**Justice Committee**

**Oral evidence: Restorative justice, HC 594**

**Tuesday 24 May 2016**

Ordered by the House of Commons to be published on 24 May 2016.

Written evidence from witnesses:

- Ministry of Justice
- Cumbria and Lancashire Community Rehabilitation Company

Watch the meeting

Members present: Robert Neill MP (Chair); Alex Chalk MP; Philip Davies MP; David Hanson MP; Dr Rupa Huq MP; Victoria Prentis MP; and Marie Rimmer MP.

Questions 114 - 251

Witnesses: Baroness Newlove, Victims’ Commissioner; Jim Barton, Deputy Director, National Probation Service; and Dan Molloy, Restorative Justice Practice Manager, Cumbria and Lancashire Community Rehabilitation Company, gave evidence.

Q114 Chair: Good morning, everyone. Thank you very much for coming to give evidence to us. This is the concluding day of our evidence sessions on restorative justice. I am very grateful to all of you for coming along. Could you say briefly who you are and what you do? We will then get straight into the questions.

Dan Molloy: My name is Daniel Molloy. I am from Cumbria and Lancashire CRC. I am a practice manager for restorative justice.

Baroness Newlove: I am Baroness Newlove. I am the Victims’ Commissioner for England and Wales.

Jim Barton: I am Jim Barton, a deputy director in the National Probation Service. I am standing in for Angela Cossins, who gives her apologies. She is not able to attend due to health reasons.

Q115 Chair: Understood. Thank you very much for coming along to help us out, Mr Barton. Baroness Newlove, let me start with the victims commissioner’s report that you have just published on the current state of restorative justice provision. I am conscious that it is part one of what is intended to be a two-part report. As we know, you are focusing on the services provided or commissioned by the police and crime commissioners. Thinking back, your previous report in 2014 made reference to a “stark difference in the huge amount of support
Baroness Newlove: Good morning, Chair. On the stark difference you mention, in 2014 I was asked to look at this because restorative justice was being spoken about a lot as a tool that helps victims to get some solace and justice. What I saw was that there was not enough victim support. It was a real rollercoaster ride of a week packed full of seeing facilitators, victims and offenders.

My recent report shows that there is still that landscape. The landscape has changed since 2014 because we now have police and crime commissioners, who are the purse holders for victim services. It is about quality and the support for victims. The landscape is still very different and variable across the country. That is why I still have some concerns and why this report is in two parts. I want to speak to victims themselves, to give me the full experience. It is not just about providing a quality service but about speaking to victims to see how they feel afterwards. That is why the two reports will give better recommendations and guidance for the agencies, so that they can do better for victims.

Chair: That is helpful. Do you have any idea when we are likely to see part two?

Baroness Newlove: In early autumn, I imagine. I do not want to get my staff, who are behind me, sweating with specific dates.

Chair: I understand. That is helpful. Perhaps we can return to that once it has been done. One of the other things I wanted to ask you about was the whole question of quality assuring restorative justice. A fairly comprehensive theme in the evidence that we have had is that there is a lot of variation. As you say, PCCs are fund holders, but, from the evidence we have, the way they approach it and the extent to which they do varies a lot. It has been suggested to us by some witnesses that it should be mandatory for those who receive statutory funding to deliver restorative justice work to achieve the Restorative Justice Council quality mark. Some people said they think that is necessary, but one of our witnesses said that it would kill restorative justice. You point out that at the time of the report few PCCs had actually achieved the quality mark. Does that remain the case? What is your own view, as Victims’ Commissioner, on whether it should be obligatory?

Baroness Newlove: I would not like to say what PCCs should do. They are in charge, so it is not for me to say. We should be looking at quality and working towards the mandatory—looking at the Restorative Justice Council quality mark. That is something I flagged up in 2014. I did not want everybody popping up to say that they were a restorative justice provider or facilitator. There is quality work out there that works towards the quality mark framework. Working together is better assurance than putting down a carte blanche mandatory framework.

Chair: Understood. Mr Molloy, do you want to come in on that point?

Dan Molloy: Yes, Chair. We wholeheartedly agree. We believe that some manner of accreditation needs to take place with the facilitators. We have fully funded our facilitators
to work towards the quality mark. If people are going out there saying that they are delivering restorative justice but there is no particular framework behind it, you could end up with a disaster.

Q119 Chair: Should it be mandatory or not mandatory, or is it too soon to say?

Dan Molloy: I would say mandatory.

Q120 Chair: Does anybody dissent from that?

Jim Barton: It is probably straying slightly beyond the territory of the NPS.

Q121 Chair: I will not push you on that.

Jim Barton: From a wider NOMS perspective—Michael Spurr may want to speak to this later—we see a variety of different mechanisms through which you can attest to the quality of RJ. The quality framework is clearly one of those, but we also use contract management, service specifications and a variety of other tools to ensure that the services we receive are to a standard.

Chair: Understood.

Q122 Victoria Prentis: My question is for Mr Molloy. In your written evidence, you helpfully gave the figures for who initiated restorative justice in Lancashire. It is striking that very few—18—of the justice sessions were victim initiated. The figures are the other way around in Cumbria, not as starkly, but slightly. What do you think are the reasons for that?

Dan Molloy: The main reason is that one of our facilitators was seconded to the CRC from the Prison Service and had access to prisons. When you come into contact with people who have had experience of restorative justice, they tend to be rather evangelical, when it comes down to it. Jonathan, who was the prison facilitator, promoted it hugely in prisons. That is the reason why we have so many referrals from the prisons there.

With regard to victim referrals, one problem is that it takes a long time for the cultural shift with regard to how restorative justice or any new kind of justice is seen. Although we did extensive promotion in various forms of media, we got very few victim referrals, or a lot fewer than we had hoped. However, by setting up the restorative justice hub in Cumbria and Lancashire, we started the ball rolling and it is now gaining ground.

Yes, there was a disparity. You have to be careful about the way you approach victims. You do not want to push restorative justice at them by saying, “You need to do this,” because you may end up alienating them and making things worse, which could be a terrible problem. When it comes to working with perpetrators and offenders, in the probation service and the CRCs we have much freer access to those people to talk to them about it, to put the seeds of restorative justice into their minds and find out how they feel about it. One reason why we did not go for the PCC contract in Cumbria for the second time was that they were very much focused on victims—rightly so—but we were coming more from the offender side.

Victoria Prentis: You were pushing the other way. Thank you.
Q123 Marie Rimmer: Good morning. Can we look at the effect of targets on the delivery of restorative justice? If restorative justice is determined by the number of referrals and victim-offender conferences achieved, could that create an incentive unduly to pressurise victims or offenders to engage in restorative justice? In written evidence, comments have been made that it could have a negative impact and be seen as a quick fix, demanding instant results. There has even been reference to “target chasing”. Baroness Newlove, what are your views on that?

Baroness Newlove: I totally agree. We should not measure and target victims with restorative justice. This is an area that has to be dealt with very sensitively. It has to be a victim’s choice. If we are target driven or are measured on how many victims take it up, it will take another turning, and that is not what restorative justice is about. It has to be a victim’s choice. Uptake is very low, but we do not want to pressurise victims to do something. If we pressurise and make it target driven, restorative justice will be taken up for the wrong reasons in the first place. That is very dangerous. It is not right and will take this elsewhere; it will not be for the victim. It will somebody else’s choice to make sure that restorative justice is done.

Dan Molloy: If you start pushing that, you could end up re-victimising the victim. Although the numbers look very small—we have about 8% when it comes to face-to-face meetings—we need to look at the wider picture of how restorative justice is defined. For example, if a victim is offered the choice of restorative justice, it could be empowering for that person to say no. The pressure is not there; they have that choice. That in itself is a restorative practice.

Jim Barton: I agree. A measure of victim satisfaction with their experience of RJ is far more powerful.

Q124 Marie Rimmer: I was just going to come to that. Would it be more sensible to set standards in relation to, for example, victim satisfaction with the process as a whole or the timeliness of responses to inquiries? That is what you are saying, Jim.

Jim Barton: From our perspective, yes.

Baroness Newlove: I totally agree.

Dan Molloy: Wholeheartedly.

Q125 Marie Rimmer: There is a large number of potential providers of restorative justice. Is it preferable for restorative justice to be provided by multi-agency hubs? Do you think that would be better?

Baroness Newlove: Multi-agency hubs may be better for data sharing, but it depends on what the police and crime commissioner wants to do for victim services in restorative justice. Dan may want to say more, as he is part of an agency.

Dan Molloy: At the CRC, we would approach it by having one agency that holds the pot and feeds into a multi-agency hub. That has worked very effectively in Cumbria and Lancashire. Because of historical splits in the budget to various different agencies, you could end up with repetition of work, which wastes resources. In Cumbria, we held that pot for a while. Now we are contributing as part of the multi-agency hub. We have things...
like monthly practice meetings, where we all come together. It needs to be done at senior level, with senior agreement, but that feeds down.

