

WESTMINSTER COMMISSION ON MISCARRIAGES OF JUSTICE
TRANSCRIPT OF FIRST SESSION: THE CRIMINAL CASES REVIEW
COMMISSION

15 JULY 2019

LG: Lord Garnier QC, Co-Chair of the Westminster Commission on Miscarriages of Justice

BS: Baroness Stern, Co-Chair of the Westminster Commission on Miscarriages of Justice

MN: Michelle Nelson QC, Commissioner of the Westminster Commission on Miscarriages of Justice

AO: Dame Anne Owers, Commissioner of the Westminster Commission on Miscarriages of Justice

EJ: Erwin James, Commissioner of the Westminster Commission on Miscarriages of Justice

PJ: Dr Philip Joseph, Commissioner of the Westminster Commission on Miscarriages of Justice

HP: Helen Pitcher OBE, Chairman of the Criminal Cases Review Commission

KK: Karen Kneller, Chief Executive of the Criminal Cases Review Commission

LG:

Right, good afternoon. Could I just explain what we are about and how we are going to proceed. My name is Edward Garnier - Lord Garnier - and I am a Conservative member of the House of Lords, and I am along with Baroness Vivien Stern, who is a cross-bench peer, the co-chair of this inquiry, which is held under the auspices of the All-Party Group for Miscarriages of Justice. This is a non-party political, or a cross-party political, body, and the members of the Commission, who will introduce themselves in a moment, are from various walks of life, and there are six of us here to inquire into the work of the Criminal Cases Review Commission. We're very lucky to have this afternoon our first witnesses, and I'm going to invite them, and you may have to speak up, because the acoustics in this room are not very good, but you're addressing us, not the members of the public, although I'm sure they'll be very interested in what you have to say.

Whilst you are formally addressing us, please bear in mind that there are others in other parts of the room who'll need to hear you. We're also doing a contemporaneous note, and in due course that will be published along with the recommendations and findings that we make once this inquiry has concluded. Anyhow, before I invite the members of the Commission to introduce themselves, and since you've been kind enough to come along to give evidence to us, could I ask you please to identify yourselves and to say what your role is?

HP:

Yes, I'm Helen Pitcher. I'm Chairman of the Criminal Cases Review Commission and have been so for the last nine months.

LG:

Thank you.

KK:

And I'm Karen Kneller. I'm the Chief Executive.

LG:

Sorry, could you just repeat, just, your surname?

KK:

Kneller, Karen Kneller.

LG:

Thank you so much. And you've been in post for?

KK:

I've been with the Commission since 2005. I was appointed as the Director of Casework and have been Chief Executive since about 2012.

LG:

Thank you very much. Right, I'm now going to invite the members of the Commission to introduce themselves to you, starting on my far left, with Michelle Nelson.

MN:

Thank you. My name's Michelle Nelson, I'm a criminal barrister. I have largely, in my career, prosecuted, so some defending but not a lot of it, and I have myself taken cases, or had cases taken that I was involved in, to the Court of Appeal. I've not been involved in any cases referred by the CCRC.

AO:

I'm Anne Owers. I'm currently National Chair of the Independent Monitoring Boards for prisons, but I was at the organisation JUSTICE in the years of the Runciman Commission which led to the creation of the Criminal Cases Review Commission, and I was for a while a Non-Executive Director of the CCRC also. And I've chaired a similar commission, the Independent Police Complaints Commission.

EJ:

I'm Erwin James. I'm Editor-in-Chief of Inside Time, a national newspaper for people in prison. I was in prison for a long time - twenty years. And I was not unjustly convicted. But I met people along my prison journey who definitely were. And I guess that's why I'm here. Inside Time get lots of letters, lots of correspondence from families and people in prison who say that they've been wrongly convicted. And we want to, sort of, figure out the best way that we can support people who feel they've been wrongly convicted and who have been wrongfully convicted.

BS:

I'm Vivien Stern, Baroness Stern in the House of Lords. I'm co-Chair of the Commission and have been involved in criminal justice matters for most of my working life, which has been long.

PJ:

And I'm Dr Philip Joseph. I'm a Consultant Forensic Psychiatrist at St Mary's Hospital in Paddington. I've been a consultant for the last 30 years and have seen many cases over those years when I've provided psychiatric reports - particularly in cases of homicide - at the request of prosecution or the defence, and I've done a number of cases where I've been instructed by the CCRC, and ended up in the appeal court. Recent cases, for example, are Marine A and Sally Challen, and so I've been involved in a lot of those cases over the years.

LG:

Thank you. One further preliminary matter, I will make it clear to you two ladies, but generally, that, this is not a forum in which individual cases are going to be looked at by us or digested. So no member of this Commission is going to be taking up casework on behalf of members of the public, I think it's very important to make that entirely clear. We're looking into the work of the CCRC and its relationship with the Court of Appeal, and the Government, and with the Treasury. And on that first issue, that is to say, the relationship that you have with the government in its widest sense and with the Court of Appeal. Could I just ask you, to open our proceedings, do either of you wish to make an opening statement?

HP:

I don't think we need to given the shortage of time that we've got.

LG:

Thank you. We are in a time of economic difficulty, I don't think we have any doubt about that. Could you just explain, if you can, how, in your reasonably short time as Head of the CCRC, and your slightly longer time working in and for the CCRC, how have you found and how do you find now, the government-imposed economic constraints have affected your organisation's ability to do its job?

HP:

In terms of who we are as an organisation, we're an arms-length body, which means that we are looked after by the MoJ. We are independent in the way we work, but we are reliant on them, obviously, for funding. In the last couple of years, we've actually been very lucky with that, because we've put forward a case for transformation, in terms of digital transformation, and also, for increased resources to support us.

