, the indications that a guideline was not working would be a reason to want to get more data about that particular guideline.

I mentioned earlier that there is a limitation that has nothing to do with resources, which is that if an offence has only very recently been created by statute, or is only ever encountered fairly rarely, there may well never be a stage when there is sufficient data to provide robust statistical analysis. For more frequent offences, the collection of data is a very valuable part of our work, but it is a time-consuming and expensive business. The more detail one looks to gather, the more extensive the data collection operation. For example, you could quite easily establish how many of the people sentenced for an offence had pleaded guilty and how many had been convicted after a trial, but if you want to get down to the detail of which particular mitigating or aggravating factors were taken into account, it is a much bigger exercise.

Q24 **Maria Eagle:** You have already made reference to low-volume offences—niche offences, if you like. Perhaps we could take as an example the guideline for modern slavery offences. At the moment, the volume is relatively low, although anecdotally there seem to be quite a lot of those sorts of offences that perhaps have not been successfully pursued. That

guideline would clearly be of great use to courts. How do you decide which niche offences, or perhaps low-volume complex offences, should be prioritised for a guideline?

Lord Justice Holroyde: It is difficult to point to a very clear-cut list of criteria that would enable one to say for sure which one we would pick from a variety of contenders. You have in fact identified an area that is the subject of ongoing work in preparing a guideline, for precisely the reasons you mentioned. It has not to date been an offence that has been very frequently prosecuted, but the number of prosecutions is going up. It is clearly a very important area of offending, it is an important area for us to cover, and it throws up some difficult questions of principle as to how one categorises elements of harm and culpability in relation to that type of offence.

All of our work is based on trying to assist sentencers to make an assessment of the seriousness of an offence by reference to the culpability of the offender and the harm that is caused, or was intended to be caused, or was foreseeably likely to be caused. In some cases, it is quite straightforward. You have the 1861 Act distinction between causing grievous bodily harm and causing grievous bodily harm with intent to cause grievous bodily harm, the latter being much more serious than the former. In some cases, the harm is very easy to see. You have a black eye and a split lip, and there is the harm, but for other types of offence—modern slavery is one of them—it may be much more difficult to categorise the harm, and set a scale of sentencing values for it.

Q25 **Maria Eagle:** My next question may be an awkward one to answer. What account does the Sentencing Council take of Parliament's intention, which can often be discerned by things like the setting of maximum or minimum sentences for an offence? What account do you try to take of the intention of Parliament when developing a guideline?

Lord Justice Holroyde: It is important to emphasise that we cannot and do not simply ignore the will of Parliament. If Parliament legislates to double the maximum sentence for a particular type of offence, we cannot simply ignore that and say, "We will never make any change to our guideline because, as far as we are concerned, that's fine and if Parliament wants to double the sentence that's up to them."

Within that broad proposition, sometimes it is possible, for example, to ascertain from the parliamentary debates that, where a maximum penalty was increased, the real motivation was a feeling that there was a need to have stronger sentencing powers for the most serious examples of that type of offence, so the change would come at the upper end of the guideline. In other cases, it might perhaps be possible to see from the debates that the aim of Parliament was just to increase the level of sentencing for the type of offending generally across the whole range, from the less serious examples to the most serious examples. It is a factor we take into account.

Q26 **Maria Eagle:** The Lord Chief Justice recently referred to the possibility that certain guidelines had perhaps contributed to more severe sentences. What view does the council take of that idea? If you end up thinking that your guidelines have contributed in a particular instance to more severe sentences, what, if anything, are you planning to do about it in response?

Lord Justice Holroyde: Again, that is a very good question, which raises a number of issues. We have a statutory duty to ensure that our guidelines do not cause sentencers to sentence contrary to the law, obviously. To take a couple of basic statutory principles of sentencing, no sentencer can impose a custodial sentence unless of the opinion that the offence is so serious that neither a fine alone nor a community sentence can be justified. If a sentencer is satisfied that a custodial sentence is necessary, statute provides that the sentence must be the shortest sentence which, in the opinion of the court, is commensurate with the seriousness of the offence. Our adult guidelines take that as the basic premise.