**Q126 Marie Rimmer:** Everybody knows what everybody is doing.

**Dan Molloy:** Absolutely.

**Q127 Marie Rimmer:** With no duplication.

**Dan Molloy:** Yes.

**Q128 Marie Rimmer:** Jim, do you have any comments?

**Jim Barton:** The local delivery landscape is so varied that to mandate or dictate a specific model of delivery is potentially risky and undermines innovation, but I agree with the observation that there is a risk that the delivery landscape can become too crowded. The National Probation Service position is that we should not look to develop restorative justice delivery in-house. Rather, we should commission via PCC-funded services or, if there are gaps in those services, through CRCs. We see our role as facilitating access to RJ services delivered by others, as well as raising awareness of the scheme with the victims we manage through the victim contact scheme.

**Q129 Alex Chalk:** My question is for Mr Molloy. What incentive is there for CRCs to provide restorative justice?

**Dan Molloy:** We work towards reducing reoffending. We understand that the victim comes first, but our job is to reduce reoffending. From the evidence we have seen—the face-to-face contact that we have, even things like letters of apology and the general discourse that comes from perpetrators and offenders when they have gone through the process of RJ—it seems to have quite an impact.

**Q130 Alex Chalk:** In its written evidence, NOMS claims that it manages CRC contracts "robustly" to ensure quality service delivery and reduced reoffending. What interaction do you have with NOMS with regard to delivering restorative justice?

**Dan Molloy:** Not much, when it comes to the delivery of restorative justice. Could you give me a second, please?

**Q131 Chair:** Are there any other thoughts on that?

**Jim Barton:** I can comment, if it would be helpful. As I referenced in an earlier answer, NOMS holds CRCs to account against service specifications. There is a service specification that details the minimum requirement for safe delivery of restorative justice. I would not for a second pretend that it is as expansive as the quality framework we talked about previously, but it dictates a NOMS authority view of what we consider to be effective restorative justice service delivery. I think I am right in saying that restorative justice has not featured in the initial priority areas set for audit and assurance work on CRCs. It is not something on which we are proactively interrogating, for want of a better word, the performance of CRCs, but we have a clear contractual mechanism to hold CRCs to account for a specified level of service delivery.
**Q132 Alex Chalk:** Mr Molloy, Derbyshire, Leicestershire, Nottinghamshire and Rutland CRC say in their written evidence that the Government need to set clear and concise payment-by-results RJ targets for CRCs, to avoid confusion as to what services CRCs and PCCs should provide. Do you agree with that?

_E Dan Molloy:_ I agree with it with regard to victim satisfaction, as we have discussed already. With regard to targets and numbers, that would be a rocky road to go down—it would be unsteady. When you are looking at delivery of restorative justice, one process can take a long time. It could be a matter of weeks, but it could be nearly a year before something like that happened.

**Q133 Alex Chalk:** It does not really lend itself to performance by results, because you are dealing with human beings.

_E Dan Molloy:_ Exactly; you are right. We are not dealing with robots. We are not fixing people, as it were. There is a measure of success that you can find, through victim satisfaction and, I guess, reduced reoffending, but if we started to say, “Right, we need this number of people here and this number meeting face to face,” it would not work.

**Q134 Alex Chalk:** Finally, what funding do you receive from the MOJ for providing RJ?

_E Dan Molloy:_ I don’t think we receive any funding from the MOJ.

**Q135 Chair:** Do you have any comments to make on that, Baroness Newlove?

_E Baroness Newlove:_ There have been references to payment-by-results measures and reoffending, but for me it is about victim satisfaction. If you look outside the box, the measure for me is seeing a victim who gets something and is empowered, so that they can walk away and rehabilitate their lives a lot more healthily than they could when they began.

**Q136 Philip Davies:** I have a very quick question. Mr Molloy, in answer to Mr Chalk, you said that the incentive for doing restorative justice was to reduce reoffending. When I asked the Minister two weeks ago what assessment he had made of the effect of restorative justice on reoffending, he replied, “There has been no assessment of the impact on reoffending rates” of restorative justice. How can we have any confidence that it has any impact on reoffending at all?

_E Dan Molloy:_ It is very early days with regard to the reoffending data. What we can see in the short term from the work that we have done in Cumbria and Lancashire is that it has had quite a significant impact. In my written evidence, I gave the example of a housing estate where police were being called out two or three times a week for minor incidents such as scuffles. We held a restorative justice conference. Although it was a tough conference to hold, because we were dealing with many people at the same time, there have been hardly any call-outs since then. In the short term, we are seeing quite an impact at the coalface.

**Q137 Philip Davies:** Obviously the Government are not impressed with that.

_E Dan Molloy:_ No.

**Q138 Chair:** Or they have not collected the data.
Dan Molloy: Perhaps. As I said, it is early days. We set up the hub in Cumbria about 17 or 18 months ago. A lot of that was about trying to get out there what restorative justice is, because hardly anybody knows. When you start talking to people face to face and say, “This is what the process is. This is how we envisage it ending,” people become enthusiastic about it. We have to look at it holistically. We have to get the message out there to people that this is an option—not only that, a viable option—they can take part in.

Q139 Philip Davies: Do you think that the Government are not showing enough interest in this?

Dan Molloy: I do not think that they are not showing an interest. We just need more time to collect more data, in order to provide the evidence that is needed to change minds.

Q140 Chair: Is victim satisfaction ever a measure, as far as you are aware, in the various contracts that you have?

Dan Molloy: Yes. We are halfway through the contract on this. Because we are very concerned with promoting RJ, we started handing out victim satisfaction feedback forms, to get feedback from the victims. At the moment, we have had few in, because there has been a low number of face-to-face conferences. With the hubs in both Cumbria and Lancashire, we envisage doing this with every victim as a matter of course. Whether it be through a phone call or through a feedback sheet, they will be able to say how they feel the restorative process has gone. It is very much something that we want to start measuring effectively.

Q141 Chair: Mr Barton, can you help us on that?

Jim Barton: Victim satisfaction is a core measure of the National Probation Service’s performance as well, such as it relates to our management of victim contact schemes—not specific to RJ, but in terms of our support for victims more generally.

Chair: That is very helpful.

Q142 Mr Hanson: Can we look at the role of the National Probation Service? I will focus on you, Mr Barton, as you have that responsibility. In our written evidence, we had what I would term a marvellous piece of gobbledygook from the Ministry of Justice. It says that the National Probation Service has “been working to identify its forward role within the partner-matrix of restorative justice delivery.” Could you tell us what you think that means?

Jim Barton: Sure. We go to civil service school to learn to speak like that. As I commented earlier, we are now clear—we were perhaps not as clear at the point when that written evidence was pulled together—that we do not see ourselves as a delivery body for restorative justice. We are not a provider of restorative justice. Rather, we see our role as twofold. First, it is to promote restorative justice, through the access that we have to victims. The victim contact scheme extends to all victims of crime for which the offender receives 12 months or more in custody, linked to a sexual or violent offence. That is a significant quadrant of the victim population—sorry, quadrant is a word I learned at the same school. We promote access to RJ, as we have access to victims and also to our offender group. We are very keen to push it more down the victim conversation line, as much as with offenders. Our second role is to facilitate access to restorative justice, by
which we mean that where we are actively supporting a victim or actively managing an offender, either in custody or in the community, we consider as part of our assessment of the case whether we think that RJ would lead to positive outcomes for victim and offender. Where we think that it would, we refer the case to the appropriate provider.

Q143 Mr Hanson: We have had some evidence that 10 areas were identified where the National Probation Service had capacity to deliver restorative justice through victim-offender conferencing. It seemed that in some areas you were doing that directly and very actively, yet in others you had this “partner-matrix of restorative justice” referral, facilitating and so on. I am interested in the practicalities, and whether, deep down, this is dependent on local capacity in a local region.

Jim Barton: It is more about an inherited position. Through the transforming rehabilitation reforms, the resources and services that had been developed by local probation trusts were split into the National Probation Service and community rehab companies. In most parts of the country, services linked to restorative justice went to the community rehabilitation company; Dan is evidence of that. In some parts of the country, the 10 areas that you reference, we inherited either resource—staff trained as facilitators—or an ongoing financial contribution to a partnership. Most of that provision is still in place. We do not see it as a long-term position that we will continue to develop by increasing our investment in those in-house services.

Q144 Mr Hanson: If you were sitting where the Committee is sitting and had the question put to you, “What is the relationship now between community rehabilitation companies, the National Probation Service and police and crime commissioners on commissioning?” what would you say? What should it be if all of this massive change settles down?

Jim Barton: At the risk of descending into gobbledegook again, I would say that we are all partners in delivering effective services for victims within a local area.

