

Justice Committee

Oral evidence: [Work of the Crown Prosecution Service](#), HC 353

Thursday 21 May 2020

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Members present: Sir Robert Neill (Chair); Paula Barker; Richard Burgon; Rob Butler; James Daly; Miss Sarah Dines; Maria Eagle; John Howell; Kenny MacAskill; Dr Kieran Mullan; Andy Slaughter.

Questions 1 - 58

Witness

[I](#): Max Hill QC, Director of Public Prosecutions.



Examination of witness

Witness: Max Hill.

Chair: Good morning. Welcome to this meeting of the Justice Committee, and a particular welcome to our witness, the Director of Public Prosecutions, Max Hill QC. Director, it is very good to see you.

Max Hill: Good morning; thank you for having me.

Chair: It is a pleasure. It has been a little while since you were last in front of us. It is good to see you again.

We begin with the usual, formal declarations. I am a non-practising barrister and consultant to a law firm. As most people know, you and I have known each other quite a long time from when we were in practice at the Bar.

Rob Butler: I was a non-executive director of HM Prison and Probation Service before my election. I was also the magistrate member of the Sentencing Council. I sat on the council at the same time as the Director.

Maria Eagle: I am a non-practising solicitor.

Richard Burgon: I was formerly a practising solicitor before being elected.

Miss Dines: I am a barrister, but I have not taken any cases since my election in December last year.

Andy Slaughter: I am a non-practising barrister.

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

Chair: There are some non-lawyers as well, I promise.

Kenny MacAskill: Nothing to declare.

John Howell: I am an associate of the Chartered Institute of Arbitrators.

Q1 **Chair:** Thank you. Director, we want to start with some of the immediate issues around the Covid-19 emergency. We will then move on to some of the broader aspects of your and the CPS's work.

I will start with a couple of questions around where we are with some of the immediate things that you have had to do as head of the Crown Prosecution Service to deal with the pressures that the current situation has brought. One of the key things we have picked up is the change that has had to be made, in certain respects, in relation to the guidance on charging. Can you tell us what practical effect, for your staff on the ground, the Covid-19 situation has had on how charging is managed, both by the police and by the CPS?

Max Hill: We are all conscious that, with the necessary and enforced partial closure of the courts and then the gradual return to trial business starting in the magistrates and then extending to the Crown court, it is necessary for us to do what we can to manage the flow of cases, without



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in any sense moving away from the necessity to charge, and often charge at pace, in cases that require to be brought into the system.

Our interim charging protocol indicates a prioritisation of cases. For example, we have identified large areas of casework that are an immediate priority. Those will include all offences of violence; domestic abuse; Covid-related offences, which I am happy to expand on; and cases where there is a custody element, and where the individual is presented to us by the police as a custody case. Those cases immediately come into the pipeline and are brought forward for the criminal justice process.¹

Falling behind that are other cases that perhaps do not have a custody profile. We may see individuals on bail, and it is still necessary to bring those cases forward, but we are able to extend the timetable without doing damage to that casework. There is a third priority category—other business—where we are able, in conjunction through partnership working with the police, to agree on an appropriate timetable for bringing those cases into what I am calling the pipeline.

It is prioritisation. I emphasise that it is not abandonment or a move away from an interest in certain areas of crime. All statutory offences remain on foot. All our guidance to prosecutors remains, but I think we are appropriately prioritising what comes forward, and when.

Q2 Chair: You are on record as saying that you want to prioritise the most serious cases.

Max Hill: It is important that we prioritise serious cases. Let me give you an example. During last month—April this year—we had 424 defendants whose cases were finalised, in other words concluded, and which we specifically flagged as Covid-related. Can I break that down for you?

Chair: Yes, please.

Max Hill: There were 424 individuals who, between them, faced 660 charged offences. All of that work has been concluded. It comprises 313 emergency worker assaults, which I can expand on; 142 offences of criminal damage; 99 public order offences; 62 common assaults; and 44 shoplifting. We are seeing a very high conviction rate; it is hovering at around 97%. That is because, in the vast majority, we are receiving early guilty pleas, and those matters can move through to sentence.

We are aware of the difficulty of dealing with both regulations and statute that have been passed under lockdown. I am happy to expand on that,

¹ CPS clarification: there are three categories of cases in the Interim Charging Protocol – immediate, high priority and 'other cases'. All custody cases and Covid-19-related cases are immediate cases. High priority cases will include domestic abuse cases in which the defendant is not in custody at the point of referral to the CPS.



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too. It is an example of where we are prioritising and flagging in our system Covid-related crime, which has to be dealt with straightaway.

Q3 Chair: I imagine that some of those Covid-related cases will not necessarily be offences under the regulations that have been brought in, but there will be an aggravating element. For example, we could be talking about somebody spitting or coughing at an emergency worker, a police officer, or the ticket collector scenario that we tragically heard about. Am I right in that?

Max Hill: Absolutely right. We have used the Assaults on Emergency Workers Act, which has been in force for as long as I have been Director, since November 2018, and we have identified particularly appalling conduct towards emergency workers. That obviously includes police officers, ambulance personnel, and nurses and other health workers. I think we have moved very quickly, in partnership with the police, to bring those cases to justice.

I want to say in the same breath that also given immediate priority under our interim charging protocol are domestic abuse cases. That includes some developments in domestic abuse casework that are driven or created by the lockdown scenario. We are as alarmed as anybody else by the very difficult position that women, in the main, are put in, particularly in some communities, under enforced lockdown. That represents a risk to those individuals, and it is very important that we say publicly that we are there to deal with those cases, and to deal with them quickly and efficiently.

Q4 Chair: We will come back to that particular point shortly. The final thing on the helpful statistics you have given us is that I assume some of those cases—600-odd offences with 400-odd offenders—are in the ordinary run of things where one course of conduct may give rise to more than one offence. There could be a shoplifting, and then the officer is called along and he spits or threatens to spit at the officer, for example. Then you have an assault and other matters; they all come out of the same set of facts.

Max Hill: Yes, that is absolutely right. Where we have 660 offences but, as it were, only 424 offenders, that is because many of them have been brought to court facing two charges. It might start with shoplifting and end with an assault on an emergency worker, who might be a supermarket or a shop employee. That should be prioritised as well.

Q5 Chair: That is fully understood and is helpful. The final thing I was going to ask you about is on the guidance you have set out—the interim charging protocol—and the threshold test.

There are five elements of that. It seems to me that, with conditions 1 and 5, you would find as a matter of course that there is reasonable suspicion, that there are grounds for the person to be charged and that there is public interest. That would be there anyway, wouldn't it?

Max Hill: Yes. It is perhaps important to say that although it has been necessary for us to create interim guidance and documents, such as the



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charging protocol, that is not in any way amending the code for prosecutors. It does not make a difference to the individual decision that every prosecutor makes, applying the evidential stage test—"Is there sufficient evidence to support a reasonable prospect of conviction?"—and then going on to consider the public interest. All of those triggers and factors still apply. All we are saying is that there is a new circumstance or a change of circumstance, namely the inevitable consequence of lockdown, which means that it is necessary also to think about the pace at which you need to bring certain cases forward.

May I take this opportunity to say something you might expect me to say? It is very important that I give tribute to the thousands of prosecutors whom it is my pleasure to represent. In the first week of lockdown, we enabled over 5,000 CPS staff and lawyers, and operation directorate staff, to work from home. We enabled the webcams, through which I am speaking to you now, on their laptops. We enabled virtual processes. The flexibility and determination shown by all our prosecutors and all our support staff has been exemplary. None of us knew what we were facing, in my part of the world or in any other part of the world, when lockdown hit, but it is a tribute to CPS staff that they have handled so admirably the circumstances they find themselves in.

Q6 Chair: That is a point well made. I am sure we all endorse that.

Are you satisfied that the interim protocol does not undermine the position of protection for the victim in deciding upon charging? Does anything change as far as that is concerned?

Max Hill: No, there is no change. The other document that it is important to mention is the public interest guidance that we brought forward on 14 April. Alongside prioritising charging decisions, where we have thousands of cases already in the system, the change of circumstance through lockdown means that it is necessary for prosecutors or reviewing lawyers to look at their cases and not simply to allow them to sit within the system. That public interest guidance says to prosecutors that where, for example, you might have an individual who is remanded into custody, and the custody time pre-trial is far longer than anyone could have expected because of lockdown, it is necessary to review the public interest, and to look at what sentence is likely to be imposed in the event of conviction; and then to look at whether acceptable pleas might be offered.

As you have already recognised, you might have one person facing more than one charge. If a plea is offered to the second charge, will that be sufficient in the circumstances? There is a really important balance in that. As I have said to all of my prosecutors, if you have a major charge and a minor charge, and an individual is offering to plead guilty to the minor charge, but you, as a prosecutor, are able to say that the criminality that you have charged is only fully represented if there is a guilty plea or conviction on the major charge, the public interest guidance is there to give you confidence to say to the court, "I am sorry, we know that a plea is being offered to the minor charge but that does not



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represent the true criminality here, and therefore it is necessary for this case to stay in the system and to await trial unless and until there is a guilty plea to the major charge.”

That is about safeguarding the victims of crime and sending a strong message to them that, where what has happened to them is represented by several charges, just because there is a change of circumstance does not mean for a moment that we will give up on the more serious charges and settle for less. There are cases where that can be appropriate, but equally there are cases where it is important for prosecutors to say, “This case requires a determination on the most serious charge, and that is what we are here to await. It will have to take its place in the system and be brought forward for trial as quickly as possible.”

There are other protocols, and judicial guidance has been given as well, to try to deal with prioritisation and administration of the backlog.

Q7 Chair: Do you think any of the learning that has been forced on you as a service has a longer-term implication? Are there some things you might want to continue to do once the immediate pressures of Covid-19 have resolved? The backlog will be with us for a long time anyway, but are there things you might pick up that perhaps have a long-term benefit?

Max Hill: Yes. The collective problem for everyone involved in the criminal justice system that is represented by the backlog is something we will all have to grapple with for many months to come. It is the natural prediction that for the rest of this year, and possibly longer, we will be dealing with backlog issues.

What has come out of the set of extraordinary challenges over the last eight or nine weeks have been some changes that I think will help in the long term. The example I would give is technologically enabled justice and the transformative effect that lockdown has had. I mentioned taking almost all of our staff online. That means that where it is appropriate to do so, because there is judicial guidance for triaging all cases in the magistrates court, you can make those submissions via a laptop, as I am doing to you today, and it is not necessary to come to court physically. Particularly in the pre-trial space, there are processes that we will want to keep and embed in the system.

However, and as always, there is a balance to that. When it comes to trial and the public declaration of guilt or innocence, which are equally important, we are going to have to look hard at the system and make sure that we do not lose any of the cornerstones of open justice and access to justice merely because we have gone through a period of national crisis. There will be aspects where we absolutely want to return to normal, if you like, but there will be aspects—this will help with the backlog—where we are able to drive greater efficiency, improve on timeliness and enable virtual hearings.

In addition to all of our staff, there is the very important work that is done by thousands of independent barristers who prosecute for us and



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who are also using their laptops to make applications in the Crown court, in particular. We place a very high value on the work that the independent Bar does for us. I am keen to point out the balance: there is equal value from defence advocates, whether solicitors or barristers, in providing their work and their assistance in clearing the backlog. This is about a whole-system response to an unprecedented national crisis.

