



Justice Committee

Oral evidence: The work of the Parole Board, HC 917

Tuesday 17 December 2013

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Members present: Sir Alan Beith (Chair), Christopher Chope, Jeremy Corbyn, Nick de Bois, Elfyn Llwyd, and John McDonnell

Questions 1–50

Witness[es]: **Sir David Calvert-Smith**, Chair, and **Claire Bassett**, Chief Executive Officer, Parole Board, gave evidence.

Sir Alan Beith (Chair): Welcome, Sir David and Ms Bassett. We will take the opportunity today to find out more about the work of the Parole Board, including its financing and work programme. I am going to ask Nick de Bois to open the questioning.

Q1 Nick de Bois: Thank you and good morning to you. I hope you will forgive and assume a level of ignorance here about the funding of the Parole Board, which is where I would like to kick off, if I may. It seems to me that, effectively, you draw roughly about £10 million in cash funding, but the MOJ meets the cost directly of the Board itself, which represents about another £1.7 million. Is that correct, or do you manage the whole budget entirely yourself?

Claire Bassett: No. All the people costs and the administrative support costs come out of that £10.8 million. We are in an MOJ building, so we do not have any of those costs. As to the employed judges who sit as judges, we get them as days from the Courts Service rather than paying for them.

Q2 Nick de Bois: But they are reflected in your overall expenditure of £12.5 million.

Claire Bassett: Yes.

Q3 Nick de Bois: In other words, they are accounted for, but not necessarily a cash transaction between you.

Claire Bassett: Yes.

Q4 Nick de Bois: That clears that up for me. In that case, it is fair to say that you have had figures steadily decreasing year on year in the funding you have received from the MOJ, looking back over the last three years particularly. Can you give us a narrative on what

impact this has had and what steps you have taken to address the issue of the diminishing resources and finances? We will probe a little deeper into some aspects.

Claire Bassett: In real terms, as you have said, we have had a decrease and also a decrease in the actual number in the last year. That has had an effect on the Parole Board, although it is fair to say that there was scope to improve the efficiency and the way we used our resources. That has been our focus, certainly over the last two years.

You will see from the figures that, while the resources have come down, we have considerably increased the number of oral hearings, which is the most expensive part of our activity, and the number of cases as a whole that we are able to process each year. We have done that by being a lot more focused on trying to reduce the cases that get deferred or essentially wasted cases. We have worked quite closely with the Department in negotiating the budget to look at where we can renegotiate contracts.

For example, about 18 months ago we took over responsibility for our courier costs. We have reduced those by about £800,000. We have found efficiency savings in the way the organisation is run and we have also looked to improve the way we do the work—for example, the number of cases we list per panel and how many of those are successfully concluded.

Q5 Nick de Bois: Were you able to plan on a forward budget over, in this case, three years? Have you been given a long-term indication of where your budget is going, or are you going from year to year?

Claire Bassett: It is negotiated year on year. Neither of us, unfortunately, was around three years ago. I have certainly been around for two rounds and they have been negotiated each year.

Q6 Nick de Bois: Presumably it would be better for you if it was slightly more longer term than that.

Claire Bassett: It would, yes, although I would say that there has also been some flexibility afforded where we have listed cases. We have been able to go back to the Department where we have capacity to list additional cases and negotiate additional funds if we need them to hold more hearings in the final quarter of the year. We tend to over-list in the first two quarters of the year against the budget and then, if we have not made any savings, we have scope to renegotiate for additional funds, which is what we are likely to do this year.

Q7 Nick de Bois: We are going to press that a little later in other questions. Let me stick to finances. I notice the staffing and member costs have increased since 2010. Can you explain why that is and, specifically, what the impact of the Staff Offer Programme was on the costs?

Claire Bassett: I will take them separately and take the staff side first. The Staff Offer Programme was a response to the staff survey. It was focused very much on improving their working environment, training and facilitation. There was not any financial increment, so we did not increase salaries. In fact, we have had a three-year pay freeze for our staff. We have a very small reward scheme but we don't have any large bonus.

Q8 Nick de Bois: That is a financial reward scheme, is it?

Claire Bassett: It can be that and it can be—

Nick de Bois: In kind.

Claire Bassett: Yes, or tea for the team where they have done particularly well—it is that sort of territory. The only cost involved in the Staff Offer was basically training, which was nearly all done in-house or using civil service learning—so, online-type training. The vast majority of the increase in the overall cost has come from the members' side. Our members are paid for the activity they carry out. For example, they are paid for a hearing. That increase in cost is directly linked to the increase in the number of hearings and cases that are being processed.

Nick de Bois: Which you may argue is a good thing in some senses if you are doing more cases and more processes.

Claire Bassett: Yes.

Q9 Nick de Bois: Would it perhaps be more illuminating if the costs were to reflect separately the member costs from the staff costs so that we could look at the administrative running costs?

Claire Bassett: We can certainly provide that to you.

