

Justice Committee

Oral evidence: [The work of the Criminal Justice Inspectorates](#), HC 1182

Tuesday 8 March 2022

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Members present: Sir Robert Neill (Chair); Ms Diane Abbott; Rob Butler; Angela Crawley; Laura Farris; Paul Maynard.

Questions 1 - 71

Witnesses

I: Justin Russell, HM Chief Inspector of Probation; Dr Rosie Benneyworth BM BS BMedSci MRCGP, Chief Inspector of Primary Medical Services and Integrated Care Quality Commission; Charlie Taylor, HM Chief Inspector of Prisons; Sir Tom Winsor, HM Chief Inspector of Constabulary and HM Chief Inspector of Fire and Rescue Services; and Andrew T. Cayley CMG QC, HM Chief Inspector of the Crown Prosecution Service Inspectorate.

II: Andrew T. Cayley CMG QC, HM Chief Inspector of the Crown Prosecution Service Inspectorate; and Wendy Williams CBE, HM Inspector, HM Inspectorate of Constabulary and Fire & Rescue Services.

Examination of witnesses

Witnesses: Justin Russell, Dr Benneyworth, Charlie Taylor, Sir Tom Winsor and Andrew Cayley.

Chair: Good afternoon and welcome to this session of the Justice Committee. We are very grateful to have the chief inspectors of the various criminal justice agencies come to see us this afternoon. We are very grateful to all of you for your time. We will come to that very shortly.

First, as you know, there is a bit of procedure. Members have to declare their interests at every meeting. I am a non-practising barrister and formerly a consultant to a law firm.

Rob Butler: Prior to my election I was a non-executive director of Her Majesty's Prison and Probation Service. I also served under the chairmanship of Mr Taylor on the Youth Justice Board.

Laura Farris: I am a non-practising barrister.

Q1 **Chair:** Perhaps I could ask our witnesses to introduce themselves, starting with you, Dr Benneyworth.

Dr Benneyworth: I am Rosie Benneyworth, and I am chief inspector of primary medical services and integrated care at the Care Quality Commission.

Andrew Cayley: I am Andrew Cayley, the chief inspector of the Crown Prosecution Service inspectorate.

Justin Russell: Justin Russell, chief inspector of probation, and currently chair of the Criminal Justice Chief Inspectors' Group.

Charlie Taylor: Charlie Taylor, chief inspector of prisons.

Sir Tom Winsor: Tom Winsor, chief inspector of constabulary.

Q2 **Chair:** It is very good to see you all. We will get straight into the questions. We were very interested to see your joint report in relation to mental health. We are also going to come on to your second joint report. I will address the questions initially to you, Mr Russell, as the chair of the group. You make a number of significant recommendations in your report in relation to mental health. The Government published their response on Friday. Have you had a chance to come to a view on that response?

Justin Russell: We have certainly been copied in on the response and I have talked to senior officials at the Department about it. Overall, we made 22 recommendations; they have agreed 16 of those, rejected two and have, as they say, partially agreed four, so a majority of the recommendations have been accepted.

One of the welcome things our report has brought about is that it has encouraged officials from all of the relevant Departments to meet together to consider this issue with colleagues from the National Police Chiefs' Council and other relevant agencies, including the NHS. There are still areas where I would certainly like them to go forward, but I think they are taking our report seriously, and that is to be welcomed.

Q3 **Chair:** What are the areas where you would like them to go forward?

Justin Russell: Two key recommendations that we made in 2009 and made again last year: the first is that we think the criminal justice system needs a common definition of mental ill health in order to ensure consistency in the way it is recorded across all agencies of the system, and the response does not agree with that. It presses for better consistency within agencies but rejects the idea of a common definition.

The second key area is that they continue to say that they do not feel a multi-agency memorandum of understanding is necessary between the NHS, the CPS and the police around which information on people's mental health can be shared. I certainly believe that such an MOU is critically important. It was something that Keith Bradley felt was important in 2009 and I think there is still a very strong case for such an MOU.

Q4 **Chair:** Those recommendations were unanimous recommendations of you all, weren't they, at the end of the day?

Justin Russell: They were, yes.

Q5 **Chair:** Sometimes some recommendations are more essential than others. How significant are the two recommendations they have chosen not to act on?

Justin Russell: The significance is in enabling the system properly and accurately to collect information on just how many people with a serious mental health problem are going through the system at every stage. Without that information we do not have a collated view of overall need, which makes it very difficult to commission services and assess what needs to be done on the ground. The foundation of a proper response to this issue, I believe, is proper data collection, and that relies on commonly agreed and applied definitions.

Q6 **Chair:** Basically, they failed to act on the most important recommendations.

Justin Russell: I would not say the most important, but important in ensuring consistency of understanding about what is actually happening in the system, yes.

Q7 **Chair:** Shall I put it this way? It is a central recommendation.

Justin Russell: It is a central recommendation, I think.

Q8 **Chair:** Is that disappointing?

Justin Russell: I found it disappointing. I do not know what colleagues would say.

Q9 **Chair:** Any views?

Sir Tom Winsor: Yes, it was disappointing.

Charlie Taylor: For us, the collection of data was absolutely critical.

Q10 **Chair:** This Committee has had evidence frequently about the sparsity of data in policy making within the Department, so you are not on your own in that regard.

Justin Russell: To give you an example, there is a huge variation in the numbers of cases being flagged even within agencies, never mind between different agencies. For the service that I inspect, the probation service, we looked at six areas. In one area, fewer than 2% of cases were flagged as having a mental health problem. In another area, it was 25%. Both those answers cannot be right. There needs to be more consistency in the way these issues are defined and measured.

Q11 **Chair:** Without that, is it possible to say with any degree of certainty that they have any complete picture at all? I imagine not.

Justin Russell: We found huge gaps in people being identified with a mental health problem at every stage of the system. That is literally

thousands of people whose needs are not being identified, and that is a critical thing that needs to be tightened up.

Sir Tom Winsor: The quality of information in the criminal justice system is, in many respects, quite poor. Good-quality data is the oxygen of efficiency and effectiveness. It is the oxygen of accountability and, of course, where there are data failures between the various parts of the criminal justice system, people fall down the gaps. Those are people who are very vulnerable and who could come to very significant harm purely because of those data failures, so it is an enormously important point.

Q12 **Chair:** In terms of priorities, sorting out data and getting a complete picture remains one of the most important, or the most important.

Justin Russell: It is to properly address the scale of the issue. To give you some examples from our own data, in 38% of the cases which the probation inspectorate inspected in our local inspections we found people to have a mental health problem. I think Charlie's inspectorate found that 48% of male prisoners have a mental health problem. We know that the police liaison and diversion schemes are taking over 100,000 referrals from colleagues in police custody suites, so there is a huge problem out there, and it needs to be properly measured and addressed.

Q13 **Chair:** I think, Mr Cayley, from a CPS point of view, there is a lack of adequate information.

Andrew Cayley: Absolutely. If you look at the tests that the CPS applies—the evidential test, evidential sufficiency and the public interest test—obviously, if somebody has a mental health issue, it is absolutely essential that any prosecutor looking at a case has that information to hand so that they can make a proper decision in that case. We found that in only 25% of cases reviewed where an individual had a mental health issue was that information provided, so in 75% of cases where somebody had a mental health issue, the police were not able to provide that information. Absolutely, the system needs to be improved dramatically.

Q14 **Chair:** In delivery of primary care services, Dr Benneyworth, is there an impediment there?

Dr Benneyworth: It is really important that we get good-quality data because without it we will not understand how we can set up services that meet the needs of the population who need delivery of care. Also, we do not understand people's unmet needs. We need that information and that data particularly to be able to look at the care pathways of people right the way through primary services, secondary care services, both within the criminal justice system, and as they exit the criminal justice system into the community.