Q145 Mr Hanson: Who should take the lead? Who is responsible? Is it a PCC responsibility? Is it for the CRC to come up with ideas? Are you co-ordinating, as part of this partner matrix across the board? What is happening?

Jim Barton: We have various contributions to make, many of which are referenced in the victims’ code. PCCs are primarily the organisation funded to deliver restorative justice services in their local area. In addition to that, many—indeed, most—CRCs have either developed their own specific RJ services or are delivering services in collaboration with the PCC.

Q146 Mr Hanson: But the funding for the PCC is not ring-fenced, is it?

Jim Barton: No.

Q147 Mr Hanson: If I am sitting in north Wales, as I am, and it is not happening, who do I go to? Do I go to the local CRC? Do I go to the National Probation Service? Do I go to the PCC? Do I go to the Victims’ Commissioner? What do I do?

Jim Barton: Any one of those routes should lead to positive effect, because we are all invested in RJ. Ultimately, PCCs are the organisation funded to deliver and, therefore, to drive restorative justice within a local area.
Q148 Mr Hanson: I am minding my own business yesterday and suddenly I am a victim of crime. I do not know anything about the legal system, courts or criminal activity, but suddenly I find myself a victim of crime, through no fault of my own. I want, potentially, to have the opportunity to get it out of my system and to get a bit of justice not just by seeing someone go down or have a community punishment, but by meeting them to discuss things and to find out why it happened to me. How do I know who to go to?

Dan Molloy: You should be able to go to anybody within the criminal justice system.

Q149 Mr Hanson: What if no one is telling me what the options are? Do I have to go and find the police and crime commissioner, who represents half a million people in my area?

Dan Molloy: Potentially, we should have people trained up in every agency you can access. In all police stations, probation offices, prisons and courts, there should be somebody who understands RJ and is there to promote it. The promotion of RJ across the country could be stepped up considerably, so that a person like you, if you were a victim of crime, knew about restorative justice and knew exactly where to go. With regard to holding the budget or budgetary responsibility, it could be the PCC, the CRCs or whoever is doing that. We believe that a multi-agency hub is the way forward for that. If the PCC has budgetary responsibility—

Q150 Mr Hanson: I will come back to the probation service for a moment. One of the key responsibilities of probation officers is to do pre-sentence reports in court. We have had evidence that, potentially, pre-sentence reports on RJ are being used less and less and that the National Probation Service officer present in court is really the person who determines whether RJ should be offered. I suppose that this is a question for the National Probation Service, but other partners may also wish to comment on it. Are you advising sentencers in an appropriate, regular, conforming way about the use of RJ as an option for any crime at any particular time? Is that embedded in the work of the probation officer who is servicing the court, as opposed to the CRC or any other potential measurement?

Jim Barton: You describe absolutely accurately our role to provide pre-sentence advice to sentencers. As part of that, we would not consider it appropriate to recommend RJ as an alternative to custody or some other form of punitive function. As you have heard in various pieces of evidence, there have been a number of pilots to explore pre-sentence restorative justice. Wherever those pilots have been live, the National Probation Service has been actively involved and has taken into account consideration of whether restorative justice should be proposed pre-sentence in those areas. I do not believe that we have yet had a full evaluation of that pilot work. As with any pilot initiative, we have to recognise that there are probably learnings, and that our report writers have probably embraced restorative justice with a degree of inconsistency, but as a service, wherever pre-sentence RJ is being explored, we see it as a core part of our advice to sentencers to consider the appropriateness of that.

Q151 Mr Hanson: In summary, it is all a bit of a lottery.

Jim Barton: I do not think that is an entirely fair summary of what I am saying. I am saying that pre-sentence RJ is not yet a mainstream service. It is not a service that you would find in the majority of Crown courts or magistrates courts. There is a variety of
pieces of work, and consideration is being given to where we go next with pre-sentence RJ. Colleagues may well have a view on that. Wherever pre-sentence RJ is in place, the NPS has been a firm and integral part of that local initiative. What I am not saying to the Committee, because it would be overreaching, is that in every single assessment RJ has been considered to the nth degree. It is a new consideration in sentencing advice, so it will take some time to burn it into the consciousness and focus of our report writers.

Q152 Chair: Is it a bit of a lottery, Lady Newlove?

Baroness Newlove: At the very beginning of all this, how do you find out all the information? I quite agree. I am not even at the pre-sentencing; I am quite lost before I even get to pre-sentence, to be honest. Part one of my review showed that within the victims’ code the key entitlement is for the police to inform the victim. It is down to making sure that the police have trained in restorative justice, to start that journey of enabling the victim to understand. The pre-sentence report and everything else are part of the criminal justice process. I do not like headliners like this. For me, it is about quality assurance for the victim and making understanding integral to the criminal justice system.

Q153 Alex Chalk: Can I emphasise that point? Probation is ultimately defendant focused. Restorative justice should be about victim focus. In the course of any trial, the person who forms that bond and ushers the person through the process is very often the officer in the case, together with the CPS. In the same way that a police officer may get a victim impact statement to read out in front of the court that says, “This is how this crime has impacted upon this person,” it is for that officer to say, “By the way, some kind of justice and closure can be achieved by the victim potentially engaging in restorative justice.” That cannot be for probation, which has a different angle on these things. I respectfully and completely agree with what you are saying.

Dan Molloy: We need to be careful about pre-sentence restorative justice as well. We need to look at a perpetrator’s motivation for doing it, if it is offered. Is it to get a lenient sentence? We have to be very careful about that. I wholeheartedly agree that it should be victim focused, but again we need to look at it holistically. This is for both victim and perpetrator, to enable both to move forward in their lives.

Chair: That is very useful.

Q154 Dr Huq: I want to ask some questions specifically about the victims’ code and the proposed victims’ law. Baroness Newlove, would you say that victims are receiving their entitlements under the victims’ code? In your report, you said that there is a mismatch; victims are meant to be informed that their details will be passed on, but it is not happening. What is the evidence for that? On the whole, are people getting their entitlements?

Baroness Newlove: My review showed that they were not being given their entitlements on restorative justice. Only 7% recall being given the opportunity to meet their offender to talk about restorative justice. For me, it is about making sure that we get a culture change—better training of the police and all the agencies that come in front of the victim. On the entitlements, there is a huge gap between the experience of victims and what the agencies say they provide to victims.

Q155 Dr Huq: People’s details are not being passed on routinely.
Baroness Newlove: No. Victims do not even know that their details are being passed on. They do not even have the knowledge that they have to sign a written consent to say that they do not want their details passed on. That is very crucial information that should be explained, especially if we go on to data protection. We cannot get information that we need, but victims are actually giving information without being aware of it at the time. Don’t forget that these victims are traumatised. You have to be very clear and sympathetic and make sure that they understand from day one where that information is going.

Q156 Dr Huq: We had conflicting evidence on that from the PCC we interviewed. Do you think that the entitlements in the victims’ code should be strengthened? Should people have an entitlement to restorative justice?

Baroness Newlove: It is already there; it is in the victims’ code as an entitlement, so you look at that first. It is for the Government to decide, when they look at their victims’ law, because they are looking to strengthen the code. I know that you will speak to the Minister later, but it is entirely up to the Government. We need to see what they produce as a victims’ law. If you are going to make it stronger, you have to provide for enforcement. If victims do not get their entitlement, how will you enforce it when that entitlement is breached? There is a lot of work to do. For me, it is about culture and training. First and foremost, it is about victims understanding what you are saying to them at a traumatic time, to make sure that they go forward for the right reasons.

Q157 Dr Huq: Would you want to put it on a statutory footing?

Baroness Newlove: I would like to see other things go into law. We should not focus just on restorative justice, but it is for the Government to come back on that. I will have a better challenge or debate about it when I have seen what the Government want to produce as a victims’ law.

Q158 Dr Huq: Do you think that the office of the Victims’ Commissioner should have powers of adjudication and redress to enforce the victims’ code or a future victims’ law, if it were to happen?

Baroness Newlove: As Victims’ Commissioner, I have the right to look at compliance with the victims’ code. Again, it is down to the Government to decide what the role of the Victims’ Commissioner will be. They may strengthen it or give it more powers, or the role may be completely different from what it is today. Once the Government produce a draft Bill, I can have a better debate about what it will look like for the Victims’ Commissioner. At the moment, my reviews show that there are huge gaps in compliance with the victims’ code. Those entitlements are not being delivered. For me, it is looking at our whole approach to having better victim protection and stronger victims’ voices. I will be interested to hear what the Minister has to say on that.

Q159 Chair: The final topic I want to turn to is the vexed issue of data sharing. It seems to be a recurrent theme in the evidence we have had that there is a problem with data sharing. We had evidence from the Restorative Justice Council that in the pre-sentence pathfinder only 1,200-odd victims were contacted, out of about 2,200 potential cases. The argument was put that there is an issue around data sharing, which is very hit and miss, and that some sort of national information template should be produced to clarify and publicise the legality of
information sharing. Should there be such a template? Is the situation a real one, in your experience?

