

For procedural and technical reasons, it has not been possible to broadcast or record this meeting or to transcribe it fully.

This note is not a verbatim transcript of today's Justice Committee meeting with the Lord Chancellor, rt hon. Robert Buckland QC MP, and officials. It is a full summarised note of all questions asked and all answers given.

JUSTICE COMMITTEE

Tuesday 7 April 2020

Members attending: Sir Robert Neill (Chair), Rob Butler, James Daly, Ms Sarah Dines, Maria Eagle, John Howell, Kenny MacAskill, Dr Kieran Mullan, Marie Rimmer, Andy Slaughter.

Apologies: Ellie Reeves (maternity leave).

Online meeting at 2.30 pm with:

- Rt hon. Robert Buckland QC MP, Lord Chancellor and Secretary of State for Justice;
- Jo Farrar, Chief Executive, HM Prisons and Probation Service; and
- Susan Acland-Hood, Chief Executive, HM Courts and Tribunals Service

Sir Robert Neill asked for latest figures on infections and deaths among prisoners and staff.

Jo Farrar said nine service users across both the prison and probation service had tested positive for Covid and had died. The cause of death required to be confirmed.

Sir Robert Neill said that number had been out on Twitter.

Jo Farrar repeated that nine people had died, having tested positive for Covid, but whether Covid was the cause of death remained a sensitivity, not least for families.

Sir Robert Neill asked how many staff had tested positive.

Jo Farrar said 118 service users and 37 staff had tested positive across both the prison and probation services and estate.

Sir Robert asked about the recently announced scheme to release up to 4,000 prisoners on temporary licence because of recognition of the risk of infection. The Prison Governors Association (PGA) had said that that number would not, even with cohorting, reduce overcrowding enough to properly isolate people.

Jo Farrar acknowledged PGA concern. HM Prison and Probation Service was working closely with Public Health England (PHE) on all plans. Release of up to 4,000 is not the only plan in place, and there are different ways to isolate and shield prisoners. There will be new accommodation in some prisons from next week to provide enhanced facilities for vulnerable people, with better health care provision and more isolation and shielding. The strategy was a mixed plan of release and extra accommodation and more staffing.

Kenny MacAskill asked how many prisoners would have to be released to get to single cell occupancy.

Jo Farrar said that was difficult to say, given plans to increase accommodation so the exact number wasn't available. On present accommodation levels, between 10,000 and 15,000 would have to be released to achieve that, but PHE advice was that it was best not to send prisoners between prisons to achieve single cell accommodation. The Service was looking at support to the most vulnerable.

Maria Eagle said the Government had announced the potential release of 70 pregnant prisoners and mothers with babies. The new temporary release scheme could allow up to 4,000 more early releases, but the rules were stringent and that figure was an upper estimate. Would that be enough? It did not seem likely given the need for cohorting and isolating, and the PGA said 15,000 releases were required. How would people be kept safe?

Robert Buckland said those figures were based on a reasonable worst case scenario. The MoJ had to balance the need for a safe prison estate with the public being safe too. While it was right to look at reasonable worst case scenarios, the Government also had to make sure to use as many different means as possible to achieve the safest possible conditions. It should be recognised that they could only minimise risk, not eliminate it. Measures taken were not only about release of prisoners, but about creating more capacity within prisons, and numbers of prisoners would also reduce as the courts took listing decisions and cases of remand prisoners, who might face sentences that could result in release on time served or alternative types of sentences, were dealt with. The figure of up to 4,000 releases would be a rolling figure: there is no one day on which everything was fixed, so that, for example, everyone within two months of release on, say, 10 April would be released. More people would be eligible for release in coming weeks.

Maria Eagle asked how many would be released if 4,000 were not an accurate figure because it was a current snapshot?

Robert Buckland said it was difficult to be precise or to estimate ahead. At any time, prisoners were automatically released from custody, and thousands left custody over any period of months in a normal way. He was seeking in some cases to accelerate release with suitable licence conditions, accommodation and other provision, in order to speed up important efforts within the prison estate to separate as many people as possible and create different cohorts of prisoners, so that, for example, new prisoners were not mixed with the existing population and that those who were particularly vulnerable, some of whom were convicted

of serious and grave offences, were safe. There was not just one club in the bag. The aim was to maximise safety, minimise risk.

Maria Eagle asked what other types of release were being considered. If measures adopted did not result in as many spare places as needed to keep people safe, what options would be considered.