Q15 **Angela Crawley:** Your report has already stated that the way in which mental health needs are identified leads to gaps and inconsistencies. Sir Tom, I think you have already referenced this. Could you elaborate on the types of gaps and inconsistencies that you have identified, and the effect that they have on both the efficiency of the system as a whole, and

on the individual's experience through the system? Perhaps Sir Tom first, but I am happy to take comments from anyone.

Sir Tom Winsor: In policing, which is my part of it, the load on the system in relation to mental health is enormous. In south Wales, for example, 24% of recorded crime has a mental health element. The police are very good, in almost all cases, at recognising mental ill health, someone in crisis, and pretty much all aspects of mental ill health, but the information gap that opens up is that unless the person's mental health has been a major contributing factor to the commission of the crime, that information does not routinely pass on to the Crown Prosecution Service when they are assessing whether to authorise a charge and take it further in the criminal justice system.

That is one instance. When police are recording the matter, they can recognise mental ill health, but unless it is a major contributing factor to the reason why the person has come into contact with the police, it does not get passed through the criminal justice system in the way that it ought to and, therefore, the people in question will not get liaison and diversion as readily or reliably as they would. In many cases, there is disorder, there is disruption, there may be a threat, and so on. They are ill. They are not criminals, in many cases, yet they can be criminalised because of the failure in passing data from police to prosecutors

Angela Crawley: Do any other members of the panel want to contribute?

Charlie Taylor: On the disparities of the services in different parts of the country, we were at Deebolt recently, where there is no wait at all to see a psychiatrist, which was terrific. We then went to Hull, where there are 200 prisoners on the waiting list and services are completely overwhelmed. That is quite common. Similarly, we were recently in Wandsworth where it was very good for the more extreme patients, but for people with lower levels of need there was very little in place. It was completely the reverse at HMP Manchester.

Dr Benneworth: I was a GP for many years and it is sometimes very difficult to identify mental illness. It is not always straightforward at all, even if you have seen people for many weeks, or on several occasions. We need to ensure that there is capacity within services to support the identification. Certainly in the liaison and diversion services we found that there were issues about provider capacity; some of the services were seeing too much demand, and there were certainly issues with commissioning arrangements as well.

Angela Crawley: Thank you. Mr Cayley?

Andrew Cayley: To come back to what I said earlier, I do not want to repeat myself, but, obviously, when a prosecutor is making a charging decision, you need to know about somebody's mental health, and, as Sir Tom said, if it is a contributing factor to the offence, the police and the CPS are going to know about it, but if it is not a visible thing they are not.

As a constructive matter, the CPS has made an effort to train staff on this issue and they are given guidance on how to recognise these things and deal with them. In fact, before our report, there was no flag on the electronic files for mental health issues. Now there is, so if in a potential prosecution there is a mental health issue for the defendant, there is a flag on the file to indicate that.

The CPS has also recently agreed a checklist with the police for suspects. It is comprehensive; I have it here. It has just been agreed, and it is a checklist that essentially allows the police to try to identify whether somebody has mental health issues. It is going to be piloted, I think, at the end of this month or the beginning of next month. People are working on this and trying to address some of it, but, as we have already said, there is no overarching MOU on the provision of this information. It is simply between the police and the Crown Prosecution Service.

Q16 Angela Crawley: That brings me neatly to my next question, which is about information sharing across the criminal justice system. We have already established that there is a lack of an agreed definition of mental health and a lack of a memorandum of understanding on data sharing. If it is not already covered in the current arrangements, what are the benefits and how could it be achieved more promptly?

Justin Russell: The problem at the moment is that the information is not being transmitted and identified at the earlier stage; it is only being picked up at a much later stage. Typically, someone may appear in court or arrive at court without their mental health problem having been identified many months previously. Their defence lawyer may spot that there is an issue, and at that point the whole thing gets delayed while reports have to be done and the process is held up.

It also means that the person has gone many months without the treatment they probably needed had it been identified earlier. The earlier you can get in and identify that there is potentially an issue and make sure that information is transmitted down the line to the CPS, to the courts and on to probation, the more likely it is that someone will get the treatment they need. It is also more likely that they will get the support they need to deal with the process itself. Without support through what is a very complicated criminal justice process, there is a real risk that people are not getting the access to justice that they need.

The third reason it is important is that the criminal justice system has a duty of care for the people passing through it, when there are risks of suicide or self-harm that are not being spotted. It is really important that people are identified and referred for help where necessary.

Angela Crawley: Dr Benneyworth?

Dr Benneyworth: There are significant quality and safety issues in things like medication transfers of care that are vital in information sharing. If people do not get the correct medication because that information is not shared, they can deteriorate very rapidly. They might not get the monitoring tests that they require. There is a whole range of

reasons why people can be at quite significant risk if that type of information is not shared in a timely way.

Angela Crawley: Thank you.

- Q17 **Laura Farris:** In the prison population, where there is obviously a high degree of possible mental health problems, what proportion roughly, in your experience, of those people have had a diagnosis of some sort of mental condition but you are not aware of that diagnosis, as opposed to arriving on the prison estate with an undiagnosed condition that you suspect may be something more serious? Can I just get a sense of that?

Charlie Taylor: It is a really difficult one because we do not know what we do not know. Often, the nature of people who come into prison means that they have missed out on a diagnosis in the first place, and sometimes the first time that their need actually gets addressed is when they come into prison. As Justin said, around 50% of men coming into prison say they have a mental health need and about 75% of women do. That is through their own self-assessment, but very often those cases were not picked up when they were in the community, partly because of the chaotic lifestyles led by some people who are likely to end up in prison, and they have interacted or not interacted with services over the course of time. Sometimes, the mental health need manifesting itself also occurs around the same time as the offending behaviour and, therefore, that could also be a source of them coming into custody. A lot of the time we just do not know.

- Q18 **Laura Farris:** When you have somebody arrive on the prison estate and you think they have a serious mental health problem, do you have the doctor's expertise, if not on site, accessible to you, to conduct a full examination? If so, what is your duty to offer or provide that, and what, if any, is the obligation of the prisoner to accept it?

Charlie Taylor: One of the things we often comment on is the level of provision in the early days when people come into prison. It is a particularly risky time. We know that people who take their own life very often do it within the first two weeks of arriving, particularly in a local prison. We often comment on the different standards in the way they are treated in those early days—whether an interview, for example, is done confidentially or whether it is done with other prisoners being able to hear.

We have seen an improvement overall in the linkage between and the embedding of health services and other services, so most of the time there is an opportunity for referrals to be made, but they tend to be for cases where the mental health is more overt, and the less presenting symptoms do not always get noticed. Monitoring prisoners in the early days, and being aware of what their needs are, is critical. Again, it is a very mixed picture when it comes to that, particularly in local prisons.

- Q19 **Laura Farris:** Can you require them to see a doctor, or is it for them to decide whether they agree?

Charlie Taylor: Ultimately, no. The difference between prison and, in effect, hospital is that you cannot compel prisoners to get treatment, and in hospital, in certain circumstances, you can compel treatment. That is why we see very unwell prisoners who will not take their medication, for whatever reason, but there is no mechanism whereby they can be compelled to have treatment.

Q20 **Laura Farris:** May I ask a question about the police, Sir Tom? You were saying that if there was a sufficient nexus between a mental health condition and a crime, typically the police would be made aware of it, but surely there is a huge grey area where it is not clear. For example, if somebody who suffers from severe schizophrenia rapes somebody, is the causation there, or is it entirely possible that it would be seen as no link between the two?

