PRISON REFORM TRUST

Prison Reform Trust response to the Independent Sentencing Review 2024 to 2025

About the Prison Reform Trust

The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective penal system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform. The PRT provides the secretariat to the All Party Parliamentary Penal Affairs Group and has an advice and information service for people in prison.

The PRT's main objectives are:

- reducing unnecessary imprisonment and promoting community solutions to crime
- improving treatment and conditions for prisoners and their families
- promoting equality and human rights in the criminal justice system.

www.prisonreformtrust.org.uk

Summary

The sentencing review has been triggered by an unmanageable increase in the prison population. Prison is the most severe form of punishment available in our system. Yet, evidence suggests that in its current form, prison only routinely meets two of the five statutory purposes of sentencing adults set out in section 57 of the Sentencing Act 2020 — punishment and protection of the public (and, even then, often only while the person is actually detained).

In the last 20 years, developments in sentencing have focused excessively on prison. Sentencing law, policy and practice have extended the punitive and preventative phases of punishment served in prison. Prison terms have increased, as have the circumstances in which people may be detained after the punitive phase has ended for the purpose of public protection through extended licence periods. The consequent exponential rise in the prison population has coincided with a serious deterioration in conditions in many prisons. Over half of people in prison today are not certain about when they will be released. Years spent without hope is psychologically damaging and can make people more risky, which is detrimental to all concerned. Sentences should enable hope for a safe future.

Serious crimes can have a profound effect on victims and their communities and rightly shock public consciousness. Victims want to see perpetrators justly punished for the crimes they commit. But they also want to prevent crimes being repeated on themselves and others. The vast majority of people in prison will be released back into the community. Long sentences can increase the risk of reoffending on release, in some cases by eroding protective factors, such as family ties and the ability to gain employment. Sentence inflation has resulted in a system so overburdened that it has limited capacity to focus on the important work of rehabilitation; and can do little more than warehouse people in prison.

If the crisis that triggered this review is to be tackled successfully, sentencing needs to change fundamentally, based on a structured and principled approach.

The five statutory purposes of sentencing adults need to be reviewed to clarify what the purpose of sentencing should be, which purposes should be prioritised and how

decisions about changes to sentencing should be made. This, alongside prison reform, is essential to enable a system of sentencing that is fit for its intended purpose.

Punishment needs to be defined clearly, with a deprivation of liberty (and all that entails but not more) being acknowledged as the height of punishment available in today's society. At present, the conditions of imprisonment mean that punishment is experienced as far more than a deprivation of liberty and can be experienced as even more punitive when a person is detained in custody for preventative reasons of public protection.

For anyone with a sentence that includes an element of preventative detention, everything possible should be done to secure safe release at the earliest opportunity.

The judiciary, Parliament and the executive all have a role to play in ensuring sentences are imposed and carried out in a way that is fair and proportionate. While the concept of the separation of the powers should mean that each power acts as a healthy check and balance on the others, this is not true at present: judicial powers have been curbed by Parliament's restrictions on what the judiciary can do, often fuelled by perceived penal populism, and the executive has found itself taking significant measures, that were not contemplated at the point of sentence, to relieve pressure on the prison estate.

Whether and how to take forward a new approach to sentencing is a matter for the Review. What follows in this response to the call for evidence is information that would support the development of a structured and principled approach, focused on what works and does not work in recent and current practice.

Structural changes are required to deflate sentence lengths and enable individualised sentencing that takes full account of needs, risks and protected characteristics.

Sentence types and structures need to be simplified to enable a better understanding for victims, defendants and the public at large.

Currently sentences operate by micromanaging a person throughout the entirety of the sentence, with the threat of being returned to prison for the duration (and sometimes beyond) the sentence end date. This has been hard wired as the new norm. But, as history shows, in the recent past there have been long periods where sentences have included release without conditions and threat of a return to prison. Therefore, steps such as reducing average sentence lengths or curbing the power of recall as not as new or radical as they might seem.

Deprivation of liberty should continue to be the highest form of punishment. Closed prisons should only be used when absolutely necessary, with punishment served in the lowest possible security categories and for the shortest possible period. Better use of community curfews without tagging should be made, and electronic curfews only used where necessary, or if the community curfew without tagging cannot work or has not worked. Hundreds of thousands of people are deprived of their liberty in the community under Deprivation of Liberty Orders, on bail or on licence: this is not a new concept.

Significant changes are required to enable those who are detained purely on public safety grounds to be released at the earliest possible opportunity.

To enable significant reform to succeed, there will need to be a significant shift in the public narrative, which is overly focused on imprisonment and the need for punishment. Research shows that, when the public is provided with the right information, increasingly harsh sentences are not inevitable. Research also shows that community sentences are more effective at preventing further crime. However, there is much work to be done to penetrate the current public discourse which is dominated by perceived penal populism centred on the need for longer sentences.

Sentencing needs to be better understood as a spread of options and the deprivation of liberty not being tied solely into prison or even electronic monitoring, with support in place to achieve this. Evidence as to the efficacy of community sentences needs to be promoted.

A new form of oversight is required to prevent knee-jerk changes to sentencing powers and changes in release mechanisms that increase time spent in custody. This should take the form of an independent panel on sentencing that must be consulted before any changes are introduced and could also oversee other aspects of the ways in which sentences operate.

Our recommendations for change fall into three broad categories: (i) changes to sentencing law and practice (ii) changes to how sentences operate and (iii) changes to how sentences are monitored, evaluated and scrutinised.

Changes to sentencing law and practice

To counter the sentence inflation of the last 20 years, the sentencing review should consider significant measures. There is evidence to support changing sentencing frameworks and practices including:

- Promoting individualised sentencing so that sentences take full account of needs and circumstances, including the impact of prison, and removing mandatory sentencing (in all but murder cases, which are the subject of a separate review) and minimum sentences.
- Simplifying custodial sentences to ensure that they can be clearly understood.
- Reducing sentence starting points in sentencing guidelines and in legislation for custodial sentences by a significant proportion in consultation with stakeholders including victims.
- Creating a presumption that all sentences of deprivation of liberty of three years or less should be served in the community unless there are exceptional circumstances.
- Removing powers of magistrates to sentence to deprivation of liberty except for a breach, which would only result in a prison term where electronic monitoring has failed, and increasing their powers to impose community orders and oversight of certain orders.

Such changes will only work if complemented by a greater public understanding of sentencing and better support for people serving sentences in the community and following release from probation and other statutory services.

Operational changes

Changes should also be considered in respect of how sentences in prison operate. There is evidence to support:

- Extending the use of Home Detention Curfew (HDC) for those sentenced to imprisonment.
- Simplifying release mechanisms for prison to restore honesty and transparency in sentencing by restoring automatic release in non-parole cases to a consistent point not greater than half-way (we would urge caution in using incentivised early release).
- Protecting and enhancing judicial oversight of decisions concerning liberty after sentence.
- Extending the High Court's power of review to enable a reduction in the minimum term at the halfway point in indeterminate sentences with minimum terms of ten years or more for exceptional progress to incentivise positive behaviour.
- Creating an independent Parole Board under His Majesty's Courts and Tribunal Service with enhanced resources to ensure timely reviews that can be meaningful and effective and where the burden is on the state to justify continued detention in the preventative phase.
- Better use should be made of open prisons, making them easier to get to and ensuring that, once in open conditions, prisoners, including those with protected characteristics, are appropriately supported and able to progress effectively through their sentence towards safe release.
- Making better use of resettlement units in prison and Release on Temporary Licence (ROTL) from prison.
- Creating purposes of prison to mirror the purposes of sentencing.
- Reforming sentence planning ensure it is procedurally fair with reviews based on need and evidenced based and shared understanding of risk, enabling a focus on developing protective factors rather than just interventions.
- Establishing a separate inquiry to understand how risk-based decision-making affects progression and release.
- Creating a mechanism to support those on indeterminate sentences who have become stuck in the system similar to Care and Treatment Reviews in hospitals.
- Removing post sentence supervision.
- Changing the use of recall, including consideration of whether it is necessary at all, and if so, whether there should be at the very least a judicial check at the point of recall.
- Creating a new statutory duty to support prison leavers to settle into the community through the provision of bespoke key long-term services.

Increased independent advice, scrutiny and accountability

These changes will need to be thought though carefully and monitored, which can be achieved by:

- Creating an independent panel on sentencing which could include the following features and functions:
    a. To consider and evaluate new sentences before they are passed into law.
    b. To monitor the impact of sentences over time, including the impact on the prison population, sentence progression, release and recall to prison.
    c. Made up of experts, including academics, lawyers, probation practitioners and the judiciary and should be empowered to consult with stakeholders.
- Strengthening the accountability of Parliament and government for the resource implications of the sentencing policies they propose or enact by a requirement for an annual statutory report on sentencing.
- Establishing a fully independent and accountable Women's Justice Board.