Q10 Nick de Bois: I think that would be helpful. Just by way of narrative, have there been reducing staff numbers, and, if so, what proportion has that been? Have the staff costs increased—

Claire Bassett: —per head count, yes. There has been a decrease in staff numbers. It has gone down from roughly 100 to around 82 to 85 at the moment. What there has not been is a decrease in the number of staff on the casework support side. When I joined just over 18 months ago, we did restructure the senior and middle management. We took a layer of management out, so we made quite a considerable saving as a proportion by taking out four middle and senior manager posts. Where possible, we have recycled that to the front line.

Q11 Nick de Bois: Were there any exceptional costs in the change period?

Claire Bassett: No. There were two or three redundancies within that which were done on standard redundancy terms.

Q12 Nick de Bois: I notice that oral hearings are the costliest part of the parole process. How concerned were you, and are you, about the increase in these kinds of hearings given the recent funding cuts? We have just said it is a good thing, but how worried are you about the budgetary pressure?

Claire Bassett: We have had a recent judgment in the Supreme Court in the case of *Osborn, Booth and Reilly v. The Parole Board*. At the moment we have life before that and after that. Before that case, we were looking to increase the number of decisions made by oral hearing, because there was a category of cases that needed to be decided like that, but we were trying to improve the efficiency with which we do that to have successful conclusion rates pushed up. The wasted costs is in areas where a case is not concluded.

Since the Supreme Court judgement we are facing a huge change. Last year we had about 4,500 oral hearings. We are estimating that we could have to have upwards of 12,000 or 14,000 in the future because, essentially, the judgment has removed from us the ability to insist on paper decisions in the vast majority of our cases. We are now looking at radically reforming how we do the oral hearings—the scopes of those and how we use the members on them—so we will have to pull that down.

Q13 Nick de Bois: That is a massive implication for you.

Claire Bassett: Huge.

Q14 Nick de Bois: How supportive are the MOJ being of you? I suppose one is going to have to include “in financial terms” in that, but also, shall we say, in other terms, given the implications of this?

Claire Bassett: We are only weeks into the journey at the moment. The thing to remember is that the impact is not just on us; it is on legal aid, prison places and NOMS for their witnesses. We have had some really excellent support from MOJ Analytical Services to help us get to those numbers and to make sure that we are planning on robust assumptions.

Submissions have gone up to the Ministers. In fact, there are meetings with Ministers this afternoon about what we do going forward. Financially, we are discussing what we can currently do to hear more cases this year. Our response is in two parts. It is, first, just to work the resources we have as effectively as possible in the next few months and then, secondly, to change how we do it beyond that.

Q15 Nick de Bois: You are presumably looking for a substantial productivity improvement, which is, I suspect, just not achievable.

Claire Bassett: Not with our members.

Q16 Nick de Bois: Finally—I don’t want to take up too much time—could whoever is best appropriate to do this give me a summary of what the main implications would be for the Parole Board of the implementation of the Government’s “Transforming Rehabilitation” reforms?

Sir David Calvert-Smith: We are heartened by the idea that the public probation service that will be left after the reforms have been carried through will be focused on what we might describe as our constituency—the more serious offenders. We hope, therefore, that there will be more continuity of care, supervision or whatever you like to call it, of prisoners through their sentence so that when they come to us at the end of the tariff period for a life sentence, say, we will get better and more focused interventions up till then, and there should be a better chance of doing something positive with the prisoner at that stage, if there is a more focused public service which is focusing on those offenders and leaving the less serious offenders to the contracted-out sector. That is a hope, but we will have to see how it all works out.

Where we will be watching with slightly more concern is the huge number of recalled prisoners we deal with, as you will have seen from the figures. They are people who have

been recalled from sometimes quite short sentences who would not otherwise have come to us at all, but, because they have been released on licence and then taken back into prison, the decision as to whether they go back out again comes to us. Those people will frequently have been under the care, post-release, of a new provider. The relationship between the new providers, the public service and us is something that we will have to watch carefully and hope to co-ordinate.

From the public's point of view, our most important caucus is life sentences, IPP sentences and the like. If we have a more specialised service, then hopefully both sides will be able to work better.

Claire Bassett: I would add that the confirmation that all Parole Board reports are going to be prepared by the national probation service is good news from our point of view. That will ensure that people who really understand risk and high risk are preparing those reports. I would echo what Sir David has said. There is a lot of opportunity here if we get it right in terms of getting those people trained so that specialist offender managers really are able to be specialist offender managers.

Q17 Nick de Bois: There was a report this morning that suggested that, with regard to the through-the-gates approach, however desirable it might be, there is a lack of training or understanding behind the gates and that, effectively, people are not having the work through the gates. That must cause you concern, because ultimately it is a critical factor in your outcomes as well as decisions, is it not?

Claire Bassett: It is, and I think that report really highlights the challenge of having offender supervisors and offender managers, and the continuity through that. Certainly, our experience would be that where you have a very good, engaged offender manager, it works really well. Where you have an offender manager who has a very high workload, is spread a bit thin and has not even met the prisoner until the morning of the hearing, for example—which is not uncommon—then it is very difficult. The changes to probation offer an opportunity to address some of that by having a more specialist cohort dealing with a more specialist group of high-risk prisoners. One of the things the report this morning picks up is that one size fits all is not really working. The probation changes do offer an opportunity for our client group—for want of a better word—to focus on the high risk, address that risk and make sure that the right interventions and release plans are there.