Sir Tom Winsor: As we know, mental health is one of the most extraordinarily difficult things to treat, and to recognise. Yes, rape is a crime of course, but what is the mental state of the perpetrator? The police, as I said earlier, are very good at recognising mental ill health and someone in crisis, but of course they are not mental health professionals, and, while they are good at recognising it, obviously the person is going to be taken into custody and they need to be protected and others need to be protected from them. Getting that person the appropriate help is sometimes a considerable problem.

There is a wider point about prevention. Of course, as we know in all things, prevention is the most humane, least-cost way of solving a problem, because you prevent the problem arising altogether. Prevention in terms of mental health in this country is woeful. The child and adolescent mental health service is in an appalling situation. Parents cannot get consistency. It takes ages to get appointments. The quality of service in many cases—not all—is dire. Let's remember what Frederick Douglass said a long time ago: "It is easier to build strong children than to repair broken men." A very large proportion of people who have mental ill health as adults began that journey into mental ill health when they were children, yet this state does not take the mental ill health of children nearly seriously enough. The result is that people get worse and worse. They are disruptive, their possibly offending behaviour intensifies and then when they end up in prison, and many of them do, it is extremely difficult to cope with the situation.

It costs £1 million an hour to close the M6 when somebody is standing on a motorway bridge threatening to throw himself or herself off. How much mental health provision could be bought for that £1 million an hour to deal with these people before they become chronically sick? That, I think, is the biggest policy issue on mental health. We were promised a long time ago parity for physical and mental health in the national health service. Will we ever see that? I don't think so.

Chair: That is a fair point, isn't it? Ms Abbott.

Q21 **Ms Abbott:** I note that 70% of women in prison have mental health

issues. Given that women in prison tend not to be there for gross acts of violence and tend not to be there for massive fraud, should these women be in prison at all?

Charlie Taylor: That is not a question that I would be able to answer. It is ultimately a decision for the courts, or for the judges. We come across some very unwell women in prison, some of whom are caught in what I think is a sort of triangle between mental health difficulties, substance misuse and homelessness, and those are recurring themes in those women's lives. We see them end up in prison partly to get some stability back into their lives during the time they are in prison. Tragically, at Bronzefield, where we were the other day, one woman refused to leave the prison because she had nowhere else to go. Similarly, at HMP Styal we found women who when they left the prison would ask if they could leave their property there because they knew that they were going to be back again in the near future.

Justin Russell: One of the things we were very disturbed to find was that judges were, in effect, ending up using prisons as what they called places of safety because there was no alternative provision for people awaiting trial. That was very disturbing. I am pleased to see that the Government have accepted our recommendation that that should no longer be the case, and I understand they will be legislating for that in the legislation to enact the Mental Health Act White Paper.

Q22 **Ms Abbott:** You found that there were delays at every stage in the criminal justice system for those with mental ill health. What area of the system should be the Government's priority to prevent those delays?

Justin Russell: To give you two or three examples of the delays, we found significant delays in the provision of psychiatric reports to judges. There is a very complicated system for commissioning those, involving legal aid and finding psychiatrists who are willing to do them. We made a recommendation for work to speed that process up.

One of the most disturbing delays was in the transfer of acutely unwell people from prison to secure mental health beds under the Mental Health Act provisions, which Charlie may want to talk about. It takes months in some cases, which is far too long. People in the community, even if they are assessed as needing treatment, then join the queue with everybody else for community mental health services and may have to wait many months for that access. Charlie, do you want to talk about specific delays in transfers?

Charlie Taylor: Yes. That has been an ongoing concern for the inspectorate and I know for this Committee as well. We came across one prison where an acutely unwell prisoner—a particularly needy prisoner—waited more than 500 days for a secure bed, and that is not unusual. We also come across places like Birmingham where I think 28 of 34 prisoners were transferred within the time threshold of 28 days.¹ We see some

¹ Mr Taylor subsequently clarified that 32 out of 34 prisoners were transferred within the time threshold. See Criminal Justice Joint Inspection, [A joint thematic inspection of the](#)

really worrying examples where that transfer does not happen for whatever reason, but some parts of the country that are able to make it work.

In their response to the mental health thematic, the Government asserted that there are enough mental health beds, or we are told that there are enough mental health beds, but for whatever reason acutely unwell people are not making it into hospital, where they should be. They are creating a huge burden on prisons where they are being looked after by staff who do an amazing job in incredibly difficult circumstances, but nevertheless do not have the skills, expertise or training, or indeed the ability, for example, to be able to enforce treatment on prisoners. Therefore, you get people languishing in segregation units or in healthcare units for long periods not making any progress, and in many cases getting worse.

Justin Russell: Would it be helpful for Rosie to say something about mental health services?

Chair: Yes, indeed.

Dr Benneyworth: Thank you. We see huge delays across the health and care system generally due to the impacts of the pandemic, particularly in mental health services. In terms of priorities, we are very concerned about the workforce in health and care at the moment. For example, there are delays in Mental Health Act assessments at the moment, and that is often because there are not enough doctors to meet the demands of those assessments. The workforce need to be a priority. We need to make sure that we have enough workforce and that they are supported to be able to deliver under the huge pressures at the moment.

Q23 **Ms Abbott:** Sir Tom Winsor talked about parity of esteem. You have to stop and think that if this was physical health you couldn't possibly have these types of delays in going from one part of the health system to another. What does it take to get genuine parity of esteem for mental health in the criminal justice system?

Dr Benneyworth: First, I think, unfortunately, there are significant delays in the physical healthcare system at the moment. We are seeing long backlogs in every part of the health and care system, for physical and mental illness, but there is a lot more we need to do on parity of esteem with mental health services. The development of the integrated care systems through the Health and Care Bill needs to look at how they identify mental health as a priority within their systems, and look at parity of esteem and how they can work with the criminal justice system in their local area.

At the CQC, we are going to have new powers in the Health and Care Bill that will enable us to look at integrated care systems and pathways

within localities. Mental health, and provision within local areas, is certainly a theme we will be looking at and exploring further.

Justin Russell: Another point to make is that we found a really complicated commissioning landscape for this group of individuals. There is one part of NHS England which commissions mental health services in prison and liaison and diversion services. Responsibility for commissioning services in the community for people on probation is an ICS or local community provision. There is a separate body that commissions high secure mental health beds as well. That makes joining up the system quite difficult. We found that the delays were shortest where you had the same provider of mental health services in prison as in the community. Part of the reason Birmingham did well on that was the ability to join up and share case records and share information about cases.

Q24 **Ms Abbott:** You have recommended the end of the use of prisons as a place of safety. If I heard correctly, you said the Government are moving towards that.

Justin Russell: They have accepted that recommendation and have said they will legislate on that in the forthcoming Bill, yes.

Q25 **Laura Farris:** Sorry to interrupt, but which Bill is that?

Justin Russell: The legislation to implement the Mental Health Act White Paper, which will also cover the 28-day statutory time limit on prison transfers.

Q26 **Ms Abbott:** Do you think that 28 days is an achievable target?

Charlie Taylor: If they can manage to do it in the west midlands, we do not see why it should not be achievable elsewhere.

Ms Abbott: Thank you.

Q27 **Rob Butler:** To follow up on the same theme, if I may, you called for the end of prison as a place of safety, as we did in our report. The Government seem to have accepted that and are going to legislate for it, as we have just heard. What can be done absent legislation? Legislation, ultimately, is words on a piece of paper, so how do we make action happen before those words are there as an Act and after they are there as an Act?

Justin Russell: Whether or not you have the legislation, you still need the alternative beds to prison for judges to use while people are being assessed pre-trial.

Rob Butler: Precisely.

Justin Russell: I am not sure that legislation in itself solves that problem. It goes back to what Rosie was saying about the situation.