So our resources *have* gone up, only by a very small amount. If you add into inflation, then you should say we should have about another £500,000 in funding over and above what we have already.

LG:

Could you just confirm, for the sake of clarification, could you just tell us exactly how much your revenue budget is at the minute?

KK:

It's just over £5m, it's just over £5.5m.

LG:

And again, just to interpose, of that £5m, how do you break down in terms of spend? I would imagine salary must be -

KK:

The vast majority is salary: Commissioners; staff.

HP:

So in terms of our budget, as I say we are currently now at £5,500,000 and then on top of that we've got capital expenditure in order to undertake transformation that we believe we need to undertake in order to enable us to respond in even more of a timely fashion to the applicants that come to us. We've got the waiting list down. We've had to do that by really hard work, and that has put a strain on some of our staff and some of our resources. So we now want to move towards enabling it in an IT fashion. Also, we need to take on more Case Review Managers to support the work we do. We currently have 31, I believe. Ideally we need 45, so there is some recruitment to do. That presents us with some issues. A number of regulatory bodies have moved into the Birmingham area, and they all have better terms and conditions than we have within the Commission. So we're running at an attrition rate of about 10.6% at the moment, which is a significant issue for us. We also have a very flat structure, so some of the people we lose, we lose because there isn't the career development opportunity. So, we would like to be able to invest more in developing our staff and developing an organisational structure that supports their development so that we don't lose the very good people that we're losing at the moment.

LG:

The organisation began its work in March 1997. Am I right in thinking that in recent years you've been averaging - averaging - about 33 referrals to the Court of Appeal every year?

KK:

That's right.

LG:

Do you think that is about right? Could you refer more, if you had more resource to do it? Or do you think the Court of Appeal, and the remit that you have under the statute, make that a number that cannot be increased?

KK:

I think one of the things that concerns us is whether people suffering from miscarriages of justice are actually coming to our doors in the first place. We are seeing a trend — an increasing trend which is worrying us — where applicants are not represented to us. So we've always had applicants who come without solicitors, and without barristers, but these days probably the vast majority are without any support at all. And that's an increasing trend that worries us. And it worries us because it leads us to believe that not only are people coming to us who aren't represented, and that will likely cause problems in terms of how we approach the review, because we know that a review that has a good solicitor or barrister on it can help us power through and find the key points. But what we are concerned about is that there will be people out there — litigants-in-person — who know nothing about us, and so who may be suffering a miscarriage but simply aren't coming to our doors. So we are concerned that we may be missing them because we're not aware of them.

LG:

Are you precluded from acting as the litigant's friend, so to speak? If you have an unrepresented applicant, do they just have to sink or swim, or are your staff able to point out how their prospects might be improved?

KK:

No - Because traditionally and historically, applicants coming to us, probably about 70% or so have not had any representation, so we have always ensured that we have looked very closely at those cases and supported the applicants to the extent that we can, because we don't *act* for them, and that's an important distinction to make. But our concern is, that if we see this trend that we're seeing in the wider, not just criminal justice system, but in the whole justice system, that we are concerned about those miscarriages of justice just not being corrected because they're not coming to us. We do offer support, we do work with applicants, and we've made very clear on our website (and then we do all our outreach work in prisons) you do not need to be represented to come to us, because we don't want people to be put off. But it is a concern to us.

LG:

Lady Stern.

BS:

Thank you very much. I come to this having not in the past had any relationship, or much knowledge of, the CCRC, so I approached the task by reading quite a lot. And it did come across that the CCRC is in some ways rather controversial, and there's a very wide range of views, some of which are certainly not favourable about the performance and the effectiveness. Now, there may be a good reason for this in that it's inevitable. You're doing something where a lot of people are bound to be disappointed, but I wonder if there are any other reasons why your organisation seems so controversial, and there are so many questions about its effectiveness?

KK:

I think, one of our challenges, is we are not very good at promoting us. And going back to people not knowing about us, so we're quite slow at coming forward. That means we're not telling the story - I think there's a good story to tell. If you look at some of the independent research, if you look at the work of Professor Hoyle, where she talks about our effectiveness and our thoroughness, and the care and concern that we have in respect of the work that we do. Now that's not to say can't do better - everyone, we can all do better.

I think we tend to get criticism, quite rightly, from people that we've disappointed. And of course, the challenge is, we will disappoint the vast majority of people that come to us, I think that's fair to say. So I'm not surprised. But I think there is more we can do to get out there, but of course every time we do that, it takes away precious resource from the frontline, the casework frontline, which comes back to the point about the lack of funding.

MN:

As you mention Professor Hoyle. One of the findings — conclusions — that she drew, and I want to ask it, if I may, historically, because you've been there for a while, and perhaps how the position is now, is, in relation to the test that's applied by you when you consider whether a case should be sent to, or back to, the Court of Appeal. Because the test - the 'real possibility' test she described in the book that she wrote with Mai Sato, as one, the effect of which, is, and I quote, is a 'cultural imperative in the CCRC to keep in favour with the Court of Appeal'. That and I take that — she said good things about you, and that's undoubted — but that seems to be suggesting that the test, and one accepts that it's a legal test, it's not one that you've created, but the application of it, and the terms, create that cultural imperative. Now is that historically true with you? Is that how you feel the organisation *has* been? Has that changed? Or is it *still* the position or is it wrong?