Sir Alan Beith (Chair): Since the more recent Osborn and others case has been raised—I have to get out of my mind that Osborne was always trade union law—we might just pursue that with Mr Llwyd.

Q18 Mr Llwyd: I have one or two points. In your briefing to the Committee you have stated that you are rising to the Osborn challenge, if I can put it crudely, with a new approach to the process. You refer to a “fundamental redesign” of the parole system. Could you enlarge on that for me?

Sir David Calvert-Smith: One obvious area where we have complete freedom of movement and could therefore act quickly is in the make-up of panels. Traditionally, at least for some years now, we have had three-member panels as the norm. There is nothing in any statute that says it has to be three rather than two—or even one. That is one possible area we will have to look at to spread our resources immediately.

Q19 Mr Llwyd: Let me interrupt you, Sir David. You are far more legally qualified than I will ever be, but, traditionally, of course, in legal forums it is normal to have a situation where, if there is disagreement, there is a casting vote. If it were down to two members, what would happen then?

Sir David Calvert-Smith: You are absolutely right. When I raise this with members, they raise the exact problem. I still sit very occasionally in the Court of Appeal in the Strand. That usually sits with three judges, but sometimes with two. Very occasionally with two, you have a difficult situation and the case has to go off back to another court. There are all these issues which we will have to deal with.

The only reason I mentioned that first was because it is something we could do tomorrow, should we decide to do it, whereas most of the other changes we may have to look to make would probably require changes to our rules, which require a parliamentary process. The average is five months or so. If we need to make quick moves, we are going to have to do things that we can do ourselves, either by redistributing our membership more sparingly to be able to do more cases or by making the cases quicker somehow, perhaps by introducing time limits as some courts do, particularly outside this jurisdiction, and saying, “You have 15 minutes to make your case and then we are going to do the next one.” We are going to have to look at areas like that.

The work is very advanced from our point of view, but as Claire has already said, submissions have only just gone to Ministers and are going to be discussed this afternoon.

Claire Bassett: I would put a bit of context around that. As part of our work to try and reduce the deferral rate, we had already started an end-to-end review of the parole process. The current process, which is called the Generic Parole Process—the GPP process—had been implemented following the NAO report and PAC findings about four or five years ago. While it worked at the time and was helpful in getting things moving on the backlog, it was quite a one-size-fits-all solution. We felt there was a lot of scope in it, so we had already initiated work with colleagues in NOMS, prisons, probation and the Department to look at that. We also enlisted the support of the NAO specialist team for improving processes.

That work had thrown up some really clear areas where we could do it better, particularly in the number of hand-offs in the process. The GPP process is six months long. It is about six months from someone becoming eligible for their hearing through to the end of the hearing. During that time there is a lot of back-and-forth gathering of information, setting up the hearings and making the decisions. The work we had already done over this summer had thrown up a lot of opportunity for us to reduce the fault forward that was happening. There were a lot of built-in checks to make sure that things that had gone wrong earlier were put right. Instead, we want to redesign the system, so that it never puts fault forward and always gets that right.

Sir David has touched on some of the things we can do on a practical level, but if we just shorten the process and get much quicker at getting the reports together and to the panel, we can reduce the margin for error and the costs right through the process. The important thing to remember is that, while the Parole Board is in the middle of this, we are only part of it, and there is a big knock-on effect of that, particularly through probation and NOMS.

Finally, on the question of how many people sit on a panel and how many cases we put to a panel, it is all about being able to recognise the complex cases versus the quite straightforward cases. Since the last changes, we have better skills in intensive case management. In the past, that decided whether it should be a paper or an oral hearing. We want to redesign that and put more emphasis on our case managers than our members in doing some of the management, which will be quicker. We want them to focus on how complicated a case is, whether it could go to a one-member panel, whether it is a complex case where there is likely to be a lot of disagreement of fact where we think it needs more, or it is a case where it is going to have particular specialisms in it. For example, is it a terrorism case, and therefore should we make sure that we have one of our terrorism judges as the Chair?

It is about getting the right horses for courses and using our resources much more smartly going forward. At the moment we have a system that works quite well. I think we have made it work as effectively as we can, but we are really keen to use this opportunity to get a lot of changes through that will mean we are doing it in a much quicker way and much more efficiently.

Q20 Mr Llwyd: As one would expect, doing a lot of work in this area, I am obviously pleased to hear that. You said earlier on that you were pleased that the preparation reports will remain with the probation service. What are the likely impacts on your work if there are cutbacks in that area?

Claire Bassett: Potentially, if there are not people to prepare the reports at the right time, it causes us delay and deferred hearings. One of the things we did, pre-emptive to the work I have just talked about, was some very detailed analysis of why our hearings are deferred. The single biggest reason is reports and, necessarily, information not being either complete or in place in time for the hearing. That is a significant factor for us at the moment and would continue, and potentially could go up. The thing to remember is that how it stands at the moment is not brilliant. We already have incomplete release plans. That is one of the big problems coming to us. There is scope to improve that as well as for that to get worse. It just depends how that resource is used and how it is designed on the probation side.