Our children guideline reflects the statutory provisions for children and young offenders. The court must have regard to the primary aim of the youth justice system, which is the prevention of reoffending, and it must have regard to the welfare of the child. The consequence of that for an adult guideline, for example, is that it will only be for the more serious offences, or the more serious categories of a particular type of offence, that the sentencing range will be all custodial. For less serious offences, it will include non-custodial disposals because sentencers must comply with those basic principles.

We also have a statutory duty to have regard to the effect of our guidelines on the prison and probation services, so all our draft guidelines, when they go out for consultation, are accompanied by a resource assessment. We estimate that it will add X prison places per year, or that it will add significantly to the number of people serving community sentences. We do not have under the statute any general duty, or indeed remit, to alter sentencing levels generally, and we do not see it as our role just to alter levels generally without any particular reason other than our own preferences. If we did that, we would very rapidly lose the confidence of sentencers, the public and Parliament.

Generally, when we produce a new guideline, we aim to maintain present levels of sentencing. Sometimes, for a particular reason, we deliberately depart from that. To give you two examples, one each way round, in relation to environmental and health and safety offences, we took the view that the current level of sentencing for the most serious offences of those types was too low, so our guideline increased it. At the other end of the scale, in relation to drugs offences, we took the view that the sentencing of drug mules, as then currently practised, seemed to us to give insufficient weight to the very frequent feature in those cases of the drug mule being himself or herself the victim of coercion and oppression

of one sort or another, so we recognised that the application of our guideline would be likely to produce lower sentences for those.

Because the general aim is to maintain current levels of sentencing, I would answer your question by saying that the guidelines reflect increases in sentencing rather than specifically causing them. As the Lord Chief Justice said in the speech to which you refer, there has undoubtedly been a general increase in sentencing that can be attributed to all kinds of factors. I think that our guidelines, in so far as they fall in with an increased level of current sentencing, may be said to reflect that increase rather than specifically cause it. If we had reason to think that one of our guidelines had either specifically increased or reduced levels of sentencing beyond what we expected, that would be a good reason to review it and think about whether we needed to amend it. That was rather a long answer. My apologies.

Q27 **Maria Eagle:** No, I understand that. It is interesting.

One of your original purposes was supposed to be to increase consistency in sentencing.

Lord Justice Holroyde: Yes.

Maria Eagle: You have just said that you think sentence inflation is not particularly a consequence of your guidelines, but that there is a general increase that your guidelines may have played into but not caused. Do you have any research evidence that would indicate that you have managed to meet the aim of increasing consistency in sentencing?

Lord Justice Holroyde: As I think I mentioned earlier, we plan to publish in the spring some research on that topic. I am afraid I cannot go into any details about it, but I do not think it will necessarily show any clear-cut evidence of an improvement in consistency. I suspect it will always be difficult to say one way or another whether a particular guideline has increased consistency. As I have emphasised, we aim to increase consistency in the approach to sentencing, making sure that all sentencers consider the same relevant factors in the same sequence, but the weight they give to those factors and the end result can differ from case to case.

Q28 **Andy Slaughter:** If I may go back for a moment to resources, you mentioned earlier in the session that you had been subject to—shall we say—the usual Ministry of Justice 35% cut. There is some modest growth in the MoJ budget in one or two areas. I do not know whether you are bidding, or whether you think you are likely to have any expansion of your role. That is the first question. If you are, where would you direct any new inquiry? If I have understood correctly, you are saying that in terms of your core work—guidelines and consistency—you are achieving that. You mentioned equality work and undertaking more analysis. There has also been some criticism that you do not do enough work on the effectiveness of sentencing. Are any of those areas that you would like to explore more?

Lord Justice Holroyde: If I may, I will invite Mr Wade to answer first because he is probably in a better position to talk about the mechanics of any bid we might make for increased funding.

Steve Wade: The short answer is that we will. Notwithstanding the modest increase to the Ministry of Justice budget generally, we are aware that we are entering a period when public finances generally will be constrained. None the less, we are of the view, as I think is borne out by the consultation responses we have looked at already, that we could offer some real value to the criminal justice system as a whole were we to have additional resources, and we will be making a bid to the Department on that basis. We had been hoping that our consultation would coincide with a wider spending review, and that we would be able to use that opportunity to make a bid for a slightly more informed longer-term additional investment. For understandable reasons, the wider spending review has been pushed back, so we are likely to need to make a one-off separate bid for additional resource.