KK:

I don't think that is accurate. I think there's a difference between having a test, our real possibility test, which is deferential to the test of the Court of Appeal, and us being deferential to the Court of Appeal, and clearly we're respectful of them - it would be crazy not to be. And anyone who thinks we don't push at boundaries, or that we don't make referrals that the Court raises a judicial eyebrow over, just really needs to read some of the judgments. So I don't think the relationship is, perhaps, as it may have been portrayed there, but clearly the tests are linked.

MN:

But may I ask as a follow up, forgive me, do you think that test enables you to do what you need to do? Do you think that test should be reconsidered?

KK:

I'd be very happy for the test to be reconsidered. I think when we were set up, the test was supposed to be reconsidered after about five years, I believe. That didn't happen. The Justice Select Committee a few years ago talked about looking at the test for the Court of Appeal and thereby looking at our test. So we're very, very open to that. I don't think it

would be appropriate for us to lead on it - it would be like us marking our own homework - but we would be very happy to have scrutiny of our test and of the Court of Appeal's test.

AO:

Sorry, may I just ask, why wouldn't it be appropriate for you, if you feel it's inhibiting you, because I understand that the Scottish body has a different test, doesn't it?

KK:

We don't feel it's inhibiting us. I think, we have some critics who think that it is, but we don't think that it's inhibiting us. We haven't, I can't think of a case where we've sat there and thought, were it not for this test, we would be making a referral. And you're right, Scotland does have a different test. We talked to the Scots a lot about it. You're hearing from them next week. Their test, similarly, of course, is linked to the test that their High Court has to apply.

MN:

I'm sorry, I think you didn't get a chance to -

KK:

Sorry, that's my fault.

HP:

No, that's absolutely fine. I'm going to echo what Karen said. We would welcome the opportunity to look at the test, and to verify whether it is the most appropriate one. We do get a lot of criticism. As Baroness Stern said, people are very divided on us. They either think that we are doing an absolutely brilliant job, or were doing an awful job and shouldn't exist, which is quite difficult for our staff to hear, because one of the things I would say having joined, and I chair a number of organisations, this is the only organisation that I've worked in where there is 100% clarity on the purpose of the organisation, which is to uncover miscarriages of justice.

And if you were in our office and see our staff on days where there is agreement to make a referral, it is seen as a 'that's what we're here to do', and people are immensely proud of it. We then watch to see what the Court of Appeal do. If they don't affirm our view, that is also quite a tough day. Does it stop us continuing to refer things to them - no. A clear example of that is *Jogee*, where we have recently referred four cases. We've been knocked back each time by the Court of Appeal. We had some views about that. We're prepared to feed those views into the criminal justice system. But we would probably need help from this Commission to be able to do that in a way that says: 'here are some systemic areas that we think need looking at in the round, in order to agree a way forward'.

MN:

Is it, or am I able to ask you to summarise what they may be, at this stage? Could you give us an idea of -

HP:

Well certainly *Jogee* is an issue. Other issues we've faced or talked about-

KK:

So in terms of transparency, we're quite restricted in what we can say about our casework, because of provisions within our statute. And undoubtedly that is there for very good reasons, but we are a mature organisation, and I think it would be useful, if there's any legislative opportunity to reconsider that particular section. Perhaps, rather than a blanket 'you *cannot* disclose', gives us a discretion, perhaps an additional exemption so that we can disclose the information where we thought maybe it was in the public interest. And that, I think, for us, would help feed into the whole public confidence issue in the criminal justice system. But at the moment, we are, effectively, we have one hand tied behind our back, because we can't talk publicly about our casework. The more we can talk about it, the more you shine a light on something, the more people know about it, the better, as far as I'm concerned.

LG:

Just following up there, it seems to me that there are a number of pinch points. Money, staff, the statutory remit, and the Court of Appeal's attitude towards the cases referred to it. And that's not to use the word 'attitude' in a critical sense: it's what they have to do. Which of those could you influence?

HP:

We've certainly spent a lot of time talking to our key stakeholders. The Court of Appeal is one of those stakeholders. You'll have seen Brian Leveson and Burnett LJ have been very complimentary about the work that we do recently. That hasn't always been the case but certainly is so now.

Their view is that if everything we referred to them was successful, then they would have the view that we are missing some miscarriages of justice. Because they actually reject a percentage, their view is that we're probably getting it about right. That's a moot point because other stakeholders have a different views. But it is quite key to us to have, not a cosy relationship with the Court of Appeal, but a relationship whereby they respect our judgement and the matters that we're referring to them, even if they end up saying 'we don't find in favour on this particular one'.

PJ:

Just following on from that, you said earlier that 33 cases a year were referred back to the Court of Appeal. That's out of a total of about 1600?

HP:

Round about 1400 in this last year, of which 40%, or in the region of 40%, are what are known as 'no appeals cases'. So 40% of what has come to us hasn't exhausted the appeals procedure. And that in some instances is a knowledge gap, and we need to do more education around that. And that can be caused by the fact that we have a number of litigants-

in-person, so there's something we need to do there. And if we do refer a 'no appeals case', it has to, effectively, have special circumstances - exceptional circumstances -

So, we have in the last couple of years changed the way we look at those cases. We used to do a full review, and then look for exceptional circumstances. We now start the other way round: look for exceptional circumstances; if there aren't, then we give guidance on how to go into the system.

PJ:

So it sounds like 40% have been wrongly coming to your attention. And the 33 that finally get to the Court of Appeal - how many of those have a favourable outcome for the applicant?

KK:

I think on average, the trend is round about 70%. So sometimes its slightly higher, sometimes slightly lower. There were a couple of years where I think it was round about 50%, something like that. So if you are before the Court of Appeal on a referral from us, you have a good chance, I can put it that way.