The combination of the panel's work and the statutory report should also enable more informed public discussions on sentencing. We further recommended strengthening the remit of the Sentencing Council to promote public understanding of sentencing and increasing opportunities for the public to engage in deliberative discussion on sentencing policy.

About this response

Each section has key points or recommendations for the review to consider. Each section responds to the key sections set by the review that fall within our sphere of expertise.

The response draws heavily on two recent streams of work:

The Building Futures programme

Our response draws on work completed to date in the first stage (2020–25) of the Building Futures Programme, funded by the National Lottery Community Fund. A major part of the Prison Reform Trust's work, the programme gives a voice to people serving long prison sentences (eight years or more for women, and 10 or more for men), enabling them to advocate for themselves, bring about change from within the system and shed light on the human cost of long-term imprisonment.

At the heart of the programme is the Building Futures Network (BFN) which has an active membership of about 800 people with direct experience of long-term imprisonment. It is their voices that enrich our understanding and their priorities that drive the strategic direction of the programme. Eight prison working groups also generate outputs around information, training, access and policy.

Building Futures' specific work on progression, which involved people in around 30 prisons, found that people serving long sentences were confused and disillusioned by the apparently simple proposition that they are required to reduce 'risk'. This work documents confusion surrounding what is meant by 'risk', risk reduction and

progression, issues relating to the delivery of Offender Management in Custody (OMiC), and problems in accessing meaningful activities and offending behaviour programmes.[1]

The Independent Commission Into the Experience of Victims and Long-term Prisoners (ICEVLP)[2]

The Independent Commission into the Experience of Victims and Long-term Prisoners (ICEVLP) was chaired by Bishop James Jones, former Bishop of Liverpool and of Prisons, and former Chair of the Hillsborough Independent Panel. The aim of the Commission was to provide the basis for a more measured and informed public and political debate about how the most serious crime is punished. Its expert panel members included the founder of the Forgiveness Project Marina Cantacuzino; public health expert Dr Bill Kirkup; criminal barrister Michelle Nelson QC; former chief executive of the prison and probation service Michael Spurr; and the writer on public ethics Paul Vallely.

The work of the Commission began in 2019 and its final report was published in 2022. The report draws on evidence the Commission received from both victims and prisoners and a range of criminal justice experts, and provides a detailed analysis of trends in sentencing for serious crime and the impact of long sentences from the perspective of both victims and prisoners. It concludes that sentencing for serious offences has lost its way and is not working for victims, prisoners, or society as a whole. It calls for a national debate on sentencing backed by a Law Commission review of the sentencing framework for serious offences, a citizen's assembly on sentencing policy, and strengthening the remit of the Sentencing Council in promoting public understanding of sentencing. It also makes eight detailed recommendations to improve the administration of long sentences for victims and prisoners.

The Commission was set up following an invitation to Bishop Jones from PRT. Its work was supported through a variety of charitable contributions, and by a secretariat led by Ken Sutton, who also performed this role for the Hillsborough Independent panel. Its conclusions are entirely its own.

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[1] Jarman, B. & Vince, C. (2022). *Making Progress? What progression means for people serving the longest sentences.* Prison Reform Trust. and

Prison Reform Trust. (2024). *Invisible Women: Understanding women's experiences of long term imprisonment, Briefing 3: Progression.*

[2] Prison Reform Trust. (2022). *Independent Commission calls for national debate on sentencing for serious crime.*

Theme 1: History and trends of sentencing

Key points

- The significant growth in our use of imprisonment is a relatively recent phenomenon, rising from 44,500 in 1993 to over 88,000 by 2024.
- The growth in the prison population has been underpinned by a stream of criminal justice legislation to increase the length of sentences, minimum terms, maximum terms, as well as the use of mandatory sentences and preventative detention.
- The way in which sentences operate have changed repeatedly and significantly over the years, often in a piecemeal fashion creating complex sentencing and release structures that often require revision and review.
- The rapid growth in the prison population has been accompanied by a sharp decline in the use of community sentences.
- The growing use of preventative detention, recall and the increase in the number of people on remand means that over half the people in prison who do not know when they will be released.
- People in prison are held in overcrowded and unsanitary conditions which do little to rehabilitate them, and act as a punishment over and above a deprivation of liberty.
- There is no evidence that prison reduces crime or reconviction rates.
- There is no evidence that harsher sentencing has made people safer or created public confidence in the justice system: research shows the public hasn't noticed that sentences are objectively more punitive than they were 25 years ago.

Context: an overview of the current position

As the call for evidence acknowledges, the average custodial length has almost doubled to 21 months in the last 20 years. However, there has also been a significant rise in the use of extended sentences, indeterminate sentences and the number of people who have been recalled to prison.

In the year ending June 2024, 1.15 million people were sentenced for criminal offences and just under 7% (75,300) received immediate custodial sentences.[3] As of 30 September 2024, 86,966 were held people in prison.[4] The legal status of those detained shows that:

- Almost a third (30%) of the prison population is serving determinate sentences of ten years or more, extended determinate sentences and indeterminate sentences.[5]

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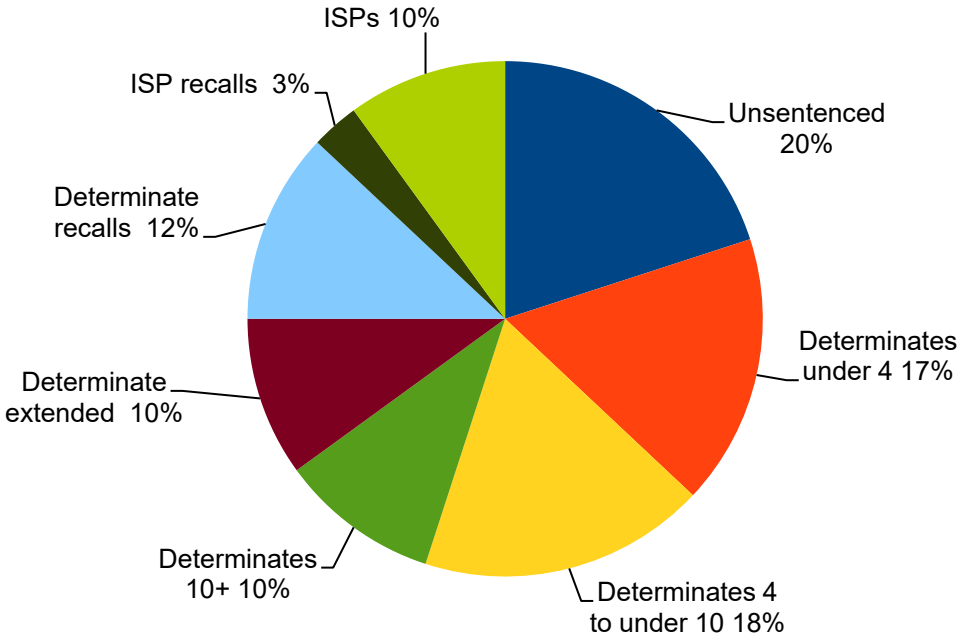
[3] Ministry of Justice. (2024). *Criminal Justice System statistics quarterly: June 2024.*

[4] Ministry of Justice (2024). *Offender management statistics quarterly: April to June 2024.*

[5] Ibid.

- 14% of people in prison have been released and recalled.[6]
- Just under one fifth (17%) are serving sentences of under four years.[7]
- Over half the people in prison (54%) are either on remand, recalled or serving extended or indeterminate sentences which mean that they do not have certainty about when they will be released.[8]

Figure 1: Legal status of people in prison in England and Wales, 30 September 2024



The rest of this chapter considers in greater depth some of the key trends towards sentence inflation. It charts how, with the exception of the use of remand, the legal status of those detained has changed over time.

To place the various trends in context, we have set out some of the key legislative changes over time that appear to us to be relevant to the increase in the prison population. We also provide a brief overview of the conditions of prisons today which mean that prison sentences function as a punishment that is far greater than simply a deprivation of liberty.

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[6] Ibid.

[7] Ibid.

[8] Ibid.
Note: In the case of extended sentences and recalled determinate sentences, it is acknowledged that there is an automatic release date for the former and a sentence end date for the latter but as the expectation is that release will be considered before these dates, there remains a great deal of uncertainty.