Q8 Maria Eagle: Is it the case that some suspects who would probably have been charged before the Covid outbreak will not now be charged? If so, do you have an estimate of how many cases that might affect?

Max Hill: The answer is that there are no broad categories of crime that will now not be charged that would previously have been charged. In the context of serious crime, I do not believe that there will be any significant difference apart from timing, because of what I said about the charging protocol, which prioritises. It is priority as to timing; it is not selecting whether to bring a case. It is when.

Having said that, and particularly in relation to minor crime—if I can call it that—you would expect, I hope, that a sensible conversation takes place involving our police partners and our prosecutors as to whether it is always necessary to charge, or whether there might be out-of-court disposals that come to the fore because of the circumstances we are in. Again, that is nothing new. There are no new out-of-court disposals, but there are sometimes features of the case that allow you to go for an out-of-court disposal, rather than bringing it forward by being charged.

One example, which is quite interesting in the current dilemma, is that around the country a number of police forces now have conditional cautioning schemes for first-offence domestic abuse cases. They are very carefully calibrated. The victim's voice and view is always taken into account, but the data from some of the earliest projects shows that there can be good outcomes if you grip controlling and coercive behaviour at an early stage. If you use a conditional caution, which is an out-of-court disposal, and bear down on that conduct, it reduces and does not happen again.

Having said that, conditional cautioning in the domestic abuse context necessarily involves face-to-face intervention. The offender needs to understand what he or she—it is usually he, but it can be she—has done. There needs to be work with that individual to ensure that the conditional caution takes effect. That face-to-face intervention is very difficult or impossible in the early stages of lockdown, so I do not think we are seeing very much by way of out-of-court disposal in domestic abuse cases. It is rather the other way; more are coming to court.

I am happy to talk about indications of volume, but these are early days. There is a report to the police, investigation and then a court process. It takes some time to work through. There are some aspects where out-of-court disposals are less available now than before. That is something the system has to deal with. It is for us to be as efficient as possible, working in partnership with the police, but I do not think, going back to where I



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started, that there are any major areas of serious crime where we are going to see a non-prosecution outcome when we and everyone, including the public, would expect the person to be charged. It just might take longer.

Q9 Maria Eagle: That is an interesting answer. Some of my colleagues will be asking a bit more about domestic abuse.

You have just been talking about sensible discussions with the police and partners about avoiding charges by using other disposals before charge. Where there are charges, and normally one would expect that there would be a trial of some kind, are you having discussions with the police about pursuing out-of-court disposals after there have been charges, or are all of those trials now going to go ahead but at a later time?

Max Hill: In the first place, it is possible for us to deal with timetabling. Let me give you a layer of detail. Where we have a charged case that is coming to court for its first hearing, and there is an anticipated guilty plea, in many of those cases, instead of bringing it to court within 14 days of charge, which is the norm, we can extend that to 28 days, to try to bear down on backlog in the system.

Where there is an anticipated not guilty plea and we think that the case is going to trial, instead of the first hearing being 28 days, we have doubled that to 56 days. In all other general cases that are going to make their way through the system, the first hearing may not take place until 84 days after charge. That does not have an impact on those who are remanded in custody or not. If there is a custody decision it will still hold, but we are able to try to affect backlog by slightly elongating the timetable.

Secondly, we need to link back to the public interest guidance I mentioned before. Yes, in direct answer to your question, it is possible on a later review, after a month or two, or three, for a prosecutor to say, "Let's have another conversation about this case. There might be an out-of-court disposal that is now possible in the changed circumstances." That is where public interest might come into play: "Yes, there was an original expectation that this would go straight through the trial process, but things have changed and pleas are being offered." They might be acceptable pleas and that is one way of shortening the case, although we do it very carefully. An out-of-court disposal is possible.

I do not think, in terms of serious crime—we all understand what I mean by serious crime—that there is any prospect of reversing and saying, "It was going to court and now we have changed our mind." That is why my top line is that I do not think that, singly or in combination, our charging protocol, our public interest protocol or our amended timetables will have an impact on serious crime. What will happen to those cases is what everyone was always entitled to expect, and should expect.

Q10 Maria Eagle: Are you aware of the letter from Sara Glen of the National Police Chiefs Council, reported in *The Times* this week? It warned about the extension to court backlogs as a consequence of Covid and told chief



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constables to examine less serious cases, such as theft and handling, criminal damage and drug and public order offences, to see if they could be dealt with in a different way and out of court.

Over 20,000 such cases were dealt with by the courts in January and February. That is an awful lot of people who have committed criminal offences. The numbers will have gone down in lockdown, but there are still quite a few thousand offences that might not be reaching court that otherwise would have done. Do you recognise the process described in the letter by Sara Glen in *The Times* on Tuesday as something that is good for public confidence in justice? Is it something that you endorsed or had some say in?

Max Hill: I had no say in the letter, but I recognise what Sara Glen is saying. As many members of the Committee know, there are very large numbers of what I try not to call volume crime, but you understand that I mean those less serious offences that are police charged and not Crown Prosecution Service charged. A lot of the volume at the bottom end of criminality is driven by the police. They make responsible decisions about whether to charge or not, without referring to the CPS.

It is appropriate in these circumstances for the police to have a careful look at what is the necessary outcome in those cases. What we would sometimes call public interest and application of the code test, in terms of the police, means that they are entitled to look at a volume of casework and decide whether it is an investigation that is complete or that needs to continue: "Is this a case that needs to be brought to the attention of the Crown Prosecution Service, or can we find a no charge, out-of-court disposal?" Provided that we all agree—I am confident that we do among ourselves—as to what necessarily must come to the CPS for a full code test charging decision, I do not think we should be alarmed by police sensibly and proportionately looking at where out-of-court disposals might fit the case.

We will have to watch that over time, but it is important to say that all 43 police forces nationwide have their own challenges and that, as a national service, we support our police colleagues nationwide. We know they are dealing at pace with all sorts of issues that they could not have anticipated two or three months ago. They have my support. The fact is that there are silos of cases that are police dealt with and police-led, and then there are those that are CPS-led. My direct responsibility is for all the cases that are referred to us. We are answerable for what we do with those cases. Sara Glen is an extremely senior officer. I am quite sure that she is talking very sensibly and responsibly about just having a harder look at cases and seeing what it is necessary to do with them.

Q11 **Maria Eagle:** That is very clear. Are you seeing an increase in the number of cases that are outstanding as a result of Covid? Is it possible for you to answer that yet?

Max Hill: In some aspects, we can. Let me return for a moment to the field of domestic abuse, although obviously I am happy to answer further questions. As a statistic, in the proportion of our total caseload, domestic



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abuse is 13.6%. In a very substantial proportion of all the casework we do, there is a domestic abuse background. That is why it is immediately prioritised and why we take it as seriously as we do.

We are starting to see coming into the system an increase in that area of crime, but at the moment it is quite low. Martin Hewitt, chair of the National Police Chiefs Council, at a joint press conference with our director of legal services last week, on 15 May, put the increase at 3%. What that means is that, in cases that have started with a call to the authorities, we are now seeing an increase, but it is quite small. We know that the England-wide domestic abuse helpline saw a very sharp increase in the number of calls. I think it was placed at 49% in April. Those callers were people who, very sensibly, were either checking on their own account or on behalf of relatives: "What do we do if things get worse and a crime is committed?"

Calling a helpline, which is a valuable lifeline, frankly, is not the same thing as a report of crime. Calls to the helpline may be up 49%, but the actual number of incidents that have been reported and are in the criminal justice pipeline was up only 3% in the four weeks to 12 April. That is the statistic. Nationwide, 999 calls are down by about 23% across the same period.

There has to be a mixed answer to your question. There are certain types of crime that are happening less frequently as a consequence of lockdown, but there are indications that there are some areas where we are going to have to maintain our focus and our vigilance. Domestic abuse is right up there as a priority area, and we will watch it.

Q12 Maria Eagle: What effect is Covid having on the completion of prosecutions? We have talked about one end of the process, but what about the other end? Has there been an impact that you can discern so far on completion?

Max Hill: There is an inevitable impact. Again, there is a range of responses. In the immediate priority charging areas, despite lockdown, with excellent partnership working from the police and the assistance of the Courts Service and judiciary, we have been able to drive cases to a rapid conclusion. Even cases that are Covid-related, where there has been a plea of not guilty, have been listed, under lockdown, for trial to conviction and sentence within a week or two weeks. That is testament to what we have been able to achieve.

However, it is of course true that we face a growing backlog. Under normal running, the backlog of cases awaiting trial, principally in the Crown court, runs at somewhere around 37,000. The completion rate in the Crown courts nationwide runs at something a little higher than 2,000 a month, maybe 2,400. It is an inescapable fact that, with every month that goes by, when the system is constrained to very low volumes particularly around jury trials, we are likely to see the backlog going up. There is no escaping from that.



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There are certain things we can do to mitigate it. I mentioned the triaging function in the magistrates court, under judicial guidance, that was issued by the senior presiding judge on 14 April. Similarly, in the Crown court, judges who have not been able to conduct trials have been bringing cases forward, listing custody cases to make sure they are sentenced as quickly as possible. They are listing cases that are coming up to the expiry of the custody time limit to see whether an individual needs to remain in custody or might be released on bail pending getting back to their trial. They are having a look at those cases to see whether acceptable pleas might appear. All of those factors bear down on backlog and will help.

In some respects, they are novel solutions. Triage hearing in the magistrates court has not tended to happen in recent years. We have gone from a first appearance, when all the preliminary arguments are dealt with, straight to trial. Now we have a triage process. Those factors will help, but I do not want to shy away from the fact that the backlog is growing. It is good that we are seeing jury trials up and running. I am particularly proud of the fact that barristers whom we instruct are going to court as we speak and starting their court day. I am equally proud of the fact that some of our Crown advocates, our internal prosecutors, are conducting trials. We have one this week in Minshull Street Crown court in Manchester, prosecuted by one of our own. We know that they are low volume, and we will all have to watch and see how that volume can grow. Meanwhile, there will be aspects of backlog that will continue to grow.

Q13 Maria Eagle: Is there anything more that you think can be done to ensure that prosecutions are completed? Obviously, a growing backlog is not a happy state of affairs, although I understand that it is inevitable at the moment.

Max Hill: Going back to the Chair's initial question on this, what are the aspects of change within the system driven by Covid that we can bank and retain? A cloud-video platform—cloud-enabled hearings—has the potential to be a game changer of some proportion. It is being rolled out across the court system quite rapidly. To the week commencing 11 April there were 34 magistrates courts licensed to conduct CVP, cloud-based, hearings, and 12 Crown courts. Those courts were not open for trial, particularly the Crown court, by 11 April, but they are now coming online for trial.

That roll-out of the CVP programme is to be completed nationally by 19 June, I understand. Even without CVP, our own prosecutors and our external counsel have been using Skype or Teams to appear virtually before the court. Pushing cases through the system and dealing in particular with non-trial, preparatory hearings is being enabled as never before by new tech solutions.

