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Criminal justice – the strains and opportunities we now face

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1. Mr President, ladies and gentlemen, thank you very much for the compliment of your invitation and for the courtesy of your attention.

2. In July 2019, I published my sixth State of Policing report. Today, my address is about the state of the criminal justice system. In my report, I described the system as defective and dysfunctional. I will shortly explain why.

3. Before I deal with that, I wish first to pay tribute to you and your colleagues, police officers all over the UK and their police staff counterparts. Having spent the last nine years in very intimate contact with policing at all levels, I know very well that policing is a very difficult job undertaken by committed, hardworking, compassionate individuals - highly professional men and women who are brave and who everyday take risks on the front line, no-one knowing what trouble will present itself that day; and sometimes the officer does not go home. In the forefront of our minds are the individuals who have paid the ultimate price, and their families who endure their loss every day for the rest of their lives. I wholly support the Protect the Protectors campaign to keep police safe and to bring to justice those who assault you.

4. I also wish to place on record my understanding and appreciation of the strains which have intensified the pressures on superintending ranks. In recent years, those ranks have faced very significant reductions in their numbers and consequent large increases in the spans of their responsibilities. Those responsibilities are of course very heavy ones, and quite unlike those in the private sector. They are the risks not that some large corporation will suffer some commercial reverse or disadvantage, but the risk a child will die, the risk someone will be shot, the risk someone will suffer a catastrophic and life-changing reverse as a result of crime, and many others.

5. The most senior operational rank has been heavily reduced. With the increase in police officers now being planned by the government, I support the case for there being an appropriate increase in the superintending ranks to relieve those pressures as well, properly to reflect the enlargement of the workforce. Nothing else would be fair. I also acknowledge and say strongly that the resilience work that is undertaken by the Police Superintendents' Association and others is of great importance, and I know I will shortly be briefed by your leadership on that.

6. Significant police reform took place between 2010 and 2018. It was the greatest amount of police reform since Sir Robert Peel established the Metropolitan Police in 1829 and the counties and boroughs were compelled to establish police forces in the 1850s. In many respects, it was essential. There were reforms to pay and conditions, especially moving from time-based service to skills- and contribution-based pay; the establishment and now re-energisation of the College of Policing under Mike Cunningham; setting up the National Crime Agency; reform of the inspectorate; the establishment of the inspectorate’s PEEL programme and now risk-based inspections; force management statements; super-complaints; the replacement of ACPO with the National Police Chiefs' Council, and the reform of local democratic accountability with the creation of police and crime commissioners and their London and Manchester equivalents. That is a great deal of reform.

7. There have also been major reforms in criminal law and criminal procedure, including in matters concerning violence against women and girls, modern slavery and human trafficking, forced marriage and other things. And the budget cuts compelled forces to find much-needed and overdue efficiencies. But in too many respects not all the efficiencies have been found and exploited, and more are needed; but they have to be realistic. Policing is ever-changing: from the recent protests where the Met requested mutual aid for only I think the second time in recent years, to the threats from cyber and terrorism, and significant increases in sexual offences. There are always several significant areas where policing can improve. But to be efficient, you need to invest; and invest means do it first, do it early not afterwards, and invest in the right things and at the right times, at fair and affordable costs. That includes of course technology such as mobile electronic devices, well-designed and efficient force intelligence systems, and much else besides. We still have officers in some parts of the country using paper and pencil, having to key the information in at the station at the end of their shifts on an insufficient number of force laptops. That sort of thing is intolerable; it is a waste of public money and a frustration and an obstacle impeding police officers being able to do their jobs. In policing, there is virtually no use of artificial intelligence and machine-learning, even though that intelligence and those techniques are in widespread use in the commercial sector. In too many respects, officers and staff are still having to read every page of downloaded data from electronic devices which can run into thousands of pages. The average smartphone can produce 5,000 pages; the average household has perhaps eight or nine individual electronic devices, and they might all have to be taken in. These devices have to be properly interrogated because there may be relevant evidence on them, incriminating or exculpatory. Disclosure requirements are of enormous importance, and the magnitude of the investigatory task is now a very considerably larger job.