PJ:

But in terms of absolute numbers, that's about 25 out of an original sample of, say, 1500. And there's also a concern that the people applying to the CCRC may be the wrong people. And the right people, you seem to be worried, are not applying in the first place.

KK:

We are concerned about that, and coming back to the no appeal issue, which is something that we have given a huge amount of thought to for a long time. There are initiatives in the CJS which I like to think we've actually been influencing, so we have done a lot of work on Easy Read within the criminal justice system, so there is now through the Criminal Procedure Rules Committee, a form to appeal your conviction from the Magistrates' Court to the Crown Court is now available in Easy Read. Similarly, there's the pilot that is near completion for appeals from the Crown Court to the Court of Appeal using Easy Read literature. Those might sound quite small things, but I think that one of the things applicants struggle with is filling in forms — complicated forms. Now, if those are in the form of Easy Read, as ours are, we may start to see fewer no appeal cases coming our way, and perhaps them exhausting their appeal rights as perhaps they ought to in the first place. But we don't know, because it's early days.

AO:

I'm sat in the position of being Chair of a Commission, in my case the Independent Police Complaints Commission, as well as being involved in the CCRC at times. I just wanted to take your view on the structure you've got to manage within and the relationship between Commissioners and the executive. And it seems to me that quite often in these organisations it's a bit like a seesaw. Starting off with a very powerful Commissioner, I think the Chair was also the Chief Exec at one point, and then you had tensions between the role of the Commissioners and the governance and operational role of the executive. And now as I

understand it, you've kind of got a lot of Commissioners but mostly day-paid rather than full-time, and I just wondered if you'd reflected on whether this is a structure that can work? Or have you found ways of making it work?

HP:

When I first applied for the role, I was somewhat shocked to see that the board had 19 people on it. And when you consider the budget that we have as an organisation, it just didn't make sense to me, and looked like it was ungovernable.

And it's no secret that it largely *was* ungovernable. We had 12 Commissioners sitting on the board, we had 3 SMT, and we had 3 NEDs. And, when I looked at previous board papers, I was struggling to find a decision that had been taken. So you then have to ask yourself: 'what is the purpose of the board?' So, since joining, we have reduced the board to a board of nine, plus myself. There are three Non-Executive Directors, or there will be shortly. We had three and two just had to rotate off: one because of a potential perception of conflict, having taken a role as Chairman of the Parole Board. And she was a very good Non-Exec, so, a great loss to us. So we're in the process of recruiting another two, who've got good commission experience, NED experience and so on. So I think that will create a strong non-executive cadre. Now, my SMT members, we're a casework organisation, so I absolutely need a Director of Casework on the board; I absolutely need my Finance Director on the Board; and absolutely need Karen as Chief Exec.

What I've done with the Commissioners is, I conducted a skills audit when I joined, because they had all told me they had a very broad base of skills, and we weren't actually capitalising on some of those skills. So I conducted a skills audit, and then against the strategy we have as an organisation, I invited applications for the non-independent NED role, as I'm calling it. So those Commissioners have two distinct roles. They have the work they do as Commissioners, which is covered by one set of rules and processes, and then they have a distinct role within the board which is as a Non-Exec Director, but because they work within the Commission, they can't be classed as independent. That board is now functioning well. It's early days but it's functioning well, and obviously we're going to have to include two new members into it shortly, on the NED side. But we are in the position to have open and constructive debates which lead to sensible decisions about what's right for us as an organisation. So we *have* moved forward on that. The non-independent Non-Execs understand that they are not there as a lobby group for the Commissioners. And they are paid for their board work in addition to their Commissioner base.

AO:

That's dealt with the governance side, and that sounds like a good move forward. What about in terms of the operational side of it, where you've got potential tensions between the staff that Karen manages and the Commissioners, but also where you've got Commissioners' oversight of cases, but they're only going to be around, for example, for a day a week? Does that pose any operational problems for you, in terms of (inaudible) of cases?

HP:

I understand that. First and foremost, it says a *minimum* of 52 days. That is not a maximum number. When we did the recent recruitment round, when we took on six new commissioners, four of whom have legal backgrounds, we checked that everybody had the capability to flex up in line with our requirements as an organisation. And they all confirmed they could do that. People call off their days in different ways: some do two or three days in one week, and then they don't do anything the next week: they take a look at the cases they're working on, and decide, essentially, how much concentration, and concentrated effort, they need on those cases, and then manage their diaries accordingly, in line with the operations team, who've put in place a process for allocating cases, which enables us to draw on their skills and capabilities.

So, I'd like to say don't get any tensions, of course we do: that is normal. But one thing I've been very impressed to see, is that clearly in my early months we had five Commissioners leave, we had five Commissioners rotate off, and all of the existing Commissioners that we had, some of whom had only been in role for two years, really stepped up, and took on extra decision making, and so on, so as that we were smoothing out any potential issues that would be caused by the lack of Commission resource. Did it slow things down a bit? Yes, inevitably it did. But now have our six new ones in who have got up to speed very rapidly, and clearly done more than a day a week — you can't understand an organisation like ours by only doing a day a week — and are continuing to flex, so I think, now, that we have a very good *modus operandi* going forward. We're also looking at where decision making lies for certain cases. Cases like 'no appeal' cases - the non-referral aspect can very easily be conducted by our Case Review Managers. However, that comes back to the issue I mentioned earlier: we need more Case Review Managers before we can do that to our satisfaction. So, we have a lot of skilled members in our Case Review Manager resource. And they want further stretch within their career structure, and we are putting in place processes to do that, so it is moving forward.