As I hinted earlier, when it comes to trial—to address your question about finalising cases—we have to be careful. Through the coronavirus legislation, we have a much more flexible regime over the link directions that judges can now make, permitting participation by video or sometimes by audio link. There is great assistance pre-trial. At trials, I



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predict a mixed economy. There are certain types of trial work, to take the example of traffic lists in a magistrates court, where it is perfectly feasible to conduct those trials across a cloud platform to satisfy open justice, to provide access to all participants and to finalise those cases. Because they are at the bottom end of the caseload but represent very high numbers, the CVP programme has the potential to take quite a lot of the backlog away.

Contrast that with, if I can put it this way, serious Crown court jury trials. I am not going to take an absolute position, but it may be very difficult to conduct the process remotely. It is very difficult for a prosecutor to do his or her job without being physically present in court because of the important set pieces that take place. It is not just the legal discussion with judges and co-counsel but advocacy, cross-examination and speeches to juries. There are limits on what you can do virtually. It is at the top end that finalising cases will be more of a challenge than at the bottom end. If we bank some of the changes, it will have an impact, provided we all continue to work together.

Chair: I want to bring in two colleagues on the charging point. Then we will move on to some other topics.

Q14 **Miss Dines:** Victims of serious rural crime like theft of machinery are often forgotten at the best of times. What effect has the interim charging protocol had on those types of offences, which can affect people's livelihoods very seriously?

Max Hill: The answer lies in how you categorise the case. There are what some people would call minor crimes that, if they are committed by a professional burglar or thief, or by an organised crime group, will have a custody feature. What I mean by that is that, on apprehending such people, it is necessary to bring them before the system in custody and to progress their cases as quickly as you can.

Where we are prioritising charging, if there is that custody feature, I would expect those cases to continue. Inevitably though, in these challenging times, if we are looking not at custody but at bail cases, there is the question of resource and resilience on the part of policing. How much time do they have, with all of their other duties, to dedicate to those areas of crime? I am not suggesting for a moment that they would forget them, but they will have to prioritise just as we do.

We have to be honest. There are some cases that will end up waiting longer than any of us would want. Depending on the seriousness of the offence, the profile of the offender and the extent of organisation or professionalism, even cases in the bracket that you mention can be escalated through the system. We depend on sensible, mature decision making by police officers and by prosecutors to try to get that answer right. I am afraid I cannot promise that everything will come forward as quickly as everyone would want.

Q15 **Miss Dines:** Would you be able to go away, look at the statistics and let the Committee know at a later stage the effect on rural crime? I am very



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concerned that these serious offences can be forgotten when the focus is perhaps on the cities because of the Covid crisis.

Max Hill: Yes, I would be very happy to write to the Chair of the Committee. Rural crime is absolutely a feature of our casework. We have an area lead system, where there are dedicated and experienced prosecutors who spend all their time prosecuting certain aspects of rural crime. That includes wildlife offences and many others that I could mention. That is part of our work profile. As I said, for the reasons I have given, where there is an impact on timing—not necessarily outcome—I am very happy to look at that to see if I can provide further information.

Chair: We look forward to that.

Q16 **Dr Mullan:** My first question relates to the discussions we have had in terms of Covid. You clearly articulated the prioritisation. I am curious to understand about prolific offenders who are non-organised. You mentioned organised minor offences, but what about prolific, non-organised minor offences? How does that rate within your approach for prioritisation?

Max Hill: The interim charging protocol, which I mentioned and which came into force on 1 April, identifies Covid-related cases in the immediate highest-priority category, but also cases where individuals are remanded to custody. Of course, it is the prolific offenders, who have been in the system before, who may come to our attention again. They may be in breach of previous court orders or have a profile of previous offending where it is more likely that they will cross the custody threshold. It is not just at the end of the case, on conviction by plea or by court or jury, but at the beginning of the case where we will take a sensible decision in partnership with the police, using the provisions of the Bail Act, to say, "We have a prolific offender here," and whether it is to bear down on future offending or for the protection of the public or other aspects under the Bail Act, it will be a custody case. That puts it into the immediate priority category.

I am not saying that the immediate priority is just Covid. It is Covid and remand in custody cases. To take another example, whether prolific or not, serious physical violence, with homicide—murder—at the apex, is almost always a custody case. That will be prioritised through the system, as everyone would expect, with all the speed that we can muster, albeit that there is going to be a question mark over the time it will take once in the system and the time it will take before the case can be brought forward to trial.

Q17 **Dr Mullan:** Before I move away from charging, I want to take a step back briefly to think about charging as a whole, away from Covid. I think about 75% of suspects brought to the CPS end up with a charge, which leaves roughly a quarter that do not. Could you—*[Inaudible]*

Chair: I am not sure we have got you, Kieran. We are having difficulty with the technology. You are coming in and out. Would you repeat that?

Dr Mullan: I was asking, for the 25% of cases where you do not charge,



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do you monitor that? Could you break that down a bit? *[Inaudible]* Could you give a sense of what you think could be done to improve that rate? *[Inaudible]*

Max Hill: I hope I caught the question. Please indicate if I did not and if my answer does not match what you require.

Yes, you are right that in any category of crime there is going to be a proportion of cases that the police bring to us that result in a very quick charging decision. For the sake of saying so, because it is important, the Crown Prosecution Service Direct division is our 24/7 charging team. They are available nationwide every night and over the weekends, often to take what are called threshold charging decisions. Even when a criminal investigation is not complete, the police can bring sufficient to us to say, "This case must be charged now." Classically, those will be serious crime custody cases. That work continues utterly unchanged. In fact, they are the leaders in home working because, unlike the 5,000 that we have taken online under lockdown, we have about 500 CPS Direct prosecutors who already work from home through their laptops. That continues.

There is then a dialogue in all other types of case between us and the police as to whether a case is ready. I have discussed that with the Committee before in relation to rape and serious sexual offences. That dialogue can take some time. We will be presented with a file, often now a virtual file, of material from the police. In order to complete a full code test charging decision to satisfy evidential and public interest stages, there will be some gaps in those cases. We will have to have a conversation with the investigating officer: "Can you please complete the gaps, because we are not able to satisfy the elements of the offence in front of a court to satisfy the charging test?"

In a proportion of those cases, that evidence simply cannot be found. Those are the cases that come to us and end up with a no charge decision. There is a lack of evidence. Yes, there are some cases where there is evidence, but there are public interest factors that stand in the way of charging. To take an example that is away from sexual offending, if you have an extremely elderly offender, someone who has never been in the system before, it is appropriate for prosecutors to ask whether it is necessary to lay a criminal charge. For example, might we have an out-of-court disposal as well? That goes back to my answer to previous questions. There is never going to be a 100% charge rate in respect of the cases that are referred to us. There is a steady state that roughly 75% of all cases that reach us are charged. Then there are variations within that.

Let me come back to RASSO—serious sexual offences. The rate of cases, particularly rapes, that we charge, of those brought to us, has increased quite significantly over the last year or so. It has gone up from 48.2% in 2018-19 to 54.7% now. I agree that that is behind the national average, and I am happy to discuss reasons why that may be in the very difficult but serious context of RASSO offences, but it is improving. That is



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evidence of an improving relationship and improving discussion over what is needed to complete a case file and to charge the case. There is always work in progress. That is the best answer I can give you.

Chair: We are going to come back to RASSO shortly, but I want to move on. We need to speed up a little bit. We are nearly an hour into the proceedings, and there are quite a number of topics left to deal with.

Q18 **Kenny MacAskill:** I want to ask about the new charges under the Coronavirus Act. First of all, generally, what effect is it having on the flow of cases through the system? I want to ask specifically about issues relating to the situation where charges were brought by the police but appear to have been withdrawn. What went wrong, and what is being done to put it right?

Max Hill: The first thing to say is that we have been able to focus on those cases, so I have, I hope, some reliable statistics. As you know, and as we publicised, we conducted a very early review of all prosecutions brought under the Act and all those brought under the regulations. I will give you the figures.

Our review showed that under the Covid regulations, in April, there were 187 cases charged and brought to court. Of those 187, the review showed that all but 12 were correctly charged; 175 were lawfully charged by the police under the regulations. Of the 12 that were incorrectly charged, seven were discontinued in court on the day. The defect was noted in the morning in court, and those cases were discontinued. That means there were five that had gone through the system under the regulations, actually with guilty pleas. Nobody had spotted the difficulty, and those five had to be relisted and withdrawn. I will come back to the reasons in a moment.

To give you a parallel, under the Act there were 44 cases that were incorrectly charged. The review showed that in all 44 cases there were incorrect charges brought by the police under the Coronavirus Act. They were incorrect because the Act authorises charge where you are dealing with a potentially infectious person. That is the statutory element. If it is not a potentially infectious person, it is not correct to charge under the Act; you should look at the regulations instead. A lockdown breaker is not necessarily a potentially infected person. That is not what Parliament had in mind by the provisions of the Act. The regulations deal with that better.

To complete the numbers, of the 44 that were incorrectly charged, 31 of them were noted and stopped in court at the first hearing. They were live cases for a very short period of time. Therefore, 13 of them had to be returned, relisted in court and withdrawn, but 11 were substituted with offences under the regulations. Although there had been a mistake under the Act, there was still the commission of an offence under the regulations.²

² CPS clarification: Of the 44 cases that were incorrectly charged, 11 were substituted for offences under the regulation. Separately, 13 of the 44 cases were returned, relisted in



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I need to say that this is a species of offending that is police charged. Just like many traffic offences, to which I referred earlier, it is not necessary for the police to come to us, so they make the charging decision. I want to emphasise that, with all the burdens on nationwide policing, a margin of appreciation and a level of understanding should, in my view, be given to police officers and police forces moving at real pace with very new legislation and regulations, doing their best to get it right.

Yes, we have seen some failure. Where we have gripped that is at both levels. I know through our contact with senior policing that levels of supervision are now being put in place in police stations to ensure there is check and challenge as to whether it is an offence under the regulations or an offence under the Act. I expect that to have a positive impact.

Equally, when these cases come to us in court—the first we know about them is in court when an individual might be produced the morning after charge—we have busy prosecutors dealing with lists of cases, and we are trying to make sure that there is some supervision. We allow another prosecutor, perhaps someone who is not physically grappling with a list of cases in court, to have a look at that case and to hold it up, sometimes only for an hour or two on the morning of listing, to try to verify whether the charge is correct or not. By applying those mechanisms, we believe that the situation will improve.

It is right to say that, although there has been absolutely understandable public interest and stakeholder interest in this area, when you actually look at the figures, the so-called failures are low in number. They have been gripped very quickly. Of course I recognise, just as anybody else does, that, if you have been through the system and it turns out that you should never have been charged at all, that is wrong, and we need to say it is wrong. That is why we conducted the review. I hope I have shown that the numbers are actually very low, and those cases have been managed quickly.

Q19 Andy Slaughter: I appreciate, Mr Hill, that you said these are police charged offences and there are not a large number of them, but a much larger number of fixed penalty notices have been issued—about 14,000. We all appreciate that the police are under a lot of pressure, but if you have concerns about offences under the Act, are you not also concerned about the fixed penalty notices? Should we be looking at those again?