Q21 Sir Alan Beith (Chair): The cases considered by the Supreme Court were paper hearings by a single adjudicator, which were then deemed should have been allowed an oral hearing. Would the logic not be to have the three-member panel for the written representations and a single member for the oral hearing?

Claire Bassett: In the judgment, it is clear that it is the oral hearing rather than the number of people who made the decision. Lord Reed is very clear that he feels it is in the interests of fairness that an oral hearing is held.

Sir David Calvert-Smith: That is a very interesting idea—I think one and one might be just as good. If one takes the three individual cases in Osborn, Booth and Reilly, they were all serious cases, albeit Osborn had quite a long determinate sentence and Booth was many, many years past his tariff on a life sentence. They were all quite dramatic cases in terms of the offender. None of them were run-of-the-mill licence-breachers, albeit that is what Osborn was there for. He had come back late from home leave and had gone to the

wrong address or an address he should not have gone to on the way, but the consequences were very serious for him.

The idea that a prisoner who has a dispute of any serious kind with the facts that have led him to be recalled or are likely to cause him to stay in prison has a right to sit, like we are sitting in front of you, and make his case is unarguable on a human level—of course it is. The paper hearing was a product of history, if you like. When the Parole Board was set up, it was all on paper. You just got a letter from the Minister saying, “Sorry, you have not got parole this time round,” signed by the Home Secretary.

We have developed to oral hearings from paper. Then, as various crises have overtaken the Parole Board historically, oral hearings have been reduced. The IPP sentence, the huge mass of work that followed its introduction and the need for us to deal with licence breaches as well meant that, all of a sudden, long before Claire and I arrived, the Parole Board had to think of ways, as we are now, of shortening things, and the paper hearing became very much the norm, and we have—we have say “rightly” because it is the law of England now—been ticked off for being overenthusiastic.

Many of my members have no quarrel with the sentiments in the Supreme Court judgment, although of course they have been asked to administer a system which effectively meant that if, on the reading of the papers, there was no realistic chance that at an oral hearing the prisoner would be released or recommended for open, then what was the point of spending public money having a hearing to decide it? That is not good enough, for the reasons set out in Lord Reed’s speech.

Q22 Sir Alan Beith (Chair): But will there remain a place for the paper hearing in a limited number of cases?

Sir David Calvert-Smith: I am sure there will. At the moment, I think rightly, we have asked our members to be extremely generous and if there is the slightest doubt in their minds, they must go for an oral hearing. We have seen a sharp rise already, not surprisingly. I suspect that, when the dust settles, down the line there may be an opportunity to fight a particular case where we have turned one down to see whether, on those particular facts, an oral hearing was really necessary. For now, we have to be cautious because the terms of the judgment are quite clear.

Q23 Jeremy Corbyn: I want to take you to performance and caseload issues. You have made progress in reducing the backlog. What is it at the present time?

Claire Bassett: It is 1,218.

Sir David Calvert-Smith: I was going to say 1,260.

Q24 Jeremy Corbyn: How long have the majority of those cases been awaiting jurisdiction?

Claire Bassett: The vast majority are now under a year. One of the things that we did to reduce the backlog was look at the aged backlog—for want of a better expression—and put a lot of resource into unblocking the older cases. The very few that are much older are quite often adjourned or deferred, almost for the benefit of the prisoner. It will be where a hearing might have started and a prisoner may have had, for example, a delay in moving to

open, and the members may have decided to defer the panel or adjourn it for six months or a year to give him an opportunity to do some training, or go on ROTL or that sort of thing, and then hear it again. There are no administrative delays over a year. We have worked quite hard because, in theory, we should not have them delayed over a year. They ought to be going back round the system.

Q25 Jeremy Corbyn: Do you examine each one that is more than a year old carefully to find out why and then push it forward if you can?

Claire Bassett: Yes. That is what we have done. We had an exercise where we got some of our most experienced caseworkers and members and went through those, starting with the oldest and working forward over about a six-month period last summer. That is when you see the big drop in the backlog.

Q26 Jeremy Corbyn: What is your aim or aspiration to get the backlog down to?

Claire Bassett: As I said, the process is six months long. That total figure includes the cases that are in that process. We have no cases at the moment—or, as of last month, anyway—waiting to be listed because of a lack of resources. We list a case immediately it becomes ready to be listed. As soon as it has the dossier ready, we will put it into the listing and it will get listed. Four years ago, the problem was that we did not have enough member resource to list. The delays in the system now are all as a result of the compilation of information, the completion of courses or the obtaining of reports.

Our aim is to reduce as many as possible where we are the factor causing the delay. A lot of the other delay will be around, for example, prisoners awaiting psychologists' reports, waiting to complete particular courses and that sort of thing. What will happen is that when a case is referred to us for the hearing and the prisoner is informed, quite often they will write and ask for it to be delayed for a period of time so that they can complete that course or we will see from the papers that we need to obtain a certain report and that is causing the delay. We are working with our colleagues in NOMS through the end-to-end review to try and reduce those as well.