We flagged up initially, as part of this year's strategic spending review in the Department, that we are likely to be coming in with a bid for certain additional funding, but not until we have finished evaluating the consultation responses and the council has decided what its priorities will be. We are not in a position to make a fully-fledged business case based on pounds and pence; we flagged up some indicative sums.

As has been said, the area that the council has tended to focus on to date has been the production and evaluation of guidelines. As to the two broad areas that have not had as much attention given to them, one is research in terms of both the breadth and quality of the data we are able to collect and the types of research that the analytical team is able to do beyond supporting the production and evaluation of guidelines. That is one area to which we want to divert additional resource. As I suggested earlier, some additional resource is required to shore up the team as it is, even if we were to do nothing additional to what we do at the moment.

The second main area is in the field of public confidence. We could add some real value there in understanding of the criminal justice system and understanding how the sentencing process works, what constraints sentencers are under, what flexibilities they do or do not have, and how sentences are reached. That is the other area where we would certainly be looking to improve and enhance some of our work if we had additional resource.

Q29 **Andy Slaughter:** Specifically in relation to the areas I mentioned—the effectiveness of sentencing or equality issues—do you do any equality impact evaluation of all the guidelines that you publish?

Steve Wade: We do. At the moment, it is constrained by the amount of data we have and the resource we have to be able to work on it. One thing we have started to do for all of our resource assessments and evaluations is provide a high-level analysis of any apparent disparities

across offences. The Committee is aware, and we have mentioned before, the work we did on drug evaluation last year where we drilled down to a significant degree of detail on what disparities might be happening there. If we were given more resources, we would like to see if we could do more of that type of work.

There are constraints. The piece of work we did on drugs was very big and resource intensive, and it was made possible only because we had significant quantities of data from the Crown Court sentencing survey that enabled us to correct for a number of the factors that could otherwise have been affecting the figures; to be able to see whether when you held the harm and culpability factors, for example, there was still some disparity based on race or gender as a result. That kind of analysis requires huge amounts of data to give any statistically significant conclusions.

It is certainly one of the areas where we want to do more work and would, with additional resource. We would need to caveat it, in that the silver standard—I would not necessarily call it the gold standard—we used for the drugs evaluation would not be possible for all offences, either because it would be so resource intensive to do it for all of them or because for some offences, even if we were to collect data on every case going through the courts in England and Wales over a two or three-year period and we had a 100% return rate, it still might not give us a dataset sufficient to drill down to that level of detail. That is definitely an area on which we want to do more work and will do more work, but I caveat that with a degree of caution that we would not necessarily be able to repeat something to the standard of our drugs evaluation for every offence we might want to look at.

Q30 **Andy Slaughter:** That is understood. You mentioned public confidence. It is important to public confidence that issues like ethnicity are not inappropriately dealt with in sentencing. You agree that you have a role there. I notice that, in the survey on whether the public generally or victims thought it was good to have guidelines, about two thirds of people said it was—it would be disappointing if it was the other way round and two thirds thought there should not be guidelines. Do you find that in getting most of your responses from people with skin in the game—victims, defendants, or their groups, and lobbyists—particular types of offences attract more attention and, if so, what types of offences would they be?

Lord Justice Holroyde: There is inevitably a lot of public concern about sexual offences and violent offences. They are most commonly the areas on which concerns are expressed. It is fair to say that lots of concerns are expressed about lots of sentences for all kinds of offences.

To develop that point, in one of the areas we are currently exploring, research shows that if you ask people the bald question, "Are sentences too lenient?" about 70% say, yes, they are too lenient, but if you invite people to go through and understand the sentencing process, and

consider what sentence they might pass in the particular circumstances, rather different results emerge. For a number of years, there has been a Ministry of Justice computer-based function, You be the Judge, which enables people to do precisely that. We are currently in discussion with the Judicial Office as to whether we might revise that to a significant extent, because it is in need of some refreshing and updating. It is an interesting area to explore, because the message is that the more people understand about the sentencing process, the less likely there may be criticisms.

One of the problems we face is that, for perfectly understandable reasons, media reporting of cases generally does not go into details of all the judge's or magistrate's reasons for a particular sentence. There tends to be an interest in the headline points, so that can lead to criticisms that are not necessarily fully informed about all the relevant circumstances.