8. I used to be a partner in a City of London law firm. My former partners are using this technology today to do commercial due diligence on company acquisitions, large commercial

transactions and major financings. They use this software to read millions of pages in a very small fraction of the time that it used to take in the days when I began my career forty years ago, when you had to read everything and make notes, and you got tired and made mistakes. Modern technology of the kind I have described can do this in a flash. There are several pieces of sophisticated software commercially available; you can buy it off the shelf, and it is not expensive. You can use it and teach it to understand texts and codes and the ways in which people communicate, and then you can get that information significantly faster and with a higher degree of reliability than having people read everything. If this technology is used to great effect in the commercial sector, then I cannot see why it should not be used in the most essential safety-critical public service of all. Moreover, officers are still struggling to download CCTV effectively, and worse is to come with ageing technology and lack of integration with the court service. In some cases, exhibiting evidence in court still uses twentieth century technology which is not fit for the twenty-first century.

9. Since 2010 there has been an exponential increase in the complexity of crime and the advances of technology. These things make a great deal more work for police and prosecutors. That is not where we were in 2010 or even later. It is essential that officers and staff have the time and the skills to do this job well. Justice delayed is justice denied. In too many cases, under our present system justice never arrives at all, whether for the victim, for the accused or for the witnesses.

10. The public have increasing demands on the police service. Those demands have grown and they will not reduce. The face and the complexity of crime is changing: for example through the use of social media, and online fraud. Technology now facilitates crime. There has also been a rise in crime in prisons and of course violent crime on our streets in general.

11. As the Commissioner of the Met, Dame Cressida Dick, said in June this year, crime today has four distinctive and distinguishing aggravating characteristics: its volume, its complexity, encryption and speed. The police have to get ahead of that; meeting that intensified and complex demand requires strong leadership and investment.

12. Some forces can improve on their efficiency, but others are struggling to meet even basic demand. It is essential do things better and more cost-effectively and to greater effect; that is the only way the police service will meet the demands it will face in the years to come.

13. What we now need - more than ever before - is single-system operation. Crime is no longer predominantly local. The 43-force model designed in the 1960s and implemented in 1974 is no longer working as it should. Too many forces are still operating in an insular way. Collaborations are failing or collapsing. The Devon and Cornwall and Dorset merger cracked. This model is 50 years old. It is policing based on an old system for a very different world. The time has now come for the Home Office to step forward and to use its influence and its unique legal powers to remove the barriers to co-operation and single-system operation, whether on a regional or national basis, and to establish that true single system. I am not talking about redrawing the map and merging police forces. Dame Vera Baird yesterday said she had the scars from the attempted force mergers of 2005-06. I've also talked at length to my predecessor Sir Denis O'Connor who did a major HMIC report on this (called *Closing the Gap*), and also former Home Secretary Charles Clarke who had his pen poised to sign the necessary statutory instruments. I am not talking about redrawing the map. I am talking about establishing single-system operation through a 43-force collaboration agreement called the Network Code. I will be consulting on it soon, to ensure that where forces should co-operate either on a regional and national basis they will, and not just because they feel like it but because they have to.

14. I am pleased to say that the Home Office now recognises the case for their doing more, and the prime minister and the new Home Secretary are on the case. The new National Policing Board met last month, and I believe it is eager to make progress with this aspect of police reform. Better collaborations, joined-up working, and importantly interoperability of technology and a number of other functions; those are critical to improving policing, and they can and should be achieved without seismic structural reform.