A brief overview of key legislative changes to sentencing and release mechanisms over time

Until the mid-19th century, prison sentences tended to be short, and explicitly punitive. More serious offences were punished by death or transportation, until the latter was abolished by the Penal Servitude Act 1853. Serious offenders or "convicts" were dealt with nationally, while less serious offenders were dealt with as "prisoners" locally, creating a two-tier system until the 1940s.

Penal servitude sentences were an early example of the idea that prison sentences could be reformative. They were intended to create conditions conducive to industrial training, with labour framed as the primary reformative mechanism.[9] However, the method of reform was harsh, intended "to break an individual's spirit and eradicate any future traces of rebelliousness against authority, theoretically producing a reformed and rehabilitated individual who had made the most of the enforced opportunity to reflect upon the error of their past ways".[10] Penal servitude is also an early example of a prison sentence with discrete stages: nine months isolation in prison, followed by transfer to a specially constructed convict prison, then a period of release on licence known as "ticket-of-leave".[11] By contrast, local prisoners could apply for remission which would result in unconditional release prior to the end of the sentence.

From 1902, the Borstal system, named after the village in Kent where the first one was built, was created for boys and girls, generally between 16-21 years of age.[12] Borstal sentences, for young people aged 16–21, lasted for between one and three years, with eligibility for release on licence at any point after six months for young men, and three for young women if the Prison Commissioners were satisfied that "there is a reasonable probability that the offender will abstain from crime and lead a useful and industrious life".[13] The act also introduced preventative detention sentences for adults whom the courts were persuaded were "habitual criminals". These sentences lasted between five and 10 years, with release on licence considered every three years.

Reforms were made in the 1930s and 1940s, including the abolition of penal servitude; tweaks to minimum and maximum lengths; eligibility; and the introduction of variants known as the Corrective Training sentence (2–4 years for people aged under 30) and an updated Preventative Detention sentence (5–14 years for people aged 30 or over) — still incorporating indeterminate conditional release. These sentences represented efforts to distinguish between those amenable to reform, and those believed to need incapacitation.[14] However, both sentences were abolished by the Criminal Justice Act 1967, amidst criticisms that they had failed in their

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[9] Johnston, H., Godfrey, B. & Cox, D. (2022). *Penal servitude: Convicts and long-term imprisonment, 1853-1948.* McGill-Queen's University Press.

[10] Cox, D. (2021), 'Fitted both morally and physically to fulfil his proper duties in the battle of life'? – The effectiveness or otherwise of penal servitude and imprisonment 1853–2021. The *Howard Journal of Crime and Justice, 60*, 47-55.

[11] n55

[12] National Justice Museum. (2024, August 22). *The History of Borstals in England - Part 1 - timeline*.

[13] Prevention of Crime Act 1908, s5(1).

[14] Criminal Justice Act 1948, s21.

reformative aims, and had been applied to less serious offences than intended.[15] These are almost identical criticisms to those that drove the later abolition of the IPP sentence.

Until 1948 — at a time when the prison population was significantly smaller than it is today — prisoners were required to serve the full length of the sentence in custody unless they successfully applied for remission for good conduct resulting in unconditional early release.[16] However, in that year, the government decided that prisoners should be released once they had served two-thirds of their sentence by automating the existing remission system which had become too administratively burdensome, following a period of strong growth in the prison population after the second world war.[17]

At around the same time, the Murder Act 1965 abolished the death penalty for murder, replacing the death sentence with imprisonment for life and resulting in an increase in the number of people in prison without a fixed release date.

The 1967 act formalised the Parole Board, empowering it to consider discretionary early release on licence for any prisoner after serving a third of their sentence, with automatic release at the two-thirds point of a fixed term sentence, and not liable to recall for the final third. The board also made recommendations on the release of the relatively small number of prisoners serving life sentences.

In the ensuing decades there was much debate on exactly what test the Parole Board should apply in making decisions and more generally on what the approach to punishment should be. The 1970s and 1980s saw a period of "bifurcation" which saw long and indeterminate custodial sentences being reserved for more violent offences and "dangerous" offenders; and an increase in community sentences for less serious offences. This approach was reflected in the development of the Criminal Justice Act 1991. The Green Paper which proceeded the act acknowledged that "imprisonment is not the most effective punishment for most crime" and that "custody should be reserved as a punishment for very serious offences, especially when the offender is violent and a continuing risk to the public".[18] The White Paper for the 1991 act went further and acknowledged that despite the "immediate appeal" of deterrence, offenders "often" do not "weigh up the possibilities in advance and base their conduct on rational calculation".[19]

The ensuing act increased the range of community options, defining community supervision as punishment that could, for the first time, be imposed by the court. It also restricted discretionary release to prisoners who had served half of any fixed term sentence of four years or more and increased automatic release to the three quarters point. The same act introduced restrictions on which determinate sentenced

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[15] Advisory Council on the Treatment of Offenders (1963). *Preventative detention.* HM Stationery Office.

[16] Guiney, T. (2015). *In the shadow of the prison gates: an institutional analysis of early release policy and practice in England and Wales, 1960 – 1995.* PhD thesis, London School of Economics and Political Science.

[17] Table 1.Leg.4, Ministry of Justice. (2024) *Offender management statistics quarterly: January to March 2024*; See Thomas (2015) for an analysis of release practices over time.

[18] Home Office (1988) *Punishment, Custody and the Community*.

[19] Home Office (1990) *Crime, Justice and Protecting the Public.*

prisoners could be granted parole and introduced Parole Board hearings for people serving discretionary life sentences, a process that was extended to all life sentences during the decade that followed.[20] The 1991 act also introduced sentences that were longer than "commensurate with seriousness of the offence" if it thought that this was "necessary for the protection of the public from serious harm from the offender". The act introduced post-release supervision following a custodial sentence of more than 12 months. In the case of short-term sentences of under four years, recall to prison was overseen by the courts. The Parole Board was tasked to oversee the recall of prisoners on sentences of four years or more under supervision.

However, the 1990s saw a general hardening of public and political attitudes towards prisons and crime. Beginning with the home secretary Kenneth Baker and his campaigns against joyriding, and the tragic murder of James Bulger in February 1993. Then gathering pace following the appointment of Michael Howard as home secretary — famous for his "prison works" mantra and overseeing a sharp rise in the prison population — a trend which has continued under governments of all political leanings (except during the period of the 2010 coalition government and Covid-19) ever since.

The Crime (Sentences) Act 1997 introduced a mandatory life sentence to anyone convicted for a second serious offence, meaning that judges had to impose a life sentence, unless there were exceptional circumstances. This sentence, known as "two strikes and you're out", was abolished in 2005 by the Criminal Justice Act 2003, after the Court of Appeal held that such a sentence could only be justified where the court determined that the defendant posed a risk of significant harm.[21] However, the sentence was not abolished retrospectively.

The Crime and Disorder Act 1998 created a system of executive recall (without the need to return to court) for standard fixed sentences of between 12 months and four years. This act also introduced a range of orders, including Anti-Social Behavioural Orders (ASBOs), the breach of which could result in imprisonment.

The Powers of Criminal Courts (Sentencing) Act 2000 was introduced to consolidate sentencing legislation previously spread across twelve separate acts.

Much of the 2000 Act was replaced by the Criminal Justice Act 2003. The 2003 act also introduced the Imprisonment for Public Protection (IPP) sentence. A combination of a lack of resources; risk aversion; and the psychological impact of the uncertainty of release, led to many people serving IPP becoming stuck in the system for many years longer than their minimum term.[22] By 2008, it became clear that the sentence was being used much more than intended and some restrictions on its imposition were introduced in 2009 by the Criminal Justice and Immigration Act 2008. The IPP sentence was eventually abolished by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 as an overapplied failure — but not retrospectively — and 1,132 people are still serving it who have never been

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[20] Padfield, N. (2019). Giving and getting parole: The changing characteristics of parole in England and Wales. *European Journal of Probation, 11*(3), 153-168.

[21] *R v. Offen* (2001) 1 CrAppR 24.

[22] House of Commons Justice Committee (2022). *IPP sentences.* HC 266. House of Commons.

released.[23] The 2003 act also replaced the longer than commensurate sentences from the 1991 act with "extended sentences for public protection" for those who were deemed "dangerous" by the court but did not meet the criteria for IPP sentences. These sentences initially comprised of a fixed punitive period with the possibility of discretionary release at a certain point in that phase, followed by automatic release (if not already released by the Parole Board) at a certain date on an extended licence.