Q31 **Andy Slaughter:** As you said, in terms of the judge's role, for any individual offence there can be a huge range of individual circumstances. If I look at my own postbag, it is probably about offences where either the involvement or the intention of the offender is in question. You mentioned death or serious injury in motoring offences, and there is joint enterprise, inchoate offences and things of that kind. Are those matters to which you are intending to pay more heed in guidelines or that you think cause particular problems in coming up with guidelines?

Lord Justice Holroyde: It is a good question, if I may say so. I mentioned earlier that with guidelines we always try to enable sentencers to assess seriousness by reference to culpability and harm. Whenever we draw up a new guideline, we spend a lot of time trying to identify the key indicators of levels of culpability and harm applicable to that particular offence. The basis of the first step in the sentencing process is to put the offence into a particular category based on culpability and harm, each category having its own sentence starting point and range. At a later stage in the process, the sentencer can consider the mitigating and aggravating factors that may necessitate a movement upwards or downwards from the guideline starting point.

As part of that process, the sort of concerns you mention, Mr Slaughter, inevitably come into consideration. I think there has been a shift over the years, putting it in very broad terms, in the focus from more culpability to more harm. That is part of a general changed emphasis and focus on the position and interests of the victims of offending.

A very simple example is causing death by careless driving. The level of culpability in careless driving can be very low indeed; it can be little more than momentary inattention by a generally careful driver, but the harm element of the offence of causing death by careless driving is very high indeed. In setting maximum sentences, Parliament, no doubt taking account of public opinion, will set a level of sentencing that probably provides an indication as to whether culpability or harm is the principal consideration, so when we are drawing up a new guideline we always try

to look at which are the most important factors for the particular type of offence.

Q32 **Chair:** It is often said that the public are harsher in the abstract than when asked to look at the specifics of a case. Does that fit your experience both as a senior judge and in what the Sentencing Council finds?

Lord Justice Holroyde: It does, and it is illustrated by the point I have just made that, if you ask the abstract question, 70% say, "Oh, yes. Too lenient," but if you invite people to consider all the particular circumstances of a case and say what they think it ought to result in by way of sentence, you get a different result.

Q33 **Chair:** You mentioned in answer to Mr Slaughter some of the constraints in data collection, and what that might or might not do. Over the years, witnesses have said to our Committee that they regretted the end of the Crown Court sentencing survey. Given that more data is collected digitally now, not perfectly, but more of it at any rate and, hopefully, growing, if you had the opportunity, where would you rank a modernised, updated, digitalised version of the Crown Court sentencing survey in your set of priorities in terms of tools you might find useful?

Lord Justice Holroyde: There is a kind of holy grail of some digital system, which, with absolutely minimal need for effort on the part of the judge, magistrate or court staff, would enable those of us in the Sentencing Council to draw from the ether all the data we need about every offence, but I am afraid it is a holy grail that proves elusive as we try to attain it.

The Crown Court sentencing survey ran from 2012 to 2015, so there is about three and a half years' worth. It gathered an awful lot of data about a wide range of offences sentenced in the Crown Court, but it was time-consuming and expensive for us, as Mr Wade said. It was not met with unbridled enthusiasm by judges and recorders in the Crown Court, who had to fill in a good number of forms; and it was only the Crown Court, whereas the vast majority of criminal cases are sentenced by magistrates. For those reasons, we have been using much more focused, bespoke research projects.

We are in discussions with the HMCTS team working on the development of the Common Platform. Ideally, from our point of view, if it was possible to have access to that database, and it collected all the sort of information about a sentencing exercise that we wanted, it would be wonderful. Failing that, as a step down from that, if we could pipeline—I think that is the word—some of the core information, for example name, date of birth and type of offence, it would at least reduce the amount of separate data collection we have to do from judges and magistrates, but it is not entirely straightforward. Those engaged in developing the Common Platform have a lot on their plate. Covid has delayed our

discussions with them, and we still have some way to go with those discussions.

We would certainly like to be able to achieve access to digital data. Mr Wade will correct me if I am wrong, but it is probably fair to say that it is much more likely that, however much data we can collect digitally, we will still have to ask judges and magistrates for further details that are of interest to us but are not necessarily of interest to other parts of the criminal justice system and, therefore, are not a high priority for inclusion in the Common Platform database.

Q34 **Chair:** Understood. That is a fair point. I get the impression that Mr Wade is nodding in agreement.