15. In my latest state of policing report I said that the criminal justice system today is defective and dysfunctional. The state of prisons was recently described by the Chief Inspector of Prisons, Peter Clarke, as deeply troubling, with jails plagued by drugs and violence, appalling living conditions and a lack of access to rehabilitative activity. Prison libraries are locked out of use. Prisoners are spending far too long in their cells, not having enough time for education and skills training, and of course these failures intensify the corrosive circle of offending. We have had a collapse of the model of probation. In February this year, Dame Glenys Stacey, who recently ended her term as Chief Inspector of Probation, said the probation system had buckled under the strain. There are appalling inefficiencies and failures in prosecutions, with inexcusable delays in bringing cases to court and disgracefully late changes to charges, with prosecutors given inadequately prepared papers at the last-minute causing disruption and delays to trials, and consequent injustices to the accused, the complainants and the witnesses. Dame Vera Baird spoke yesterday about the willingness of people who have been through the criminal justice system as witnesses or victims to do it again. She said almost half of them would never do it again because of their experiences of delays and frustrations. That is a depressing indictment of our criminal justice system, and it must change. It doesn't stop there. We see the decay in our courts: the physical fabric of the buildings is deteriorating before our eyes. There are injustices and inefficiencies through the waste of court time: 500 hundred courts closed, court hours cut, courts standing idle when trials are being delayed and accused persons, victims and witnesses are waiting a year and two years just to get to trial. And as Cressida Dick also said recently, the courts

are emptying and detection rates are woefully low. We have also very recently heard about the severe threats to justice through the under- funding of criminal defence and prosecution work. The voices of the very recently retired President of the Queen's Bench Division (who is the judiciary's head of criminal justice), the last President of the Supreme Court, and the last Lord Chief Justice, must be heard and heeded. Access to justice is a right of everyone: the accused, the victim, the witnesses and the community. It is essential, and yet in too many respects it is the preserve only of large corporations, the very wealthy or the very, very poor. And even they must wait too long, and suffer the inefficiencies and frustrations which pervade the system.

16. So why has the criminal justice system come to this state? Funding cuts are the basic answer; unlike health and education, there are very few votes in criminal justice. Policymakers and others pay too little attention to criminal justice, that is unless and until their lives or the lives of people close to them are touched by it, whether as victims, witnesses or accused. Then the failures and inefficiencies – the many injustices of the system – appear to them in stark and shocking terms. But by then, of course, for them it is too late, and they have to endure it.

17. So, what is my locus as Chief Inspector of Constabulary to say all these things about the wider criminal justice system? I expect the answer is easily apparent. All these solvable problems with criminal justice have severe knock-on effects on the police, on their morale and their ability to do the jobs they are committed to do. The strain on officers and staff are now very severe, and these are intensified by the frustrations of the failures of the system. Far too many officers are being run ragged. They are facing severe dangers on the streets and very heavy pressures in the caseloads they carry and the nature of the crimes they are dealing with, especially crimes against children and other vulnerable people.

18. The Government has recently announced a net increase of 20,000 police officers. And there will be many more associated police staff to train and support those 20,000. Since the police

service loses 6-7,000 police officers every year through retirements and resignations, over the three years of the 20,000 increase, the service is facing recruiting perhaps 50,000 people. That is an enormous task, and a great deal of work is going on to plan for that. We must also recognise that this welcome increase will bring new pressures on other parts of the criminal justice system: on prosecutors, the courts, prisons and probation. If the recruitment and deployment of the extra 20,000 is done perfectly and perfectly effective police officers are recruited with 100 per cent success in achieving the objectives of Peel's first principle of prevention, then there won't be any need for additional people in the criminal justice system. But of course hardly anything happens perfectly, and there will be increased pressure on the system.

19. In order properly to predict and evaluate the true pressures on the system, it is necessary to have reliable information about demand, and forces' condition, capacity, capability, performance, serviceability, efficiency and security of supply. All well-managed enterprises – public sector and private sector, whatever they are doing – need to know those things to make efficient and effective decisions. They need to know future demand as far as it can be predicted; of course nobody expects perfection. All predictions are wrong; the question is how wrong. So forces need to have their best assessment of future demand. They also need sound asset stewardship and efficiency, and to know what financial resources they are going to have to use those assets to meet that demand. For the last two years, a great deal of that information comes in the form of force management statements. These are instruments borrowed and now adapted by the Inspectorate from the world of economic regulation.