AO:

Can I just ask Karen, from your point of view, having sat through however many years - 14 years, maybe - whether from the point of the executive, you feel it is working better -

KK:

Yes

AO:

Because it wasn't at one point.

KK:

No, it wasn't, you're right, there were issues. I think it's working much, much better now. My view is: if, sometime down the line, we think this isn't working, I'm going to be the first to put my hand up and say it's not working, because, you know, it's an organisation I lead on a day-to-day basis, and I'm sure that Helen, similarly, would share that view.

But I do think it's working. We've seen some really good appointments in the last couple of years - people who are really passionate about the job, and they provide a great deal of flexibility in how we can deploy them. So yes,

AO:

Because, the reason I'm pressing on this, really, is that if an organisation isn't working well, then what happens is it spends an awful lot of time thinking about itself -

KK:

Yes

AO:

And not enough time thinking about those who are coming to it.

KK:

Absolutely, and I think one of the things we've started doing is drawing up that shopping list, of 'we've got our own house in order, or we're getting that house in order, so what do we need to focus on', and we're looking at whether we need to do much more outreach work — we think we do — and I've already talked about concerns about whether the right people know about us, so you're right, if you're inward-looking, that's not what we were created to do.

LG:

Just to follow up, you said yourself 'if sometime down the line'. I know you didn't mean that in the sense of 'sometime, sometime' - have you set yourselves timetables/deadlines so that you can then measure the improvements that you want to see happen, to make sure that they *have* happened? It's productivity that one might be looking for.

KK:

Absolutely, I think one of the things we are particularly focused on is the duration of review, so some of our cases are still taking too long to review, so what we would expect to see now that we've got more Commissioners in post, and once we get more Case Review Managers, is for that to improve. So that's one of the measures that we'll be watching very very closely.

HP:

We'll also be reviewing how the Board is working, whether the right things are coming to the board, whether the right decisions are being made, and being made in a timely fashion and then communicated appropriately throughout the organisation, because we do need to go through quite a significant change, both in terms of digitisation, but also in terms of the fact we become homeless at end of 2020, because our lease expires.

LG:

Where are you next off to — are you staying in Birmingham, or are you going somewhere else?

HP:

We will be staying in Birmingham as another government hub, but clearly it's important to us who we share that space with, because, again, we can't have any perception of conflict. There's currently an issue which the MoJ are going in to bat for us on, which is, we got a response which said that office move might be delayed. It can't be delayed, as our current landlords are closing the building December 2020, so we have to move, and you cannot possibly move twice, when you have an organisation as complex as we are, with as much data as we have.

EJ:

Well, shouldn't you really be based in London, in the heart of where the judiciary is, and government. You're in Birmingham, which is a wonderful city — I have friends in Birmingham — is it a disadvantage that you're not actually in the heart? You know, why aren't you down the Strand? Why aren't you in the West End somewhere? Why aren't you here?

KK:

Why would we want to be? I mean -

EJ:

Well you should be here because people in prison, who shouldn't be in prison, think of London as the centre, of justice, for this country. That's why you should — my feelings are — you might want to think you should be in the heart of where justice is perceived to be, in this country, the heart of where it all happens — where decisions are made.

KK:

I think, when we were established, I believe, I may be wrong, but I *believe* consideration was given to the Commission being in London.

EJ:

It almost seems, sorry, it almost seems like, 'oh, the CCRC was thinking about you' — out of the way. Out of the way — out of sight, out of mind.

KK:

No.

EJ:

It almost seems like that

KK:

No, my understanding is, when we were being established, thought was given to whether we should be in London or elsewhere. Now, I believe, I may be wrong, but I *believe* that the decision was taken that we should not be London *to show* the separation from judicial centre, because you're right, you think of the judiciary and you do think of London. I

entirely accept what you're saying about many people who are affected by miscarriages of justice think of it as all being London-centric. I'm not sure that's necessarily the experience that we pick up on from the outreach work we do with prisons about the country. It's also -

EJ:

When you say outreach work, do you actually go to prisons and share your -

KK:

Yes

EJ:

Ah, I didn't realise you did that.

KK:

Yes, we do a lot of that

EJ:

You go to prisons, and do workshops or something, do you?

KK:

We do presentations, we do workshops, we have one-to-one surgeries, so a member of staff will talk to a prisoner face-to-face. We do a lot of that, we want to do more - we think there's a real issue there

EJ:

When you say 'a lot', how much do you do? How many visits?

KK:

We have a prison programme, I think we've probably got three or so lined up over the summer — five, I'm being told five — we've got five, over the summer, lined up, but we have a rolling programme

EJ:

I mean, there's about 120 prisons in country, so, that doesn't seem very many, if I'm honest.

KK:

We haven't got to all of them, but we're working through them: some are more receptive to a visit from us than others.

EJ:

Do you get resistance from prison governors?

KK:

We do get some resistance: I suspect we're not the highest priority. We do get some resistance, but we keep plugging away. We also take part in national - we have a slot on national prison radio, we run a campaign a couple of times each year.

EJ:

And you have a column in my newspaper

KK:

And we have a column in your newspaper, indeed.

EJ:

It does seem that you're, you know, you go to prisons, but not enough prisons.

HP:

Well we would agree with you on that, and that's something we need more resources for. Because, in certain prisons, we have an issue that our material is not distributed by the prison governor, and we note that, we have evidence of that. And, whether that can be dealt with by a Prison Services Order, whether that could be something that's monitored as part of reviews, is, I think, quite an important matter. A prison that I visited recently was Oakwood, and they have a group there called Your Consultation Group, which is staffed by some legally trained people who are prisoners. When I went, I had no idea which ones of them were prisoners, and which ones - you just couldn't tell, they were so professional. And they are very proactive with our materials and -

EJ:

We mustn't be surprised that, sometimes, you can't tell who's a prisoner and who is not a prisoner. That mustn't be a surprise.