Max Hill: You are absolutely right to draw attention to it. That is the next thing coming down the line. By definition, as of course you know, a fixed penalty notice is a decision made by the police on the spot. There is no dialogue with the Crown Prosecution Service, nor would I suggest there should be. There is then a time to pay. Under a fixed penalty notice, it is normally 28 days. You have to wait at least a month under lockdown, and in practice it has been longer than that, before you see any of the non-payers coming through. The expectation is that the vast majority might



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take their 28 days to pay—they are entitled to—but they will then pay. A much smaller number will come into the system as non-payers. We are, essentially, waiting for them to arrive.

What is my prediction? I cannot give you an absolute prediction that there will be no errors or failures under that part of the system. What I would say is that this activity, again, has been generated by what Parliament did at such speed in the very early weeks of lockdown. The focus that has been applied at the most senior policing levels nationwide on the Act and on the regulations should help, and I am confident it will. Is it going to drive errors down to zero? That is impossible for me to predict.

Q20 **Andy Slaughter:** My question was not whether we should wait and see who complains, but if we have been alerted to the fact that there may be a problem, because it is new legislation and because it is a controversial area, should we not be proactively looking at the way police forces are using it? There is a huge disparity. Some police services have issued 1,000 and some have issued 30.

Max Hill: Yes. Clearly, I do not govern, and I do not seek to govern, that decision making. We have 43 police forces nationwide. They each have different demographic and geographical features to deal with under lockdown. All I can say is that we are maintaining robust relationships with all police leaders. All our chief Crown prosecutors and our area leaders maintain their relationships across policing. We are there to help. There has been a really grown-up conversation at speed in relation to the Act and the regulations generally. I do not think it is possible for us to reach across and say, "We will take over fixed penalty notices."

Q21 **Andy Slaughter:** I am not asking that. You are being very diplomatic, but you must have a view, given that there has been some experience of what has happened in court in a minority of cases. Do you think that the police should be looking at this and reviewing it as we go on?

Max Hill: I have no doubt that they are looking at it. There may be a difference between looking hard operationally and reviewing objectively as you go. The time that has been taken to review prosecutions under the regulations and the Act has been beneficial. During that time, because of the delay period on a fixed penalty notice, we have not seen cases coming through.

What I am saying, diplomatically or not, is that the police have had a learning period from their experience under the regulations and under the Act. I am quite sure that they have banked that learning and are looking very hard at it in real time when it comes to operational decision making. Beyond that, I am not saying any more today. We stand ready to look, as and when required and requested. In the first place, I would like to allow a margin for the police, who undoubtedly have been looking hard at that, as they have at all other aspects of what they have had to cope with under lockdown.

Q22 **Chair:** Understood. You cannot deal with the police's issue. You have



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made the point. Do you happen to know, Director, of the 44 where they were charged under the Act and should not have been, how many of those, if any, were represented?

Max Hill: That is a very good question, Chair. I do not know the answer. I suspect, though, that it was a low number. You are making a point that I hinted at earlier, but perhaps I should expand.

In the main, almost exclusively, those cases were production cases of an individual remanded overnight by the police, charged and brought to court the very next day. It was a very quick process. In court there is a prosecutor, physically or remotely, and in some cases, but a very small number, the imperfection in the charge has not been noted.

Equally, if there were any defence representation, the error has not been noted by them, but I am not seeking to cast aspersions on the defence community because I think the vast majority were not represented. As far as the court is concerned, some of those cases were dealt with very rapidly. There were guilty pleas and sentences were imposed, so the error was not spotted by the court either.

We have collective responsibility for that. You are right that, if any were represented, there was a good opportunity to have a look and maybe that opportunity was missed, but I think the vast majority were not represented.

Chair: Common sense suggests that, and experience.

Q23 **Kenny MacAskill:** Do you think the effect of the interim protocol, and indeed the circumstances we face, means that some categories of low-level offending are in reality simply being decriminalised? I am not necessarily saying that that is a bad thing or inappropriate, but do you think that is the circumstance we find ourselves in?

Max Hill: I tried earlier to address questions on what the prioritisation means. I recognise that there are aspects at lower levels, as you say, where an out-of-court disposal can properly be used. That has always been the case.

I do not accept the word “decriminalisation” though. In the field of serious crime, nothing has been decriminalised. At most, there is an impact on timing, which can be significant—the whole backlog issue I have been talking about—but, even at lower levels, it is not decriminalisation. It is looking at the circumstances we are in. These are cases that are gripped, if you like, by the authorities, starting with the police and sometimes, but not always, involving us, and an appropriate outcome needs to be found.

Yes, in terms of absolute numbers, we might see a rise in out-of-court disposals, but that is not a Covid response; it is something that has always been in the system. There will be a bracket of cases that are in the system and have been before the court, but because of the passage of time and the stance that a defendant might take towards a case,



tendering a plea to some matters, you can move towards aspects of out-of-court disposal.

All of that is going on. When we come out of this phase, it will be interesting to review what it has meant in terms of volume, but the strong message must be that no crime has been decriminalised, nor will it be, whatever comes our way under Covid or anything else.

Q24 Miss Dines: I am sorry to come back on this again, but I find very alarming what I have heard about the offences that were wrongly charged. In my view, there should be zero cases where members of the public have been charged with something that is not an offence under law: zero. What seems to be worse is that a small number have been enticed to plead guilty. That will have undermined public trust in the Crown. I realise that a lot of these day-to-day decisions are taken by police officers working very hard, but what did you do when you became aware of it? What can we do in future to get back trust in prosecuting?

Max Hill: I have given the numbers. We moved quickly to conduct a review, which we shared. Instead of just worrying about it internally within the CPS, we publicly declared that a review would be conducted at speed, and the outcomes of that review were announced at a press conference on 15 May.

Of course, I agree with you that we all strive to create a system where there is never an incorrect charge. I have indicated that, particularly in relation to the Act, what police forces nationwide had to do was to deal at real speed, under the intensity of the early weeks of lockdown, with what powers they had and what they were looking at.

The regulation offences are almost all correct. Anyone in the system has to accept that we should all strive collectively to do better and to drive however small a number of incorrect decisions down to zero. But if 175 out of 187 regulation charges were correct, and if 31 out of 44 incorrect cases charged under the Act were immediately stopped at the first hearing, and then 11 were substituted with offences under the regulation, we are actually dealing with a very small number.

My hope would be that such a small number in such an intense period of time will not reduce confidence in the system. It should not have an impact on confidence in policing. The police, in addition to all their other duties, had to grapple at real speed with two legislative instruments—one set of regulations and one under the Act. The signs are that they have absolutely gripped that. I know that levels of senior police officer supervision have been put in place for these offences, whether charged under the Act or under the regulations. Different levels of seniority will now supervise officers who are about to make charging decisions under the Act and under the regulations. On our side, when these cases become visible to us, we will do everything we can to put eyes on them when they are listed in court.



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If I may say so, that is a burden that is shared, as per the Chair's question just asked, with any defence representatives who come forward, and with the courts, who ultimately deal with these cases and pass sentence. Yes, there has been something to grip, but I suggest it has been gripped forcefully in the very early weeks. It should not have an impact on overall confidence.

Q25 Miss Dines: I am curious as to what the review process is from the Crown Prosecution Service. Why was it just when people actually came to court that it was spotted? Why was it not being picked up before people had to go to court on an erroneous charge?

Max Hill: I am afraid that is not possible. We are dealing with individuals who are taken into custody because they are in breach of either the regulations or the Act. They are processed at the police station and are in court the very next morning. Unless we were to change the protocol and say that the Crown Prosecution Service should supervise every charging decision, it is not possible for us to get an earlier grip than we do. It is not possible for us to do anything sooner than the next morning, when the case is produced. We can look at the file, recognise that there is an error and either substitute with a correct charge, in conversation with the police, or withdraw altogether.

I do not think the Crown Prosecution Service should take responsibility for those cases. There are far more police officers than there ever will be prosecutors. It is perfectly appropriate that the police retain their own charging discretion in areas of casework that they have traditionally always done, and which they will continue to do in a whole range of offending not limited to these Covid cases. It is just that, in the eye of the Covid crisis, we have a very small quantity of errors that have been made, which we will all work to grip as quickly and as firmly as we can.

Q26 Chair: The reality is that the CPS gets the file at court. It is when it looks at the file at court that day that it spots the error, hopefully, in most cases, although, as Sarah says, not absolutely all.

Max Hill: That is exactly right.

Q27 Miss Dines: You agree, don't you, that there should not be any sort of burden, duty or obligation for the defence to pick that up? Obviously if they are represented, a good lawyer will pick it up, but a lot of these people are not represented. It cannot be a burden on the defence to prove that a charging decision is correct. It should be squarely on the state. It should not be on the individual, should it?

Max Hill: Absolutely right. I do not shift any burden on to the defence. In my comments earlier, what I said is that the defence legal community is a vital part of the criminal justice system, and they have my support because of the role they play and the check and challenge they perform in court. As a barrister of 33 years' standing, I look for a good opponent in court because I know that is going to add to the robustness of the proceedings. That is not to say that there is a shifting of burden from prosecution—the state, as you put it—on to the defence.



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There are roles that defence advocates need to play. Perhaps when we are talking about other issues, including disclosure and certain areas of casework, it is incumbent on the defence to do their bit to progress cases and to identify the elements that must go forward.

Chair: We are going to come on to disclosure later.

Max Hill: I hope that is a clear answer. I am not seeking to shift the burden. I do not think I have said anything to that effect.

Chair: That is very clear. Thank you.

Q28 **John Howell:** I want to talk about the legal profession, particularly legal aid solicitors. Let me start by saying that there has been, for some time, a problem in retaining legal aid lawyers. How much of that is driven by Covid, and how much of it is actually going on because it has always been going on?

Max Hill: It is important to recognise what my role and remit is, and the boundaries beyond which I cannot go. My answer is this: in so far as it concerns the independent legal profession, whether barristers or solicitors, who make themselves available to prosecute for us, the support that we can and do give them, I hope, is extremely clear. As we know, there are large numbers, particularly at the Bar, who prosecute as well as defend, so we have individuals on our panels, as we call them, who spend part of their time prosecuting and part of their time defending.

Our chief executive, on 30 March—within a week of lockdown—wrote to the leaders of the Bar in particular and indicated what we could do under our graduated fee scheme to appropriately escalate payment to the Bar who had found that their income stream had been cut overnight. They were no longer continuing to earn because cases were stopping. We did everything we could to escalate under the rules. We went a step further in April by setting out a statement of principles for the fair distribution of work and making it very clear that we rely on our relationship with the independent professions, and we support them.

We are going into spending reviews later this year. As we saw in the spending review last year, when the Government recognised that the Crown Prosecution Service needed an increase in our financial resource—I am very pleased this happened—a significant element of the settlement went towards a revision of the prosecution graduated fee scheme. For the first time since 2012, and really going back to the start of the graduated scheme in 2001, we were able to give a real positive injection of additional reward for people who conduct our advocacy in court. We believe and hope that we have a strong continuing relationship with the external professions.

For those who exclusively defend, it is the defence amended graduated fee scheme, which sits with the Ministry of Justice and is strictly outside my remit, so I have to restrict myself to words of support. I wish well all



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of those who appear for us or against us in court, but I cannot control the legal aid budget.