**Dan Molloy:** No. We have had absolutely no issues at all with regard to data sharing, again because of the multi-agency approach. The agencies include victim liaison officers and victim services. It is always understood that any data from the victim is shared voluntarily by the victim. Data sharing between agencies around the perpetrators has not been a problem.

**Jim Barton:** We routinely share information, within the appropriate safeguards, with a wide range of partners, whether statutory partners, organisations such as CRCs, local authorities or local voluntary sector organisations. There is no fundamental structural obstacle to the sharing of information as it relates to victim services or restorative justice. There are, of course, considerations that need to be worked through to ensure that data and information are transferred and handled safely, but I do not see a unique or specific problem there. It is around ensuring that we walk safely through the steps that are required of us under the Data Protection Act.

Q160 **Chair:** Let me quote to you a piece of evidence that we had from one witness, who said, “I do not want to sound too pessimistic; maybe it will be delivered this time, but, currently, NPS cannot share information readily with CRCs, and CPS does not share information readily with NPS.” Is that the experience of any of you?

**Jim Barton:** Forgive me if I am reading something into evidence that I am taking out of context, but I wonder whether that relates more to system issues, rather than a fundamental readiness to share data. The NPS and the community rehabilitation companies share a single case management platform. We therefore have a ready means of sharing information around offenders. We do not share a database that supports the management of victims.

The NPS inherited a large number of local victim databases, which is the shorthand we use for those case management systems. We are currently going through a process of rolling out a single platform for all our victim liaison officers. As it stands, it is not a system that is opened up to CRCs. We could certainly look at whether opening up an element of it would better enable data sharing around restorative justice. It is not something that has been shouted particularly loudly in internal conversations about the specification of the system, but it is certainly something we would have an appetite to explore.

Q161 **Chair:** Lady Newlove, do you have any thoughts on that?

**Baroness Newlove:** The team that did the fieldwork found that there were barriers to victims being informed about restorative justice. I know that since November last year the police have to pass on the details. That is the data sharing. I went to a conference in Thames Valley, where data sharing was raised as a problem. It may be about internal systems, rather than big data sharing. When the multi-agency approach works locally, it works fine.

Q162 **Chair:** That is what you say you are finding in your circumstances, Mr Molloy.

**Dan Molloy:** Absolutely.
Chair: Thank you very much. The evidence has been very clear and concise. We are very grateful to you for your time and trouble.

Examination of Witnesses

Witnesses: Rt Hon Mike Penning MP, Minister for Policing, Fire and Criminal Justice and Victims; and Michael Spurr, Chief Executive, National Offender Management Service, gave evidence.

Q163 Chair: Welcome, Minister. It is the first time that we have had the pleasure of your company at the Justice Select Committee. We are delighted to see you. Welcome back, Mr Spurr. You are a more frequent visitor to the Committee. It is very good to see you, too.

This is the last piece of evidence that we are taking in our inquiry into restorative justice. We have had quite a lot of written evidence and we have heard oral evidence from a lot of witnesses. What I want to start with, from the Ministry’s point of view, is this. We have heard some evidence that, basically, it is difficult to say how effective restorative justice is. The evidence base can be varied. Very often the Ministry refers to the study that was done by Joanna Shapland, which goes back to 2012. Some people say, “Have things moved on from that?” Other people would say that a lot of the evidence we have is purely around the victim conferencing approach to restorative justice and that it is not so detailed on the other aspects. What is your assessment of the evidence on that?

Mike Penning: The first thing is that we must make sure that we look at exactly what restorative justice is in the context of what the Committee is looking at particularly, because there is some confusion among victims and individuals out there. The type of restorative justice involving victims, with either face-to-face or video conferencing, is one side. Restorative justice within out-of-court disposals and to do with the piloting of deferred prosecutions is somewhat separate.

As you can imagine, money is tight, so we would not be putting in the sort of money we are putting in if we did not think that it would work. It is not a golden bullet. It is not the only way. We still think that the 14% figure shown in the report you alluded to a moment ago is about right; it may be slightly better. The more accurate one from my point of view, as the funding Minister, is probably what I call the BCR—for every pound that I put in, what tangible benefit does the Department feel there is? For every pound, it is £8. When I was at Transport—to use that analogy—that kind of road programme would go ahead every single time. I was putting projects through at 1:3 and 1:4. That is where we are.

Do we need to work to understand better how that funding works in particular areas? You will probably come to that conclusion as a Committee anyhow, especially as we are using PCCs more in the trial. You have seen the extra money that we have put into it. That is going to develop. The agreement between the Home Secretary and the Justice Secretary on more powers for PCCs in that particular area is very important.

Chair: I understand. Mr Davies, do you want to come in on this point?

Q164 Philip Davies: Yes. I was rather surprised that the Minister seemed to be such a world-leading authority on the benefits of restorative justice. When I asked some
parliamentary questions a couple of weeks ago about restorative justice, the Minister and the Government appeared to know very little about it, but it seems that there has been a radical change in the last two weeks. I asked how many people who had committed certain types of offences—indictable offences and violence against the person—had been on restorative justice programmes. The answer was, “We don’t know. The information could be obtained only at disproportionate cost.” I asked how many people had been on such programmes on more than one occasion. The answer was, “We don’t know. The information could be obtained only at disproportionate cost.”

I asked what assessment had been made of the effect of participation in restorative justice on reoffending rates. Apparently there is a great financial benefit to this, but I was told, “No assessment has been made of the reoffending rates of people participating in restorative justice.” I asked whether they would go on the police national computer. The answer was, “We don’t know. There are no plans to do any of that.” I asked how many restorative justice resolutions were given to people on suspended sentences: “No idea—can only be obtained at disproportionate cost.”

Literally, the Minister has not been able to answer every question I have asked. How do we know all of a sudden that for every £1 invested there is an £8 benefit, when two weeks ago no assessment had been made of any of these things?

Mike Penning: Probably the reason was partly that I was coming before this Committee and I wanted to make sure that I had as much detail as possible. It is very difficult when you are using myriad different suppliers and have changed—very much so—how you develop this since the initial plans were done in 2013. You ask an awful lot of questions, and I answer them as best I can. Sometimes your asking a question and my coming before the Committee generates more questions for us, but that costs money. At the end of the day, I have to make sure where that money goes. The best measure is the victims. Surely we are all here to make sure—

Q165 Philip Davies: Hold on a moment. Before we get on to—

Mike Penning: Let me finish my point and then the Committee can ask me more questions. If victims are coming forward and saying that they feel that this is beneficial to them, surely that is crucial.

Q166 Philip Davies: That is a different question. You said categorically that as far as you are concerned, for every £1 spent on restorative justice there is an £8 benefit. Two weeks ago, in an answer to a question, you said that no assessment had been made of those sorts of things.

Mike Penning: I asked for an assessment to be made.

Q167 Philip Davies: How can we go from no assessment being made two weeks ago to the absolutely definitive, “We know that there is an £8 benefit for every £1 spent”? Either the first answer was wrong or this answer is wrong. Both of them cannot possibly be right.

Mike Penning: Of course they can. If you have data in front of you at the time when a PQ is answered, that is the information you give. I may then ask for more information. Nothing is 100% definitive. I do not care who they are—no one who comes before any
Committee says, “That is 100% where we are,” but I will write to the Committee and give you the evidence as to how the 1:8 figure was arrived at. We can do that.

Q168 Philip Davies: So that has all been compiled within the last two weeks. The information that you stated definitively has all been compiled, put together, analysed and robustly tested in two weeks.

Mike Penning: As I have just said, I will write to the Committee with an analysis of how it was produced.

Q169 Chair: Your view is that the Shapland £1 to £8 figure remains very robust.

Mike Penning: Yes.

Q170 Chair: That has been out there for some time.

Mike Penning: Yes.

Q171 Chair: I understand.

Mike Penning: There is no evidence to the contrary. That is the point I am making.

Q172 Chair: Further detail on that calculation will be welcome. Earlier we talked about the distinction between conferencing and indirect restorative justice. Do you have any view on the comparative benefits of those?

Mike Penning: Only from the victim’s point of view. This only works if it works for the victim. In some cases, particularly certain types of offences, the victim will not and, quite understandably, should not be pushed in any shape or form to go down the road of restorative justice. I know that you have seen some evidence from both sides—the victim and the perpetrator—saying what the benefit was. For some, video conferencing or that type of facility works, but that does not take away the absolute need for the Prison Service, for instance, to have a face-to-face facility available. As the Home Secretary said the other day, in no shape or form should victims be forced, pushed or cajoled in any other way into restorative justice. That is absolutely crucial.