The 2003 act also introduced the first schedule of minimum terms for those convicted of murder. Minimum terms for all life sentences had previously been set by the home secretary. This resulted in a significant increase in the typical minimum terms served for murder (see below). The change occurred after the House of Lords ruled that the setting of minimum terms by the home secretary was incompatible with Article 6 of the European Convention on Human Rights (which requires criminal hearings to be conducted by "an independent and impartial tribunal established by law").[24]

The 2003 act also abolished the oversight of the Parole Board for most fixed term sentences, introducing automatic conditional release at the halfway point. Because of this act and the increase in indeterminate sentences, the nature of the Parole Board's work changed significantly.[25] The board's work shifted from overseeing the early release of long-term determinately sentenced people to being tasked with deciding whether *indeterminately* sentenced prisoners should be released *after* the expiry of their punitive minimum term (tariff); and reviewing the release of both determinate and indeterminate sentenced prisoners following a recall to custody. However, the majority of its current caseload concerns determinate prisoners.[26] According to the Parole Board's latest strategy report, its caseload "increases 10% year on year…driven by increased prisoners serving determinate sentences being recalled to custody, coupled with a fall in executive re-release when compared to five years ago".[27]

The 2003 act also standardised automatic release at the halfway point for all standard determinate prisoners, and this continued until 1 April 2020, which marked the beginning of a series of changes to the automatic release date (see below).

The Legal Aid Sentencing and Punishment of Offenders Act 2012 not only abolished the IPP sentence but replaced Extended Sentences for Public Protection with a new Extended Determinate Sentence (EDS), operating in a similar way and continuing to apply the rationale that some people deemed "dangerous" required an extended period on licence to protect the public. The initial incarnation of this sentence resulted in most people being released at the two-thirds point of the custodial term, unless the custodial term was over then years or for a listed serious offence.

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[23] Ministry of Justice (2024). Table 1.Q.14. *Offender management statistics quarterly: January to March 2024*. Ministry of Justice.

[24] R v Secretary of State for the Home Department, Ex Parte Anderson [2002] UKHL 46

[25] Padfield. N. (2019). Giving and getting parole: The changing characteristics of parole in England and Wales. *European Journal of Probation 11*(3), 153-168.

[26] The Parole Board for England and Wales. (2024). *The Parole Board for England & Wales Annual Report and Accounts 2023/24: Performance Data*.
Data extrapolated from this shows that in 2023/24 determinate cases accounted for three quarters of all decisions made.

[27] The Parole Board for England and Wales (2023) *Parole Board Strategy 2023-2025.*

The Offender Rehabilitation Act 2014 (ORA) extended the possibility of recall to prison for anyone serving a sentence of up to 12 months and introduced post sentence supervision to ensure that anyone serving a sentence of less than two years had at least a year of probation supervision in the community. Before the ORA, those sentenced to less than 12 months were released unconditionally after serving half of their sentence.

The EDS was further altered by the Criminal Justice and Courts Act 2015 to remove the possibility of automatic release at the two-thirds point of the custodial term, in favour of eligibility for parole at that point and automatic release at the end of the custodial term on the extended licence. The same act introduced sentences for Offenders of Particular Concern (SOPC) to be imposed for offences listed in schedule 18A to the Criminal Justice Act 2003. An SOPC is made up of a prison term with an extended licence of one year. In its initial carnation, release before the end of the prison term was at the discretion of the Parole Board at the halfway point.

In 2020, following extensive work by the Law Commission, the Sentencing Act 2020 codified all sentences. However, despite the original printed Act running to 829 pages, it did not include release mechanisms, most of which are still continued in the Criminal Justice Act 2023, as amended.

The Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020 was the first legislative measure to alter automatic release from the halfway point to the two-thirds point for adults sentenced to standard determinate sentences of seven years or more for certain violent and sexual offences.[28] This was subsequently extended by the Police, Crime, Sentencing and Courts Act 2022 to those serving standard determinate sentences of four years or more and who were convicted of those same eligible offences.[29] The rationale for the change was that it would bring "the release policy governing these offenders in line with that governing those who receive [a standard determinate sentence] of 7 years or more for these same offences".[30] The equalities impact assessment stated this change would "better protect the public and improve confidence in the administration of justice".[31] There has been no subsequent analysis showing better public protection and increased confidence in the administration of justice, to the best of our knowledge.

The Police, Crime, Sentencing and Courts Act 2022 also increased starting points for children who committed murder; removed exceptional progress reviews of minimum terms for individuals who committed murder as children but were not sentenced before turning 18; and introduced a power to detain certain high-risk offenders beyond their automatic conditional release date unless the Parole Board agrees to release them. It also increased the parole eligibility date on SOPCs from halfway to the two-thirds point.[32]

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[28] The Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020

[29] These changes affected those sentenced as children differently.

[30] Home Office. (2022) *Changes to release and sentencing policy governing serious and dangerous offenders: Equalities Impact Assessment.*

[31] Home Office. (2022) *Changes to release and sentencing policy governing serious and dangerous offenders: Equalities Impact Assessment.*

[32] For a good summary of how this power operates see R(Simpson) v SSJ [2022] EWHC 3181 (Admin)

Since June 2023 several minor amendments to legislation and policy have been introduced with the specific aim of reducing pressure on the prison and probation service. These include extensions to the Home Detention Curfew (HDC) scheme — which enables certain prisoners to be released early at the discretion of the prison Governor on an electronic tag; the management of people on licence; and automatic release.

The Criminal Justice Act 2003 (Home Detention Curfew) Order 2023 came into force on 6 June 2023 and extended HDC from a maximum of 135 days to 180 days. This was first proposed when David Gauke was Lord Chancellor and Secretary of State for Justice, but remained as draft legislation.[33]

The Victims and Prisoners Act 2024 legislated for a raft of further changes, some of which were designed to reduce pressure on the prison system, such as the automatic or chance for an earlier termination of some people on IPP licences and further extending the use of HDC. Others measures in the act may increase pressure, such as an enhanced public protection test and a further layer of review in top tier parole cases.

Between 29 April 2024 and 1 July 2024, the Probation Service implemented a change to practice called “Probation Reset” which resulted in suspending contact between probation and a significant number of people supervised and managed in the community.[34]

Most recently, the Criminal Justice Act 2003 (Requisite and Minimum Custodial Periods) Order 2024 was approved by Parliament on 29 July and came into force in September 2024. The order — introduced in response to the growing capacity crisis in prisons — replaced automatic release at the half-way point with release on licence after 40% of an eligible sentence (SDS40).[35]

In November 2024, The Home Detention Curfew and Requisite and Minimum Custodial Periods (Amendment) Order 2024 was laid in Parliament. This reduced the list of eligible offences for SDS40 in response to domestic violence concerns, and increased the maximum period a person can spend on HDC to one year.[36]

Sentencing guidance

Until the late 1990s, there was no body responsible for providing guidance in sentencing other than the Court of Appeal through judgments. Thereafter, to achieve consistency in sentencing, various panels have been established culminating in the current Sentencing Council.[37] The Coroners and Justice Act 2009 requires courts to

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[33] The Criminal Justice Act 2003 (Early Release on Licence) Order 2019.

[34] Ministry of Justice. (2024). *Offender management statistics quarterly: January to March 2024*. and HM Prison and Probation Service. (2024). *Probation Reset* [Slide pack].

[35] Ministry of Justice. (2024, July 12). Lord Chancellor sets out immediate action to defuse ticking prison ‘time-bomb.’ *GOV.UK*.

[36] The Home Detention Curfew and Requisite and Minimum Custodial Periods (Amendment) Order 2024.

[37] Sentencing Council. (n.d.). *History – sentencing*. Retrieved January 9, 2025, from https://www.sentencingcouncil.org.uk/sentencing-and-the-council/about-the-sentencing-council/history/

follow the guidelines issued by the Sentencing Council "unless the Court is satisfied that it would be contrary to the interests of justice to do so". However, the Sentencing Council operates within the legislative framework set by Parliament, which, as this short history shows, has continued to legislate regularly since its inception.

A brief overview of the conditions of imprisonment today

Imprisonment today is far more punitive than just the deprivation of liberty. Living conditions in many prisons, including newer facilities, have deteriorated due to overcrowding and neglect.[38] Such conditions can be experienced as even more punitive when a person is detained in custody for preventative reasons of public protection — and for some — prison is a wholly unsuitable and inappropriate environment.

In 2024, the National Preventive Mechanism reported that rising prisoner numbers, overcrowding, staff shortages, and decaying infrastructure have created untenable conditions. [39]

"We have seen buildings that are not fit for purpose brought back into use, or two people being squeezed into single cells, to cope with more prisoners, without enough staff or wider infrastructure to adequately prepare them for release and manage risks of reoffending."