- Q29 **John Howell:** No, I understand that, but nevertheless the drop-off in legal aid defenders has made an impact on the prosecution point of view, and there are implications for you in terms of the availability of duty solicitors. Has it been made worse by the Covid situation, or is it part of a continuing process?

Max Hill: I think the answer is both. There needs to be a continuous dialogue over what the appropriate conditions are for the external professions and what their remuneration should be. In the spending review to come, we will be very clear that we are under ongoing pressure to keep criminal Bar fees under regular review, so that is an ongoing feature.

Equally, we are all looking—anxiously, if I might say—to see how the independent profession survives this short-term crisis in the system. That is why we stepped in to do everything we could under our own fee scheme to support the Bar. I hope it is clear to everybody that, as courts open up—I appreciate it is slow to start, but I am not in control of how many courts or the precise volume of cases—there is going to be a huge amount of work available to prosecution and defence advocates alike as we work through the backlog. I can only say that I wish them well.

There is an ongoing discussion, as there should be, in relation to the particular crisis. As we come out of it, there will be lots of work to be done and, under our fair distribution principle, there will be plenty of work for the criminal Bar who make themselves available on our prosecution panels.

- Q30 **John Howell:** We have heard that this is adversely affecting younger professionals rather than more experienced professionals. Is there anything special that you are doing to help younger professionals, apart from the general help you have described?

Max Hill: Yes. May I give you a financial headline for that? The increase in the prosecution graduated fee scheme was 28% if you look at it across the board, but if you concentrate on the work that is conducted by junior advocates—principally, junior barristers—the increase was closer to 50%. We concentrated, not exclusively but in particular, on rates of remuneration that had been held at the same, frankly, low level for many years, to introduce real increases, doubling if not trebling some appearances in court for junior barristers. That is what we did, but we recognised that there needed to be a revision of the scheme right across the piece, so that is why you reach a 28% scheme average.

- Q31 **James Daly:** Director, very briefly, how many solicitors, prosecutors and support staff do you employ directly?

Max Hill: That is a very good question, to which I do not have a statistical answer. Our lawyers—Crown prosecutors and Crown advocates—are a mixed economy of qualified barristers and qualified



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solicitors. Actually, under lockdown, some of our legal trainees—we have large numbers in the CPS who started out as paralegal or administrative staff—have been qualified, sponsored by us through to qualification. We have been able to deliver final training modules remotely under lockdown so that new solicitors have qualified in the course of the last three months, fully employed by us. They will be the Crown prosecutors of tomorrow. There are large numbers. We have between 2,000 and 2,500 prosecutors, of whom a significant proportion are solicitors; the remainder are barristers. I will need to write to you to give you the breakdown, because I do not have the figure.

Q32 James Daly: Thank you. As you have just said, Director, you have thousands of solicitors and thousands of support staff within the system. I think it is a fair point for me to say that the staffing levels you have at the moment are able to cope with the workload that is coming through the system, and probably, I would suggest, can cope with a significant increase in the workload coming through the system. Would that be a fair comment?

Max Hill: The spending round last year—I have mentioned the outcomes on Bar fees—put us in a position to conduct an unprecedented national recruitment campaign, and we would not have wanted to do that unless we essentially agreed that we need more lawyers. The headline figure is that, with the money given to us by Government last year, most of which did not come on stream until the financial year just commenced, we would recruit 390 more prosecutors. We then added to that 100 operational delivery staff, because it is just as important, where you have lawyers in the system, to have all the other professions to support the work that the lawyers are doing.

Our service, at the moment, is managing an uptick of 10% in our total headcount. It is of that order. That has come on the back of a number of lawyer campaigns that have been running during the course of the last year. Even under lockdown we are inducting and introducing new lawyers, many of whom come from the defence solicitor profession; they are experienced lawyers and we are able to put them straight into our magistrates and Crown court teams, particularly as senior Crown prosecutors. Hundreds of offers were made during the course of the last year.

What is of course hugely important is that we are resourced not just to recruit but then to retain, so you would expect me to say, as I do, that where we have been put in a position to increase our headcount, particularly among lawyers, we will need the resource to maintain that. It is my hope that every team, every unit, within the CPS will benefit from that increased number of lawyers. We are seeing it happen as we speak. We need to complete that process, and then we need to hold those numbers through being funded to retain the expertise that we are taking into the service.

Q33 Chair: At the end of the day, of course, sometimes they come to the Crown Prosecution Service because you are able to offer them better



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conditions and better pay than they are able to get elsewhere, given the rates of legal aid at the moment. Without any comment on the rates of legal aid, that is perhaps a reality. It is not a criticism of you, but that is how it is.

Max Hill: Yes. I recognise the reality, and of course I recognise on behalf of the CPS that we are the beneficiary of the move to us that has been made by lots of experienced lawyers. I emphasise, though, that we are not seeking to say that it is a bad life in the independent profession and a good life at the CPS, and I hope that is true in the campaigns that have been conducted, particularly this year. Our messaging did not contain that slant. We simply said, "If you come to us, this is what we will be able to do, and this is the work that you will conduct." I am very pleased that so many people of the right calibre have responded and applied.

Q34 **Chair:** As you fairly say, for the system to work properly, not only do you need good-quality people, but there has to be enough infrastructure on the defence side as well, in an adversarial system, to make sure there is a proper robust challenge. That is not your area of responsibility, but that is the reality that I think we draw from your remarks. Is that fair?

Max Hill: Yes. The whole system is important. Just as you need a criminal justice system-wide set of responses to Covid, so you need a criminal justice system right across the piece that has the right people in place at the right time to conduct all our casework.

Q35 **Maria Eagle:** We were talking a little earlier about the impact of Covid on jury trials, but I want to talk a bit more broadly about court capacity, sitting days and how you are going to get through the jury trial backlog that has been made worse. What would be helpful to you in dealing with the backlog of cases, because, obviously, we do not want it to extend and go on for years? What would help you clear it up?

Max Hill: I think you are right to mention sitting days, and that is a very good starting point—again that is completely outside our control. The fact is that Crown court sitting days, based on Ministry of Justice data, have reduced by 25% since 2015. The figures I have are that they have gone down from a little over 109,000 sitting days at the start of that period to 81,000 now. If you combine that with the backlog, as at December 2019, of 37,000 Crown court trials, which I mentioned earlier, there has been an increase in backlog during that period.

As a matter of fact, the statistics show that the Crown court trial backlog increased 13% on the previous year, but that was pre-Covid, so of course we can all predict further increases. It is not a matter for me, but that is why we welcome what the Lord Chancellor has been saying and the moves that the Ministry of Justice is making to increase sitting days. That will be a really important feature in building our response to the backlog.

We know that more is needed, and therefore better case management principles, which were already in place, are now better structured and performance has improved. A reinvigoration of BCM—better case management—principles is needed and will help us through the backlog.



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We need to continue to concentrate on the effectiveness of the plea and trial preparation hearing, the PTPH, which is, as you know, the first hearing of a serious case in the Crown court. That will perhaps feed across into disclosure later. As a way of maximising case management, pushing the effectiveness of the PTPH will help us with the backlog and will make sure that we are effective. All participants in the process in relation to disclosure at the PTPH will help with the backlog.

There is still going to be a challenge in relation to listings. We understand that. Non-compliance with BCM principles or other judicial orders will only make the situation worse, so full and early compliance is really important.

Listing patterns in court are another feature, which I know that others—the Ministry of Justice—are looking at to try to make best effective use of the courts that are open, and, of course, to keep on increasing the number of those courts. We have not talked about cleanliness and social distancing, et cetera, but that work, which has been going on day by day, needs to continue to improve our chances of bearing down on the backlog in the various ways I have mentioned.

Q36 Maria Eagle: You have just mentioned maintaining safe and appropriate access. Are you confident, going forward to restarting trials, that staff will be safe at courts, the court estate being the way it is?

Max Hill: The very first thing that we did under lockdown was to emphasise the health, safety and wellbeing of our own staff—I am sure you would expect us to do that. We set that pace, that pulse, of messaging in week one of lockdown. That has put us, I believe, in a good position.

Can I mention our abstraction rates? The percentage of our staff who are unavailable for work is one thing that we monitor on a daily basis, and I am very pleased to say that the abstraction rate, as I speak, is hovering between 14% and 15%. That means that the vast majority of our staff, even under lockdown, are available to work and are working. The vast majority of the 14% who are not are people who are taking leave. It is important that staff take leave, even though they may be at home and under lockdown, because we cannot have a situation where everyone stores up their leave and takes it once lockdown is finished. That would impact on our efficiency and effectiveness, so we put safety first.

There are a number of stages that we have gone through. I pay tribute to the Courts Service for the work it did putting in an entirely new nationwide cleaning contract in the early weeks of lockdown. A number of surveys were then conducted with courts. I do not think that work is ever concluded, but on the back of surveying the cleanliness of courts on a continuing basis and the work to look at social distancing, which has to be done under the supervision of the judiciary, who rule the process and will continue to rule the process, we are in a position where, as I said earlier, we always have staff at court.



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There may not have been trials running in the first month of lockdown, but we have always had staff either at court or feeding their work down the line to court. Our message has always been: if your work cannot be conducted from home, provided it is safe and provided social distancing is guaranteed, you should feel confident in going to court. Without that, I would not have Crown advocates going to court in Manchester to present cases. I am very pleased that that has been achieved.

We all have to recognise that there are some courts where that is more difficult than others. There are some magistrates courts in particular where size and space mean it is difficult to maintain social distancing. What has happened under lockdown is that everybody has come together under a cross-criminal justice system command structure. That includes defence advocates, because it is vitally important that they are safe and can maintain social distancing when, as I have done countless times in the past, they do not just go to court; they have to go down to the cells to take instructions from their client, and they have to be safe in doing that.

There may be wrinkles along the way, and we need to keep up the conversation, but I think we have got into a good position. Speaking for the CPS, that has been because we have put safety first, and we continue to put safety first, for all of our staff.

Q37 Maria Eagle: Do you think that, in addition to keeping your own staff safe, the new arrangements in courts will be able to give proper and appropriate access to the public and to the media to maintain open justice?

Max Hill: Clearly, you cannot do without open justice, nor proper access to justice. In the first place, open justice is largely represented by the physical presence of the judge in court, which is what we are seeing, for example, with district judges in the magistrates courts around the country.

Beyond that, though, to answer your question, I come back to what I call a mixed economy. I think you can, using some of the technological advances, ensure that justice remains open but that safety is not compromised. For example, where there are police officers due to give evidence, wherever possible, if they can go, instead of to court, to their local police station and use a video link from the police station to give their evidence to a prosecutor who may be in court, that maintains the safety of the air space within the court.

To a degree, you can also do that with other participants, defendants in some situations, where the Act enables it, and other forms of witnesses. I am particularly concerned, if I can call them this, about vulnerable witnesses—as you know, it is a term of art within the law—who need to have their experience in court and who need to be given the opportunity to tell their story. In many cases, where they can do that across the cloud platform, it will still satisfy open justice. But, as you say, a court is a place of scrutiny, and that includes scrutiny and record by the media



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and others who observe court proceedings. We have to retain that, but it has a bearing on the number of people you can physically have in any court, large or small.