Q27 Jeremy Corbyn: You undertook a prisoner survey. What was the reason for doing that and what did you learn from it?

Claire Bassett: The main reason was that we had done quite a lot of stakeholder work, but that had been online and in the general media. We had not actually focused on offenders for some time, so we were quite keen to hear the views of that stakeholder group. We also wanted to understand what their experience of dealing with us was like because they had not had an opportunity to do it. In particular, I was quite keen to understand how accessible we were in terms of how well understood quite complex letters were by prisoners, what their experience was and what the perception of the parole process was.

When you go into a prison, if you start talking to the prisoners, what becomes immediately apparent is that it is one of those things that has a lot of myths around it. There is a lot of assumption that things happen that don't and that sort of thing. We wanted to understand that better as well.

Q28 Jeremy Corbyn: Do you feel that prisoners need to be better informed about the parole process?

Claire Bassett: One of the questions we asked was, “How well did you understand what happened to you in your hearing?”, and 84% felt that they did understand that. We felt that was higher than we expected the answer to be, to be honest. We have done quite a lot with Inside Time. We now have an article in nearly every Inside Time explaining parts of the parole process, so we are trying to get them to understand the different factors of it.

The other thing we are just about to introduce for people who might not be represented, mainly linked to the changes in legal aid, is a prisons guide to the parole process in a very straightforward question-and-answer way. It is in more detail than the previous guide, though, so that people can find out more if they want to.

Sir David Calvert-Smith: Claire organised this survey, and under her direction it was put out in this easy-read format, which gets to an awful lot more of the prison population.

Q29 Jeremy Corbyn: Did it go to all prisoners?

Sir David Calvert-Smith: Yes.

Claire Bassett: It went to prison libraries.

Sir David Calvert-Smith: I must say that the response was very revealing and, in many respects, quite pleasing. There was perhaps a greater understanding, as Claire said, of what we were about than we had feared there might be. Even so, there were things pointed out to us that we have acted on.

To follow up on Inside Time, I did a piece some months ago now and got a lot of responses out of that, some of which were personal, and I replied to the individual prisoner, but some of them were more general. I am not suggesting that any of you should attend a Parole Board hearing, but if you ever wanted to, please get in touch and we will find you a hearing that suits you to go and watch. Claire and I go pretty often. I must say I am impressed, as somebody who has come from the sometimes rather esoteric area of the ordinary courts, how down to earth and easy to understand the proceedings seem to be as compared with even a criminal trial, with which I am more experienced.

I have felt that the hearing itself and the need to involve the prisoner has been a small part of the rehabilitative process, in that there is half an hour or more of direct conversation between the panel and the prisoner. Obviously, it is vital that he or she understands the questions they are asked and are able to respond to them. Involving a prisoner in their own process is an absolutely key part of what we do.

Q30 Jeremy Corbyn: You have tempted me to ask if any of us could observe a parole hearing because it is a very interesting part of the criminal justice system.

Sir David Calvert-Smith: Please write in and we will find a hearing for you to observe.

Claire Bassett: I think it gives you a really good insight not just into parole, but how a prison works as well, because you are part of the function of a prison at the time.

Q31 Jeremy Corbyn: Let me move on to ineffective hearings. In the introduction to your report, Sir David, you said that a principal strand of maintaining a balance between the rights of victims and the safety of the public with the rights of prisoners will be in the reduction of ineffective hearings. How far have you got with that process?

Sir David Calvert-Smith: One of the biggest pluses since I have been here—again, Claire and her team take the credit for it—is in taking over responsibility for the warning of witnesses. The biggest single problem we had on a human front was to arrange a hearing and then find that the key witness—the offender manager or the offender supervisor—had not been told, had not filled in the form correctly or did not turn up for whatever reason, and an entire hearing had to go off simply because somebody was not there. Of course, it is a frequent problem in the criminal courts.

Q32 Jeremy Corbyn: If you get a case like that, which is obviously an incredible waste of everybody's time and money, do you then personally look into it and follow it up so that you learn the mistakes of this, because the waste must be incredible?

Sir David Calvert-Smith: We personally do. I would not say that I personally do, but somebody does, yes. Since we have taken over the warning of witnesses ourselves and have direct contact with the witnesses, instead of another department of the Ministry of Justice doing it for us, we have seen a marked increase in witnesses turning up and, therefore, a marked decline in deferred hearings. There is always going to be an irreducible minimum of deferred hearings, for the reasons Claire referred to in one of her earlier answers. A prisoner himself who is halfway through a course might like the case put back, so that he would then be able to go to his parole hearing and say, "Look, I did the course. Please let me out," or, "Let me go to open conditions," or whatever he wants. That said, there is still more work to be done involving the end-to-end process, which I know you have been told about, and the hand-offs that Claire referred to earlier. The number of times that papers seem to have to go backwards and forwards and can then get lost in the post, or different people have different versions of what appears to be the same document—all that can be reduced by a series of processes and negotiations, so that we take more control of our hearings.