Steve Wade: The type of very bespoke data we need for our evaluations and assessments, particularly around the various harm and culpability factors, which will be different for each guideline and each offence, is information we are less likely to be able to get from the Common Platform. We are exploring whether, even if the platform itself would not routinely hold that data, it is possible to build into it some form of facility whereby the platform can provide a digital link to the form we require, to minimise the impact on the time of both sentencers and court staff and to give us the data we need. That is probably the most fruitful area we are exploring at the moment.

Chair: That is helpful.

Q35 **Rob Butler:** We have touched on public confidence already, but I wouldn't mind exploring one or two aspects in slightly more detail, if I may. Can you tell me what work has been done in response to the recommendations made by the report produced by ComRes regarding public knowledge of, and confidence in, the criminal justice system and sentencing specifically?

Lord Justice Holroyde: One of their recommendations was that we should do more with the young, so we have updated our package of information for school-age students and we have contributed to the Citizens Foundation mock trial scheme. Another area identified as somewhere that more needed to be done to improve public confidence was, perhaps slightly surprisingly, the over-55 age group. There has been a limit to how much we have been able to achieve with that because, going back to something I said earlier, it is fairly clear that the most influential factor for groups that lack confidence in us is the way cases are reported in the media, which, with all respect to them, focus on areas of interest to them and not necessarily the full sentencing factors. We are always up against a difficulty there.

We are working on whether we can do anything with the You be the Judge function, which was also mentioned by ComRes. We have also tried to widen the bodies we specifically invite to contribute to our consultations. Our consultations are public, but when we send out a

consultation, we send it to specific groups and bodies that we think will have an interest, and we have tried to widen that range in particular to black, Asian and other minority ethnic people with an interest in sentencing issues who may wish to comment on our consultations. As part of our general review of how to go about our work, we are discussing internally various other options as to how we might improve public confidence.

Q36 **Rob Butler:** I wonder whether part of that is the use of owned media—social media that you own yourself. The council's new website, which you updated at the end of last year, is undoubtedly a step in the right direction. I navigated around it yesterday, and it is very easy to follow.

Is there scope to be more proactive in communicating about sentencing? At the moment, you rely on people coming to you, to the website, but perhaps, if we are talking about young people, for example, there is an opportunity to promote something on Instagram, TikTok or social media platforms that that age group uses, and similarly, for the over-55s, the sources of information that they use, as a way of overcoming the barrier that is put up by the mainstream media in only reporting what is, as you say, the juiciest headline for them, which is inevitable.

Lord Justice Holroyde: Those are indeed points we are considering among ourselves. There is one constraint on the way we might proactively put information out. One might expect that we would be publishing information about topics of current interest, but because of the presence of judges on the Sentencing Council, there is constraint about commenting on specific cases and also, of course, about commenting on Government policy or parliamentary decisions on policy.

It is difficult to avoid coming up against those particular obstacles whenever one is looking for an area one might want to publish something about. We are discussing various ways in which we might be able to add to the education of the public about the sentencing process generally and the sorts of considerations that have to be taken into account. If we can find a way of doing it that does not run the risk of being seen as a comment on a particular recent decision, we will be glad to follow that path.

Q37 **Rob Butler:** That is absolutely the emphasis I would have suggested. I certainly would not have suggested anybody getting involved in topical cases. For example, on your website, you have a section on a young person who has been convicted of an offence, and it walks through the various stages for that young person in court. But you have to know to get there. With the greatest respect to the communications team at the Sentencing Council, I don't think there are many 15-year-olds out there thinking, "I must log on to the Sentencing Council website tonight," whereas some of those little videos could be pushed out on media they already use, like Instagram or TikTok or whatever. There is some great content. I worry that perhaps it does not get the audience that it deserves.

Lord Justice Holroyde: It is a topic that we were discussing at our most recent meeting only last week, so that sort of idea is certainly under active consideration.

Q38 **Rob Butler:** You were asked by my colleague, Ms Eagle, about the consideration that is given to parliamentarians, and you referred to looking at parliamentary debates. If I may say so, parliamentary debate is sometimes a little bit like newspapers in that it is only part of the story, and not every MP who wishes to speak gets the opportunity to do so. I speak as a new MP, and we always come at the bottom of the list.