As an example, we know that the first jury trial to recommence—a part-heard trial that recommenced at the Old Bailey two weeks ago—is doing so across three physical courtrooms. It is necessary to use more of the courthouse to deal with a single case in order to keep everybody safe. I have not mentioned juries, which are so pivotal in the Crown court system, and they need to be persuaded that it is safe to proceed. While everyone was waiting, I have seen trials commence successfully at the Old Bailey and elsewhere—a trial commenced in Cardiff and a trial commenced at Minshull Street in Manchester. That should imbue everybody with a sense of confidence, provided we use the technological advances as best we can, but I entirely agree with you about making sure that we do not move away from or in any way cheapen the open justice principle.

Q38 Maria Eagle: On getting through the backlog of jury trials, the Magistrates Association suggested to us—I am sure you have heard this before—that perhaps increasing the retirement age and sentencing powers of magistrates would enable them to dispose of more of the cases that at the moment go to the Crown court. Do you think there is any merit in that?

Max Hill: There is merit in looking at any creative proposal, provided all elements of the system are satisfied that the right thing is being done. What we have seen in the early weeks of lockdown is professional district judges in the magistrates courts taking the strain. For obvious reasons, it has been much more difficult for the lay Benches, who generally sit in threes, to physically come to court. I welcome their return whenever and however that can be managed.

It is for Government, and ultimately obviously Parliament, to decide whether there are changes to the system. A change such as an increase in sentencing powers is something that we would need to look at very carefully. There are good reasons for limiting the sentencing provisions in magistrates courts. Yes, we are dealing with a backlog, but we should be slow to move principles like that. I am not ruling out various ways of being creative. I do not rule out an increase in sitting age or retirement age. We need to come together for a conversation about that. Equally, there are lots of proposals that, as you would naturally expect, are being considered to try to improve the physical use of the spaces that remain open.

While we are running at less than capacity in court, I think the first answer is that the professional magistracy, the district judges, have been able to cope very well, if I may say so, because they are not having to sit across so many courts. We can look at those proposals in slightly slower time and be careful about what is adopted and what is not. Beyond that, it is not my remit.



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Chair: I gently say to everybody again that we need to speed up the questions and answers a bit because we need to finish by 12 o'clock and there is quite a lot of material that we still need to get through.

Q39 **Rob Butler:** Being a magistrate, I am very keen to pursue the line on magistrates courts. Director, how effective do you think virtual hearings have proved generally—you touched on it a little bit—and, particularly, do you think the technology has advanced sufficiently? My previous experience with technology in the magistrates court is that it was not always the best. Prosecutors sometimes had to hand their laptop up to me on the Bench so I could see a piece of evidence. Do you think you have made the step change that is necessary?

Max Hill: It has gone through an unprecedented step change over the course of the last two months. There is a technology-enabled justice silver group that leads work right across the criminal justice system to try to ensure the best use of technology by all agencies. That has been given an injection of pace by the circumstances we are under.

The cloud video platform has become a real priority to provide a national solution for magistrates courts, and although it is not rolled out entirely nationally yet—it is coming, as I understand it, by the middle or second half of June—it will be a game changer. One of the things it enables is for defence advocates and, where appropriate, prosecution advocates, and also the probation service, to appear in a virtual courtroom hosted effectively by the Courts Service. It is the judiciary, and here the Bench, who maintain the open justice requirements by physically sitting in court.

There has been a great deal of work done at senior presiding judge level for Crown courts and magistrates courts, and of course by the Chief Magistrate herself, in sitting on the cross-CJS bodies to do as much as possible at the greatest speed. It is a positive development and a case of "Watch this space."

There are other aspects of technological change, but, just on allowing access, it is moving at a pace that I do not think anyone would have predicted three months ago.

Q40 **Rob Butler:** Very often in a magistrates court there is quite a lot of pragmatism. Quite often, a magistrates Bench is asked to retire briefly while the prosecution advocate and the defence advocate have a quick conversation, and they might come to some kind of suggestion as to how a case might proceed that could ultimately save time and still be in the interests of justice. How feasible is that when there is not a physical presence?

Max Hill: It is down to a breakout facility on the virtual platform. My understanding is that, just as in a Zoom call or a Microsoft Teams call, there are features that allow chat conversation to go on, even during proceedings. I think flexibility will need to be shown by all, including the Bench, perhaps by allowing longer gaps between cases being called on, to ensure that a conversation has taken place between the advocates so



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that the Bench are met with maximum efficiency when the case is called on. It is around the flexibility of the technology.

Our prosecutors have been very concerned to ensure that they have that time, which traditionally, as you say, would have been a physical huddle in court before the Bench came in. They now need that in a virtual space, but I think the technology enables it. It will be down to the efficiency and the weight of the listing. We are going to need to look at the number of cases per morning session and per afternoon session.

The great advantage under lockdown, and with social distancing even post lockdown, is that where you, frankly, cannot physically list 15 or 20 cases in a busy morning list, you can do that where you have virtual processes as well. If you use a mixture of the two, you should be able to drive up the volume, even allowing for a conversation between the participants, as it were, before each case. I am not pretending that it will be easy to address the whole of the backlog or that it will be done quickly, but I think we will move into better and better territory.

Rob Butler: We may come back to the magistracy later on in some broader questions, but that is all for now. Thank you.

Q41 **Miss Dines:** Director, during his annual session with the Lords, the Lord Chief Justice was asked about jury trials, and he said there was discussion about reducing the numbers on a jury to just seven. What is your view on that, and what discussions have you had? Is there any likelihood that it will happen? I must say that I am very alarmed at this because I think it is a fundamental part of our constitution. I would be interested to hear about your role in those discussions.

Max Hill: I start my answer by saying that I would not be, nor would I seek to be, the decision maker. That matter, if it requires legislation, would ultimately have to come to Parliament, but in the first place it rests with the Lord Chief Justice, as he is in charge of all the judiciary.

Yes, as you would expect, there is ongoing discussion about any way in which the problems we all face can be addressed. The Crown court jury trial working group, which sits within the cross-criminal justice system command structure, is led by a senior member of the judiciary. It includes membership from the Crown Prosecution Service, so we have been part of all the operational decision making to enable jury trials to restart. That includes the ongoing survey of Crown courts.

The existing situation, as we speak, is that all jury trials that have recommenced, or have started afresh, are with 12-person juries, so I do not immediately envisage any move away from, as you might put it, ordinary, normal jury size. If the confidence that I have spoken about from the early examples works as I hope it will, members of the public who are summoned for jury service should be able safely, and maintaining social distance, to come to court to sit in groups of 12, but, as we know, their social distancing is being maintained across courtrooms, so there would be no change to what we recognise as the



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normal running platform. It is beyond me to predict whether there may be a return to a conversation about changing it, but I am pleased to see now that we are looking at juries of 12 conducting ordinary trials, albeit in slightly strange circumstances.

Chair: That is as far as you can take it. I understand.

Q42 **Andy Slaughter:** Going back to the backlog, you said there would be an increase in sitting days this year. That is still a substantial reduction from where we were, say, five years ago, with perhaps only 20% of that loss reinstated. There is also the immediate problem of Crown courts being closed. Is it still four that have re-opened?

I was struck by an article in *The Times* today that quotes a number of previous chairs of the Criminal Bar Association who say, talking to judges privately, that the system will still be in chaos for at least a year and that a trickle of jury trials will not help. Do you agree with those sentiments? It is nobody's fault but, being realistic, is that very substantial backlog going to grow over the next year?

Max Hill: Of course, you are right—we need to be realistic. I identified that somewhere between 2,000 and 2,500 Crown court trials are concluded in an ordinary month, and we can work out that by concluding so few cases at the moment, and having had a lay-off from trials in total for five or six weeks, the backlog is likely to grow. I repeat what I said about mitigating that backlog through the various ways of triaging cases, which I think will have an impact. Equally, an increase in sitting days will help, although you need to calibrate the number of sitting days to the number of courts that are open and that can provide physical space for judges, full time or part time, to sit. There are plenty of people to do it, but you need to have the courts open.

Things could change for the better quite quickly. The early injection of confidence could lead us to a position where many more courts, particularly Crown courts, are able to open, and that will bear down. But, of course, if we are talking about the flow and actual volume, everybody recognises that these are small numbers and they will take some time. I do not think anyone can predict exactly how long.

Q43 **Andy Slaughter:** The estimate I have seen is that the backlog is going up by about 1,000 a month at the moment. I do not know if that is before or after mitigation. Are you realistically expecting that, in a year's time, you will have a 50,000-plus backlog of cases?

Max Hill: I do not think I can put a number on it, but if you are asking whether I can guarantee that the backlog will be gone in a year's time, no, I cannot guarantee that. I think we will still be dealing with aspects of it.

Q44 **Andy Slaughter:** Can I ask for two small points of detail? You operate a protocol, I think, about extending custody time limits. Given that fewer cases are coming into court, is it going to create problems with custody time limits being extended? Are you doing anything to address that, and



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do you have any figures that you can give us or send us about how they are being extended?

Max Hill: Yes. I do not have outcome figures as we speak, so I do not have a figure for how many custody time limit cases have been addressed under lockdown. What I do know is that, during the month of April, between 1,500 and 2,000 cases already in the system would have hit their custody time limit. We identified that very early on.

The legal principles that a judge must apply under the Act to determine whether to extend or not to extend are unchanged, but we developed a very quick protocol as to what our prosecutors—and that would often include instructed barristers—would need to put before a judge for him or her to make the decision. We were able to streamline that to a degree. What I mean by that is that Covid was recognised by the judiciary as a good and sufficient cause for extending a custody time limit, so that burden was reduced. However, it is still incumbent on us to demonstrate efficiency, expedition and due diligence to justify the extension.

The other aspect is that the triaging, looking at cases when they are coming up towards the custody time limit, is undoubtedly producing some cases where, on being asked again, a guilty plea is forthcoming. That does not mean that an individual comes out of custody, as they may then go to prison as a serving prisoner, but the case is resolved. That is going to be a component. It is very difficult for me to say how big a component.

Q45 **Andy Slaughter:** That is a rather worrying statistic or response, if you do not mind my saying so. The implication being that if Covid is going to be a sufficient reason for extending the limits—again, it is no one's fault that it has happened—it may induce in some way a guilty plea when one might not have been forthcoming. Can you publish those statistics on how time limits are increasing, if they are increasing, and can you say whether or not that is due to Covid?

Max Hill: Yes, I am very happy to write to the Chair with whatever data we can find on the number of cases that have hit custody time limits under lockdown and on what has happened to those cases. I will look for that information.

I should add, though, that, speaking as a prosecutor, if a case is listed because of a CTL issue and a defendant pleads guilty, in many cases that is because a defendant has been slow to recognise his or her guilt, but ultimately they do. What is important, running right through this, is that there is effective representation so that defendants are advised and informed of the consequences of whatever may happen at the hearing.

Listing a case to look at the custody time limit is not the application of pressure on an individual to plead. More often than not, when an individual pleads guilty, it is simply because they are guilty; they have not recognised it before, but now they have come to a position where they think they should recognise their guilt. I am not in favour of applying any pressure. We have representation, and particularly in the Crown court everybody is represented. It is just a fact that there are



people who will belatedly recognise their guilt, and that is part of the statistical picture.