HP:

No, no, it shouldn't be, but it was the way they conducted themselves as well, and it turned out, I'll share this anecdote, I was talking to one of the prisoners who was very helpful in terms of giving advice, who was legally qualified, and it turned out we'd went to the same university and studied under the same professors, so the chances of that happening as a coincidence was really quite interesting. And, you know, that is a service, Your Consultation Group, if that could be rolled out amongst more prisons, it would also be really helpful.

EJ:

You would like to see that?

HP:

We would love to see that. Because they actually proactively work with prisoners on how to manage your sentence, and how to know at which point it's appropriate to come to people like us.

AO:

I just wanted to pick up on something Karen said earlier, and a point that you'd made, and is about contacting prisoners. I mean, first of all, I think the work you've done on Easy Read terrific. I know, as someone who's been leading on that, that's absolutely great. But I also know that there is an issue, and we find it in the Independent Monitoring Boards too, particularly about prisons holding younger people, and a lot have now, because of the changes in sentencing and so on, a lot of the younger people in prisons are now serving very long sentences, they're very serious offences, and I was just going to ask whether you were still doing outreach for that particular group of prisoners, that tend not to complain, and not to appeal, and don't get to you? Or if they do get to you, they're not even able to you give the starting point for knowing what to look for?

KK:

I mean, you're absolutely right, that is an area which concerns us. We do do outreach for young offenders. We do a lot of work in the community. We listen to what community groups are saying to us about young offenders. Essentially, many are very anti-establishment, so the last thing they're going to do is want to come and apply to us. Many of them don't appeal for exactly the same reasons. So it is an area that concerns us, we do do a lot of work, we have seen an increase in young offenders coming to us. I'm not sure that's necessarily down to our outreach work, or perhaps more to the impact of joint enterprise, because obviously youngsters are more likely to be involved in joint enterprise cases, but it is a huge concern. We've done work in schools, on the advice of someone who worked in the community, to ensure that young people are aware of us. So we are doing a big amount of — we'd like to do more, but it comes back to the funding thing. There's so much more we could do.

MN:

Just on that, this, please. The cases that you said where people came unrepresented by a solicitor or barrister, are they less serious, and I don't mean 'not serious' — there are obviously very serious cases — or not necessarily, it could be a mixture?

KK:

A complete mixture, so, you know, it would not at all be unusual, in fact it would be very common to have serious sex offences, robbery, high end drugs, murder, people coming to us without representatives.

MN:

May I just ask this. I'm assuming you have a risk register.

KK:

Yes

MN:

Can you broadly say what your top ten risks are? You've talked about homelessness.

KK:

Talked about what, sorry?

MN: Homelessness, your being homeless, you've mentioned that.

KK:

Oh, yes -

MN:

I assume that will be there.

KK:

Yes

MN:

What else would be there?

KK:

In broad themes, clearly finance is a risk, and that's around having a sustainable ongoing budget. Retention of staff is a big one, and that's of increasing concern to us. The estates, we've already talked about. Our digital transformation. We have to move very quickly on our IT front as we know IT goes out of date very, very fast. We've been funded to the tune of about £2,000,000 over the next three years to do a lot of digital work, but there is a risk there. So, I would say that those are probably the *key* ones. There are issues around our stakeholder management, our relationship with the court, obviously, and with the department. But those are more 'issues' rather than risks, if I could describe them that way.

MN:

And reputation, and I'm thinking in terms -

KK:

Yes

MN:

The people who come to you for help. There is a reputational risk.

KK:

Yes

LG:

Dr Joseph.

PJ:

We've touched on your geographical relationship with the judiciary. I'm also interested in your psychological relationship and interactions with the judiciary because, of course, you've got to deal with the Court of Appeal, prosecution authorities, the police, and also

medical experts, for that matter. You've got to instruct, and you've spoken about, perhaps, reductions in staff and maybe fairly junior staff. How easily do your staff get knocked back, and find it difficult to pursue their line of enquiry, get the material they need, and so on? Is that an issue for you?

KK:

Well, most of our staff — we appoint people who find it very difficult to take no for an answer. So, that can make them quite challenging, as a group, actually, in managing them. We find that the biggest challenge is not getting the material, it is the time it takes to get the material. So I think that's a big issue for us. So, we have certain powers, under section 17 [of the Criminal Appeal Act 1995], to get the material. Usually we get it, but it can take much longer than it ought to. And if we're talking about legislation, some teeth around that power would be helpful, but we have a pretty tough set of staff, and Commissioners, who don't take no for an answer. And if we think that we're being spun a line, we will escalate it.

PJ:

And in terms of your medical experts, say, particularly psychiatric. For example, I've just been involved in a case where the CCRC have gone to enormous lengths getting material, obviously looked at the original trial, spoken to the defence team, the barrister who's now a judge, but finally ended up instructing a psychiatric expert whose findings it appears you are relying on, which seem to be going nowhere. And in terms of, do you think you may be let down by the quality of an expert you then decide to instruct after you've done all the work in terms of looking at the potential miscarriage?