Q173 Chair: Understood. One quite sensitive area we heard evidence around was in serious and complex cases, particularly where there is a sexual element or an element of domestic violence. You made the point that nobody should be forced into this. Do we know enough about the potential effectiveness or otherwise of its use in those sorts of cases?

Mike Penning: That will develop as we as a society and as a criminal justice system better understand and work with the victims of domestic abuse and other sexual types of violence. Let’s not beat about the bush. For all too many years, it would have been pushed to one side. It would not even have got through the criminal justice system in any shape or form. There is a lot more confidence now, particularly with domestic abuse cases, that people can come forward, but we need to protect them as well. As I said, it is not a silver bullet. There is no point in someone having the confidence to come through to do restorative justice if they are then back in the really terrible and difficult environment that put them there in the first place.
Chair: I understand. As a Minister, you sit in both the Ministry of Justice and the Home Office. I notice that the Home Secretary expressed what appeared to be opposition to or serious reservations about the use of restorative justice in domestic abuse cases. She referred to disliking sticking a victim and an offender in a room. Is there any disjunction between MOJ and the Home Office on this?

Mike Penning: The Home Secretary was absolutely right to make the comments that she made. The police are on a journey as well, particularly around domestic abuse. Some would argue that they are not far enough down that journey. This was a Home Secretary with a size 10 boot saying that the mindset that was there before has to change. I reiterate that it is absolutely wrong for anybody, whether it be the police or any other part of the criminal justice system, to push and cajole someone into restorative justice. It has to be right for them as part of a package. As the Home Secretary said, it should not mean putting you in a room with the perpetrator. That must have been horrendous.

Chair: Can we move on to the Ministry’s action plan?

Q175 Alex Chalk: That is slightly what we have just been discussing. It has been put to us that some police forces are wrongly using level 1 restorative justice in cases of domestic abuse, particularly in circumstances where they might go to the scene of an alleged domestic, have a chat with everyone and say, “Is everything all right? Don’t do this. Don’t abuse people. Don’t abuse your wife or partner.” They then call that restorative justice. Are you aware of that concern?

Mike Penning: I am aware of that concern, which is partly why the Home Secretary made the comments that she made last week. It is fundamentally wrong if officers are doing that. I say that as the Police Minister, as well as the Criminal Justice Minister. It is happening less and less, but there is still concern about it. The College of Policing has to get its guidance and training right the way through to the guys and girls on the frontline, as they deal with these issues.

Q176 Alex Chalk: Is it not a fact that the police need to be assisted more by Government? Shouldn’t Government be saying that, as we step back and look at this, restorative justice will probably not be suitable for all types of offences, such as domestic abuse, and it is wrong to say that it should be available for all kinds of offending?

Mike Penning: We are saying that. The speech from the Home Secretary this week was very definitive on that. The Justice Department completely agrees with what she was saying.

There is a difficulty. The assumption will be, quite rightly, that wherever domestic abuse is reported, prosecution should take place. Restorative justice should run alongside prosecution. This should be an exception. In the particular context we are talking about at the moment, restorative justice is not designed around the idea that it is either prosecution or restorative justice. That is not what restorative justice is supposed to be about—it is supposed to run alongside prosecution. The judges and the courts very much see it that way.

Of course, the big problem—it is still a problem—is for individuals to have the confidence to feel that they are safe to go ahead with the prosecution. That is one of the other reasons...
why we are looking very carefully at police-led prosecutions as well, particularly with the video evidence that we are getting on camera, which has transformed some of these prosecutions.

Chair: That is very helpful.

Q177 Mr Hanson: I want to look at funding, Minister. The Ministry of Justice action plan states that £23 million was allocated to police and crime commissioners over three years, from 2013 to this year, to build capacity for restorative justice services. How much of that money has been spent to date?

Mike Penning: I cannot tell the Committee directly how much has been spent, because it is being spent locally, throughout the PCCs. It has been allocated, along with just over £90 million around victim support. More and more of this will come through the PCCs, so the accountability argument as to how that money is being spent will be required.

Q178 Mr Hanson: As it is not ring-fenced, can you say categorically to the Committee that the £23 million that has been allocated has been spent on restorative justice services?

Mike Penning: No, I cannot. As you quite rightly said, it is not ring-fenced or hypothecated. We believe in localism. You will see more and more of those powers coming out through the localism agenda.

Q179 Mr Hanson: Localism is all very well, but if you are allocating £23 million to build capacity for restorative justice services, shouldn’t you have an idea of whether it has been spent on that?

Mike Penning: We will know how it has been spent, but what we are not going to do is say to every PCC in the country, “You must spend every single penny on this.” There could be joint projects going on. This is not a silver bullet—it has to be part of a package. Sometimes those packages will be together.

Q180 Mr Hanson: Linked to Mr Davies’s question, could either you or Mr Spurr provide the Committee with a list of projects on which that £23 million has been spent to date, so that we know exactly whether the aspiration meets the reality? Is that a commitment?

Mike Penning: Yes, of course.

Q181 Chair: Mr Spurr, can you help us on that today?

Michael Spurr: I cannot, on the basis that I am not responsible for the expenditure of police and crime commissioners. As the Minister said, these are locally commissioned services, some of which my service may provide for police and crime commissioners.

Q182 Mr Hanson: Minister, can you give me the logic of providing £23 million of funding from UK taxpayers to local police and crime commissioners to encourage restorative justice when you do not know whether they are spending it on restorative justice?

Mike Penning: First, it is very early; we will know as it comes in. As my colleague just said, some of this will run alongside other projects. If so, it will be money that is spent with other projects locally. I passionately believe that police and crime commissioners
should have the responsibility for this particular area; but as it is taxpayers’ money and it is coming out of my departmental brief, we will look at it very closely.

Q183 Mr Hanson: What is the formula for police and crime commissioners getting a portion of the £23 million?

Mike Penning: In what respect?

Q184 Mr Hanson: There is £23 million—

Mike Penning: There is a formula—

Q185 Mr Hanson: The Ministry of Justice action plan, which you are responsible for, says that £23 million has been allocated to police and crime commissioners over three years to build restorative justice services. At the moment, it appears that you do not know what they are spending it on, and you have no record of what they spent it on, but you have some aspirations for them. My question is: on what basis is that money allocated? For example, do all police and crime commissioners get a portion of it? On what basis is it allocated?

Mike Penning: There is an allocation to all police and crime commissioners. Last year the police and crime commissioners got £67 million of a £95 million budget. In your part of the world—north Wales—they got £820,000. I can submit that to the Committee.

Q186 Mr Hanson: My bottom line question is simply this. If you are trying to encourage the action plan for restorative justice services and you are allocating money for that, and if, as it appears at the moment, you do not know whether that money is being spent on restorative justice services, isn’t the answer simply to ring-fence a portion of the money that goes to a local police and crime commissioner so that you know that it is going to be spent on that area?

Mike Penning: I think it is too early. As a former Minister, you will appreciate—

Q187 Mr Hanson: That was six years ago.

Mike Penning: The principle is exactly the same. We will know. We have said that this is what it is for. Of course, it can be packaged together. It is very early to know exactly to the pound how the money is being spent, but we will know that. Most importantly, we will know how it is working. If you believe in restorative justice and in localism, this is the way to do it, not to ring-fence.

Q188 Mr Hanson: I am just trying to find out where we are. Vera Baird, on behalf of the police and crime commissioners, came to this Committee and said that it was a postcode lottery. If it is a postcode lottery, it means that the funding you are providing is not being used by everybody.

Mike Penning: Every police and crime commissioner is getting an allocation.

Q189 Mr Hanson: But are they using it?

Mike Penning: As I said to you, it is very early days. You can keep asking the same questions. I do not have the analysis yet, but I will. I will share that with the Committee.
Q190 **Mr Hanson:** What about the Youth Justice Board? How much is it getting to support this?

*Mike Penning:* I do not have those figures. They are not part of the figures that I gave.

Q191 **Mr Hanson:** The Ministry of Justice action plan says that £2.5 million was provided to the Youth Justice Board. Do you know what they are spending it on?

*Mike Penning:* I do not have those figures. I will know, but I do not have them in front of me. I will write to the Committee on that.

Q192 **Mr Hanson:** Let us put all that to one side for the moment. We have a three-year plan that ends at the end of this year, where you have allocated £23 million, and a three-year plan where you have allocated £2.5 million to the Youth Justice Board. As of today, which is a quarter of the way through the third year, you do not yet know the outcomes of those two funding streams and what they have been used for.

*Mike Penning:* That is not fair. You are putting words into my mouth that I have not said.

Q193 **Mr Hanson:** What happens in April or May next year? That three-year funding stream—both the £2.5 million for the YJB and the £23 million for the police and crime commissioners—expires in April next year. When will you evaluate that money? Will you continue it post-April next year?