Frequently, those who get to speak only have the opportunity to do so for maybe three or four minutes, so they have to be selective about what is mentioned. It rang a very slight alarm bell about emphasis, in that perhaps if they just talked about the serious end of sentencing, maybe that was the only bit they wanted to put an emphasis on. It may just be that they did not get the opportunity to say everything they would have liked to say.

I do not necessarily come with an immediate solution, which I apologise for, but I thought it was worth flagging up on behalf of my parliamentary colleagues who have sometimes surprised me, being new to this role, by their lack of confidence, when I know from my own experience with yourselves how hard you try to make people have confidence in sentencing, through the diligent efforts of all the members of the council. I thought it was worth flagging that in this forum.

Lord Justice Holroyde: Thank you very much, Mr Butler. I may have said, and if I did not I meant to say it, that we are looking for a clear indication. A remark by one Member of Parliament in the course of a debate would not be the sort of clear indication we had in mind, but the general warning is taken. Thank you very much for it.

Chair: The rules of statutory interpretation and the way you look to *Hansard* to discern the interpretation all grew up at a time when debates were rather more discursive and went on all night, very often after a lot of Members had finished their practice at the Bar in court during the day and then they went on to other things. It is a frustration for many of us. It operates differently now.

Q39 **Maria Eagle:** I assumed that we were talking about a Pepper *v.* Hart type of consideration of what the Minister had had to say in his—sometimes her—frequently too long opening remarks, which is what ends up leaving the rest of us with two or three minutes at the end of day. There are some frustrations to parliamentary life.

Do you have a handle yet on what impact Covid-19 is having on sentencing?

Lord Justice Holroyde: I don't have any statistics for it. Every sentencer in the country is well aware of the effects of Covid both generally and, in particular, within prisons and in the management and completion of community sentences. Certainly, in cases in the Court of

Appeal, it is commonplace to see references to the effect of Covid on conditions of imprisonment being mentioned as a factor in the sentencing decision.

Q40 **Maria Eagle:** Will the council issue any further guidance on Covid-19? We are now in another lockdown. The crisis is continuing longer than some may have initially assumed that it would. Will there be any further guidance?

Lord Justice Holroyde: No, we do not have any planned at the moment. The important point that I would like to make, if I may, is that the relevant principles a sentencer should have in mind when thinking about Covid are all well established. The Lord Chief Justice made the point in the very well-known case of Manning. He pointed out that factors such as the actual impact on this offender and this offender's dependants of the actual sentence the court is contemplating are a relevant consideration. We subsequently published on the website a statement of the relevant principles, which was primarily aimed at non-lawyers, by way of information for them, rather than at judges and magistrates who would be familiar with those principles.

You are absolutely right, Ms Eagle, that the pandemic is continuing probably longer than many had anticipated, but the principles stay the same. It is for each sentencer in each individual case to decide what weight to give that factor. Obviously, it will vary from case to case, not only because of the circumstances of the individual offender, but because of the offence itself. At one extreme, if it is a case where you are, as we say, on the cusp of custody, and there is a difficult decision to be made as to whether there has to be a custodial sentence or not, the pandemic may be a very powerful factor against a custodial sentence. If, on the other hand, you are a major drug dealer facing a sentence in the high teens of years, it is of less significance because it is, in the end, expected to be something that will pass, even if it is going on longer than expected.

Q41 **James Daly:** Lord Justice Holroyde, can I ask a question that is related to victims and how the rights of victims play into the sentencing considerations of the council? I am terribly sorry if I have missed the word so far, but one of the words that I look for in terms of sentencing is deterrent. I am sure that many victims look to the council to give a deterrent sentence, and for that to be at the forefront of the role of sentencing in addressing reoffending. Can you comment on that?

Lord Justice Holroyde: Parliament has laid down five principles or aims of sentencing, one of which is the prevention of crime, including its prevention by deterrence. Parliament did not rank those five in any kind of order of precedence or priority.

There are perhaps two levels of deterrence to think about. One deals with the individual offence and deterring it in the sense of sending out a strong message that such offending will result in a severe sentence. The

other is what one might call local deterrence where, at a particular time in a particular area, a particular type of crime is seen to be prevalent and there is a desire to take firm action to stop it.

The latter category needs very careful consideration before a sentencer goes down that route because, to put it in very simple terms, there needs to be clear evidence that there is actually a problem in that area that is significantly worse than in any other area, to justify singling out the particular offender to receive a heavier sentence to deter others.