Robert Buckland had powers already, such as compassionate release for those with life threatening illness or medical reasons, and was exercising those powers for some prisoners who were vulnerable. A new power was the variation to rules on temporary licence for the cohort identified this week. The unpredictable nature of Covid would make him wrong to say he would consider no further powers in future, but he had enough for now to carry on a controlled programme to make a difference, particularly for those in the Category B local estate, which had acute problems as regards the spread of contagion. He was satisfied he currently had the powers he needed.

Sir Robert Neill asked whether he had considered using those powers for Category D prisoners, most of whom had been risk assessed.

Robert Buckland said he was, frankly, trying to focus on parts of estate where the risk was most acute. On the Category D estate, the cohort could be effectively managed under less pressure than in older Category B prisons, like Birmingham.

Jo Farrar agreed, saying other reasons for not releasing Category D prisoners might be long sentences and the nature of offence, and whether prisoners had symptoms of the virus.

Sir Robert sought assurances that all those released would have accommodation.

Robert Buckland confirmed that. He was making sure accommodation was ready and working with the Department for Work and Pensions (DWP) on universal credit provision, which was not previously there for those on temporary licence. People were being sent out with £80 extra allowance to help them, which was more than norm for a number of. The Department was aiming to think of all necessary means of support to minimise any risk to the public and ensure that those released could stay home and save lives, in which they had their own parts to play.

Sir Robert said the PGA had raised questions whether there was a point in tagging people who would be released without the tag in two weeks?

Robert Buckland disagreed. Tagging gave the public the reassurance they naturally looked for when the exceptional step of releasing prisoners on temporary licence was taken. It was an emergency situation, and the public, quite apart from the normal stress and strain of the current situation, deserved the peace of mind of knowing everything possible was being done to monitor and to know the whereabouts of those being released. It was the right thing to do, and he hoped lessons could be learned for the future on scaling up the use of tagging. It was an ambition of the government to scale that up and doing it this

way help understanding of how effective this tool could be to give confidence that the system could police people who breached their conditions.

Sarah Dines asked about persistent allegations that Sudbury prisoners had no water and towels.

Robert Buckland did not know about Sudbury, but said he had heard of such instances, but the position on sanitation and washing was improving.

Jo Farrar said HMPPS was making sure everyone had access to water and towels and would follow up on the situation in that prison.

Sarah Dines asked about hearings conducted by digital means. Anecdotal experience suggested that evidence taken that way was not of the best quality. What guarantee was there of a fair trial. What provision being made for confidential discussion between lawyer and client?

Robert Buckland said that he and Ms Dines were both practitioners of some standing and knew that seeing someone in person made things easier when it came to evidence. In general, apart from problem of jury trials, which had many moving parts and were virtually impossible to conduct remotely, the work of courts was proceeding in novel, transformative ways. Privilege of discussions was being maintained, and justice being seen to be done. There had been a tenfold rise in the number of cases dealt with by phone or video and latest figures showed that 3,000 cases had been done that way, with 500 done directly.

Sir Robert asked for clarification on provision of jury trials.

Robert Buckland said none were now continuing. A number had finished, some were lost. The Lord Chief Justice had decided, in consultation with him, to stop jury trials the week before last. Work was being done to see how to bring them back into action, but social distancing would have to be observed. A number of courts had managed that during trials, with jurors seated in different parts of the courtroom and retiring to other courtrooms, which demonstrated what was possible. HMCTS' decision to consolidate the number of open courts to under half the normal number had been welcome, meaning the courts could concentrate on making those centres the focus of attention for being clean, open and, potentially, used for future jury trials. Much thinking was being done on whether further measures were needed on jury trials, given that the crisis was of uncertain duration.

James Daly asked about criminal legal aid solicitor firms. Former colleagues of his were concerned about finances as work had dropped off a cliff. When he asked what the Government and agencies could do, they suggested firms receiving average monthly payment of, say, £20,000 be paid at that average level from before the crisis, with provision for them to pay back money over a couple of years to the Legal Aid Agency (LAA).

Robert Buckland said that was a helpful suggestion, given Mr Daly's direct experience of legal aid practice. He was looking for constructive suggestions from colleagues and legal professionals to help assist in understanding the challenges so that representations could be made to the Treasury. On Friday,

after discussion among various legal groups, initial support measures were announced with the LAA to help with cash flow problems and ensure a viable legal aid sector in future. Hardship payments threshold in crown court cases had been changed to £1,000 from £5,000, and the evidence requirement relaxed. Debt repayments to the LAA had been pulled for some firms, and [line dropped for 15 seconds].