Overcrowding is rife: nearly a quarter of the prison population (24%), some 20,500 individuals, are crammed into spaces meant for far fewer.[40] In the worst cases, some prisons hold over 80% more people than they were built for, creating appalling conditions.[41] Inspectors have found cells so crowded that that beds are placed directly next to toilets with little or no screening, and shared areas are unhygienic and unsafe. Filthy showers, broken heating systems, inadequate ventilation, and infestations of rats, cockroaches and even pigeons reflect the chronic underinvestment in prison maintenance.[42]

Mental health support is equally inadequate. With long waits for forensic mental health beds, severely unwell individuals are left in settings ill-equipped for their needs. This leaves staff struggling, and prisoners at risk of irreversible harm. Rates of self-harm have reached record highs, with 76,365 incidents reported in the 12 months to June 2024—equating to 876 incidents per 1,000 prisoners.[43]

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[38] HM Inspectorate of Prisons. (2024). *HM Chief Inspector of Prisons for England and Wales, Annual Report 2023–24.*

[39] National Preventive Mechanism. (2024). *Monitoring places of detention: 15th Annual Report of the United Kingdom's National Preventive Mechanism 2023/24* (CP 1290).

[40] Ministry of Justice. (2024). *HMPPS Annual Digest, April 2023 to March 2024.*

[41] Ibid.

[42] HM Inspectorate of Prisons. (2024). *HM Chief Inspector of Prisons for England and Wales, Annual Report 2023–24.*

[43] Ministry of Justice. (2024). *Safety in custody: quarterly update to June 2024.*

Prisons are violent places: in the 12 months to March 2024, the rate of assaults was 327 assaults per 1,000 prisoners (28,292 assaults), up 19% from the 12 months to March 2023.[44]

Older prisoners face unique challenges in these crumbling systems. The number of prisoners aged 60 or older has surged by 82% in the last decade and by 243% since 2002. With higher prevalence of chronic illnesses, disabilities, and mobility issues, prisons remain poorly equipped for their care. Many spend excessive time confined to cells, exacerbating isolation and hindering rehabilitation.[45]

Women in prison often have histories of trauma, substance misuse, and mental health difficulties, with many serving sentences linked to offences committed in coercive or abusive relationships. Despite making up less than 5% of the prison population, women account for disproportionately high rates of self-harm and suicide, now at record levels. The chaotic and punitive nature of prison life can exacerbate these vulnerabilities, with noisy and traumatic environments often mirroring past abuses.[46]

The current state of our prisons reflects a systemic failure to uphold basic human dignity. People are sent to prison as punishment, not for punishment. Yet poor conditions are adding an additional layer of punishment onto the deprivation of liberty. In their current condition prisons are places of harm rather than rehabilitation, perpetuating cycles of despair and reoffending.

What are the drivers behind the growth of the prison population?

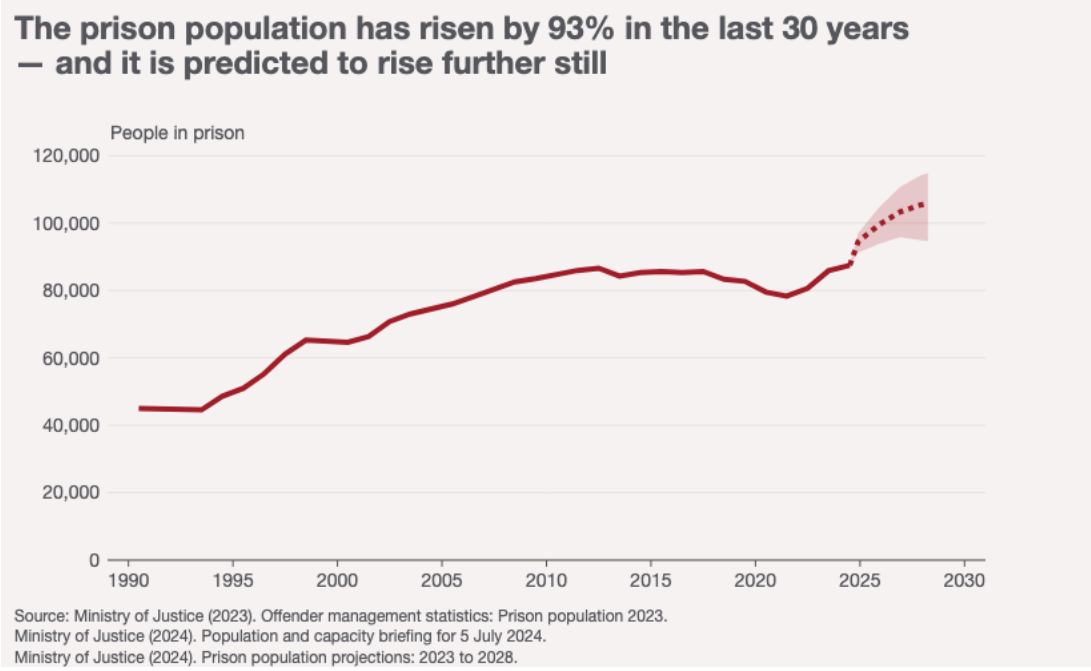
As we have already discussed earlier in this section, the 1990s marked a turning point in our use of imprisonment. As Figure 2 shows, from 1993 the prison population began to undergo a dramatic period of growth, rising from 44,500 to over 88,000 by 2024.

[44] Ministry of Justice. (2024). *Safety in custody: quarterly update to June 2024.*

[45] House of Commons Justice Committee. (2020). *Ageing prison population* (HC 304).

[46] Kelman, J., Gribble, R., Harvey, J., Palmer, L., & MacManus, D. (2022). How does a history of trauma affect the experience of imprisonment for individuals in women's prisons: a Qualitative exploration. *Women & Criminal Justice*, *34*(3), 171–191.

Figure 2: The prison population in England and Wales



The growth in the number of people sentenced to immediate custody has been the single most important contributor to the overall growth of the prison population since 1993 increase. Immediate custody rates for indictable offences increased from 16% in 1993 to 28% in 2002 — an increase of over two-thirds — and stabilised between 26% and 28%.[47]

At the same time, there has been a decline in the use of community sentences and an increase in the average custodial length of sentences, as well as an increase in the use of preventative sentencing and the use of recall. These changes have been driven by tougher sentencing law and policy outlined above. Legislative and policy changes since the 1990s have made sentence lengths longer for certain offences. This has seen the introduction of mandatory minimum sentences; increased maximum sentences; and changes which have increased the likelihood of being imprisoned for breach of non-custodial sentences, or recalled to custody for failure to comply with licence conditions on release from prison.

There has also been an increase in the number of certain types of offences coming before the courts.[48] The number of people sentenced to custody within three offence groups — violence against the person, drug offences and sexual offences — have all increased in volume during this period. But it is important to note that this is a measure of detection, charging and prosecution, rather than necessarily an increase in the number of offences being committed.

We turn to specific examples of how some these changes have contributed to driving up the number of people in prison serving long sentences.

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[47] Ministry of Justice. (2013). *Story of the Prison Population: 1993–2012 England and Wales.*

[48] Ibid.

Longer sentences and more preventative sentencing

Sentences have resulted in longer periods in custody in two ways.

First, sentence inflation has increased the length of prison terms.[49] They have become longer as the result of decisions taken by courts at the outset when imposing a longer fixed term sentence or a longer minimum period before a person can be considered for parole. The justification for this is that sentencing decisions by courts are partly designed to reflect the culpability of the offence in setting the total length or minimum term. There are many examples where governments have chosen to legislate to lengthen the amount of time that the courts can send someone to prison. Most of these sentencing changes have been introduced with an accompanying narrative that they are necessary as a response to punishing or deterring people from committing crimes, and in a political climate marked by 'tough on crime' messaging (Theme 2).

Second, there has been an increase in preventative sentencing. In addition to setting sentence lengths related to the seriousness of the offence, courts, aided by assessments provided by the probation service and psychologists, can also determine "dangerousness". A person is defined as dangerous if they have committed a specified offence and pose a significant risk to members of the public of serious harm occasioned by the commission of further such offences.[50] A person who is deemed to be dangerous by the court may receive an extended or indeterminate sentence which contains a preventative element. These sentences will require the involvement of the Parole Board with the aim of public protection once the punitive element of the sentence has been served. The circumstances in which preventative sentences are imposed have expanded due to significant changes to legislation and policy. These changes have been introduced with the aim of protecting the public and effectively reducing or managing risk once the punishment term is served.

Both of these changes have resulted in the increased involvement of the Parole Board which may be involved in both initial release decisions and following recall. After a person has served the punitive element of a long determinate sentence and has been released on licence, the sentence becomes preventative in nature: if they are recalled for a breach of their licence conditions, then in many instances they will only be released again by the Parole Board. The longer the determinate sentence, the longer the period during which they may be subject to detention following recall, even though there has never been a finding of "dangerousness" by the court.