*Mike Penning:* First, post-April next year we will have to do a Treasury negotiation. That will have to be evidence-based, because the Treasury will not give us the money if we do not have the analysis to do that. Initially, we feel—this seems to be supported by the experts as well—that although restorative justice is not a panacea or a golden bullet, it actually works, particularly for victims. That analysis will have to come forward and we will have to look at it seriously, but let’s not beat about the bush: we are going to push more and more responsibilities on to PCCs. Vera Baird, in particular, has been very keen for us to do that.

Q194 **Mr Hanson:** On that point, wearing your Home Office hat, what guidance are you giving police and crime commissioners with regard to the commissioning of restorative justice?

*Mike Penning:* That funding comes from the Justice side, not from police and crime. The guidance that is out there is exactly what I have said to the Committee today. They have been given money for restorative justice, but I am not saying definitively, “You can only spend every last penny on that,” if they are doing stuff alongside it, potentially with Michael’s team. There are myriad different ways this can be delivered out there. It is wrong to assume that there is only one way of doing this, which is to ring-fence it and say, “Right, you must spend all of that within the year. That’s the only way you can spend it.” We know that that money is spent wrongly at times.

Q195 **Mr Hanson:** You are paraphrasing me, Minister. What I am trying to get to is what is the outcome of all this expenditure and activity?

*Mike Penning:* The outcome has to be that we have less reoffending and that victims feel part of the criminal justice system. For too many years, they have not done so.
Q196 **Mr Hanson**: Do you think that any funding of this issue should be linked to some form of quality control at local level? For example, should we have a restorative services quality mark, so that there is badging of whoever receives this funding over the three years?

**Mike Penning**: It is very important that, when PCCs are commissioning, the people they commission from are signed up to the toolkit, for instance, and that there is a level standard that is required. That is something we are encouraging and pushing forward on.

Q197 **Mr Hanson**: You will report back to us on your understanding of the expenditure by police and crime commissioners of the £23 million and you will report back to us on the YJB’s £2.5 million. We will then be able to look at whether or not that has made any impact, linked to Mr Davies’s questions earlier.

**Mike Penning**: Yes. What I cannot do is give you a timescale. I just cannot say to you that it will be here by next week, or whenever, simply because that analysis has to be done. As you can imagine, I do not want to waste huge amounts of money that could be spent.

**Mr Hanson**: Linked to that is the security of next year’s funding of these issues. If schemes are developing, rightly or wrongly, they are either good or bad—they are effective or not effective. In April next year, a portion of money needs to be allocated. In Government terms, that is not very far away, so I would ask that they be brought back.

Q198 **Alex Chalk**: When would that happen anyway? Presumably, as Mr Hanson has indicated, there would have to be some sort of audit.

**Mike Penning**: Yes, but it would not necessarily be in time for the conclusions of your report.

Q199 **Alex Chalk**: Sure. When, in the normal course of events, would you expect that review to take place?

**Mike Penning**: We will meet the Treasury and look at what the expenditure will be in the autumn. Of course, the victims funding was provided directly from the Treasury to Justice. For the first time, we had funding specifically around victims.

Q200 **Mr Hanson**: That is not ring-fenced either.

**Mike Penning**: I didn’t say it was. I just said that there was specific money.

Q201 **Mr Hanson**: Even on that, if it is not ring-fenced, how do we know that it is going to the area you have allocated it to?

**Mike Penning**: At the end of the day, if you are asking someone to do a job locally, surely you should let them get on with doing that. A top-down approach is not necessarily the right way forward. We learned from those mistakes previously.

Q202 **Mr Hanson**: It is not necessarily a top-down approach. It can be a top-down approach that says, “There is x amount of money for this. You can spend it how you want to locally, as long as it is spent on that area.”

**Mike Penning**: I find this line of questioning really interesting. We have put more money into this area than any previous Government, which makes it a bit of a pry to say, “You
nasty, horrible people—you are going to stop the money overnight.” There will be a negotiation. No Government can tell you what the funding will be for the following year, outside that spending round, but we have committed to funding victim support, which is a major area. I will be amazed if that is not part of the spending plans going forward.

Q203 Chair: You are saying that there is a political commitment to spending on that.

Mike Penning: There is a political commitment to victims, which is the most important thing.

Q204 Chair: Mr Chalk’s point, which I think you have accepted, is that there will be a pulling together of the evidence, as part of the spending round.

Mike Penning: In a nutshell.

Chair: No doubt we will want to see some of that.

Q205 Alex Chalk: Is this Committee therefore going to ask for something in advance? Are we waiting until the autumn? I am not clear about how it has been left.

Mike Penning: I will supply to the Committee whatever I can, but I cannot supply something that has not yet been evaluated. Whatever happens, I will write to the Committee and give an answer on that rationale. I think we just have a different opinion to do with ring-fencing.

Chair: That is a philosophical and political view that is not for us. We can deal with the report on that.

Q206 Victoria Prentis: I move on to raising awareness of restorative justice. We know that awareness is quite low in the population as a whole. Does that matter? After all, the people for whom it in fact matters are victims. Should we concentrate our efforts and our money on ensuring that victims are educated and asked whether they want to take part in restorative justice, rather than on doing general awareness raising?

Mike Penning: I completely agree with you. Putting victims at the front of the criminal justice system is absolutely vital. They should know that they are not compelled but that they can be part of it, perhaps through TrackMyCrime, which is provided by some forces. It is more important for them to be aware of what is available to them than for the general public to know about restorative justice. It is a complicated area, and it covers myriad different aspects, but victims need to be more aware of it. You have seen from the survey of victims how supportive they are of restorative justice.

Q207 Victoria Prentis: What about criminal justice practitioners and lawyers, who are themselves fairly unaware of what restorative justice can do?

Mike Penning: That is the work we need to do.

Q208 Victoria Prentis: How are we going to do that?

Mike Penning: Through their representative bodies and, particularly, through the judges, who are responsible as we go through the criminal justice system. This is more Michael’s area.
Q209 Victoria Prentis: Judges have very little ability to talk to victims. It is how we get the message out to very vulnerable people that worries me.

Mike Penning: In different parts of the country it is working in different ways. As I said at the start, there is much more work that we need to do to make sure that it is part of the system, not just an add-on. You are absolutely right, but the judges are vital. It is their court. The way they treat victims in their court is very much down to judges. It has been a bit of a transformation for some judges to see it that way. The physical court structures are important. As we heard, restorative justice in this context should not be designed in any shape or form as a replacement for prosecution—far from it. It must rank alongside it.

Chair: Mr Chalk wants to come in. I will then bring in Mr Spurr.

Q210 Alex Chalk: This is part-question, part-suggestion. One of the really fantastic steps forward in terms of protecting victims and standing up for victims is victim impact statements at court, read in front of the judge or submitted to the judge, which can have an enormous impact. Might there be some merit in ensuring that, on the forms for those statements, there is a box that says, “I have had explained to me by the officer in the case the possibilities of restorative justice”? We do not necessarily need to spend huge amounts of public money. It is simply about police officers knowing that, when they take victim impact statements, they need to tick the box to remind them to explain to the victim that this is a possibility they ought to consider.

Mike Penning: In a perfect world, I am sure we would not need a tick-box, but we cannot guarantee that everybody has had that explained to them. If we get to a tick-box mentality, let us hope that the question has been asked before they tick the box. I understand exactly where you are coming from, but I want to put the impetus into that part—informing the victim of what is available.

Q211 Alex Chalk: It has to be police-led, I would respectfully suggest.

Mike Penning: I agree.

Q212 Chair: Baroness Newlove made it very clear that, from her perspective as Victims’ Commissioner, the responsibility is on the police. If the police do not always come up to scratch, maybe we need a process to remind them to come up to scratch.

Mike Penning: Yes. Baroness Newlove would also emphasise the fact—certainly she has done so in the meetings that she has had with me—that at that moment the victim may not be ready to tick the box. If they have ticked the box, later they may not be ready, or if they have not ticked it, later they may be. It is for them to decide when they want to become part of the process, rather than for the police officer, the courts or their legal advisers. It is about putting them at the forefront and having no timetable. It is very important that we do not just fix it and say, “You have to make a decision now.” If we are not careful, that may be what is implied with the tick-box side of it. I understand the principle, but we need to make it as flexible as possible.

Q213 Chair: Mr Spurr, what is NOMS’s perspective?

Michael Spurr: I want to add one thing to what the Minister said. I agree absolutely that, in the first instance, it is the responsibility of the police to ensure that they engage with
victims through the process. That is clearly set out in the victims’ code, which encourages that. There is a further opportunity. If an offender is convicted, it is the responsibility of the victim liaison officers in the National Probation Service to make contact with victims and to ensure that they understand what their rights are. That provides an additional opportunity, when victims have gone through the court process, to reinforce that restorative justice is an option for them.