It is important to recognise that we are not a court, in the sense that we do not have coercive powers. We rely on co-operation. We cannot issue witness summonses or warrants for witnesses' arrests, if necessary, as a court can. We cannot fine people for non-attendance or contempt of court or anything of that kind. It all has to be done by persuasion and negotiation rather than with the whip, because we still remain outside the formal court system.

Q33 Jeremy Corbyn: There was a Supreme Court ruling, was there not, in respect of delays. How are you responding to that ruling?

Sir David Calvert-Smith: The work that Claire has described has meant that we are not now responsible for nearly as many delays as before. The Supreme Court rulings—because there have been a number of appellate court rulings—have frequently been on the failure/inability of the Prison Service to come up with courses in sufficient time to give the prisoner the chance of having a successful outcome through us, rather than our delay,

although there have been cases in which our delay has resulted in an award of damages. Faulkner and Sturnham may be the cases you are thinking of. Those cases are down to a minimum at the moment. Of course, all bets are off now until we sort out the consequences of Osborn. There are bound to be delays in the short term.

Q34 Sir Alan Beith (Chair): Can I turn to the victims? Let us start with what Baroness Newlove, the Victims' Commissioner, said. She said that after a family had attended a trial and gone through the whole process, "What is confusing, and difficult to understand for the victim, is how the serving of that sentence can be reviewed in a Parole Board hearing which appears less legally rigorous and transparent." She went on to say that victims should be able to attend the whole of the Parole Board hearing. She said: "At present victims can make a statement but they are then ushered out of the hearing. You say your bit and then you have to go." What is your response to that?

Sir David Calvert-Smith: I have obviously had face-to-face discussions on this issue with Baroness Newlove. The result of those and other discussions has been the Victims' Code, which is, after all, now only a month and a bit old. That has maintained the status quo—i.e., it is a matter for the panel chair and his or her members to decide how to run their hearings. The victim, if he or she wishes to attend and read their statement—of course, it is only in a very small number of cases that they wish to—can do so, and the normal disposal is for the prisoner to be asked whether he wishes to be present when that takes place. More often than not the answer is: "No, I would rather leave"—he stays out, but his legal representative stays in. Of course, the prisoner has seen the statement.

The difficulty is this, Sir Alan, and it is a human problem. The room in which we are sitting in a Parole Board hearing is about the size of this round table here. If you are the chairman of the panel and I am the prisoner there, the victim is sitting next to the prisoner. She is the victim of his rape. It is not a court where the prisoner is in a dock with bars in front of it, the victim is sitting at the side probably 15 m away, and there are wigs and gowns and all the paraphernalia that goes with the court hearing; this is a very intimate and private event. Of course, the key is the prisoner. Is the prisoner's risk at such a level that he can be moved to open or released or not?

Of course, it is vital that the victim has a voice. It is vital that, if the victim has anything to say that is relevant to risk now in 2013, rather than in 2008 or whenever it was that the sentence was passed, then that gets said. If the victim has something to say that is relevant to the risk now posed by the prisoner or perhaps to the conditions that should be imposed upon the prisoner if he or she is released—such as an exclusion condition from the area where the victim lives or something similar—and that is disputed, then the victim effectively becomes a party or a witness to the proceedings. It has to turn into something more like a criminal trial, because the witness may be cross-examined—"Oh yes, you did," or, "Oh no, I didn't." "You wrote me a letter saying, 'When I come out I am going to come and visit you and beat the living daylights out of you.'" "No, I didn't." Sometimes the victim is there as a party. More often than not, the victim is there simply to inform the panel of the effect that the offence had on them at the time and continues to have on them, and perhaps on their family, in terms of the apprehension that they feel walking out at night and so on.

If Parliament were to decide that Parole Board hearings should be held in public, they would become very different hearings indeed. Of course, it would be much more

appropriate in my view for victims, members of the public or anybody to come and sit and watch them. At the moment, they are extremely private discussions—or investigations, if you like—of which the focus is the risk posed by the prisoner. Anything extraneous to that is really extraneous to the decision and should not affect the hearing.

The Code requires us in normal circumstances to admit the victim to the hearing unless there are very good reasons not to do so; to read any statement; and to inform the victim, if the victim has asked for conditions to be applied to release and they are not applied, why they have not been imposed in exactly the way the victim has asked for. At the moment that seems to me to be the best solution.

There is one more thing. These hearings take place in prison. Some prisons will not allow children in, for instance. If a child is the victim, then we have to deal with it in another way. We offer the chance of a DVD if they do not want to come—and we watch the DVD of them giving their statement—or of it being recorded in another way. Because there are at present these limitations in the way Parole Board hearings take place, I think we have reached the best we can with the Victims' Code.

I would just finish by saying this. I do not want to blow our own trumpets, but we are regularly in receipt of letters from victims who have attended hearings thanking the panel for the way in which they dealt with them. There has been a quiet word afterwards and they were made to feel that they mattered.