Where a sentence contains a preventative phrase requiring release by the Parole Board, release can be subject to extensive delays due to a multitude of reasons. As Ben Jarman points out, there has been a significant evolution in the role of the Parole Board since it was first established:

"The Parole Board, which at its outset in 1967 was charged with deciding whether to grant early release to determinately-sentenced prisoners, now increasingly makes decisions about whether to continue the sentences of indeterminately-sentenced prisoners whose minimum terms have expired, but who are deemed unmanageably risky in the community… [From the prisoner's perspective] the Parole Board increasingly dispenses punishment, as well as granting release."

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[49] Howard League (2024) *Sentence inflation: a judicial critique*.

[50] Sentencing Act 2020, s.308

Increases in minimum terms, maximum terms and mandatory sentences

The number of people sentenced to custody within three offence groups — violence against the person, drug offences and sexual offences — have all increased in volume during this period.[51] This increase in volume has also been matched by an increase in the length of sentences imposed to punish these offences, partly because of mandatory minimum sentences, increased starting points and increased maximum sentences.

Increase in starting points for murder

The most stark example is the increase in starting points for murder through the introduction of schedule 21 of Criminal Justice Act 2003:

"Previously, the higher starting point for murder was a minimum term of 16 years. At a stroke, in December 2003, this became either 30 years or whole life depending on the circumstances of the offence…The average length of a minimum term for murder increased from 12.5 years in 2003 to 21.3 years in 2016, an increase of 70 per cent."[52]

Since then, starting points for murder have increased yet further still, including for children. Changes include:

- The Criminal Justice Act 2003 (Mandatory Life Sentence: Determination of Minimum Term) Order 2010 increased the starting point of the sentence from 15 to 25 years for murders involving a knife, following the murder of Ben Kinsella.
- Section 127 of the Police, Crime, Sentencing and Courts Act 2022 increased the starting point for a 17-year-old child convicted of murder with the highest level of culpability from 12 years to 27 years.

Further changes have been announced to increase the starting point for people convicted of murder if involving strangulation or following the ending of a relationship.[53]

The Sentencing Academy also highlighted that the increase in the severity of sentencing for murder caused a knock-on effect for other closely associated offences — manslaughter and attempted murder — which increased in line with each other.

"Such offences are now sentenced more severely than they would have been prior to 2003."[54]

Mandatory sentences (in addition to murder)

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[51] Ministry of Justice. (2013). *Story of the Prison Population: 1993–2012 England and Wales.*

[52] Independent Commission into the Experience of Victims and Long-Term Prisoners. (2022). *Making sense of sentencing.*

[53] Ministry of Justice. (2024, December 6). Domestic killers face tougher sentences in latest move to halve violence against women and girls. *GOV.UK*.

[54] Independent Commission into the Experience of Victims and Long-Term Prisoners. (2022). *Making sense of sentencing.*

In addition to the mandatory life sentence for murder, there are a number of other instances where sentences have been prescribed by law, often as a response to public concern about particular types of serious offending (see Theme 2).

These have included instances where offences of a certain level of seriousness or repeat serious offences are met.

For example, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 introduced a mandatory life sentence for people who are convicted and sentenced for a second serious sexual or violent offence, where a sentence of 10 or more years' imprisonment was imposed for the first offence, and the second offence merits a sentence of 10 or more years' imprisonment.[55]

The Criminal Justice and Courts Act (CJCA) 2015 created a new mandatory "Special custodial sentence for certain offenders of particular concern." These sentences must be imposed on people convicted of certain offences (now in a schedule to the Sentencing Act relating specific terror offences and sexual offences committed against children), but who are not deemed dangerous and therefore not eligible for ordinary extended determinate sentences. These sentences operate in a way that is similar to EDSs: they are made up of a custodial term (with eligibility for release on parole at the two-thirds point and automatic release at the end) and an additional licence period (but unlike the EDS), this is limited to a year.

Other examples include mandatory minimums for certain offences. For example, for certain firearms offences, mandatory minimum terms apply. Broadly speaking the mandatory minimum sentence is 5 years for and adult and 3 years for a child.[56] The mandatory minimum must be imposed unless the court determines that there are "exceptional circumstances" relating to the offence or the offender which justify not doing so.[57]

Another example is the introduction of "third strike burglary" sentences which was introduced in 2022. This is a requirement for the court to impose a custodial sentence of at least three years for a third domestic burglary offence unless there are exceptional circumstances or it would be unjust to do so in all the circumstances.[58]

Increase in maximum sentences

A maximum sentence available for certain offences has increased significantly in recent years. For example:

- The Violent Crime Reduction Act 2006 increased the maximum sentence for knife possession from two to four years.
- The Police, Crime, Sentencing and Courts Act 2022 doubled the maximum penalty for an assault on an emergency worker to two years.

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[55] Legal Aid, Sentencing and Punishment of Offenders Act 2012 s.122

[56] Sentencing Act 2020 s.311

[57] Sentencing Act 2020 s.311: for an example of what might constitute exceptional circumstances see Bassaragh [2024] EWCA Crim 20 (Theme 5).

[58] Sentencing Act 2020 s.314: note the test for not imposing the mandatory minimum depends on when the offence as committed.

Increases to sentence lengths for sexual offending

The Sexual Offences Act 2003 brought in major changes in respect of sentencing for sexual offences. These changes have both increased the proportion of people convicted of sexual offences who go to prison and increased the average prison sentences they serve — with the latter being driven largely by very substantial increases in the sentences imposed for the most serious offences.[59]

In her evidence to the Independent Commission into the Experience of Victims and Long-Term Prisoners, Dr Alice Ievins said:

"Over the last forty years, the number and proportion of men in prison for sex offences has drastically increased. In 1980 they represented 4 per cent of the prison population; by 2000 they were 10 per cent and by 2020 they were 18 per cent"

Dr Ievins suggested a range of reasons sentencing for this increase besides sentencing itself, including increased reporting of offences by victims and recording by police; and changes to simplify and expedite prosecutions.

"It is possible to interpret the increase in the number of men being prosecuted for sexual offending, and the severity of the punishment they receive, as a sign of society taking sexual violence more seriously."

The Sentencing Academy has also highlighted the potential impact of Court of Appeal determinations in further expanding the scope for the courts to pass extremely long sentences in cases of the most serious sexual offending.

"In December 2020, the Court of Appeal imposed life sentences with minimum terms of 40 years on two offenders convicted of a series of very serious sexual offences. Whilst the gravity of offending by these two individuals truly was exceptional, we believe that the previous longest sentence for sexual offending was a life sentence with a minimum term of 25 years. In raising that ceiling to a minimum term of 40 years there is now clearly scope for longer sentences for other very serious sexual offending to fill up the range of sentences below a minimum term of 40 years (which is currently the equivalent of an 80-year determinate sentence)."[60]

At the same time, research on the risk and rehabilitation of sexual offenders shows that they remain at a relatively low risk of sexual reoffending. Studies suggest that less than one in five of a general sample of sex offenders released from prison go on to commit a further sexual offence.[61] Further, specialist Core Sex Offender Treatments in prison have been found to be generally associated with little or no changes in sexual and non-sexual reoffending.[62] While more recent programmes have received more positive evaluations, these have since been withdrawn.

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[59] Ministry of Justice. (2013). *Story of the Prison Population: 1993–2012 England and Wales.*

[60] Independent Commission into the Experience of Victims and Long-Term Prisoners. (2022). *Making sense of sentencing.*

[61] Grubin,d & Wingate, S (1996) Criminal Behaviour and Mental Health, 6, 349-359 Whurr Publishers Ltd. Pages 349 – 357

[62] Ministry of Justice (2017). *Impact evaluation of the prison-based Core Sex Offender Treatment Programme*

Standard determinate sentences

The most common type of custodial sentence imposed by the courts is the Standard Determinate Sentence (SDS). In 2023, 68,740 people were given a SDS, representing 97% of all custodial sentence.[63] These sentences last for a fixed length of time and consist of a period spent in custody after which a person is released and subject to supervision on licence in the community.

