



Ministry
of Justice

The Right Honourable
Dominic Raab MP
Deputy Prime Minister
Lord Chancellor & Secretary
of State for Justice

Sir Robert Neill MP
Justice Select Committee
House of Commons
London
SW1A 0AA

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30 January 2023

Dear Sir Bob,

FOLLOW UP ON DEPUTY PRIME MINISTER'S JUSTICE COMMITTEE APPEARANCE

I was pleased to attend the session on 22 November to give evidence to the Justice Committee and that you and the Committee found it helpful. Further to your letter of 29 November, I am writing to provide you with further information on the areas I agreed to write on and areas where we did not have time to cover.

Courts

1. Whether the MoJ has a target for reducing the number of outstanding cases in the Family Court or any other courts, beyond the 53,000 target for the Crown court? [Question 47]

We regularly model various scenarios for outstanding caseloads in both the family court and other jurisdictions.

Whilst these provide a useful guide for planning and allocations purposes, we have not used these to develop target caseloads for each jurisdiction.

This reflects the fact that resources will often be moved or shared between jurisdictions in civil and family in any given year and the level of uncertainty that is inherent in our demand forecasts for those jurisdictions.

In November 2020, we published an overview of the HMCTS recovery plan for the civil and family courts and tribunals. This summarised the progress that had already been made in the family courts, as well as outlining plans and targets for further work to drive increased capacity and efficiency.

2. Whether the MoJ has revised its target of reducing the number of outstanding cases in the Crown Court to 53,000 by March 2025? and

3. If the MoJ could tell us when, based on the current rate of progress, the number of outstanding cases in the Crown Court will be reduced to 53,000? [Response to 2 and 3 are grouped together]

Our decisive action in the courts kept justice moving during the face of an unprecedented pandemic and as a result, the outstanding caseload in the Crown Court reduced from around 60,400 cases in June 2021 to 57,500 at the end of March 2022.

However, the caseload increased again from April, primarily due to the Criminal Bar Association action, and stood at 62,400 at the end of September. The caseload has now stabilised and stood at 61,900 at the end of November.

Our projections of the outstanding caseload reflect several different factors including the number and type of cases flowing into the courts, the capacity available across the system to hear those cases and how quickly they can be heard, whilst also ensuring a just outcome.

Despite these challenges, we continue to strive to reach our ambition of reducing the backlog to 53,000 cases by March 2025. We will do this by working closely with the judiciary and other cross-system partners. We regularly update our modelling to reflect the latest data and have no plans at this time to revise our public aim to reach 53,000 outstanding cases by March 2025.

We will keep this under review and look to update the committee further in due course.

4. The MoJ has announced a target of recruiting 1,000 judges in 2022-23. Could you provide a breakdown of this figure by the type of judge? [Question 8]

In January 2022, the Lord Chancellor approved a recruitment programme for around 1000 judges for 2022/23 (Apr-Mar). Recruitment needs are kept under review and can therefore change in-year. The Judicial Appointments Commission operates a rolling programme of judicial recruitment and the numbers in the table below reflect the selection exercises commencing in the 2022/23 recruitment programme for 981.5 vacancies overall:

Exercise	Number of Vacancies
High Court Judge	2
Circuit Judge	80
District Judge	100
Deputy District Judge	100
First-tier Tribunal Judge (fee-paid)	125
Employment Tribunal Judge (fee-paid)	75
s.9(4) Deputy High Court Judge	25
First-tier Tribunal Judge (salaried)	60
Employment Tribunal Judge (salaried)	25
Deputy District Judge (Mags Court)	TBC (max 50)
Medical Members, Health Education and Social Care chamber	80
s.9(1) Authorisations to act as Judge of the High Court	40
Specialist Lay Members, Special Educational Needs & Disability chamber	100
Specialist Lay Members, Health Education & Social Care chamber	60
Various small exercises for single leadership posts / 1-10 vacancies	59.5
TOTAL	981.5

In addition, up to 172 recommendations are expected to be made February 2023 as a result of a Recorder exercise that launched in the 2021/22 recruitment cycle.