Going back to the first category, the general proposition that a severe sentence may send out a message to others is one of the factors a sentencer will have in mind, but it is only one of the aims of sentencing, and it is by no means the only consideration that needs to be taken into account.

Q42 **James Daly:** I was a criminal solicitor for many years, practising before magistrates, and I am a higher rights advocate as well. The sentencing action that had most impact, in my opinion, during my time dealing with a lot of crime of various levels of seriousness, was the three-strikes rule for dwelling burglary and the increase in sentences. When I started off in practice, I represented many dwelling house burglars. When the sentence was increased to three years, with the three-strikes rule for minimum sentence imposed, it had a real impact on the number of dwelling house burglars coming before the court.

Going back to some of the comments colleagues made, and relating back to witnesses, the main criticism from parliamentarians and from some members of the public—not all members of the public—is that the length of custodial terms imposed for a variety of offences is too short even at the most severe end of the sentencing scale. Is there some justice in that statement, or is it completely wrong?

Lord Justice Holroyde: I am bound to point out that levels of sentencing have increased very substantially over the last decade, or longer, but I am particularly focusing on the last decade since that is the period of the Sentencing Council's existence. To start at the top, the Criminal Justice Act 2003, in schedule 21, introduced minimum terms for different categories of the offence of murder, which brought about a very substantial increase in the length of minimum terms being imposed.

I cannot quote the figures precisely, but, in 2009, the average minimum term for a person convicted of murder and sentenced to life imprisonment was about 12 and a half years. In 2019, it had risen to something in excess of 21 years. That may not be absolutely precise, but it is something of that order. That increase for the most serious crime has inevitably had an effect on other crimes; first of all, other crimes of serious violence, manslaughter, attempted murder, and GBH with intent, but gradually causing other sentences to rise as part of that overall trend. Average custodial sentence lengths have increased over that 10-year period, so the general proposition that sentences are not high enough

needs to take account of the fact that sentencing has generally risen quite significantly.

Q43 **James Daly:** What research has been done to assess the impact of victim personal statements in the sentencing process?

Lord Justice Holroyde: I am not aware of specific research. Undoubtedly, their introduction has made public the effects on victims, which courts take into account, and they can be very potent. There are constraints on what can properly be included in a victim personal statement. Within those constraints, they can very vividly convey the effect on individuals of particular crimes. They are particularly potent, or capable of being particularly potent, with consequences that are not readily visible—the psychological effect, for example, or the continuing fear and anxiety that has been caused by an offence.

Q44 **James Daly:** Do they impact the length of sentence? Is it your feeling that they actually have an impact on the severity of the sentence imposed?

Lord Justice Holroyde: If we go back to the nature of the exercise, the sentencer is assessing, among other things, the harm caused by the offence. A victim personal statement may more clearly indicate the seriousness of the harm caused, which may not have been as apparent without that personal statement. A judge or magistrate is perfectly entitled to take that into account in assessing the seriousness of the offence.

Q45 **Kenny MacAskill:** I have two brief points. One is specific and the other is general. The specific is whether you were consulted by the MoJ on their sentencing White Paper that was launched back in September. The second is more general. Could you or should you have a more proactive role in evaluating policy proposals on sentencing and its impact on criminal justice? Specific and general.

Lord Justice Holroyde: The answer is broadly the same to both. We were made aware of sentencing proposals in the White Paper, so there was an opportunity for us to comment on the likely effect on the Sentencing Council's workload of particular proposals. In that regard, and more generally, I go back to the constraints on a body that has a majority of judges on it: matters of policy are for Parliament and not for the judiciary. It is very important that the judiciary do not become involved in expressing views, or appearing to express views, about what are matters of policy for Parliament, tempting though it is. There is a limit to what can be done.

Q46 **James Daly:** I hope you will forgive me for bringing my MP's postbag into this question, but it is relevant as a practical example of how circumstances affect a sentence imposed. Certainly, all my colleagues and many MPs have been contacted by retailers—shops and various things—who are very concerned about the role of shop workers, and potentially whether, if a shop worker is assaulted and the matter goes

before a court, the fact that somebody works in a Co-op or Sainsbury's is viewed as an aggravating factor in the sentence for an assault. I do not want to put you on the spot, Lord Justice Holroyde, but as a practical example of the sentencing guidelines for an assault, would that be viewed as an aggravating factor in the sentencing process?