KK:

I mean, I don't know the particular case that you're talking about, but I'm certainly aware of experts, or certainly *an* expert, we probably wouldn't use again. I don't think that's the same case. So, we work very hard to ensure we identify the right type of expert, because that can actually be a challenge, we'll not hesitate to seek a second opinion, if that's the right thing to do. We are very aware of the risk of getting into a 'bigger and better expert' battle, where you keep going on and on and on. But, we know, we have people on staff who have expert knowledge, but they are not experts in the same way as going to an independent experts across a whole field of specialities .

PJ:

Well, I'm glad to hear can you can get a second opinion. It would be disappointing for it to fail on basis of the wrong expert.

KK:

Absolutely, no, I couldn't agree more.

EJ:

I just wondered, there are letters we get at Inside Time from people who've been convicted of sex offences, and families. And I wondered - proportionality, since 1994, when the

evidence benchmark was changed so that people could make an allegation that something happened 40 years ago, or 50 years ago, or 35 years ago, and they were convicted. I wondered what proportion of your applicants are, from people who say they've been wrongfully convicted of sex offences. Is it proportionally higher than the rest of the, well, more regular sort of offences?

KK:

Yes, it's around about a third of our intake of cases.

EJ:

A third of your applicants are from sexual -

KK:

Yes, a quarter to a third, it's quite steady.

EJ:

That's quite high, that's quite a high -

KK:

Yes, it is.

EJ:

And are you aware that this is a high level?

KK:

Yes.

LG:

Just to pick up on your ambitions to do more, in terms of having more outreach and so forth, is there a danger that with your limited resources - and £5 million for a government body is tiny, compared to, for example, the Crown Prosecution Service, which has got a slightly different remit. But there is, really a huge comparison: they have budgets of hundreds of millions, whereas you don't. Is there a danger that the more outreach you do, then the more disappointment that you create, because you appear to be promising more than you can achieve?

HP:

I don't think that need be the case. If we're doing the right outreach, and educating people in terms of what we do and how we do it, when they should come to us, then I think there is more chance - and this happens now in some of the surgeries - where we do end up saying to people, you know, 'you cannot come to us for these reasons', so we're very clear with people and manage their expectations around what it is that we're there to do, and how we can help.

And we're very clear about the need for new evidence, we're very clear about some of the issues around disclosure and so on, so, if we're doing that in the right way, then, we will have people coming to us who, at the moment, feel that the criminal justice system is failing them, and they have no avenue to go to. So I think that's really, really important, that we do that. When I first joined, I was quite surprised what a closely guarded secret we were, in terms of what we do and how we do it, and I kept coming up against people saying 'well, section 23 [of the Criminal Appeal Act 1995] means we can't say anything'. And, no, this has to be wrong.

So we do need to be able to take a look at what is appropriate under section 23, and what isn't, so that we can manage our communications and our messages much more clearly, so that people know how, when and why to access us appropriately. And it's only going to get worse, at the moment, with the number of litigants-in-person. So we really, really, really do need to be able to address that. So, that's in the broader criminal justice system — we can't change that at the moment — but there is a need for something to happen in that area so that people get the right advice. Because our fear is that what happens when somebody goes to a solicitor, if indeed they do go to a solicitor, is that there's cherry picking of 'well what cases do I really think there's a chance of success here', and the slam-dunk ones people are always going to go for anyway, but the ones where actually, with appropriate inquiry, and the right questions directed towards us, could actually bear fruit. I think that's an area where we are, as a society, missing some miscarriages of justice, and that's wrong.

LG:

There's clearly a wealth of difference between you writing newspaper articles or going in the media, or other public fora, talking about a particular case, but there's nothing to stop you [HP] or you [KK] from talking about your remit, about how you think it could be changed, your resource desires, and so forth. So there's plenty that you can do, not just in talking within prisons, and within the legal profession, but to the world at large. Do you have a programme of public relations: getting out there; selling your story?

KK:

Yes, we have an external communications strategy, which involves all of those things, so, talking to key stakeholders, we have, I think, a good, business-like relationship with our sponsor team, we have a research committee, which has two independent academics on it to advise us. Two or three years ago, we started a stakeholder forum, chaired by a Commissioner, and that's really important to us. There are people in this room who attend that forum. So we *do* do those things. Could we do more? Absolutely. But again, it comes back to, the more of that we're doing at the moment, then the less we're doing of the core purpose, so it's getting that balance right, which is always a challenge.

MN:

Can I just ask, on the back of what you said about getting your message out and persons who come to you unrepresented. Are you able to say what the 'real possibility' test means? If I was to be thinking of 'maybe I've got a chance here', could you encapsulate what you, as an organisation, when you're looking at something initially, think that means?

KK:

I think that would vary depending on which Case Review Manager you talk to.

So, someone who has been in the organisation for many years will have, almost, that instinct borne of experience, and will look at a case and will know that this is the type of case where, with some digging around, there might be something there that we can find. We certainly don't use the language of real possibility when we're having conversations with applicants, because, as we know, it's a legal test, and academics and lawyers disagree on what it may or may not mean. But, we certainly, it doesn't stop us from, we think, doing the job that we need to do, which is digging around and looking for miscarriages of justice.

And as an example, Friday evening, I had a long day in London. Back in the office, bumped into a Case Review Manager in the lift, who was so excited, 'I think I've found a referral'. He'd just got the whiff of something, and he could hardly contain himself. And it's that sort of enthusiasm that I think if people who come to the office, and spend time with us, if they see that, they will maybe forget about the 'real possibility' test. That's the test that we have to apply, but actually it comes down to digging around in those cases, looking at the facts, so just finding those gems.

MN:

Does that often mean, then, that we're talking about fresh evidence in some format?

KK:

It may do. It may do.