5. When will the evaluation of the rollout of section 28 be published? [Question 42]

The process evaluation of section 28 is scheduled to be published in spring 2023 and we will share findings from this evaluation with the Committee.

6. You mentioned a proposed reform for instances in which people refuse a reasonable mediated outcome and then pursue a case in court and also that the Department wants to incentivize engagement in alternative dispute resolution. Could you provide more detail on those initiatives? and

7. You mentioned that the President of the Family Division and the Government have a clear reform agenda for private family law: could you provide more details on those plans? [Question 45] [Response to 6 and 7 grouped together]

This Government wants significantly more people to use dispute resolution to reach agreements rather than coming to court.

In March 2021, we launched the Family Mediation Voucher Scheme for those seeking to resolve private family law matters relating to a child. Since its introduction in March 2021, over 13,500 eligible families have successfully used the scheme to access mediation, with the Government committing over £8.6m in funding to date. Family Mediation Council survey data shows that 65% of families who have attended mediation sessions through the voucher scheme reached a full or partial agreement away from the family courts, while a further 3% only proceeded to court to secure a consent order to formalise their agreement.

Many families apply to the court to resolve their disputes about child arrangements. However, we know that prolonged conflict between separating parents is harmful to children's wellbeing and life chances and that many disputes are often better resolved through less lengthy and adversarial approaches. The Government is developing proposals to further support and encourage families to attempt mediation when they have private family disputes they are seeking to resolve. These proposals will shortly be subject to public consultation. As part of this, we are considering the means the court has to hold accountable those who seek to block attempts to resolve the dispute or draw out proceedings unnecessarily, including the use of cost orders. Increasing the use of mediation or other forms of dispute resolution will spare families and especially children the anguish of protracted litigation, reduce court backlogs and deliver on the Levelling Up agenda.

As part of our wider reform agenda, we intend to make the private family law process more investigative and less adversarial, with the aim of reducing the demand on the courts and the negative impact proceedings can have on any children involved. We are currently overseeing the pilot scheme of "pathfinder" courts in Dorset and North Wales to test this approach to certain private law proceedings. The aim is to support the appropriate participation of the child in relevant cases and ensure that the court meets the welfare needs of the child and reduce the number of cases returning to court. The pilot courts are already developing positive working relationships with key local partners, such as mediators, local authorities and domestic abuse support services.

In the civil courts, we recently consulted on the introduction of compulsory mediation for lower value claims in the civil courts. Claims valued under £10,000 would be required to attend a free, one-hour telephone mediation with HMCTS' Small Claims Mediation Service before their case can progress to a

hearing. Our vision is that through this policy thousands of additional people and small businesses will be supported to resolve their dispute through mediation and avoid the time, cost and stress of litigation.

We are analysing the consultation responses in detail. The Government is also considering whether a requirement to mediate should be expanded beyond small claims.

8. Could you provide a timeline for the delivery of reforms designed to digitise processes in the civil courts? [Question 50]

Two services in the civil jurisdiction have already been part digitised – the **Online Civil Money Claims Service** (claims for a fixed amount of debt) and the **Damages Service** (claims for an unspecified sum such as for personal injury). HMCTS will complete the digitisation of these services by the end of the reform programme, enabling parties to upload their evidence digitally and the hearing to be conducted using a digital file.

To date, these services have digitised the issue of claim and response to claim stages, along with the referral to a judge for directions* to be issued. Since 2018, 360,000 claims have now been issued using the Online Civil Money Claims Service (OCMC) with those cases reaching the directions stage three times faster than those issued using the legacy service. Damages Claims received on paper take an average of 11 days to be issued, whereas in the new Damages Service, validation and issue of the claim is automated so happens on the day of receipt.

We also have plans to extend the OCMC service to users that issue claims in bulk and to digitize the process that supports the enforcement of county court judgments through issue of a warrant of control (instructing county court bailiffs when a county court judgment is not paid). This work will also be completed by the end of the reform programme.