20. Force management statements are now in their third year. After a certain amount of resistance from some forces and police and crime commissioners, they are proving successful. Of course there is more work to be done to achieve their highest practicable degree of standardisation, respecting local conditions, and so comparability and utility. By measuring all demand on the police and the state of forces' assets – predominantly people, the most complex

assets of all – and how those assets will be used to meet demand, the statements reveal an essential truth. That is that the police cannot ever meet all demand, and find and tackle all crime and disorder, and satisfy the many other demands they face, such as finding missing people and tackling the consequences of failures of others properly to treat people with mental ill-health. Once fully mature, force management statements will enable compel the public - through their elected representatives - to make a determination of what they want the police to do and the standard to which they want it done. Crucially, they will also enable people to decide how much they are prepared to pay efficient forces to prioritise, and therefore what they want the police not to do. Of course that has a knock-on effect on the other public services and agencies whose primary purpose is to deal with the causes of crime and disorder, and as far as practicable to prevent them. As we all know, prevention is not only the job of the police. Indeed police intervention should be the last thing that happens before the offence is committed. Health, education, housing, social services, family cohesion and discipline – these are the things which have the primary capacity to prevent things going wrong, or to intervene early to reduce or mitigate their effects. This involves the diversion of young people from crime and disorder. So much can be achieved by programmes such as those in Wales and elsewhere in respect of adverse childhood experiences.

21. Force management statements – self-assessments by every chief constable, used by the inspectorate and others – expose a fundamental and essential truth. It is an essential truth which applies throughout society, and it applies just as much in criminal justice. It is a truth about demand being met by supply.

22. As you probably know, I used to be the economic regulator for the railways (1999-2004). One of the things I had to do was to determine how much money the railway infrastructure provider - first Railtrack, later Network Rail - would require in each five-year period if it were efficiently to meet projected demand. In October 2000, I increased the financial settlement of Railtrack from £10 billion to £14.8 billion. At almost exactly the time I made that decision, the multi-fatality

Hatfield rail crash took place. A train travelling at 115 mph derailed at Hatfield because of an unremedied engineering failure which caused the rails under the train to break. Because Railtrack had an inadequate knowledge of the state of its network, it did not know where else this form of metal fatigue might cause another catastrophic failure. So the company threw on 1200 emergency speed restrictions on many parts of its network, and of course the operational integrity of the railway was severely degraded for many months, leading to very hostile criticism from the public, the media and, fatally for Railtrack itself, politicians. Sir Alastair Morton – then chairman of the Strategic Rail Authority – called it the railway's collective nervous breakdown. These severe operational failures led in October 2001 to an unconstitutional and illegal political attack by the government on Railtrack, forcing the company into administration on a false statement that the company was insolvent. Because the company was not insolvent, the Government's plan included a threat by the Government to use emergency primary legislation to extinguish my independence as regulator if I stood in its way. I told Railtrack I would be prepared to intervene to prevent this, but the company's top management decided not to resist, the company did not take my help, and the Government got its way, renationalising the network without its threatened legislation against me.

23. Network Rail was the Government's chosen successor to Railtrack. It inherited all Railtrack's problems except the current hatred of Railtrack. But it still needed money. And it remained my job to determine what a competent and efficient network operator would require to meet future demand. Pre-Hatfield, my determination of £14.8 billion was unsound because Railtrack did not have reliable and sufficient information about the condition, capacity and capability of its network. That is why it put on so many emergency speed restrictions. And if Railtrack did not know, the regulator did not know either; that was perhaps the biggest frustration I acquired when I became regulator. Although in my first year as regulator my staff and I strained every muscle to improve knowledge of the network, it could not be done in so short a time, and the

financial settlement decision had to be made in October 2001. So at that time I had to make my £14.8 billion decision on what was obviously unsatisfactory and incomplete information.

24. After Railtrack had been politically and corporately defenestrated, Network Rail faced the same problem. The £14.8 billion settlement obviously was not enough, but what was the true (higher) figure? The emergency legislation (drafted, but never used) was to prevent the regulator doing a further financial review of the network operator's requirements for money. That review was exactly what the company needed, and it did not matter whether the company was Railtrack or Network Rail. As the chief executive of Railtrack said at the time, the laws of physics and the realities of engineering were not going to change with political affections for one company over another. The rails, signalling systems and the rest of the network needed maintenance and renewal whatever the political weather.