MN:

But that's not - in terms of proportions, is it more the case you're likely to apply to the Court of Appeal where you have fresh evidence than in a case where perhaps you don't?

KK:

No, I'm not sure - I mean, we've got to have something new, be it new evidence or new argument. So that's, we need something new. Quite often it will be around disclosure: the failure to disclose. So the bit that is new is that we've uncovered the failure to disclose. It could well be new evidence in the form of advances in science, psychiatric or medical evidence, DNA, those sorts of things, so I would say non-disclosure and finding something new, something concrete and tangible such as DNA.

MN:

But you then think you're beyond a situation, and I'm just looking at something that was said by Alexandra Marks, in 2017 in March, where she had doubts about the ability of the Commission to discover cases where there'd been material non-disclosure. She particularly, the point she was making in March 2017 was she doubted whether enquiries that led to the discovery of the two cases that she had been referred, that that discovery would have been made if those applications had been made today, and that's end of March 2017 she's speaking of. So what we understand is that the issues of disclosure have risen, because we

understand what's happening, and Lord Garnier has spoken, in part, of it. Do you recognise that remark, or, the truth of it, or?

KK:

I think, and I may be wrong, but I think that comes from some board minutes, where the board was having a discussion. I think this is a reflection of just how serious, how seriously, the board takes issues around disclosure, so, I think the context was around some recent cases in the Court of Appeal, and, combined with how we approach, I think it may well have been, possibly, medical evidence, or might have been character evidence in respect of complainants, and we were just talking through the issues that we face when dealing with that. I think the minute isn't an accurate reflection of the discussion we had. So we are concerned about disclosure - we're always concerned about it - and when we're looking at, particularly, sex offence cases, or any case where it's perhaps one word against another, we will dig very hard on the disclosure point.

LG:

We're very grateful that you are here to see us, but when did you last have a formal or an informal meeting with a group of Parliamentarians, to explain your work?

KK:

The Justice Select Committee, which I think was 2015, I believe, looking at, yes, 2015. And then, earlier this year, the All-Party Group on Miscarriages of Justice, which I think was probably February this year, give or take.

LG:

Do you think you're making enough use of your contact with policy makers and Members of Parliament from all parties?

KK:

Yes, I think so.

HP:

I think we are. We're certainly reaching out to a lot of interested parties who we think can help us. And that, obviously, includes the APPG, which is really important. One of our successful referrals came and spoke to one of the evenings there, and spoke very movingly about the impact it'd had on her life, that she had been wrongfully convicted.

The moment that, kind of, did worry all of us at that point, was that there is no special status. So, if we have a successful referral, that individual is released without the kind of support they may well have had if they come through the Parole Board, and they've had both to a) admit their guilt, and a lot of people who come to us do not want to admit they're guilty because they believe for a genuine reason they're not, and therefore, we are their point of last recall, but they then come out and don't get any special status around housing, around benefits, around rehabilitation. The MJSS have very limited resources: I'm working very closely with Ruth on how we might use some of our staff, as volunteers, to support our

successful referrals when they come out, which will be motivation for our staff, as they would see things from start to finish. But there are some systemic things that need looking at, because it can't be right that somebody comes out and waits five, six weeks for benefits, for instance.

LG:

So can you pick up the telephone and ring the Secretary of State for Justice, saying 'I've got some things to tell you'?

HP:

Yes, yes.

LG:

So do you have regular conversations with the ministerial team?

HP:

I do, I have regular reviews with the Secretary of State, and also the Under-Secretary, so yes. And they always start with 'what can we do to help?', 'what will make your job, your role, easier?' They don't want to interfere in what we're doing day-to-day, because that would not be right, but I feel more than ever that we are knocking on an open door, but some things are going to need legislation to change the current practice. And that, as we know, with the distractions that are around at the moment, creates some issues.

LG:

Ann.

AO:

Just two final things from me. First of all, I think it would be really useful if we have, if we haven't already had from you, the things where you think that legislation would make a difference. Because obviously that's something of great interest to Edward and Vivien. But I just wanted to pick up on what you mentioned earlier about the feedback loop. That where you're finding things that you actually need to feed back into the criminal justice system as a whole, whether that's around - you mentioned joint enterprise earlier, but also, I imagine there are issues arising around forensic science at the moment given what's happening to forensic science at the front end of the system. And I think you were implying that section 23, in a way, inhibits you from being able to do that in the way that you would want. Or is that not right?

HP:

I don't think section 23 inhibits us from doing that. I think there has been a reticence in the past to openly go out and say 'these are the things we think are wrong'. And that's partly around our purpose - we are not a campaigning organisation. But nonetheless, my personal view is — and I know this is supported by the Board and the team — it doesn't stop us highlighting, from our vantage point, these are the things that we see that area causing issues which are resulting in a loss of confidence in our criminal justice system.

AO:

Indeed, I'd go further. I'd say that it's essential that you do that, because I think the less you can create a virtue circle, you're simply rehashing the same things over and over again, aren't you, so I think you're a very good litmus test for what's not going right.

LG:

Thank you very much. You've been very generous with the amount of time you've given us. Thank you for travelling all the way from Birmingham.

Thank you very both very much indeed for coming. You've been extremely helpful, candid and thought-provoking. If there are things that either you or other members of your team back at the office, or who are with you today, having heard the questions and the discussion we've had, other things that you want to say or wish you had said, or feel that need amplifying, please write to us and let us know. And equally, if there are suddenly bright ideas that we wish to put to you, but haven't for time reasons, been able to, we will write to you. But may I thank both of you very much indeed for coming, and we very much appreciate the time you've given.

Right, this session is now closed, and we will go into private session.