9. Whether people who have made an allegation of rape are considered a victim under the Victims Bill; and what practical difference the Victims Bill will make to those complainants? [Question 121]

Victims of rape, regardless of whether they have reported an offence to the police, are considered victims under the Victims Code and Victims Bill as they have been subject to criminal conduct.

The Victims Bill will positively impact victims by improving their experience of the criminal justice system and giving them confidence that there is the right support available. Two measures in particular will make a difference to these victims. Victims of rape may need a range of support, including medical, therapeutic, practical and/or emotional support, and the Bill will require PCCs, local authorities and health bodies to collaborate when commissioning these services, so that this is better coordinated.

The Bill also aims to give victims of rape the support they need to engage with the system, by strengthening the roles of Independent Sexual Violence Advisors (ISVAs). The Bill will do this by introducing a statutory definition of ISVAs, requiring the Secretary of State to issue guidance and requiring agencies to pay regard to this guidance. These advisors are crucial to supporting victims of sexual violence, with research showing that almost 50% more likely to stay engaged with the criminal justice process with this support

Beyond the Victims Bill the Ministry of Justice is more than quadrupling funding for victim and witness support services by 2024/25, up from £41m in 2009/10. This includes increasing the number of ISVAs and IDVAs by 300, to over 1,000, by 2024/25 - a 43% increase on the number of ISVAs and IDVAs.

Sentencing

10. Could you provide clarification on the compatibility of commitments to introduce a whole-life sentence for child murder with the subsequent criteria of significant premeditation; and what the sentencing options are for child murder? [Question 63]

All cases of murder, including child murder, must receive a life sentence. These crimes are rightly punished severely by the courts and the law allows lengthy prison terms including whole life orders (WLOs) in certain cases.

When a life sentence is imposed, the court must determine the minimum period to be served in custody, in line with the starting points set out in law.

WLOs are the most severe penalty available in our justice system. Someone sentenced to a WLO will spend the rest of their life in prison without the prospect of release. As such, they are reserved for the worst cases of offending where the offending in question is viewed as exceptionally serious. There are currently 65 offenders serving WLOs in our prisons.

The law sets out a number of circumstances where a WLO is the starting point when considering what minimum term should be imposed by the court. The law requires that the murder of a child carries a WLO as a starting point if the murder involves sexual or sadistic motivation or the abduction of the child.

The Police, Crime, Sentencing and Courts Act (PCSC) 2022 expanded the range of circumstances which carry a WLO as a starting point to include the murder of a child involving a substantial degree of premeditation. Although all cases of murder are serious and cases of child murder particularly so, the view was taken that cases of child murder that had been committed with such premeditation were exceptionally serious and so should have a WLO as their starting point when considering the minimum custodial term.

Some instances of child murder may also fall within the other circumstances which carry a WLO, which apply to victims of all ages, where a WLO is the starting point, for example terrorist murders or murder committed by someone with a previous murder conviction. It is possible for the court to regard any offending as exceptionally serious and impose a WLO in a case in which the circumstances are not listed as those where such a punishment would usually be the starting point.

Even if the murder of a child does not attract a WLO, the perpetrator must receive a life sentence which is likely to include a substantial minimum custodial period. Depending on the circumstances of the case, the starting points for this period can be set at 30, 25 or 15 years.

There are also aggravating factors, set out in legislation and applicable to all murders, which could result in an increase to the minimum term due to the victim being a child. These factors include the vulnerability of the victim due to age and where the murderer abused a position of trust.

At the end of the minimum custodial period, an offender will only be released if the Parole Board are satisfied that he or she can be safely released. Many such offenders are not released at this point and many will remain in prison significantly past the expiry of their original 'tariff'.

11. How many decisions on average each year will be subject to greater Ministerial oversight of (a) moves of offenders to open conditions and (b) the release of top tier offenders on parole? [Question 124]

11a. We expect on average around 250 recommendations for moves to open conditions will be subject to greater Ministerial oversight each year.

11b. As set out in the Root and Branch Review, we intend to legislate so that if the Parole Board decides to release a prisoner in the top-tier, the case will come to ministers to review and potentially refuse release if they judge the new statutory release test has not been met. Based on previous years' data, we estimate that, on average, approximately 660 cases per year will be subject to greater ministerial oversight.