Q46 Andy Slaughter: In terms of your own staff appearing, do you feel you are able at the moment to maintain the same breadth and quality of representation? For example, are you still able to field specialist prosecutors for children and matters like that? Do you think that you are under pressure in terms of what you can deploy in the courts?

Max Hill: In terms of specialist casework, even though the national caseload volume has fallen, as we know, over recent years, the complexity and the intensity of work per case has gone up in a variety of ways. That leaves specialist prosecutors and other prosecutors under pressure. There is a very high work rate in our specialist teams and divisions, whether that is rape and serious sexual offending, what we call special crime or any of the casework divisions, together with the complex casework units area by area. Yes, I am interested—keenly interested—in bearing down on the number of live cases per prosecutor, and the best way of addressing that is the national recruitment campaign that is ongoing and that needs to be maintained.

As to confidence, I am confident in the powers, experience and dedication of our prosecutors nationwide. I am confident in the work they have been doing under lockdown. One benefit, which I have not mentioned but should, because we have been talking about backlog, is that while trials and courts have not been under normal running it has allowed us to address the backlog, particularly the pre-charge backlog. What we have seen are dedicated prosecutors—to take a simple example—who might be in a London team but, using their laptop, are taking rafts of work from an out-of-London team and making charging decisions. In some cases, that results in cases coming into the system, hence an increase in backlog; in other cases, it results in non-charge decisions for a whole variety of reasons. We have been able to use our staff, and make more flexible use of our staff through their laptops, essentially, to be in a better position than we were on pre-charge backlog. We are coming out of lockdown in a better position in that sense.

What we have to watch is the new work and how many new cases come into the system. Our priority charging will play a part in trying to manage that backlog, while I still continue to recognise that the backlog is going to be here to stay and that we will continue to grapple with it for a long period.

Q47 Richard Burgon: Good morning, Director. I want to turn to the CPS Inspectorate rape inspection report from 2019. As was alluded to earlier, the crime of rape is recognised as a huge problem in the criminal justice system. The chief inspector, Kevin McGinty, said that since 2016 there has been a substantial increase in rape allegations while the number of rape prosecutions has fallen significantly, which indicates a serious problem. In the year ending March 2019, there were 58,657 allegations of rape but only 1,925 successful prosecutions.



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Of course, the report only looks at a small part of the overall picture—the role of the Crown Prosecution Service. I have previously advocated, and still would, a full end-to-end review of how the criminal justice system handles rape, from the first report of it right through to parole board discussions, but what has been done so far to implement the recommendations made in that 2019 CPS Inspectorate rape inspection report?

Max Hill: I start with the crucial opening line that I and everyone at the Crown Prosecution Service share the deep public concern that, while the number of allegations of rape and other sexual offences has increased, the number going to court has fallen. Any conversation on this topic has to take that as a starting position. We know that the number of cases referred to us by the police has dropped, and that is part of the picture about which our Crown Prosecution Service Inspectorate—I say “our” in distinction to other inspectorates—came in at my request, after I wrote to the Attorney General asking for an inspection. On 17 December last year, that inspection found some good outcomes and some questionable outcomes.

To answer your question directly, we have accepted all the recommendations of that report, so we have recognised that 98% of the rape charging decisions examined by the inspectors were found to be compliant with our code—correct decisions. Equally, we recognise that, where action plans have been set by prosecutors for the police to do further work on a pre-charge case, in 60% of those cases the inspectorate said that each and every word of the action plan was proportionate, necessary and appropriate. That leaves almost 40% where we have work to do.

We have set about a joint police and Crown Prosecution Service action plan to work on all the recommendations of the report. We could, in one sense, have awaited the outcome of the cross-government Criminal Justice Board review, of which the inspectorate report is one feature. That review is ongoing. We determined not to wait but to come together with the police and to continue working. We are not coming together only with the police; we are doing so with all other stakeholders in this area. There are weekly meetings taking place with interest groups and stakeholders who have a valid and valuable voice to bring to bear.

We have developed our Crown Prosecution Service strategy to take us to 2025 and, exceptionally, we are developing alongside that a RASSO strategy—a specific rape and serious sexual offence strategy—to take us to 2025. We are doing that alongside a great deal more by way of guidance and training for our prosecutors. To give you one example, the neurological impact and the trauma caused to a victim by what he or usually she has sustained must be understood by anybody who looks at the case. We have taken steps to encourage our partners to help us deliver greater training, and since January this year, since the inspectorate report, we have had internal online training videos from consultant psychologists, demonstrating what the neurological impact of trauma can be on an individual. That is designed to improve the



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understanding of prosecutors and police officers of what they are dealing with.

Alongside that, I actively encourage a joint inspection. You talked about end-to-end review. I thought last year, and I still think this year, that there should be a joint inspection by the police inspectorate—HMICFRS—and the CPS Inspectorate to come back and put us under scrutiny again. I welcome all of that alongside the cross-government review.

I go back to where I started. I recognise that there is deep concern. We must continue to encourage victims of these appalling crimes to come forward, and we must build their confidence in the system. We are not complacent, and we are doing everything we can to improve month on month and year on year.

Q48 Richard Burgon: Thank you. That is useful. Built into your answer was a bit of statistical analysis of some of the factors in the low level of rape prosecution. As you mention, the CPS is part of the process, but the whole system needs to be looked at.

You obviously make the case, as you did in an earlier answer, for adequate budgets to do your vital work. Do you have a view on how much budget cuts have affected rape prosecutions, and, if so, what budget increase do you think would be needed to properly tackle this horrendous crime?

Max Hill: I am afraid I am not in a position to give a figure in pounds, shillings and pence. Our RASSO units are made up of experienced and specially trained prosecutors, so those we are recruiting today through our national campaign are unlikely to go immediately into a RASSO unit, although it is not impossible, depending on their experience. Over time, as they gain experience internally, they will make their way into that and other specialist units. What is important is that we keep the tap flowing, and we keep recruitment going to make sure that we have the right calibre with the right potential to assist our colleagues who are already working in those specialist units.

On the statistical piece, to come back to it briefly, the other thing we have done is to move from an annual data release to a quarterly data release. We did that as a mechanism for helping everybody, including specifically those who scrutinise us externally, so that they do not have to wait a whole year but can look at our statistics quarter by quarter. We released the second quarterly data analysis on 30 April, so it has been released notwithstanding lockdown. It shows some positive signs: receipts are up from the police, charging is up and convictions are up, all by absolute numbers. We accept that they are still down across a whole financial year, and we are only two quarters into our new mechanism for quarterly reporting, but the conviction rate is holding—it is around 69%—and the charging rate, as I think I mentioned earlier, has gone up from 48% to over 54% across recent quarters.

I think things are moving in the right direction, but that does not take away from the fact that we are going to have to stay on this for a



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considerable period of time, and, yes, you are right that resourcing is part of that. I am not going to put a figure on it, but we need to be appropriately resourced to make sure that we do not have undue pressure on prosecutors, however dedicated they are. I was at a stakeholder meeting yesterday morning with many of our RASSO leads, and they made the point that I have made many times over: they get out of bed every morning and go to work in order to charge cases. That is their incentive, and that is what they are dedicated to doing.

Q49 Richard Burgon: You may wish to advise me on this question, as you may have just covered it in your answer to an extent. I was going to ask about violence against women and girls offences. There was a decision taken to stop publishing annual data. That is different, isn't it, from the data you referred to as being published quarterly? It is the RASSO data you have been referring to, isn't it?

Max Hill: Actually, the quarterly data release is general, so there are headline statistics given for our entire caseload, but within those statistics are RASSO-related—rape and other offences-related—statistics. Our VAWG stakeholders—the violence against women and girls groups—are able to gain, I would say, a much better understanding, quarter upon quarter, of what the picture shows.

In terms of statistics, I gave a domestic abuse statistic earlier as a percentage of total caseload. The VAWG percentage of total caseload—all the cases that are flagged as not necessarily specific to rape or specific to domestic abuse, but representing violence against women and girls—is 16% of the total caseload. Of that 16%, 85% is domestic abuse, hence my earlier statistic; 13.6% of the caseload is domestic abuse-related. But we are trying, and I hope this is the sense of your question, to make our data more available and more frequent so that VAWG interest groups can keep an eye on us. I am not shy of that scrutiny, nor are we complacent as a national prosecuting service.

Richard Burgon: That is very important, because it is crucial that women can have confidence in our criminal justice system. As it stands, it is very understandable that groups representing women say that they do not. Thank you very much for those very useful answers.

Q50 Paula Barker: Good morning, Mr Hill. In the interest of time, I will try to be as succinct as possible so we can move along.

In respect of the national disclosure improvement plan, which was published in 2018, do you consider that all the partners in that have done enough to improve their own practice in relation to disclosure, and, if not, what more do you think needs to be done?

Max Hill: Clearly, as I recognised at my first appearance before this Committee at the end of 2018, I came into the middle of a series of system responses that had already been set up, but I have jointly chaired the national disclosure improvement plan board with Assistant Commissioner Ephgrave since I started as Director 18 months ago. That board is genuinely representative of everyone who has an operational



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role in improving disclosure, so it remains the engine for improving things.

Under phase 2 of the NDIP plan, which was published on my arrival in my first month as Director, I think the answer to your question is that it is important that we continue to maintain a focus on specific workstreams and then monitor how they improve things. Digital processing notices, which are commonly called consent forms, are just one component. I recognise that ever since this time last year there has been a live conversation about what we require of complainants and victims, and in what circumstances they are required to hand over aspects of their private life for scrutiny. I am happy to talk about that in greater detail. We are still awaiting the Information Commissioner's Office report on those processing notices. I hope it will arrive in the next month or so. The CPS Inspectorate conducted a disclosure report on more than 1,000 of our cases and there were good outcomes from that report. That is separate from the rape inspection.

Also, in answer to your question, the NDIP board has expanded its remit to case progression. I have often talked in the past about getting disclosure right, which remains of paramount importance, while recognising that disclosure is one part—an important part—of an overall case file. Expanding our remit to include case progression, and setting up additional workstreams across the criminal justice system to try to drive towards a digital case file, is important because of all the content we wish to see. We are all responding, and the NDIP board will produce its own response, to the Attorney General's consultation in relation to disclosure. It is still open and is now open until 22 July, as it has been Covid-affected like everything else. There is a great deal of sub-group work going on.

As a means of holding everybody to the same speed in the system, disclosure management documents, which I have talked about in the past, are important, but we have found, in absolute partnership with our police colleagues from police forces and from the College of Policing, that a disclosure strategy document should also be worked up, where, at the very earliest stages of an investigation, investigating officers indicate what their disclosure strategy is. That is new. It is not entirely novel in terms of the work that is undertaken, but creating a disclosure strategy document, which is a precursor to a disclosure management document, is another feature of front-loading disclosure in the interest of fairness to all. That is what we are continuing to work on, and we will need to keep our focus on it through the NDIP board, which has no plans to wind up any time soon. That work will continue.

Q51 Paula Barker: Thank you for that. If we were to look beyond disclosure, what are the other challenges you face when it comes to making decisions about prosecuting rape and serious sexual offence cases, and what is the CPS actually doing to improve confidence in that area?