Q35 Mr Llwyd: The procedures are quite similar to Mental Health Tribunals, aren't they?

Sir David Calvert-Smith: They are.

Mr Llwyd: I used to practise in that area years ago.

Sir David Calvert-Smith: They are very similar. Members of my staff had a number of meetings with MHRT to see whether our procedures could be adjusted to be more similar to theirs or vice versa.

Claire Bassett: Perhaps I could add to what Sir David has said. The victims' experience of parole is not just limited to the hearing; it is about what goes on around it. As Sir David said, very few choose to come to the hearing. Many will choose to put in a statement. One of the things that we have been very keen to do—and we have invested a lot of time in training victim liaison officers within probation trusts—is to make sure that victims' expectations are managed of that statement and that they understand what that statement can and cannot do. One of the biggest criticisms some victims have is that they write a statement similar to the one they made at the time of sentencing and expect that to have an impact on the parole decision, when it is only things that they say with regard to current risk that are likely to have an impact. We have invested quite a lot of our time and energies in training the VLOs so that they are better engaged. We have worked with our colleagues in the public protection unit in NOMS to improve the guidance that they receive as well, in light of Baroness Newlove's comments.

Sir David Calvert-Smith: Perhaps I could just add one more thing which I should have said. For 10 years or more I have been a patron of Support After Murder & Manslaughter, which is a small charity that basically looks after bereaved victims of homicide. I obviously keep in close touch with SAMM. The biggest concern that I get from members

of SAMM is that the relationship with the victim liaison officer varies. With some, the victim liaison officer has almost become part of the family, so much have they assisted the victim. In others, it is a new one every week and they are offhand.

Coming back to a question that was asked earlier, if we have a more professional and smaller probation service, hopefully the quality of the VLO will be more uniform and better.

Q36 Sir Alan Beith (Chair): Presumably some victims would want to make a statement that does not help you very much. It would be a statement in the form of, “I thought he was going to be in for eight years and he shouldn’t serve a day less than eight years.”

Sir David Calvert-Smith: Exactly, yes. A lot of the statements, Sir Alan, say, “He shouldn’t just have been convicted of manslaughter; it should have been murder,” or, “It shouldn’t just have been 10 years; it should have been 20.” Of course, hopefully, the VLO has explained to them, “I am afraid there is nothing we can do about that at this stage. If the Attorney-General has not referred the sentence to the Court of Appeal to have it increased, that is the end of it.” It is a question of them managing expectations.

We will guarantee that whatever in the end comes to us we will read. As Claire said, if it is irrelevant, then it won’t be part of the decision, but we will at least do them the courtesy of taking it into account in the sense of reading it.

Q37 Sir Alan Beith (Chair): On another matter, you are subject to the Triennial Review process of governance of public bodies. Do I take it that it would be your view that there is a continuing need for the Parole Board to remain a freestanding public body?

Sir David Calvert-Smith: Yes is the answer to that.

Sir Alan Beith (Chair): I thought the answer to that question would be yes.

Claire Bassett: The Triennial Review has literally just started; so the stakeholder workshop is happening as we speak. We are at very early days within stage one of the review, but yes, we would feel quite strongly that it should remain not just as a public body, but as an independent one as well. That is very important.

Q38 Sir Alan Beith (Chair): Do you think that your governance structures will meet the second test that is applied?

Claire Bassett: We hope so. We have done quite a lot of work to improve them over the last six months or so and particularly to gain greater clarity around the role of our management board, its sub-committees and the various members of that. We also hope to be recruiting some non-executive directors shortly. We have done a piece of work looking at the second stage test and how that would be applied to identify the gaps, and we have plans in place to address those.

Q39 Mr Llwyd: On the Government’s legal aid reforms, we are aware of the submission that the Parole Board made to the Joint Committee on Human Rights. To cut to the chase, there is a particular sentence where you say: “There is in consequence, a great deal at stake for prisoners at these reviews. In summary, we believe that the proposal is very likely to impede our attempts to deal with cases fairly, promptly and effectively.”

Given that clearly these hearings are extremely important to the individual appearing before them and in many cases, in my experience at least, they are people who are not very good at expressing themselves and therefore would need representation—not always, but in many cases—how is the Parole Board going to adjust in a situation where clearly somebody who comes before them is unable to present his or her case adequately without representation?

Sir David Calvert-Smith: I have in my hand, as they say—

Mr Llwyd: As if by magic.

Sir David Calvert-Smith—dated December 2013, a first stab, which is going the rounds within the office, of a guide for prisoners who do not have a legal representative. It reads pretty well to me, I must say, and it will be reduced to easy-read as well. We are going to try and make life as easy as we can for those prisoners who do not have access to legal aid following the reforms, both at the hearing of course and before it, so that they have the fullest possible understanding.

Mr Llwyd: With respect, Sir David, many of these prisoners cannot read anyway.

Sir David Calvert-Smith: They cannot read at all.

Claire Bassett: It is important to remember that the reforms left in place representation for parole hearings where release is being considered. For the majority of Parole Board hearings, legal aid will still be available.