Q28 **Rob Butler:** How much impact will legislation have?

Justin Russell: Presumably it creates a legal backstop that people can use to challenge the Government or the relevant health authority where it is not being done. Ultimately, those places need to be there. We give an example in the report of a judge who basically had to bully a prison for six or seven months before an alternative bed was found for someone who had been placed in custody as a place of safety.

Rob Butler: Dr Benneyworth?

Dr Benneyworth: We recently published a report called "Monitoring the Mental Health Act", which is a regular report we publish at the CQC, and in that we suggested that we need expansion of investment in community services and case management at commissioning level, because beds are only part of the issue. We need to make sure that there are strong community mental health services and strong commissioning arrangements for individuals with complex needs, to be able to meet those needs.

Q29 **Rob Butler:** To go back to the prison scenario, like Mr Taylor, I have visited a huge number of prisons and frequently seen people who are quite often in healthcare facilities in the prison but for whom there isn't a bed. Where does responsibility for that lie? Is it with HMPPS or is it with the NHS? Dr Benneyworth, shall I come to you first?

Dr Benneyworth: With the 28-day target, it is imperative that all organisations work together to meet that target. If there is a commitment by the NHS to deliver that 28-day target, it needs to be met, and I think that sits with the NHS, but there needs to be very collaborative working across all the organisations across the criminal justice system and the NHS to enable that.

Q30 **Rob Butler:** Where do you see a breakdown in collaboration at the moment? Prison officers, governors and head office staff at HMPPS tell me that they are co-operating and collaborating fully, and that the problem lies with the NHS.

Dr Benneyworth: There is no doubt that the NHS has been under huge pressure during the pandemic and that has—

Q31 **Rob Butler:** With respect—I am sorry to interrupt—this was before the pandemic as well; it is not a problem that has just arisen because of Covid.

Dr Benneyworth: No, that is right. There have certainly been problems with mental health services that predate the pandemic, due to a whole variety of reasons: unmet need, changing demographics and changing complexity of need, and workforce shortages and workforce issues, which have been hugely exacerbated by the pandemic. There needs to be an improvement in those mental health services, and there needs to be collaborative working both at local integrated care system level and at national level to ensure that people do not get delays in their transfer.

Q32 **Rob Butler:** Is there any degree of truth in the suggestion that has occasionally been floated that the NHS will think, "At least, these people

are somewhere relatively safe. They are in a prison cell; therefore, they can go lower down our list of priorities”?

Dr Benneyworth: I have never heard that expressed from the NHS. The NHS is very much looking at how it prioritises people based on need and at how it addresses health inequalities. Our message to the NHS, as the regulator of health and care, has been very much that it needs to be prioritising based on need and based on health inequalities; and looking at how to deal with the backlogs to make sure that the people with the greatest need are prioritised and top of the list. We would be very disappointed to hear that there was any question that people were disadvantaged because of where they currently were.

Q33 **Rob Butler:** Mr Taylor, what perception do you get from your visits to prisons on that?

Charlie Taylor: It has been a big concern for us. One of the issues is the collection of data. It goes back to the original point that it is not clear how many people are there for a place of safety. The legislation is coming, but what we are not clear about is what will be in that legislation.

There are different ways that people can get into a prison as a place of safety. Either it is written on a warrant specifically that prison is being used as a place of safety or because the person, for whatever reason, cannot be safe in the community. Sometimes, people are charged with an offence. For example, we came across a woman who had been trying to throw herself off a bridge. She was charged with a public order offence and was remanded to prison, in effect, as a place of safety but for committing a public order offence. There is a danger that that would not show up when it came to legislation on place of safety. The devil will be in the detail in whether those sorts of cases are covered off as well.

Q34 **Rob Butler:** Could you say a little about what you find about the impact on prison officers, staff who are not medically trained, from needing to take care of mentally unwell prisoners, and any knock-on impact on the regime that can then be followed by other prisoners as a result of the focus of those particular staff?

Charlie Taylor: Absolutely. First, they are a huge strain on resources, whether they are in a segregation unit, where sadly they often end up, or whether they are in a healthcare unit. A conversation that has always stayed with me is one that I had with a really impressive caring officer at HMP Low Newton on the mental health wing. They had some extremely unwell women there. He said, “Look, we’re doing our best. We’re exhausted. We’re trying to stabilise and look after these women in the best way we can, but we are not the experts and we don’t have the expertise.” That is not at all uncommon. Similarly, what I thought was even more impressive was the segregation unit at Thameside, where we discovered that psychological services were at least giving some support to officers, so they were getting something like the equivalent of the clinical supervision that nurses would get. Nevertheless, there are some brave, courageous, dedicated officers having to deal with people who are

outwith their skillset, and the effect on them, and potentially on their mental health, is hard to measure.

- Q35 **Rob Butler:** Mr Russell, in your report you talked about and mentioned today the problems sometimes on leaving prison and moving into the community, where sometimes services are joined up but more frequently, unfortunately, are not. One thing that struck me as somewhat alarming was that probation practitioners reported that their work was often hindered because community mental health services would not allow them to access information about the individuals they supervised, despite the fact that these requests are lawful. How common is that?

Justin Russell: We found it very common, and it is not just at the stage of probation mental health interfaces; it also occurs in the relationship between the police and NHS workers. We found widespread misinterpretation of Data Protection Act restrictions on what could and could not be shared. That is partly why we pressed so hard for an MOU—a memorandum of understanding—which spells out between the relevant agencies that it is a right to share and that they have our permission to share essential information in the best interests of the person going through the system. One of our key recommendations is to combat the myth that somehow data protection legislation stops you sharing that type of information.

- Q36 **Rob Butler:** I have a final question. You have talked about data a lot, including just then, and I know that one of your last posts prior to moving into the inspectorate was in the Ministry of Justice, where I think you were director general of justice analysis, among other things. Did you have this data problem there and were you, when you were in place there, able at least to start to try to improve the data? You are obviously, if you will forgive the expression, poacher turned gamekeeper. Can you use some of that previous experience to illuminate the problem and how people are or are not attempting to solve it?

Justin Russell: It was tough, and I always had problems getting data out of NHS England in relation to this group. I had many conversations with them about monitoring, for example, whether the 14-day turnaround target was being met for transfers. It is not an easy thing to track down some of this data. I think, Charlie, there are still issues about how much of it is in the public domain. We still do not know publicly how well prisons are doing at meeting that transfer target, for example.

- Q37 **Chair:** Given that the Government again did not accept your recommendation for an MOU, are you satisfied that their response offers any satisfactory or alternative means of dealing with this issue about the problems of data sharing, which are, as I think you also suggest, pretty much endemic?

Justin Russell: I think their suggestion is how they improve consistency within agencies in the way the information is shared. There is opportunity within agencies to issue clearer guidance on what information could be shared, but the power of an MOU is that it is jointly signed by the NHS, the police and the prosecution service, and it provides people in each of

those agencies with the reassurance that they can co-operate in this important problem.

- Q38 **Chair:** It seems to address only part of the problem, doesn't it, with respect to the Government? It is the internal measures, not the data sharing, that we are told bedevils the system. Is that addressed at all as far as you can see in the response?

Justin Russell: Not sufficiently. I think the point Andrew was making earlier was that, in the sample of cases we looked at, only 25% of the case files transferred from the police to the CPS made mention of what we knew were mental health problems, so three quarters were missing. A big part of the reason was that people did not feel they were empowered to share that information.