**Mike Penning:** Can I reinforce that point? Quite soon we will produce a Green Paper on the victims’ law. One of the difficulties is defining a victim. If something happened here, now and I was stabbed, would my wife or daughters be the victims? I would be the victim, but I would be dead. Do you see what I mean? There is a really difficult scenario. The Canadians have defined it in law now, and we are very close to trying to define it in the Green Paper. It is really difficult, in restorative justice terms, to make sure that the right people are offered restorative justice. Sometimes it is very difficult to decide who the right people are.

**Q214 Victoria Prentis:** That is an important point. You can look at it from the point of view of probation, but probation is naturally offender focused. We would suggest that restorative justice is really victim focused, so that is not a great time to come in and see the victim again. We are keen to ensure that awareness of restorative justice is raised with victims all the way through the process, but perhaps not from the offender’s point of view and in order to benefit the offender.

**Mike Penning:** It needs to be their choice. That is the biggest thing.

**Q215 Victoria Prentis:** But they need to be at the centre of what we are worrying about. With due respect, Mr Spurr, it should not be from the offender’s point of view.

**Michael Spurr:** To be fair, the victim liaison part of the National Probation Service is entirely victim focused. Victim liaison officers do not work with offenders; their role is specifically to liaise with victims. They are in the National Probation Service because it gives them access to practitioners who are working with offenders across the system, but it is really important that they are discrete roles. They work solely with victims.

**Mike Penning:** The other point is that it gives them access to knowledge and information that would not be available to them otherwise. That is one of the more difficult areas to get round. There are lots of excuses as to why we cannot give information, but none of them is really factual.

**Q216 Marie Rimmer:** Can we get back to restorative justice and what it is really about? We are talking a great deal about victims. It is quite clear that the victim must be the centre and focus of this, yet the Committee has received several pieces of evidence, in writing and orally, asserting that victims are simply not receiving their entitlements. Lucy Jaffé said that police are not passing on victims’ details, as they are required to do under the code. Jon Collins said that the feedback from Restorative Justice Council members indicates that the entitlements are not being fully received. The report of the Victims’ Commissioner also suggests that victims are not receiving those entitlements. In written evidence, the Ministry of Justice has argued that it is too soon to tell how the entitlements under the victims’ code are working. This morning we have listened to so much talk about the victim, but what exactly is the Ministry of Justice doing to ensure that the victims’ code is complied with?
Mike Penning: That will probably come under the victims’ law, to put it in statute and to make sure that it actually happens. The evidence is that over 80% of the victims who have been involved in restorative justice feel positively about it. However, for others, the system is not working—I meet the baroness on a regular basis—for one reason or another, as you alluded to in your question. It was in both major parties’ manifestos that we would go for a victims’ law, to put it there and to say, “There is no excuse. You must do what it says on the tin, put the victims first and give them the information that is required.”

Q217 Marie Rimmer: Do you accept that victims’ entitlements are not being met?

Mike Penning: In some areas, of course I do. If you have 80%-odd saying that they are happy, there are less than 20% saying that they are not.

Q218 Marie Rimmer: So it is not too soon to tell. You accept that it has failed, and that is why we are going for law.

Mike Penning: It is part of the reason why we are going for law, yes. At the same time, particularly with certain offences, this is very new. I fully accept what the baroness has said. We are working together very closely; we have a victims’ panel that talks these sorts of things through as much as possible. But we must make sure that the rights of the victim are adhered to, as you touched on. If that means putting them on the statute book, we will put them on the statute book.

Q219 Marie Rimmer: Will the Bill contain a right to access restorative justice?

Mike Penning: The Bill is in Green Paper form. I cannot see any reason why we would deviate from the code. In other words, yes.

Q220 Marie Rimmer: So it will.

Mike Penning: There will be a Green Paper and then a White Paper. I am the Victims Minister—

Q221 Marie Rimmer: How is it going to be enforced?

Mike Penning: Because it will be in statute.

Q222 Marie Rimmer: With the money that is going to PCCs, they will have to comply with that law.

Mike Penning: Yes.

Q223 Marie Rimmer: How are you going to enforce it?

Mike Penning: If you have a law, it has to be enforced. There is no point in having laws that are not enforced.

Q224 Marie Rimmer: How is it going to be policed?

Mike Penning: You do not police it. You will have bodies that will be legally responsible under statute for fulfilling the commitment that they have. If PCCs or the police are not doing that, it will become self-evident and that will have to be resolved. At the moment,
you have 80%-odd who are happy and just under 20% who are not. We need to make the remaining 20% happy with the process.

Q225 Marie Rimmer: It has been said that it is “untenable”, because there isn’t the capacity in the system to support such a high level of demand. You said that not every victim accepts restorative justice as it is, even though it is not being monitored. How will you enforce it so that it is offered properly, fully understood and explained and granted?

Mike Penning: There is more money than ever going into the system now. In my jurisdiction, we have 43 police and crime commissioners who are getting funding and will be responsible. If we put it in statute, it will not just be the police and crime commissioners but police forces, NOMS and others who are responsible for making sure that the law is adhered to. It is not a case of policing it with police. It is about saying, “This is on the statute book. This is a legal responsibility for you to produce.” We have that across the board in numerous areas.

Q226 Marie Rimmer: Are we going to ensure that the finance is spent on restorative justice? Are we going to start ring-fencing?

Mike Penning: Now we are going back to the ring-fencing situation. Let’s see how the money is spent. If we find that it is not being spent correctly, we will make sure that it is. If we are going back to the business of ring-fencing or hypothecation, I am afraid you will probably get the same answer that I gave before.

Q227 Marie Rimmer: So we are going to have a victims’ law.

Mike Penning: We are going to have a victims’ law.

Q228 Marie Rimmer: You are sure of that.

Mike Penning: Yes.

Q229 Marie Rimmer: And restorative justice will be in that, and it is going to be enforced.

Mike Penning: I will publish the Green Paper and give it to the Committee as soon as I possibly can—certainly before the summer recess.

Q230 Marie Rimmer: There are three questions. We are going to have a victims’ law. It is going to have the right to access restorative justice, and the law is going to be enforced.

Mike Penning: Correct—otherwise there is no point in having a law.

Marie Rimmer: Exactly.

Q231 Chair: The Green Paper was originally set to be published by early May. It has slipped rather, hasn’t it?

Mike Penning: Yes.

Q232 Chair: What is wrong? Why has it slipped?
Mike Penning: I apologise, Mr Chairman. I said publicly that it would be by the end of May to force my civil servants to publish it by then, to be honest, but it is not ready. I will publish it as soon as I possibly can.

Q233 Chair: I cannot believe that you did not succeed in forcing them, Minister.

Mike Penning: I tried very hard.

Q234 Chair: You will understand the frustration that victims will feel about that.

Mike Penning: Yes. I wanted to go to a Green Paper, rather than straight to a White Paper. I thought that the important thing was for victims, in particular, to feel that they could have an input. If you go to a White Paper straightaway, that is ruled out. I did not want to go out to consultation again. Frankly, these people have been consulted to death. We need to get on with the legislation.

Q235 Chair: I understand. Do you accept that maybe one part of the Green Paper should involve what the enforcement mechanism might be? As with any law—you and I both have experience of this—if you have a right and for some reason that right is not delivered, there has to be some means of enforcement and redress.

Mike Penning: My simple view on legislation is that there is no point in having it unless you can enforce it.

Chair: That is exactly right. So we can expect to see something around that. That is helpful.

Q236 Dr Huq: I have a couple of questions on the NOMS capacity building programme. Apparently 1,000 people were trained, but there were only 137 victim-offender face-to-face conferences, which is fewer than might have been expected—6% of cases, in fact. Would you call that a success?

Michael Spurr: The evaluation by Professor Shapland said that it was done at a very difficult time, but she concluded that much was achieved during that period. That is true. In the end, there were 153 victim conferences, involving about 300 victims and offenders. There were something like 250 additional restorative interventions that did not lead to full victim conferences. You are right; about 1,000 people were trained and made aware. The awareness is very important in itself. If it becomes the default position that people actually bother about restorative justice, understanding it and having champions for it across the system—Mr Molloy talked about that earlier—are really important.

The capacity building programme was funded jointly by ourselves, through a grant of £500,000, and the Monument Trust. It has achieved some things. Most importantly, it made restorative justice something that was very real across the system, which should not be underestimated. There is now a whole load of products available on which people can draw to set up conferences and engage with victims properly. We have worked with partners such as Restorative Solutions and Thames Valley Partnership to produce those. All of that is worth while.

Not all the money was spent. We have agreed with the Monument Trust that the additional money is to be used to pilot restorative approaches to conflict management in prisons at Onley and Buckley Hall. There was a good deal done, through a very difficult period
when, as Professor Shapland’s research rightly says, the whole system was going through major change. Transforming rehabilitation was being implemented in the community, and prisons were going through major reductions to their budgets; so it was a difficult time, but a lot was achieved.