Q40 Sir Alan Beith (Chair): It is the prison transfer and conditions cases that we are talking about, isn't it?

Claire Bassett: Yes.

Sir David Calvert-Smith: The pre-tariff hearing.

Claire Bassett: It is a very small portion.

Q41 Mr Llwyd: Is that right?

Claire Bassett: Yes.

Mr Llwyd: That makes it slightly easier.

Sir David Calvert-Smith: But it is still important to the prisoner, because if he gets a good result from his pre-tariff hearing, which he won't now have legal aid for, then he is going to have a better chance the first time he comes up for an actual one.

Q42 Mr Llwyd: I am encouraged by what Ms Bassett says; we are dealing with a minority but each one is clearly important to the individual. Without over-pressing the case, how would it work if, for example, a person comes before the Parole Board who clearly has a deficient understanding of what is going on, despite the best efforts of the Board with the easy read and so on? Is there scope for a McKenzie friend or some kind of assistance of that nature?

Sir David Calvert-Smith: A prisoner can have anybody he chooses, within reason. In fact, it really is very wide. Unless the McKenzie friend has a recent conviction, it can pretty

well be anybody. It can be a member of the family or anybody. That is within our rules now. If he can find somebody to speak on his behalf because he is unable to express himself properly, then he can and we will allow it.

Sir Alan Beith (Chair): My apologies to Mr Chope, whom I should have brought in a little earlier.

Q43 Mr Chope: Can I ask about the Vinter judgment and how your behaviour has changed as a result of that?

Sir David Calvert-Smith: Thus far, not at all. Vinter deals with whole-life tariffs, which are currently not on our menu. If there is no possibility of parole, you don't get a Parole Board hearing. When I last counted, there are something like 50 whole-life tariffs currently being served. If the Government were to decide that they would refer whole-life tariffs to us after 30, 40 or whatever number of years Parliament decided, then it would only be 40 or 50 new cases. Compared with the huge number of cases we are going to be dealing with at oral hearings via Osborn, I do not think it would be a problem.

Q44 Sir Alan Beith (Chair): They would not all be at the same time.

Sir David Calvert-Smith: Of course they wouldn't, no. I think it would simply be taken on board as part of our normal diet instead of the very long tariff cases that come to us from time to time. We would be getting the ex-whole lifers or however the Government decided to react to Vinter. It is entirely a matter for Parliament.

Q45 Mr Chope: Obviously the Government do not seem to have made a clear response, except that initially they were very critical. The Prime Minister was quoted as saying that he was absolutely against all this; so was the Home Secretary and the Lord Chancellor. The Prime Minister said he was "very, very, very disappointed". What is happening and what are the Government doing about this, as far as you can tell?

Claire Bassett: It is not a field we have had any involvement in. We would just be the body that would deliver part of the solution if they decided on it. It is not an area in which we have any policy expertise or that we would not have any expertise to offer in how to respond. If the Government were minded to introduce some form of review, then we would be in a position to advise on how that review might be conducted, but our involvement would not go anywhere beyond that.

Q46 Mr Chope: Have the Government approached you to discuss any possibilities arising from this judgment?

Claire Bassett: No.

Q47 Mr Chope: So at the moment it is just silence.

Claire Bassett: In terms of talking to us, but I would not expect us to be involved in that sort of policy discussion anyway.

Q48 Mr Chope: How does this fit in with the wider work that you are doing? Obviously, the whole-life tariff was set up effectively as an alternative to what would have been capital punishment before that was abolished. We have signed the Protocol to the European Convention and legislated to abolish capital punishment, but now it seems that the European

Court of Human Rights is saying that we must also abolish whole-life tariffs. The work you are doing is dealing with people who are not coming into that category and therefore it is easier for you to look at them as being not the most serious cases where people would have been hanged in the past.

Would you like to comment on the way in which the European Court of Human Rights seems to be trying to legislate for us and extend the scope of the European Convention?

Sir David Calvert-Smith: Unless I have completely misread Vinter—and I am looking at it now—it did in fact find that there had been no violation of article 3 by the imposition of the whole-life tariffs for Messrs Vinter, Bamber and Moore. There was a very strong dissenting opinion, of the three who dissented, saying it was, but as I understand it, at the moment the European Court has not gone so far as to say that in a given case there should be a whole-life tariff, with the ability of the Minister of Justice of the day to allow release on compassionate grounds so that it does not actually have to be a whole-life tariff. It is a matter for the Government to decide whether they want to move.

Q49 Mr Chope: So you don't think that the press release issued by the court is an accurate reflection of what the judges were saying.

Sir David Calvert-Smith: I do not think it is. I do not think that there has been a complete ban as far as Strasbourg is concerned.

Q50 Mr Chope: What about on the wider issue of Strasbourg legislation?

Sir David Calvert-Smith: That is not really for me. I obviously have personal views, but not as chairman of the Parole Board.

Sir Alan Beith (Chair): We thank you very much for your assistance this morning, Sir David and Ms Bassett. We are most grateful.