Lord Justice Holroyde: Yes. The relevant aggravating factor is that the victim was performing a public service. For example, a common situation would be the person working alone, or with one other person, in a corner shop performing a very valuable local role late at night. The fact that it is someone in that position is an aggravating factor. More generally, an assault on someone who is providing a public service is more serious than an assault on someone who is having a drink with the assailant or something of that sort.

Q47 **James Daly:** I have been contacted by the FA and a number of sporting organisations regarding an increase—certainly not during lockdown, but outside lockdown—in assaults on referees and other amateur sporting officials. Would that fall within an aggravating factor in an assault on its own merit? Would it be the same criteria that you have just outlined?

Lord Justice Holroyde: In each guideline, we publish a list of aggravating and mitigating factors commonly encountered for that type of offence, but those lists are always said to be non-exhaustive. It is up to the sentencer in the individual case. Without wanting to comment on any specific case at all, the fact that an assault was perpetrated against a person in a position of authority in a sporting contest could be treated as an aggravating factor. Obviously, it depends on the circumstances, but it is certainly capable of being an aggravating factor.

Q48 **James Daly:** Are there any issues that we as a Committee should be investigating fully in our role as parliamentarians regarding the sentencing process? Is there anything that could be of assistance to the council or any issue that is of relevance that we should be minded to investigate further?

Lord Justice Holroyde: Can I go back to data collection? It may be that different constituent parts of the criminal justice system are collecting data in different ways. Some sharing of data may be appropriate and very valuable. From our Sentencing Council point of view, as both Mr Wade and I have indicated, we would welcome opportunities to be able to collect more data—for example, via the Common Platform or in some other digital way. Any steer the Committee could give on that would be very welcome.

In your response to our consultation, Sir Bob, you kindly proposed that we might come before this Committee perhaps more frequently than in the past, either on a regular basis or on a more frequent ad hoc basis. We would be very glad to have that opportunity. We would also be grateful for any advice or views the Committee may have as to how we

might assist parliamentarians generally with information about the sentencing process.

There was an event some years ago designed to assist and inform parliamentarians. I do not think, from the accounts I have heard, that it was a complete success, but maybe there is an opportunity for something along those lines. Any suggestions the Committee might have for us would be very valuable. Because of what we have said about resources, any views of the Committee about how data collection might be improved would be valuable.

I am sorry, my screen has shifted and I seem to have my eyes cast to heaven.

James Daly: That's no problem at all.

Lord Justice Holroyde: I wasn't offering up a silent prayer.

Chair: You are in the Court of Appeal already, Sir Tim.

Q49 **James Daly:** In the sense of whether it should be in the magistrates court for less serious matters or the Crown Court for more serious matters, how should we, as parliamentarians, assess and test the effectiveness of sentencing guidelines? What should we be looking at to see whether the system of sentencing is working, if I can put it like that?

Lord Justice Holroyde: You could look to see whether the sentence appeared to be just and proportionate to the seriousness of the offence when all relevant factors are taken into account—I underline those last words. The sentencer has to take into account a wide range of circumstances. It is perfectly understandable that people affected by a sentencing decision will focus on the one or two factors that are of most concern to them, but the aim is to impose a sentence that is just and proportionate in all the circumstances of the case, both relating to the offence and to the offender.

Q50 **Chair:** Sir Timothy and Mr Wade, thank you very much for your time and for coming to give evidence. As you say, we had a very constructive discussion prior to this meeting, a little while back, about how we might improve the working of the council's relationship with the Committee. We are statutory consultees in relation to the guidelines, and we have changed our working there to be more useful to you, I hope.

Lord Justice Holroyde: Very much so, thank you.

Chair: We are open, indeed, to more frequent engagement, particularly if you are in a position to deal with some of the broader issues of public confidence and awareness of the sentencing process. Perhaps we can work on the basis of scheduling some more frequent appearances from yourselves, and other members of the Sentencing Council as appropriate.

Lord Justice Holroyde: We would be grateful for that. We are very grateful generally for the responses of this Committee to all our

consultations. They are always very valuable and we are grateful for the time that is devoted to them.

Chair: Thank you very much. Thank you for the work that you and the council members and staff are doing. We are very grateful to both of you for your time and your evidence.