- Q39 **Chair:** That is very helpful. There is one other thing before we move on to another topic that some of you are going to stay with us to deal with. You talked about some of the pressures, and the pandemic of course made some of the pressures on the system even worse. The last time we had the joint inspectors in front of us seems a long time ago now—January 2021—when you very helpfully gave evidence to us about the impacts of the pandemic on your various parts of the system. Are you able to update us perhaps as to how you think they have progressed in recovering, or otherwise, from the pandemic? We seem, hopefully, to be moving into a less acute phase, if I can put it that way. Are things being caught up with? Who would like to kick off?

Justin Russell: We published our annual report on probation last week, which included a chapter on the impacts of Covid on the probation service. It is still a long way from being business as normal for the probation service.

We are finding staff exhausted by the last couple of years. There were only a couple of months last year when the probation service was not operating under what they called exceptional delivery arrangements. We are finding very, very big backlogs of unpaid work orders that have not been completed; 13,000 orders had reached the 12-month point without being completed. The delivery of accredited programmes is only 70% of the usual levels, and many people are having to wait many months before they get access to accredited programmes. Recovery is still a long way off.

We did a survey of probation officers last autumn, and unification has not really solved the problem yet. People are still very concerned about case loads and lack of staff. Full recovery is some way off.

Andrew Cayley: The magistrates court case load is 15% of the pre-pandemic level, so it is gliding down, essentially. Crown court case load is, unfortunately, 55% above pre-pandemic levels, but, again, it is coming down. The reality is that it is going to take time to get through the backlog of cases. Everybody I speak to is aware that it is a problem and people are trying to solve it. Specifically looking at the CPS, it has

had additional money, as you know. It is trying to recruit more staff. My understanding is that it has been reasonably successful in doing that.

One point that I think should be made about existing staff in the CPS is that, like everybody else, they have had a really tough time. The DPP was saying yesterday that people are exhausted trying to get through the backlog of work. With time, you are going to see improvements, but it is going to take more time to get through the backlog, and to give a precise date or figures, or anything else, is very difficult.

Charlie Taylor: Things were beginning to get back to at least a degree of normality until the latest lockdowns as a result of omicron. Things have taken a big step back recently. What we saw particularly was that some of the therapeutic groups that prisons used to run a lot have not been able to run very often. Sometimes, those prisoners have been referred to see individual practitioners, but of course that has led to much bigger delays.

Places like HMP Grendon, which is a therapeutic community, run groups that simply were not able to operate at times during the pandemic in the way they normally did. Ultimately, a huge number of prisoners have been locked up for 22, 22 and a half, 23 hours a day over the course of the pandemic. We have a real concern that we do not yet know what the effect of that will be in the future. Certainly it is something that we will be looking out for and it will be of concern.

Dr Benneyworth: We are seeing, as I mentioned earlier, significant backlogs across all health and care services, particularly in mental health. That is compounded by an increase in the number of children and young people with mental health problems who have had problems during the pandemic, and an increasing complexity in the nature of the problems people are having. We are also seeing a reduction in the long-term condition management of people, which is very important for people with severe mental illness because they often have physical problems and multiple long-term conditions. There is an increase in whistleblowers. We do not know the unmet need at the moment. We do not know how many people have not come forward in the pandemic who have symptoms of both mental and physical ill health and have not, as yet, got the treatment they need.

Sir Tom Winsor: The police are still very busy. Crime levels have returned to their pre-pandemic levels in almost all respects and to almost the same extent—domestic abuse, homicide, violence, acquisitive crime, serious organised crime. The police will never be able to cope with all the demands, so it is a question of prioritisation, but they are a lot better at it than they were. They are more efficient and they are more effective, but they could still do with a lot more. I will be saying more about this when I publish my ninth “State of Policing” report in two days’ time.

Q40 **Chair:** You were pretty clear to us last time, a year or so ago, that this did not just affect the police; it affected the whole system.

Sir Tom Winsor: They are the feeder for my colleagues to my right.

Chair: Indeed, and that has not changed at all. We look forward to the report in two days' time. We won't ask you to pre-empt it.

We have come to the end of this part of our evidence session. Mr Cayley is going to be staying with us for the next part. I thank all of you for your time and attendance, but Sir Tom in particular, since this is likely to be your last appearance before the Select Committee as chief inspector.

Sir Tom Winsor: In this role, yes.

Chair: There may be other ways. That holds out an interesting prospect. I want to thank you both for the work you have done as Her Majesty's chief inspector of constabulary, and for the very positive engagement you have had with us as a Committee. You have been very frank with us and constructive, and it has always been very much appreciated. It sounds as if there are other things to come. I am glad of that, and we wish you well in that regard. Many thanks to you and all your team.

Sir Tom Winsor: Thank you.

Examination of witnesses

Witnesses: Andrew Cayley and Wendy Williams.

Q41 **Chair:** Ms Williams, thank you very much for coming to join us. Could you introduce yourself for the record? Mr Cayley already has, of course.

Wendy Williams: I am Wendy Williams, an HMI with HMICFRS.

Q42 **Chair:** We are now going to look at another report that has been produced, in this case jointly between your two inspectorates—a thematic report on the police and Crown Prosecution Service response to rape. We are looking at the second phase of that investigation, which is the post-charge element. The first phase is dealt with in the police investigations and so forth. Now we are getting to the stage where charges have taken place. How effective is the system post charge at dealing with rape?

Wendy Williams: This was the first joint inspection of its nature between the two inspectorates, spanning two years, and involving the examination of in excess of 550 cases, also involving interviews with witnesses, with victims of rape, importantly, and with investigators and prosecutors.

In essence, the inspection concluded that the current system, and the way that prosecutors and investigators deal with rape, is currently in need of significant and fundamental reform because it is failing victims of rape. Unless those elements are dealt with, there will be an issue of public confidence and of securing justice.

We found that there were different problems at different stages. Chair, there have been a number of reviews/inspections over the years, but what sets ours aside from those is the beginning-to-end process that we

were able to look at through the lens of the victim. It involved our speaking to 135 victims of rape and victims services representatives.

In answer to your question specifically, we found that there were delays at every stage of the process, whether in relation to investigations, prosecutions or case management. We identified a lack of collaboration between investigators and prosecutors, and we found that the significant delays were resulting in real inefficiencies and anxieties for victims. On average, it took approximately 706 days from the date of reporting an offence of rape until the trial. That is nearly two years and, quite frankly, we describe the situation as unacceptable.

There were various issues, but one point that both inspectorates would wish to make clear is that we came across a number of dedicated practitioners, be they investigators or prosecutors, who were committed to securing the best outcomes, but the system itself needs to be reformed.

Q43 Chair: We will come to that. You quoted figures about the length of time—706 days, in effect, from charge to coming to court. There are also 218 days from the date of investigation before the police send the case for the charging decision. Can you help me, Mr Cayley, specifically from the CPS perspective, on the time lag in receipt of the file from the police? It is 218 days before it gets to the CPS. At some point, there will be a charge and it is 706 days, on average, until it gets to trial. What is the time period between the CPS getting the file and taking a charging decision?

Andrew Cayley: I will give you all the figures on this because I think it is only helpful if I go from the beginning. The average number of days from a rape reported and investigated until the CPS authorises charge is 340. That obviously also includes the time the police are investigating it, and the CPS may well be advising the police during that time period. The average number of days from the CPS authorising a charge to a suspect being formally charged is 21. The average number of days from a suspect formally charged to a first hearing in the courts is 13. The average number of days from the first hearing until the PTPH, the first effective hearing—the plea and trial preparation hearing—is 30, and average number of days from PTPH to the trial is 272, which is too long.

Q44 Chair: What is your assessment of where the problem is?

Andrew Cayley: You are looking at the police and CPS, and we are here to talk about that. I can give you a few comments about other areas of the system, but we have tried to steer away from the sort of blaming culture—

Chair: That is one of the things that has come up.