Q237 Dr Huq: So the underspend—175K—is going to be focused on RJ—

Michael Spurr: It is being spent now, in agreement with the Monument Trust, to build a restorative approach to conflict resolution, effectively. Can we use restorative approaches in prisons to resolve some of the issues that are happening there in terms of violence and so on? We are piloting that at two establishments, Onley and Buckley Hall. It is due to report in 2017.

Q238 Dr Huq: The guidance document “Better Outcomes through Victim-Offender Conferencing” suggests that there should be a more targeted approach and that RJ should only be delivered where it has the greatest impact on victim satisfaction and reoffending. Doesn’t that contradict the stated aim of equal access to restorative justice?

Michael Spurr: The original 2012 document on outcomes focused primarily on reoffending outcomes. It set out which people you would target if you wanted the biggest impact on reoffending, and they were primarily offenders who were involved in violent or acquisitive crime. We have adapted that. A lot of work on the capacity building programme has been in response, rightly, to the Victims’ Commissioner’s points and the victims’ code, which talks about victim-initiated restorative justice, which is absolutely right. We are now very clear that it is about victim satisfaction, from a victim-initiated point, even where we would not necessarily have targeted resources because we thought it was the best way of tackling reoffending. An outcome where a victim feels that the issue has been fully dealt with and there is some closure in the distress they have had is obviously an appropriate outcome. We are trying to ensure that that is facilitated within the NOMS estate, whether it be in prisons or in the community.

Q239 Dr Huq: You mentioned that the underspend is going to be for in-prison work. Given the limited resources in prisons, to avoid duplication of work, wouldn’t it be preferable to focus on making prisons a supportive environment for restorative justice, without actually doing the commissioning or providing the services—separating the two?

Michael Spurr: I agree with you. Primarily, much as in the National Probation Service, the direction is that we will facilitate restorative approaches. That is the right primary role for prisons and for the National Probation Service, particularly where the focus is around victim-initiated restorative justice. In the way we are moving, if it appears that restorative justice approaches will work for the offender and make complete sense as part of their sentence plan, and there is something that will work for the victim—the “and” is very important, of course; it must be both sides—they should be part of the sentence plan. It would be wrong to prevent that. Equally, where there has been an offer of restorative justice to a victim, as the victims’ code requires, and they wish to initiate that, we should facilitate that within prisons. I see the majority of cases being that, rather than our initiating it for offenders.
**Mike Penning:** That is exactly where it will be. We must make sure that prisons have the facility to do that, either one to one or by video conferencing. Most prisons have that now, anyway.

**Q240 Dr Huq:** There is a danger that the offender-initiated aspect of this will be lost if the probation service is not going to be the provider, and CRCs and prisons are not obliged to develop it.

**Michael Spurr:** One of the key things is that the people who facilitate restorative justice have to be properly trained. Doing it occasionally is not the right way to get the quality of service for the victim or, indeed, for the offender. A growing number of providers specialise in restorative justice approaches, so using somebody else, rather than doing it ourselves within the Prison Service or the National Probation Service, is a perfectly reasonable way of addressing it.

It is open to community rehabilitation companies not only to use restorative justice approaches as part of the way they manage offenders to reduce reoffending, which I think Mr Molloy talked about, but to offer that service to police and crime commissioners and to develop it as something for which they are funded through police and crime commissioners generally. We absolutely see that as a potential option. Some community rehabilitation companies are looking to develop in that way.

**Mike Penning:** They are.

**Q241 Dr Huq:** On the role of CRCs, does NOMS have a role in kite-marking and assuring quality standards for the restorative justice they deliver?

**Michael Spurr:** Yes. We have a very clear set of specifications for a whole range of work, including restorative justice. We will have to determine whether our criteria as set entirely match the restorative services quality mark level, but yes, we have that. If restorative justice is delivered, our expectation is that it is delivered to a standard. The first thing you have to ensure if you are delivering services is that you do no harm. Standards need to be in place to assure people that we are not doing harm. Then, hopefully, good comes out of it. We have that mechanism. We have clear specifications. If restorative services are being delivered, we expect them to be delivered to that level.

**Q242 Chair:** Can I come back to one point, Mr Spurr? You referred to using the underspend on capacity building. You said that that has now been committed and that the work is dealing with tensions and issues within prisons. I am trying to see where the benefit to the victim of crime is in that. It is probably very desirable to deal with tensions and to improve prison safety, as this Committee would stress, but it does not seem to me that you are using it to build capacity to help victims anywhere along the line.

**Michael Spurr:** That assumes that there are not victims when incidents occur in prisons. Of course there are victims. There are staff victims every time they are assaulted.

**Q243 Chair:** That is the way you put it.

**Michael Spurr:** Yes. There are also prisoner victims. It is that approach, which says that there is a victim in a case.
Q244 Chair: That is how you read it; fair enough. That clarifies something that might otherwise have seemed odd. The final thing I want to come back to is data sharing, which seems to be a recurrent issue that has been brought up with us. It has been suggested that, in some cases, it has got to the stage where NPS does not share data with the CRCs, and the CPS and the police will not share data. How do we resolve this quite intractable issue?

Michael Spurr: We start from the very clear premise that the law allows us to share data and we should do so to prevent crime and to support victims. There is no barrier to sharing data. In statute, it is actually a requirement. There is a whole range of issues to do with how you ensure that cultures that are different between agencies come together so that that very clear requirement happens in practice. Then there is the whole issue of how you facilitate that and make it easier by having systems that talk to one another. Across the criminal justice system at the moment, they do not all do that. I am not denying the issue at all. The most important thing, which I try to do within the agency, is to be very clear for all of us that sharing is something we look to do, not something we look to stop.

Q245 Chair: It has been suggested, Minister, that the MOJ, for example, might produce an information-sharing template for restorative justice providers. Has anybody thought about that?

Mike Penning: Yes. There is a toolkit, but it will only work—and it would work—if we look at it from the other end of the telescope and get away from, “Why should we?” rather than, “Why shouldn’t we?” The attitude has been, “We shouldn’t share, because of data protection.” That is tosh. The Data Protection Act has nothing to do with this. It specifically sits in statute that, as part of the criminal justice system, information must be shared. That is absolutely crucial.

There is an evolving issue, to do with mindset in the different Departments. One thing I have said to my officials is that, if PCCs or others are going to commission, there has to be a level of competency and a level of agreement to do with data sharing. If there is not, they should not commission with that group, whether it be a third-party charitable organisation or whatever. It is quite simple. I know that in Vera Baird’s area they set up a not-for-profit charity alongside. There is no reason why that information should not be shared. We need the mindset change that Michael has just alluded to, and I fully accept that the Justice Department, and myself, through the police, need to drive that.

Q246 Chair: That is a fair point. One of the bits of evidence that was given to us was about the Association of Police and Crime Commissioners guidance, which is laudable in itself but it is about 50 pages. The evidence that was put to us was that the mindset can very often be that in those 50-odd pages you will find a reason not to share, and the guidance was being used as a barrier, rather than as an enabler. What can we do to change that?

Mike Penning: The biggest thing, which I shall do tomorrow, when I meet some of the senior officers, will basically be to say, “You can describe it whatever way you want. You can keep your 50 pages, but you need two pages as an idiot’s guide to say, ‘This is what you should be doing.’” They can ignore me, if they wish, but you are absolutely right. If you keep writing, you will find an excuse not to do something. It has to be seen from the other end of the telescope. It is a lot better than it was—I think that is right—but there is a long way to go.
Q247 Chair: One thing that was said to us was, try as you may to influence them, they can ignore you, although one would hope not. Perhaps we should put it on a statutory basis and say that there is a duty to share.

Mike Penning: There is a Green Paper, but it is statutory now. I emphasise yet again, what is the point of bringing forward more legislation if existing legislation is not being fulfilled in the first place? The biggest reason why I pushed for a Green Paper, not a White Paper, was to get as much discussion as possible about what is best for the victim in the victims’ law.

Q248 Chair: Mr Spurr, do you have any comments?

Michael Spurr: No, I have nothing to add.

Q249 Chair: Fine. That is very comprehensive. Gentlemen, thank you very much for your evidence and your time.

Mike Penning: I will write to the Committee as soon as I can.

Q250 Chair: Yes, if you would. We will write to your Department setting out the discussion that we have had—

Mike Penning: The letters will cross in the post.

Q251 Chair: Then we can make sure that we are both on the same page as to exactly what we have agreed to exchange.

Mike Penning: Yes. There are enough Sir Humphreys behind me to work that out.

Chair: That is very helpful. We will get that letter off to you. Thank you very much for your evidence. The session is concluded.