In recent decades there has been a significant increase in the use of long determinate sentences of 10 years or more. Figure 3 shows the number of determinate sentences passed by the courts according to sentence length. It shows that sentences of 10 years or more account for the smallest number of determinate sentences passed by the courts. However, the use of these sentences has grown significantly, rising from 514 in 2010 to 1,530 in 2023. By contrast, the use of short sentences of six months or less fell sharply during the same period, from 58,693 in 2010 to 35,173 in 2023.[64]

Figure 3: Number of people sentenced to custody by sentence length in England and Wales

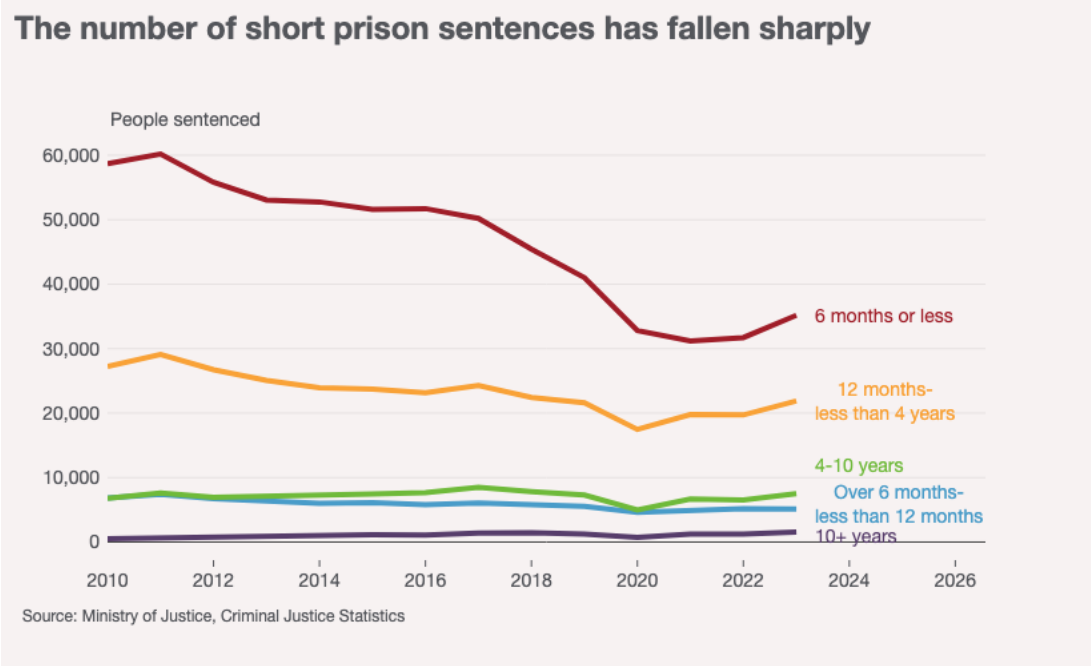

Figure 4 shows the percentage change in the use of different lengths of determinate sentences from 2008. It shows that the annual use of determinate sentences of over 10 years increased by more than two and a half times. By contrast, over the same period, the use of determinate sentences of four to 10 years increased by just 9%, while the use of determinate sentences of less than four years declined.

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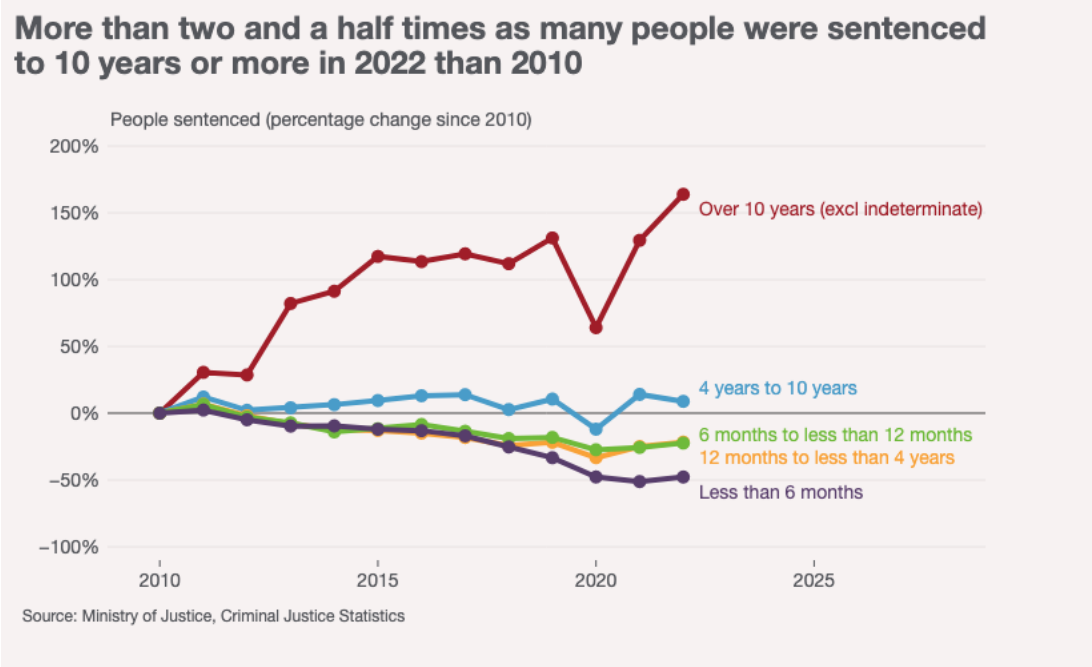
[63] Ministry of Justice. (2024). Outcomes by Offence Data Tool: December 2023. In *Criminal Justice System statistics quarterly: December 2023.*

[64] Ministry of Justice. (2024). Outcomes by Offence Data Tool: December 2023. In *Criminal Justice System statistics quarterly: December 2023.*

Figure 4: Change in the number of people sentenced to custody by sentence length in England and Wales since 2010



There has been a marked shift in the number of people being given very long determinate sentences of 20 years or more. Figure 5 shows the number of people sentenced to a determinate sentence of 20 years or more between 2009 and 2019. In 2019, the latest year for which data are available, 124 people were sentenced to custody for 20 years or more (excluding life sentences) — four times the number of just a decade ago.

Figure 5: Number of people sentenced to custody for 20 years or more in England and Wales

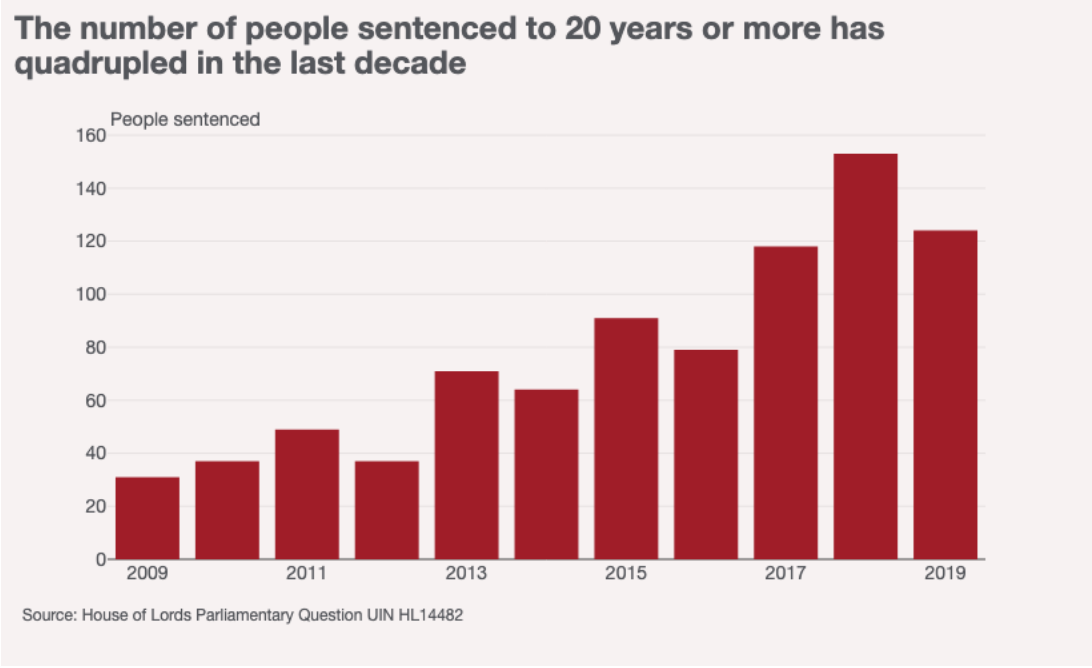
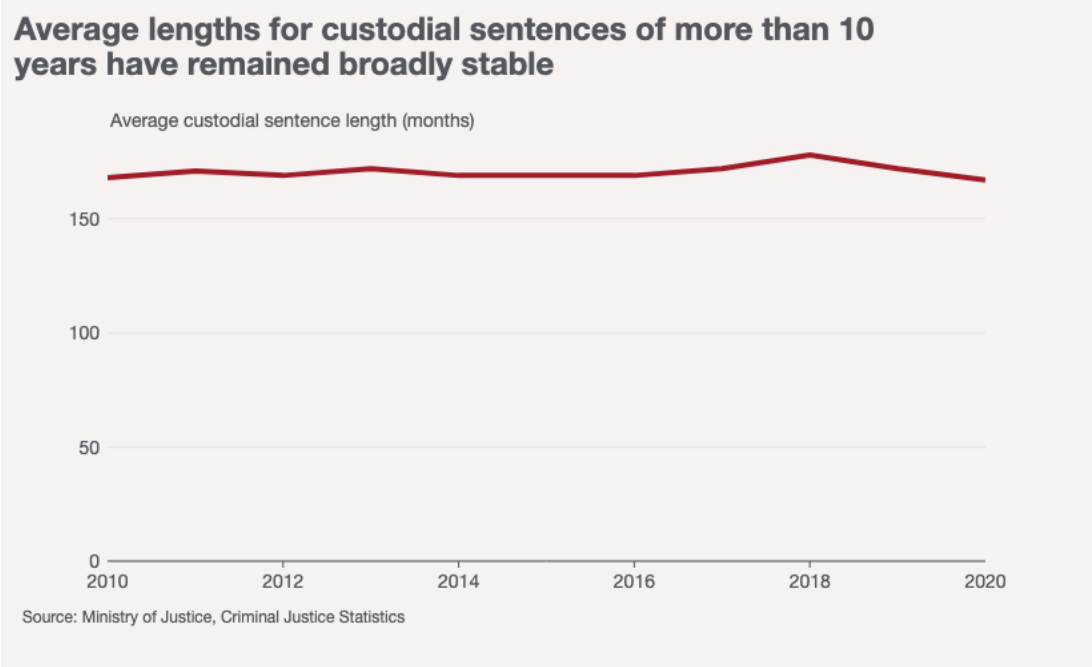