12. How many recommendations for open conditions were made in 2021-22 and how many were accepted?

In 2021-22 the Parole Board made 528 recommendations for moves to open conditions, 412 of which were accepted.

13. How many recommendations for open conditions have been made in 2022-23 to date; and how many of those were accepted?

In 2022-23 the Parole Board has made 261 recommendations for moves to open conditions, 13 of which have been accepted, with 218 awaiting a final decision, by Ministers (or an official with delegated responsibility).

14. Whether it is the Government's intention to introduce a standalone Bill to implement the proposals in the Root and Branch review; and whether we will see that legislation in this Parliamentary session? [Question 1]

We are exploring options for how best to bring forward legislation for the parole measures. We will introduce this legislation as soon as parliamentary time allows.

15. If you will share the clauses in draft with this Committee in advance of the legislation being presented to Parliament?

Though there is benefit to pre-legislative scrutiny as demonstrated by the recent pre-legislative scrutiny inquiry carried out by the Committee on the draft Victims Bill, this is not standard practice. The legislation will be brought forward when Parliamentary time allows and committee members will be able to scrutinise the legislation in the usual way.

Bill of Rights Bill:

16. Whether you have had discussions with Members of the Irish Government on the Bill of Rights Bill?

The Government regularly discusses matters of mutual interest with our international partners.

17. If you will provide examples of recent cases in which section 3 of the Human Rights Act has proven problematic to the Government? [Question 111-7]

Section 3 has in some cases shifted the balance of power away from Parliament towards the courts. We set out examples in the Bill of Rights consultation (paragraphs 116 – 123, pp 23-35). Repealing section 3 rebalances this, so that Parliament will have a greater say in how to address incompatibilities. Where legislation is not compatible with rights it ought to be for elected representatives in Parliament to decide whether and how to address that incompatibility, instead of our courts being required to rewrite legislation through interpretations made under section 3.

18. Clause 1(3) of the Bill states that ECtHR judgments are not part of domestic law and do not affect the right of Parliament to legislate. As that is already the case, what legal effect does this provision have?

Given the important role that this Bill will play in our constitutional framework, it is right that we set out the key themes and principles of the Bill.

19. Clause 9 recognises that the UK has trial by jury. What legal purpose does this clause serve?

Jury trial is not recognised specifically by the European Convention on Human Rights. The purpose of this clause is to recognise that in the UK trial by jury is one mode of trial capable of providing a fair trial under Article 6. Jury trials are part of the criminal justice system in each part of the UK and this clause emphasises their important position.

The clause does not change the extent to which jury trials are prescribed by law in any jurisdiction of the UK.

20. Whether clause 5's proposed limitation on the imposition of positive obligations under the Convention would have made it harder for the victims of John Worboys and the families of Hillsborough victims to enforce their Convention rights?

The Bill of Rights will not prevent such serious cases from being brought, and the Bill does not remove any existing positive obligations. The Bill will however ensure that where interpretations involving new obligations are adopted by the European Court of Human Rights, it will be for Parliament to decide whether and how they should be recognised in UK law, bearing in mind the margin of appreciation.

21. How many claims have been brought in which 'right to socialise' was the grounds for litigation to date; and how many of those claims have been successful? [Question 94]

Since the introduction of the separation centres policy, four claims have been issued that included Article 8 ECHR as one of the grounds of claim. Damages claims were pursued in two of these cases, one of which was settled.

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IPP Prisoners:

22. You told the Committee that 34% of IPP recalls were as a result of further charges for new offences. How many of those charges resulted in prosecution and conviction? [Question 55]

We are unable to provide a response to this question as the required data is not routinely collated. The figure of 34% where there is a further charge is only collated as part of the data to explain the reason for the recall. At the point this is collated offenders are most often only at the stage of having been charged with an offence. This is where the routine data collection ends.

Prisons:

23. How many prison officer vacancies HMPPS is currently carrying? [Questions 127-8]

The Department does not publish prison officer vacancy figures. A prison's staffing requirement for every grade and role is assessed by the Governor and the Prison Group Director, within their allocated budget. Workforce and budget planning processes allow the overall resourcing levels to be monitored at national level.