The LAA would facilitate and fast-track as many claims as possible to help with cash flow. But it was equally important to keep work going. The MOJ resisted calls to shut down courts entirely; that would have been wrong. Functioning magistrates and crown courts and more use of technology meant the system could keep cases going, and barristers and solicitors could bill for cases they were doing, which would go a long way to help deal with the problems practitioners face. The Law Society and Criminal Bar Association had made similar points. Officials were examining them so that they could be put to the Treasury.

Sir Robert Neill asked whether the Bar Council had shared its survey of chambers.

Robert Buckland said it had, but that survey was based on an assumption of no restart of jury trials. If that were indeed so, chambers would hit many problems, which is why he was keen to see if jury trials could be kept going.

Sir Robert Neill asked about the position of junior tenants or others who did not have three years of accounts to show average earnings.

Robert Buckland was looking carefully at the Bar Council's proposals. Some people had received awards from their chambers, but third year tenants do not have a cushion, and submissions on how to help were being taken seriously.

Rob Butler asked about early release, seeking more detail on how to decide whom to release. Those within two months of release were not necessarily in the right places to make necessary space. Was the decision about where to create capacity rather than who was most suitable.

Robert Buckland said that was a good point. He had to focus on the cohort most suitable, and it was difficult to say which institutions that would most affect. A number of low-risk offenders on short-term sentences would be in the Category B estate, not the training estate, and it was his fervent hope to see a difference in that estate while acknowledging that if contagion calmed there would be flexibility to transfer people within estate to maximise accommodation use and to cohort safely within PHE advice.

Jo Farrar said HMPPS was identifying people in Category B prisons to free up space in local prisons, where space was most needed. By rotating prisons, and not receiving new prisoners for some weeks in some prisons, they would be able to cohort more effectively.

Rob Butler asked about tagging. He agreed it was a vital ingredient, but was there capacity for tagging if 4,000 people were suddenly released. Could

companies set up and implement that, not least as they would normally need to go to someone's home.

Robert Buckland said it was important to recall that there would be no release of thousands at one fell swoop. Bearing in mind timing and phasing, he was confident of the ability to scale up tagging. MOJ was working with providers to maximise units, and real progress was being made to provide those facilities. This would also be for not just this emergency but for the long term more generally with regard to use of GPS tags. He was encouraged by work being done and was keeping hourly eye on it. He was confident those released over next few weeks and months could be serviced with tagging.

Rob Butler said that more offenders on licence would mean more work for the probation service. How would probation cope with that?

Jo Farrar said all those released would be on temporary licence so not under the jurisdiction of the probation service, and under tight licence, including staying at home, and with tagging to ensure that. At end of their sentence, all within two months, they would be on probation. So, there would be a light touch for probation at the start, and more normal process later.

Dr Kieran Mullan asked about criteria for release. Violent and sexual offenders were not considered, but what weight was being given to prolific offending.

Robert Buckland said the index offence would be the most important consideration, but there would be risk assessment of each offender, and some people were in for an offence that looked low level or low risk but who previous convictions or were those for whom there was intelligence of the possibility of their posing a risk of harm. Using credited assessment tools could address those issues so that those who posed immediate risk of offending in a way prolific past offending might indicate could be not released.

Jo Farrar said detailed assessment at prison level with partners in localities would help assess if people posed a risk of harm to public, and that would be a consideration.

Dr Kieran Mullan asked about non-violent offending, such as fraud, that targeted vulnerable people in their own homes and whether early release could risk advantage being taken.

Robert Buckland said that licence conditions and tagging were important. "Mean" offences, where vulnerable older people were conned, were of particular concern, and the Service would do all it could to minimise risk. Temporary licence and tagging, and thorough assessment of risk were necessary to reduce risk, even if public health concerns loomed large.

Dr Kieran Mullan asked about whether local probation and community providers not currently carrying out activity could volunteer for redeployment.

Jo Farrar said HMPPS was interested in working with those who could volunteer, especially those with experience and would be glad to get details of that group.

Kenny MacAskill appreciated that this was a matter for the courts, but there was a philosophical question whether people who had been convicted were being released while some not convicted were retained in prison. Could bail reviews be speeded up?