Andrew Cayley: —where the police are blaming the CPS and the CPS is blaming the police. I think the delays lie with both organisations, it is fair to say. Often the police are overworked. We all know that. We have just heard that from Sir Tom. They need more resources. Oftentimes with this

particular offence, the police officer investigating the case may not be the most experienced officer. He or she may not even have, in some instances, any experience of investigating these types of offence at all, so I think they are struggling there.

The CPS tries to make decisions as quickly as it can, but, again, it has a very large number of cases. The case loads, as you know and as you have heard previously, are very significant. I say that they should not be blaming each other because one of the things we have identified is that they have to start collaborating with each other. If anything comes out of this report, which I think it will, and we can come on to that when you wish me to do so, it will be that we can get the police and the CPS working best together, so that the police take early advice on a case from the CPS, from a lawyer, in order to build that case.

Rape cases are not enormously complex, but they can be challenging. Often the only evidence you have in a case is the word of the victim and the word of the defendant. There may not be anything else, so in the end it is who the jury believes. There are ways you can improve the evidence in those cases. We can talk about that in a moment. Oftentimes, I do not think the police take early advice from the CPS. I know that the Director of Public Prosecutions wants to ensure that police are taking early advice. I think where that early advice is given there is a greater chance of success in those cases, and it should reduce delay.

When it gets to court, the listing of trials is a matter for HMCTS and judges. This is an interesting area. Rape cases are often listed as what are called floaters or fixed floaters.

Chair: Yes, I saw that in the report.

Andrew Cayley: What that means, essentially, is that in a rape case often, as the Committee will know, the victim, who is already traumatised and is having to wait, having gone through the trauma of the investigation and the charge, gets to court and finds that because their case is a floater, and it is waiting for another case in front of it to finish, they are told, "Terribly sorry, but your case is not going to go on. You are going to have to go home again," when they may well have already waited a long, long time, several hundred days, to get to trial.

Interestingly, I am told that in other parts of the criminal justice system rape cases are fixtures. There is a date set. Everybody turns up to court—the victim, the defendant, the counsel—and the case goes ahead. Of course, the reality is that the listing of cases in court is not something this Committee can get closely involved in. My sense is that judges are well aware of the sensitivity around all of this; they understand.

Q45 **Laura Farris:** I am beginning to think that parliamentarians have been too reticent in criticising judicial listing. When I talked to the previous chair of the Bar Council, he said that judges must do judicial listing because it is a judicial function and they understand the administration of justice. That is a straw-man argument, surely.

Andrew Cayley: I agree with you. As you have just put it, the argument is that judges say, "Listing is a judicial matter. Constitutionally, we are independent and our determinations cannot be questioned." I absolutely accept that for decisions in cases. If they make a specific decision in a case, that is subject to appeal through the appeals process and it cannot be looked at from the outside. I agree with you.

Q46 **Laura Farris:** Your report found that in 32 out of 54 case files reviewed the trial date had been postponed at least once. For example, if it was within the gift of the MOJ, or even, frankly, through primary legislation, to insist on behalf of victims that rape cases be treated as fixtures, that would remove the problem.

Andrew Cayley: It would. To be fair to the system—and I have spent time in Crown courts looking at this because I want to try to understand it—it has serious challenges around it. I do not think there is a lack of sensitivity about these cases. I cannot speak for judges, because I am not—

Q47 **Laura Farris:** Sorry to interrupt again. The Home Affairs Committee—some of us sit on more than one Committee—heard from a number of barristers. There was memorable evidence given by Mary Prior QC. She was very critical of the judicial function. It meant that often the barrister could not continue with the client when they relisted, because they might have another engagement, so all the relationship they have built up with that victim disappears and they have to form a relationship with another barrister. The effect is that the victim withdraws from the process. That seems to me fundamental.

Andrew Cayley: Something you do not want to happen, particularly in a rape case, is that somebody withdraws.

Q48 **Laura Farris:** Another thing she said, which dovetails with what Ms Williams said, was that she thought it was important for counsel to be brought in early because of—I have to say she spoke very plainly about this—inadequacies in the police. As you said, some of them were inexperienced. It was much better to have a criminal barrister experienced in rape meeting the victim early on, and staying with them all the way through the process. That overrode the provision of any independent ISVA. Is that what they are called?

Andrew Cayley: ISVA.

Q49 **Laura Farris:** It was more important to have somebody who understood the law, how the trial would work—the whole thing—to go and meet the victim early and stay with them all the way through. Do you agree with her? Do you think that if the police or the CPS brought in counsel early, removing some of the inexperienced police officers in the early days, and we had a much more stringent requirement around the listing of trials, we would see less victim attrition and better victim support and more convictions?

Wendy Williams: There are various steps before we get to that position. At the point of reporting an offence, it is important for the investigator to

adopt the sorts of techniques that enable the victim to give the best evidence they can. Recognising that victims do not recall these traumatic experiences in a linear way and the importance of taking the first statement and identifying the issues and all reasonable lines of inquiry that are geared towards the offender, as opposed to the victim, are the sorts of aspects that will lead to strong cases being built and better outcomes as a result.

The Chair spoke about delays. There are various other issues. One is the very practical difficulty that the agencies themselves do not have a shared understanding of what the situation is, what the delays are and where they are occurring in the system. Unless and until that is the case, and there is shared understanding of where cases fall out of the system, what the blockages are in the system, what is preventing victims from feeling they can support the proceedings from beginning to end and what is causing victims to withdraw support, improvements will not occur.

Q50 Laura Farris: Could you go a bit further and say exactly what you mean? Are you going back to your original point that the police and CPS do not share information or communicate soon enough? I am so sick of talking about judicial listing. I have moved from a neutral position on this to feeling that it is part of the problem, and I do not know why we have not done more about it in Parliament. The thing about saying it is a judicial function and different judges will list in a different way is that it is not an objective standard that only a judge understands how to apply.

Andrew Cayley: Essentially, it has two components. I know that you are a lawyer and I do not want to be too simplistic about it, but so that everybody understands, how I see it is that, in essence, in the Crown court you have a listing officer and a listing department in the court and they are primarily responsible for the listing of cases. A judge then supervises the listing. Normally, it is the resident judge in a court who is in charge of listing. He or she works together with the listing officer.

You are quite right in your concern. A lot of people have expressed concern about the way in which trials are listed. I agree. I think listing is not a judicial function. I do not think you can throw over it the cloak of judicial independence, because it is a problem. One says that not to criticise but perhaps to offer help, support and assistance to try to make the system better and more efficient, and address some of the issues you were talking about.

Q51 Chair: Do you think part of the problem is that HMCTS as an institution does not have an understanding of exactly the pressures that both you and Ms Williams have been talking about, and which practitioners in the CPS and police officers probably understand? The elephant in the room, if I can put it that way, is that HMCTS is carrying out an administrative function perhaps without understanding the implications of listing something as a floater, for example.

Andrew Cayley: All I can tell you is that in terms of HMCTS the inspectorate body was abolished, in 2010, I think. We have residual

powers around that. If I am involved in inspection of the CPS, I can also inspect HMCTS as it relates to that. I do not think there has been much inspection of HMCTS in other inspections. I don't know. I have only been in this job for a year, but I do not think there has, and it needs to be looked at.

Having said that, from speaking with listing officers in courts I think they get it. It is not in our report, but I travel around the country visiting courts. They understand how urgent these cases are, but all kinds of factors are at play to delay things, and those are contained in our report.