25. In 2002, Network Rail could not properly take over the network until Railtrack was brought out of administration. In order to achieve that, the Government had to convince the High Court that the company was no longer insolvent (which had been the basis on which the Government had forced Railtrack into administration a year before). To do that, it needed the independent regulator to be prepared to do the financial review I had always been willing to do and which the Government had been determined to stop in 2001. I did the review, and of course decided – according to economic and engineering principles, not political ones – that the network operator, Network Rail, needed a great deal more money than I had determined in the case of Railtrack. The figure was £22.2 billion, which was an increase of £7.4 billion over the settlement for Railtrack. Under the legislative regime for the railways at that time, the decision on what the figure would be, and when and how it was to be paid, was mine, not the Government's. (The law was changed after I left office in 2004.)

26. The Secretary of State for Transport was not pleased with this. He could not direct me to come up with a lower figure; as said, that was my decision. However, he had the ability to get the figure down by reducing demand on the network, using the powers Parliament had given him to reduce the size of the network and the intensity of its use. He could have directed line closures and he could have cut back on the amount of traffic on the network through his powers over franchising passenger services and the support he gave to freight services.

27. Some time before I announced my decision, I told the Secretary of State what the number was likely to be. He and the Treasury had, until then, maintained that it was the Government's position that Network Rail should have no more money than the £14.8 billion settlement I had given to Railtrack. I knew that to be unsustainable. We had calculated that if Network Rail were to have only the £14.8 billion allocated to Railtrack, the Secretary of State would have to reduce the size of the national network by 25 per cent; he would have to reduce the numbers of services using the remaining network by a further 25 per cent; there would be a 100 per cent cut in enhancements to the network (so no new projects), major cuts in renewals and a consequent increase in maintenance, and a significant fall in network performance (because assets would fail more often). And we thought there would have to be a six per cent year-on-year increase in passenger fares. Understandably, the Secretary of State was unwilling to announce all that. I said that unless he decided to reduce the size and intensity of the use of the network – in other words, reduce overall demand – I would put up the financial settlement by £7.4 billion to £22.2 billion. And since I heard nothing more from the Secretary of State on the matter, that is what I did, in December 2003.

28. The message I had been giving to the Secretary of State was this: you cannot meet 100 per cent of projected demand for 70 per cent of its efficient cost. Either demand and performance are reduced, or more money has to be provided. In other words, you can't get a quart out of a pint pot. Those are the economic realities. It is the same reality which prevails in all other public services: you can't have 100 per cent of whatever it is you want for 60 or 70 per cent of its

efficient cost. That truth applies in the criminal justice system, in policing, prosecutions, courts, prisons and probation, as it applies everywhere else. The laws of economics are as immutable as the laws of physics.

29. Reducing demand on the police and the rest of the criminal justice system is necessary, to ensure that the costs of crime and disorder, both in financial terms and in terms of human suffering, are minimised. The causes of crime and disorder are many and often complex. They include social dysfunctionality, families in crisis, the failings of parents and communities, the disintegration of deference and respect for authority, alcohol, drugs, a misplaced and unjustified desire or determination to exert power over others, envy, greed, materialism and the corrosive effects of readily-available hard-core pornography and the suppression of instincts of revulsion to violence. Most have nothing to do with the police.

30. Prevention – done most efficiently and effectively – takes place far upstream from the interventions of the police. It happens in the home, at school, with housing and social conditions, in health with timely treatment, and early intervention with chaotic and troubled families. It is when these agencies fail that the problem intensifies and often becomes chronic, and then it ends up with the police, and may go on to prosecution, then prison and probation, where the chances of long-term remedy reduce sharply at every step of the way.

31. Despite this obvious truth, public resources and investment in things which will be far more effective in keeping people safe, diverting others from crime and disorder, and preventing hopelessness and misery, are unsustainably low. Communities, through their elected representatives, and in possession of reliable and verified facts, need to decide where they want to invest in prevention and being safe. The costs are significantly lower upstream, and neglect in the early stages only causes the problems to worsen and grow. Prosecution and prison are the most expensive and least effective remedies for the ills of society.

32. For the UK to retain its well-deserved and world-renowned reputation in policing, the difficult questions that I have raised need to be answered. I believe that the public will is probably there to do so. This cannot come early enough.