Robert Buckland said that was a good question and a matter on his mind and those of the HMCTS and judiciary. As a Scots lawyer, Mr MacAskill would know there was a clear presumption in favour of bail in English and Welsh law, and reasons were set out in statute and courts applied them. If there were opportunities to allow bail on conditions addressing Bail Act concerns, courts were ready to hear them and deal with them expeditiously. Individuals about to enter a plea or who had pleaded guilty and await sentence also had to be remembered. Technically, they remained remand prisoners and there was much to do to deal with their cases quickly. Listing officers and the judiciary were seeking to bring those on so that prisoners who had served a degree of time could be released or moved. A combined approach of listing and hearing bail applications would ease the prison population but not make a substantial difference. Only with other measures would it make a substantial difference.

John Howell asked whether Covid threw into perspective the need to consider short sentences, particularly those of under six months. Was there enough emphasis in the justice system to support people so that they did not end up going straight back into prison.

Robert Buckland said the evidence was clear about the problem of a revolving door of offenders who go to prison for a few weeks and are soon back before court having reoffended. He was not persuaded that the short sentence option should be abolished, far from it. Having sat as part-time judge himself, he knew that sometimes custody was the only option, the last resort. Many of the senior judiciary supported that idea. It was the job of government to ensure that community alternatives were as meaningful as possible. Despite Covid, work would be done on that through a sentencing white paper and bill this year. Scaling up tagging and confidence in unpaid work requirement and options on mental health or addiction treatment would lead courts to other approaches than short-term sentences. It was tempting to use the crisis as a pretext to change policy on sentencing, but it was teaching us that technology was something to embrace more boldly in the courts, and for tagging.

Andy Slaughter asked about early release. 69 pregnant women and mothers was the original figure given. Twitter said only one had been released. How many had been? Would guidelines be published on the new power, in this week's statutory instrument, to vary terms of release? Did the guidance differ for young offenders?

Robert Buckland said 6 women in that cohort had been released. 70 was the figure for those who could be considered for release. Risk assessment and finding suitable accommodation were being done before release, which was good for the women and for the unborn children. The Government was also looking at offenders with acute health issue who might be vulnerable, and that would be done on case-by-case assessment. The proposals on temporary release extended

to youth estate but numbers were smaller and there were fewer people eligible. He had signed off directions on the criteria for the new SI.

Jo Farrar confirmed those directions will be published. On children, the criteria would not be different, although there were different mechanisms, such as place of safety on release, to be considered.

Andy Slaughter asked about women's cohort. To make an appreciable difference, what weekly or monthly rate of release was expected?

Robert Buckland said that depended on suitability and accommodation provision. If the majority of people could have accommodation secured through work with MHCLG the flow could continue. He would be more concerned if this was rushed and many hundreds released without necessary support. The Committee would not forgive him for doing that. The process had begun, but with an extended bank holiday weekend, there would be a quicker pace after Easter. The rate of release would be monitored, the committee updated on the rate of progress.

Andy Slaughter raised concern about not-for-profit legal advice.

Robert Buckland was interested in any scheme that dealt with problems the legal profession was facing. Schemes existed for practitioners which fit the bill for some, but there was a need to remember not just private practice but the advice sector and law centre pro bono network. The Department was engaging to ensure much support could be given. He was aware of issue and working with the sector to create more support. MOJ would update the Committee on progress in that area.

Ms Sarah Dines said a legal aid barrister practitioner had asked her whether payments for work already done could be speeded up to help with cash flow.

Robert Buckland said the LAA was working from home and remotely and absentee rate was mercifully low. There had been clear steer to the agency about the importance of ensuring payments for work done were processed as quickly as possible. LAA had an emergency response page on Gov.UK with information about changes, and was going directly to law firms and practitioners about their work, too. There was a real sense of urgency to speed payments and ensure cash flow so that the legal system survived the current emergency, just as was the case with other important part of our economy.

Sir Robert Neill thanked the Lord Chancellor and said would write to follow up matters raised.

Robert Buckland said he would be available whenever the Committee wished to ask questions. He also hoped it would be possible soon to do so in public meetings, being as keen as the Committee was to hear these things in public. Private hearings were not wanted; everyone wanted the public to be able to listen to them and digest what was said.

Sir Robert Neill said the Lord Chancellor and the Committee were entirely at one on that.