You made a point about bringing in counsel early. I agree with the principle you expressed, in that in many cases it is essential that the police take advice from a lawyer, and that is probably best done within the CPS in my view. You talked about appointing counsel. If you appoint counsel prior to the PTPH, right at the beginning of a case—I know that in very big cases counsel is appointed early on—the problem that might arise in a rape case is the very problem you identified: counsel may not then be available to prosecute the case. You end up in a situation where the victim is looking at this and all of the parties involved are changing. That adds to the stress and strain of an already traumatised individual going through the system. I agree with you absolutely about early advice, but I think it should be done by the CPS.

Wendy Williams: It also brings to the fore the importance of ensuring that victim services are consistent. One of the issues we identified was the fact that because of short-term funding, given that the average case takes nearly two years to be resolved, if there is a change in the services and support that the victim receives, the risk of the victim not supporting the proceedings and falling out of the system is heightened. There is a need for continuity, and the best form of continuity is the support that the victim receives right from the outset. Further down the process, better collaboration and joint working will make the system much more co-ordinated than is currently the case.

Andrew Cayley: It is worth making the point that post charge the attrition rate of victims dropping out and refusing to co-operate any longer is very low. For most people who do not want to support a case, it is prior to charge. That is a fact. What Wendy is saying is true; people need support throughout the system and that is not there at the moment, but at present most victims stay with the case once it has been charged.

Q52 **Ms Abbott:** As you know, in the last five years there has been an absolute decline in the number of charges and prosecutions for rape. You will also know that the vast majority of victims do not see the crime against them charged, and there is a huge amount of public concern both among the profession or those looking at these things and the general public about the decline and the very poor results in rape cases.

I note that in the Government's end-to-end rape review, which came out last year, they committed to reversing the trend and returning the volume of cases referred to the police to 2016 levels by the end of this

Parliament. In real terms, that means over 1,000 more victims would see their cases proceed. Is that realistic?

Wendy Williams: What is realistic is ensuring that investigators and prosecutors work together far more effectively than is currently the case. One of the issues we identified was that workloads were considered to be very high on the part of both investigators and prosecutors. The feeling expressed to us was that practitioners did not feel they were ever getting on top of their case load, and that led us to conclude that there was a need for more resources and for the system to be adequately funded. That could take various different forms, but while we did not look at what resource it would take to charge a case and investigate it, we saw that the delays were causing waste and inefficiency.

As long as that continues, and investigators and prosecutors are not working together to build strong cases, the prospect of reverting to previous levels of prosecution is hampered. That is where Operation Soteria comes to the fore. It is a pilot, admittedly, but it brings together researchers, academics, investigators and prosecutors. The whole process is for them to work in a collaborative setting identifying what techniques work and understanding what happens at different stages of the investigation and prosecution process. Without that forensic examination, not in an environment of blame but in a learning culture, things will not improve. The quality of decision making will not improve and volumes will not increase. Investing in those specialist arrangements will lead to downstream savings, but it will call for an investment in the upstream processes for those efficiencies and improvements to be realised.

Q53 **Ms Abbott:** I asked quite a straightforward question. Is the Government's commitment as of 2021 to reverse trends and return to the volume of cases referred by the police to the CPS to 2016 levels realistic? You have not answered the question directly, so can I assume you would rather not?

Wendy Williams: No, not at all. If I did not make my response clear, I will try to do so.

Q54 **Ms Abbott:** I heard what you said, but is it realistic? If you cannot answer, that is fine; I understand that. Could you answer it, Mr Cayley?

Andrew Cayley: I would like to bring Wendy back in on this because she can answer that question directly. I think she was giving you all of the background.

At the beginning, you said something about public confidence in the system. I wholeheartedly agree with that comment. The biggest crisis in all of this is that public confidence is lost and there is a sense in many areas that rape has been decriminalised. Living in 2022 and not being able to say that women and girls are safe both on the streets and in their homes is shameful. That is my own feeling about it. That is my response to what you said at the beginning.

In answering your specific question about going back to 2016 levels of prosecution, I cannot say to you that, with the recommendations we have made, we will go back to those levels. What I can say to you for all the reasons Wendy set out very eloquently—I will not repeat all of the recommendations that have been made—is that you will see an uptick in the number of prosecutions, but it will take time. I cannot give you a figure, but if the police and the CPS work collaboratively together you will see an increase in the number of cases coming to court. Yes, you will.

Q55 Ms Abbott: Ms Williams, you gave me all the background. Are you able to say anything about whether it is realistic to bring things up to 2016 levels?

Wendy Williams: It is important for all the agencies to look at the problem and approach it in a positive way, focusing on where cases are falling out of the system and the reasons for that and addressing that attrition. Of the 55,000 cases reported last year, 4,000 were subsequently referred to the CPS for a charging decision. Of those, 3,000 were subsequently charged and just over 1,000 resulted in convictions. With that rate of attrition, if the agencies are not looking at why cases fall out of the system, they can continue to aspire to returning to 2016 levels, but they will not be successful.

That is the reason why we have sought to identify some of the issues. The police, prosecutors and the courts need to come together effectively to provide an appropriate service for victims by looking closely at why cases are failing. Is it because there has not been the swift decision making that could lead to strong cases being brought? Is it because the respective agencies are too busy looking to each other, as opposed to working together to identify how to build strong cases? What are the features of the cases that resulted in successful outcomes? It is by the change in approach and mindset that we have reported that significant improvements should subsequently result.

Q56 Ms Abbott: We are interested in the issue of last-minute postponements. You touched on that. You talked about floaters, which was very interesting to me because I had never heard of such a thing. My colleagues talked about judicial listing. Is there anything further you want to say about last-minute postponements?

Andrew Cayley: I do not want to repeat what I have already said. I cannot add anything to it. The only point I would emphasise is that for any victim of a crime to attend court and find that the trial has been postponed is fairly traumatic, but for victims of rape it can be particularly traumatic because of the nature of the offence, confronting the defendant and all of those issues. Whatever can be done to make more effort so that these cases are not floaters and are always fixtures is essential. It is paramount and needs to be done quickly.

Wendy Williams: That is the reason why one of our recommendations was to look at specialist courts. Specialist courts would be able to pool their resources, experience and expertise, and ensure that the backlog of

cases, which is contributing to significant delays, was dealt with. That could be observed as a potential pilot for future cases and serve to point practitioners in the direction of whether specialist courts have a positive effect or whether the effect is such that it is still possible to list more effectively among general lists.

Q57 **Ms Abbott:** Happily, you have gone on to what would have been my final question. Have you had any feedback from Government about the idea of specialist rape offence courts?

Wendy Williams: So far, we have been told that the Ministry of Justice is looking at the concept and considering whether it is a viable proposition. In the past, Andrew has had various views about where those resources could come from, but given that the overall number of rape cases awaiting trial is not huge, it is presumably possible to deal with those cases fairly swiftly and effectively.

Q58 **Chair:** That is very helpful. Building on that, perhaps you could explain just how a specialist court would work in practice. It is a rather different jurisdiction. It is not like a family court or anything like that; it is a Crown court simply dealing with rape cases.

Andrew Cayley: It is relatively straightforward. Essentially, it is about locating a court in other premises. As you know, the Government are using premises—hotels and conference centres—as Nightingale courts. Practically, those buildings do not have holding cells, but the reality is that the vast majority of defendants awaiting trial for rape are on bail, so you do not need holding cells. You will find that the MOJ says that you need a sufficient number of judges or recorders who are ticketed. As you know, you have to have a special authorisation from the Lord Chancellor or the resident judge to try those cases. You would need to find judges; you would also need to find counsel, specialist staff and victim support to look after the victims of rape, but it could be done. You could brigade all of the rape cases together, put them into a single list and work your way through them.

Q59 **Chair:** I don't know whether it is still the case, but there was a time when the Old Bailey had a diet, almost overwhelmingly, of either serious sexual offences or serious offences of violence of one kind or another. There was a bit of concern that sometimes you get judicial burnout if people are relentlessly hearing one type of case all the time. Is that something we should guard against?