Max Hill: I refer to my previous answer on the various workstreams that we have put in place. What is vital is that there is compliance with the code and an understanding of what the code means. You have not



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referred to it specifically, but of course we are aware of the debate around the so-called merits-based approach to prosecuting, particularly in this area, and there have been judicial review proceedings in relation to that. We played a full part in those proceedings.

The merits-based approach, as a phrase, as a set of words, is not something that features in the code for prosecutors. It is something that was found in a 2016 CPS Inspectorate report, with a recommendation that the CPS should do more to make sure that it is enshrined within the decision making of prosecutors. Because the code was revised in October 2018, the evidential stage test and the public interest stage test are doing what some people call an evidence-based approach to prosecuting. We have not put new tests in place; we have reiterated what you need to look at. I said evidence-based a moment ago, but merits-based is the phrase that everyone used.

A prosecutor does look at the merits of the case but, in doing so, needs to ensure that he or she is not replacing merit with anything improper, along the lines of an assessment based on a myth as to how a jury might treat the case, or a stereotype in terms of the type of complainant whose account is being put before the court. I am confident that, with all the additional training we have put in place and with the dedication in our RASSO units, prosecutors do not decide based on stereotype. They decide in rigid adherence to the code—98% compliance is what the inspectorate said—and cases are brought to court whenever those two tests are satisfied. Part of the answer is that, in order to keep it simple and open to objective scrutiny, we should always refer back to the code and apply the code, but using all the additional elements of learning, of which the neurological impact of trauma is one important component. We wanted to act on that earlier this year, as I said.

Q52 Rob Butler: Director, could you say whether you feel that the progress you are talking about on both disclosure and case progression applies equally to the magistrates courts? We both know that it has been a problem there, and, although they deal with what might be seen as less serious offences, none the less magistrates courts handle about 95% of crime, so it is important to get it right there, too.

Max Hill: You are absolutely right; of course, it applies. Every case starts in the magistrates court, and if you take the right steps, with the right preparation at that early stage, whether it ends in the magistrates court or goes through to the Crown court, you are more likely to have a robust outcome and cases that go smoothly through the system. As you know better than anyone, although the magistrates courts deal with a vast quantity of lower-level, less serious offences, when we come to the youth court aspect of the magistracy, you are dealing with many of the most vulnerable individuals, many of the youngest individuals by definition and often some really complex casework. That disclosure strategy still applies there as well.

In terms of rape cases, which always go to the Crown court, we put particular focus on disclosure management documents, and then, as you



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know, the online questionnaires that are filled out by judges in every case at the plea and trial preparation hearing flag disclosure. That does not mean that disclosure should not be worked on at the magistrates stage. Obviously, no case can go to trial, whether it is magistrates court or Crown court, unless there has been a proper focus on disclosure.

NDIP phase 2, in force now for 18 months, applies a focus on youth courts and on making sure that the national message is carried out at every regional level. That does not mean to say that a disclosure management document is needed in every single case; it is important to add that. There are, if I can use this phrase, very straightforward single-witness cases where it is not necessary to compile additional documents and to put additional strain on prosecutors and investigators, and where there is unlikely to be anything meaningful by way of disclosure. I do not think it is one size fits all, but wherever there is complexity, and absolutely there is in the youth court, those processes are just as important.

Q53 Rob Butler: As you have touched on the youth court, could I very briefly ask you a broader question about the youth court? We know there is meant to be a different philosophy, that there is meant to be greater engagement and that it is very important that young people understand the proceedings. There are reports coming out about that all the time, suggesting that we still have a long way to go.

How much progress do you think you are making in ensuring that you have prosecutors who have the right training, the right experience and the right personal skills to make sure that young people appearing in the youth court are treated appropriately, given, as you said, that many of them are very vulnerable?

Max Hill: It is experience in court that gives the answer on a case-by-case basis. Internal to the CPS, we focus on the prosecutors who should take youth court work. It is not automatic that, because you are a Crown prosecutor, you will conduct youth court work. Just as you move through to specialist areas of working around RASSO cases, so too youth court work is a specialty. We have very experienced and dedicated prosecutors who appear in the youth courts, and I have absolutely no doubt that they do a very good job.

Equally, we instruct independent barristers as agents, particularly to prosecute our trial work. There is a component of trial work in the magistrates—this will specifically include youth court cases—where it will be independent barristers to whom we give the case and ask them to conduct the trial. It is not for me directly, but the training that is delivered in advocacy skills, awareness and the various Advocate's Gateway toolkits, which legal professionals know about, is there to ensure that anybody who advocates at a particular level has the right training in place.

All I would add is that we scrutinise and conduct reviews. There are individual and area-based performance reviews so that we look, not just



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through management streams, but in an organised way, at performance in court. That actually extends to all the agents we ask to prosecute for us from the Bar, and there are mechanisms for dealing with performance that falls below what we require. We are not complacent there; we act on it.

We have, as you know, an independent assessor of complaints. The office holder has changed during my time. The independent assessor rigorously holds to account any failures in our service to court users, and each and every report by the IAC is sent personally to me so that I am aware of it. I hope in those various ways that we are staying on top of what you mention.

Q54 James Daly: There is a lot to ask but, unfortunately, we are running out of time, so I will try to combine my questions.

How will you meet your strategic aim to progress cases in a timely manner? Which processes within your control can be speeded up? Specifically, release under investigation is an example of that. As you know, far too many people are being released under investigation, and cases remain in the system for months and months. Within your strategic plan, how are you going to deal with that?

Max Hill: We are concerned at the very great increase in the number of suspects being released under investigation—in other words, released without bail. That is leading to delay in the length of investigations, because there are very few time limits to focus the investigation. Although it is a matter for policing to decide when to release under investigation, I think we should have a renewed emphasis on the application of the Bail Act, which is why I welcome the Home Office consultation that was announced in February on a review of the Bail Act approach.

What I am saying is that, wherever possible, I think we should move back to the position we had before, where, if there is an ongoing investigation, individuals in many categories of cases should by all means be released, but be released on bail under the provisions of the Act. Whether we return to the Bail Act provisions pre-2016/2017 is a matter for the Home Office, a matter for the consultation and, ultimately, a matter for Parliament.

I can see that, as part of the conversation, we should look realistically at timeframes. I have every sympathy with policing nationwide who, just like our prosecutors, are dealing with crime volumes that are generating more material per case and more that requires investigation than ever before; the whole digital revolution speaks to that. Looking creatively at timeframes is one thing—

Q55 James Daly: I am very sorry to interrupt, but it is just because of lack of time. You appear to be arguing that the police and the Crown Prosecution Service are not capable of having a diary system in place to manage cases. You have used the words “as efficient as possible” on numerous occasions, and I assume that the CPS would play a full part in many of



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the cases that are released under investigation.

Would you accept that you need to work closely with the police to make sure these matters are dealt with in a timely manner and can be brought to court? Many cases are not proceeding, as you know, because nothing happens on them for over 12 months. That is not an acceptable situation. It is impinging on criminal justice and impinging on victims, most importantly.

Max Hill: I recognise all of that. We have a diary system in place. It is very important to distinguish between the volume of cases that are referred to the Crown Prosecution Service and the volume that are not. Under the existing system, a police force can decide to release a suspect under investigation without the CPS being aware that there is an investigation.

I am not making a case for the CPS to take over or to direct police investigations nationwide; that is not what we have ever done. What I am saying within my remit, though, is that for the proportion of investigations that are referred to us, we not only maintain a diary system but we set action plans, which I referred to earlier this morning. They set out with precision what the investigation needs to conduct in order to allow our prosecutors to make a final full code test decision. What I have been alarmed by is the extent of what is called administrative finalisation, which is where we as prosecutors set action plans and there is a component of those cases where we receive no response; we receive no reply.

I add in the next breath, with reference to one of the inspectorate reports, that it is important that we set appropriate action plans. It is important that we continue to improve our service to make sure that we are asking for the right things, that are justified. Where we do, we want a closer relationship with the police to ensure that the investigation is concluded in good time and we can get on and charge it. I think a return to a Bail Act approach could be very helpful. I await the outcome of the Home Office consultation and will play a full part in it.

Where it is release under investigation, we are only in control of a certain component of the investigation. We can be looked to, and I would expect to be scrutinised, for the cases that come to us. I cannot speak about those that do not.

Q56 **Andy Slaughter:** This is about the royal commission on criminal justice. I will try to put it into a single question. Do you know what it is likely to be looking into, and what do you think it should be looking into? In particular, over the last 10 years, but perhaps before that as well, there has been a combination of factors: a squeeze on the professions, the adequacy of representation, delay in the system, waiting years for cases to come to trial and the move to remote working, which is particularly exacerbated at the moment, in criminal as well as civil areas. They all have profound effects on justice and create a justice deficit. Is that the sort of thing you would like a royal commission to look at, and what do



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you think it will be looking at?

Max Hill: I think there are some aspects, which include technological change, and include a lot of what we would have to say about funding, that do not actually require a royal commission. They should be dealt with under ordinary running, at the greater speed the system can provide, given that a royal commission necessarily takes some time. What that means the royal commission can do, which I think might represent a once-in-a-generation opportunity, is explore some of the issues across the criminal justice system.

The headline I would give is that a cross-system approach should be the core of the royal commission. That means that, of course, the Crown Prosecution Service will be in scope and will be a strong focus for the commission. The relationship between the police and the CPS, and, going back to previous questions, the ways in which we progress cases from investigation through to charge, should be a focus, but it should not stop there.

It is important that the focus is extended so that it encompasses at least the period from commencement of investigation to conviction. Whether sentence and the prison estate is in scope is not a matter for me, but I am concerned at every stage, from when there is a report of crime, right through to conviction. All of that case progression work, which is the wider ambit that we have taken for ourselves under the national disclosure improvement plan, could be good ground for scrutiny by a strong royal commission.

There are aspects of transformation, which no doubt might include technological progress, that the royal commission would want to look at, but, given that the commission has not started yet and will take a period of time, we can address that under ordinary running, suitably scrutinised. It is the cross-system scope that is key, and not merely restricting it to the police-prosecutor relationship. That is the best answer I can give. I know that the terms of reference have—

Q57 **Andy Slaughter:** Have you been asked for any input as yet, and do you have any idea when it is likely to start?

Max Hill: Yes, we have been asked to give input, and the lines I provided form the headline of the input that we have given. The timetable is not for us. I think it has been Covid-affected like everything else. We are awaiting settlement of the terms of reference and then an identification of the members of the commission.

There was considerable work in January and February, and our views were being asked during that period. I expect that that will revive as we start to move through recovery from the national crisis. I hope that the terms and the membership of the commission will be settled in the coming months. Beyond that, I do not know, and it is not for me to say.

Q58 **Chair:** We have come to the stage where we really cannot go on any longer because of the time available to us. You have given some very full



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answers, Director, but there are a number of issues to which we will need to return. Perhaps, rather than waiting the length of time we have before, we might schedule a further meeting to discuss some of the other ongoing issues so that we can have full scrutiny of some of those matters as well.

Max Hill: By all means.

Chair: Thank you very much. We are very grateful to you for your time and for your evidence. The session is concluded.