24. The prison population is estimated to grow to 98,700 by June 2026, how many band 3-5 prison officers will be required for that population?

We have estimated that up to 5,000 additional prison officers across public and private prison will be needed to deliver the expanded estate by the mid-2020s.

Staffing requirements for new establishments continue to be assessed and factored into workforce planning up to 18 months in advance of new prison places opening.

25. The Government has committed to delivering 20,000 prison places by the mid-2020s. How many prison places will be available by 2026 and how many will be available in total once all 20,000 new places have been delivered?

We have already delivered over 3,100 additional prison places across the country. This includes HMP Five Wells which opened in February last year as a c.1,700 capacity prison in Wellingborough.

The new prison HMP Fosse Way in Leicestershire, which will hold c.1,700 prisoners, is due to open this spring, and construction has begun on Britain's first all-electric prison at Full Sutton in East Yorkshire, which will hold nearly 1,500 prisoners when it opens in 2025.

We are also undertaking major refurbishments at HMP Birmingham, HMP Norwich and HMP Liverpool, delivering c.800 cells between them. A wing-by-wing refurbishment at HMP Liverpool will see every cell renovated. Construction has started on new houseblocks at HMP Stocken, HMP Hatfield, HMP Sudbury and HMP Rye Hill, delivering approximately 900 additional places between them. In June, we announced a contract with Kier and Wates to oversee the construction and delivery of approximately 2,200 new places across six prison sites. These will include houseblocks, as well as supporting buildings such as kitchens, workshops and sports facilities. The installation of c.1,000 Rapid Deployment Cells places has started across the estate, and the majority will be delivered in 2023.

Additional projects to deliver the remaining places are progressing and we intend to deliver c.5,000 places through three new prisons which are currently subject to planning appeals. We recognise the challenging fiscal environment, which is why it is right that as we deliver a modern, fit-for-purpose prison estate for the future, we do so in a way that reflects the fiscal reality. The budget for the financial years beyond the current SR period is not yet set and we will negotiate with HMT in the usual way.

Over the coming years additional capacity will continue to come in to use, however prison capacity can also be taken out of use both temporarily and permanently for a number of reasons. This can include

deterioration in the standard and condition of the accommodation or for essential maintenance and refurbishment. Operational capacity therefore varies over time, and we are not able to provide an accurate figure for future useable operational capacity.

26. How much more will the prison service cost to run as a result of the increase to 98,700 prisoners, compared to today?

Costs of the prison service for each year are published at: Prison performance data 2020 to 2021 - GOV.UK (www.gov.uk). These costs cover the direct and overall cost of prison places and the prisoner population. The cost of the prison service will increase as a result of the increase in prison capacity. However, we expect direct costs for the new prison places to be lower than the cost of older places in the existing estate, which may reduce the average cost of the prison service per place.

In addition to a focus on safety, security and rehabilitation, the new prison places have been designed with efficiency in mind. The relatively large scale of the new prisons also provides further cost efficiency through economies of scale and these prisons will have lower major maintenance costs once they are built compared to older establishments in the existing estate.

27. As of May this year, 35,000 of the 80,000 prisoners in England and Wales were being held in accommodation that did not meet current fire regulations.

We have major programmes of works underway to upgrade 30,000 places in public sector prisons and 5,000 places in privately operated prisons, bringing them fully in line with current fire safety requirements. This year we are investing over £65m to address these issues of fire non-compliance, and we will seek to maintain investment in this area until the programmes are complete by 2026/27. The delivery of fire safety improvements depends critically on availability of headroom in the prison estate, so we will continue to monitor closely the pressures in the prison population to ensure we can continue to deliver these improvements.

Staffing costs:

28. How much severance pay the MoJ has paid to Ministers, including Secretaries of State, in the last six months, broken down by Minister?

This information will be published as part of the Ministry of Justice's Annual Report and Accounts, which will be published in due course.

Yours sincerely,



RT HON DOMINIC RAAB MP