Andrew Cayley: I don't know enough. I would be reluctant to comment on judges burning out. Let's face it, everybody involved—

Chair: They are harrowing cases.

Andrew Cayley: They are, for anybody involved in the criminal justice system. Wendy can speak for the police. If prosecutors are working in a RASSO unit, that is all they do; they work on those kinds of offences. Yes, it becomes exhausting. People dealing with these cases are seeking medical assistance, and certainly mental healthcare, because it is hard. It is really hard.

Q60 **Chair:** In the event of conviction in these cases, if you did not have cell capacity, you would have to adjourn sentence to a venue where there were custody facilities.

Andrew Cayley: Exactly, but I think that can be done.

Q61 **Chair:** Would you be looking to make improvements to the physical layout of courts so that it is easier to deal with some of the protective measures you referred to? You talked about inconsistency in the use of screens, for example, never mind section 28, which I will come to in a minute.

Wendy Williams: The layout of courts is a relevant consideration. One of the aspects we identified in the inspection was the lack of use of special measures consistently in any event, whether it was giving evidence behind a screen or pre-recorded evidence in the form of section 28. When one considers the whole process and the trauma that can be experienced, it was a surprise to us that special measures discussions were not consistently taking place between investigators and prosecutors or with victims themselves, so that formed one of our recommendations.

Q62 **Chair:** Mr Cayley, you mentioned that a number of people in the system were trying to improve collaboration. Is that one of the areas where you see signs of better collaboration—having those discussions—or is that one of your recommendations?

Andrew Cayley: Do you mean between the police and the CPS?

Chair: And perhaps with the defence as well.

Andrew Cayley: For the CPS and police, yes. We heard the DPP yesterday at the joint chiefs' meeting. He sees better collaboration as a priority. I will let Wendy speak for the police, but the police speak about it too.

It is very difficult to make the defence collaborate. It is not easy. Substantively, if you look at the defence case statement, what is the position of their client? They are obliged to serve statements under the criminal procedure rules, but they are not always served on time. They can often delay cases because they lead to disclosure problems. If a defence case statement is served on the prosecution very late and it gives rise to seeking more information from the police and CPS, that will delay a case. The system needs to start looking at the way defence lawyers behave, in as much as they are independent within the system and have to defend the interests of their clients. Oftentimes, the CPS are held responsible for issues that are actually linked to the defence, not to them.

Q63 **Chair:** It is one of those situations where there has to be timeliness on both sides. We talked about the importance of an offender-focused strategy. That does not obviate the obligation on the Crown Prosecution Service for disclosure when it is relevant. That has to be done in the timeliest fashion; equally, the response has to be timely. For example, what is the percentage of adjournments or cases being taken out of the

list? They are in the warned list and they are taken out. How many of those instances are because of issues with disclosure by one side or the other? Late disclosure means that, if you are defending, you want to make an application because you need to get your own evidence that may follow up the disclosure or rebut something. Did you manage to get any data as to how big an issue disclosure problems are in all these delays?

Wendy Williams: We identified disclosure as an issue. As to whether it led to cases being adjourned, that was not something that specifically came out of our file sample. What we saw, however, were examples of late disclosure that then caused the system to concertina, whereas, as you pointed out, disclosure should be dealt with effectively by the prosecution team, but there is a commensurate responsibility on the defendant. That is where the court comes to the fore in enforcing the disclosure provisions so as, hopefully, to avoid late disclosure occurring.

Q64 **Chair:** The courts have quite significant powers in case management. Do you find that they are always consistently exercised in relation to rape and serious sexual offences?

Andrew Cayley: That is not an easy question for me to answer because we did not really look at it. What I can tell you is that for defence case statements a judge has no power of compulsion in making the defence serve them. Obviously, it has to be done, but you cannot say it has to be done by a specific date. Judges need to be tougher about making the defence set out their case earlier in the proceedings, because the point Wendy and I have made is that it affects disclosure. If you raise an issue late in the proceedings, for example if the defence suddenly says, "We believe our client has a mental health problem," everybody is racing around to try to find information on whether or not he does have a mental health issue. So the earlier disclosure is settled and defence case statements are provided in a trial, the better.

Q65 **Chair:** Ms Williams, you are nodding; that is your experience too. The other area you flag up is the inconsistent approach to section 28 applications—the pre-recorded video evidence. Were you able to get any sense as to why there is that degree of inconsistency? In terms of policy everybody seems to welcome it. The legislative framework is in the same place, but there seems to be a different approach in different CPS areas, different courts and different police areas.

Wendy Williams: What came through was that they were inconsistently used, and therein lies the difficulty. Special measures as a whole were not afforded the priority they should have been, and section 28, which would take a great deal of the anxiety out of the process for victims, was not considered as often as it should have been.

Q66 **Laura Farris:** Is that a failing of the CPS or of the police?

Wendy Williams: That's the thing. In the spirit of not pointing fingers, it is the failure of both organisations. It is for investigators and prosecutors to identify the issue. If it is not raised as a possibility, victims are not

aware that it is available to them. Given what we said earlier about the number of adjournments that can occur, and the length of time that a case can take to come to court, having those pre-recorded accounts banked, as it were, will assist in the trial subsequently proceeding efficiently.

- Q67 **Chair:** To make it work properly involves some additional administrative work in terms of listing, for example. To do it properly you have to make sure that you have continuity of counsel, and arguably not too long a gap between pre-recording of the evidence and the rest of the trial. Do you find that is sufficiently addressed?

Andrew Cayley: On your first point about listing, there is complexity around that and I will concretely explain to you why that is so. For example, if you had an ongoing trial in the Crown court in Wolverhampton and the counsel involved in that trial was listed to do a section 28 hearing in London, it would mean that the case in Wolverhampton had to be adjourned to allow counsel to go to London to do that pre-recorded cross-examination. It creates administrative issues and delays in other cases. I think judges are very worried about the disruption. They are not against the process; everybody accepts that.

To go back to something Wendy mentioned about why it is not being used consistently, I think there are historical reasons. Historically, it was a provision used for child witnesses. As you know, Parliament then extended it. Wendy touched on this. There is a lack of awareness on the part of both the police and prosecutors that the cross-examination of witnesses can be done by video.

- Q68 **Chair:** You are expecting a response to your report from Government.

Andrew Cayley: Yes.

- Q69 **Chair:** You do not have a timeframe yet.

Andrew Cayley: No.

- Q70 **Chair:** We are running up to the deadline with our quorum and the rather unusual business that is happening in the Chamber later involving the President of Ukraine. Perhaps once the Government have responded to your report it might be possible for you to return and we can pursue the matter further. Would that be a convenient way of taking it forward?

Andrew Cayley: Absolutely.

- Q71 **Chair:** I am very grateful to you. I appreciate there is more we can look at in this area, but you have given us a very helpful heads-up as to where the report is going and some of the issues that I expect we will want to pursue with our sister Committee, the Home Affairs Committee. If we are able to come back and take stock once we see what the Government are proposing to do on the back of your proposals, we can move it from there.

Andrew Cayley: I realise what you are trying to do. I came to this very late because I was appointed only in April. Wendy has been running it for

two years. I think this is one of the most significant reports on criminal justice in a long, long time. Wendy and the other inspectors involved have done an absolutely fantastic job on it. It is important for many reasons that I will not repeat as we have touched on them already, but I think it would be very wise for us to come back.

Chair: Let us make sure that we do that. If you like, we will treat today as a preliminary hearing and then deal with those issues. Thank you both very much for your time and your helpful evidence to us today. The session is concluded.