Figure 6 shows the average length of custodial sentences since 2010 for people sentenced to more than 10 years in custody. Given that Figure 5 shows there has

been a significant rise in the number of people sentenced to 20 years or more, one could reasonably expect that we would also see a rise in average custodial sentence lengths for those sentenced to more than 10 years. However, as Figure 6 shows, that hasn't happened — the average has remained broadly stable.

This suggests that there has either been a matching rise in the total number of sentences of more than 10 years and less than 20 years; or there has been an increase in the number of sentences at the lower end (10–15 years) with a corresponding fall in the number of sentences at the higher end (15–20 years); or a combination of the two. The quadrupling in the number sentences of 20 years or more cannot be explained as a general drifting upwards in sentence lengths.

Figure 6: Average custodial sentence length for sentences of more than 10 years in England and Wales



Extended Determinate and Indeterminate sentences

People serving extended determinate or indeterminate sentences account for over a quarter (28%) of the sentenced prison population—19,406 people, although this is likely to be an underestimate, as publicly available data do not provide a breakdown of the number of people serving SOPC, a SDS for a terrorism offence, or the number of recalled EDS prisoners.[65]

Of these, 42% are serving an indefinite form of life sentence (this excludes Whole Life Orders, where people are almost certain to spend the rest of their life in prison);[66] 14% are serving an IPP sentence;[67] and 44% are serving an EDS sentence[68]—with

[65] Ministry of Justice (2024). Tables 1.Q.1, 1.Q.2 and 1.Q.14, Prison population: 30 September 2024. *Offender management statistics quarterly: April to June 2024.*

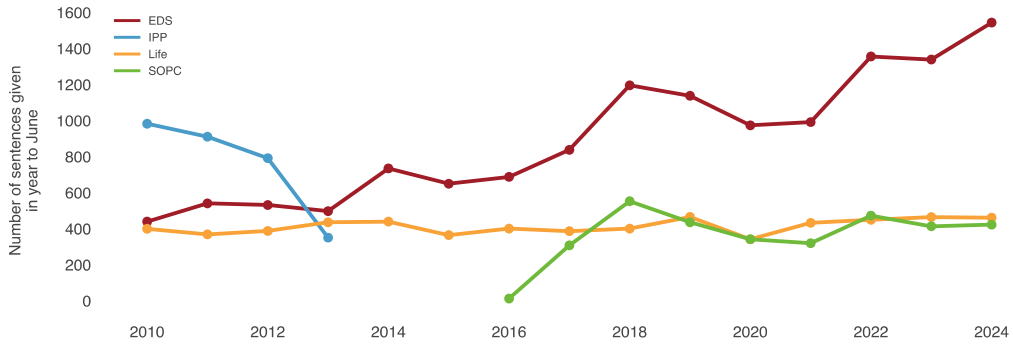
[66] Table 1.Q.16. Ibid.

[67] Table 1.Q.14. Ibid.

[68] Table 1.Q.2. Ibid.

EDS now accounting for more than one in ten (12%) of the sentenced prison population.

Figure 7: Number of extended and indeterminate sentences in England and Wales 2010–2024, by type[69]



Source: Ministry of Justice (2024). Outcomes by offence tool. Criminal justice statistics quarterly: June 2024.

While indeterminate sentences have reduced in recent years following the abolition of the IPP, there has been a proliferation in the use of the EDS. The use of this sentence has risen sharply in recent years, with nearly four times as many sentences passed in 2024 than in 2010.

People currently serving these sentences become *eligible* for discretionary release by the Parole Board once they have served two thirds of their custodial term. However, unlike those serving a life or IPP sentence, they will be released automatically from custody after serving their entire custodial term — if they have not already been released at the direction of the Parole Board.

Extended sentences can be very lengthy, with the average length of EDS and SOPC handed down being nine and 10 years respectively in the 12 months to June 2024.[70] In 2022, nearly 2,000 people on EDS had minimum custodial terms of 14 years or more.[71]

It is instructive to consider how differently the SOPC, a sentence that is similar to but different from the EDS, has developed compared with the EDS. The use of SOPC appears to have quickly stabilised at around 400 sentences per year.[72]

This difference may be explained by an examination of the criteria which sentencers must follow if they are to impose the two sentences.

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[69] This figure does not include SDSs for terrorism offences as this is not possible to determine from published data. However, data from the Sentencing Council shows an average of 36 custodial sentences (of any form) given per year for terrorism between 2010 and 2020, suggesting numbers are not high.

[70] Ministry of Justice (2024). Outcomes by offence data tool: June 2024. *Criminal justice statistics quarterly: June 2024.*

[71] House of Lords written question HL3588, 5 December 2022.

[72] Ministry of Justice. (2024). Outcomes by Offence data tool: June 2024. *Criminal justice system statistics quarterly: June 2024.*

SOPC can only be used following conviction for specific terror offences and sexual offences committed against children listed in Schedule 13 of the Sentencing Act 2020. Schedule 13 includes a broad range of terror related offences, but is much more restrictive for sexual offences—limited to rape or assault by penetration of a child under 13. The government has previously stated that around 95% of SOPCs are for sexual offences committed against children[73], suggesting that tightly defined criteria and limited scope have allowed the use of the sentence to stabilise quickly following its introduction.

In contrast, the criteria for EDS sentences are much more wide ranging. The sentence can be imposed for specified offences under Schedule 18 of the Sentencing Act 2020 where the court is of the opinion that there is a significant risk of serious harm by the commission of a further specified offence from that schedule, if the person has also previously committed another specified offence from Schedule 14, or the term imposed would be 4 or more years.[74]

Schedule 18 is restricted to specified violent, sexual and terrorism offences, but the list has grown large, totalling around 200 separate offences, with Schedule 14 totalling around 60. Its focus on assessing dangerousness and the wide-ranging list of eligible offences bears some similarity to the circumstances that gave rise to the overapplication of the now abolished IPP sentence. However, unlike the IPP in the early years, there is some room for judicial discretion.

The EDS has not been the subject of much scrutiny. However, there is evidence to suggest that they are not working as intended due to the lack of opportunities to progress in prison, Parole Board delays, and excessive use of recall, which can result in the person spending less, rather than more time on licence than a person serving a standard determinate sentence.[75] Between 2017 and 2021, just over two in five (42%) first releases of EDS prisoners were granted at their first parole hearing. This means that on average, almost three in five (58%) EDS prisoners coming before the Parole Board at their minimum term were directed to stay in custody.[76]

Figure 8 shows the number of people sentenced to a life sentence and IPP sentences. It reveals a rapid rise in the number of people sentenced to an IPP between 2005—when the sentence was introduced by the Criminal Justice Act 2003—and 2008. Reforms introduced in 2009 by the Criminal Justice and Immigration Act 2008 to limit the scope of the sentence coincide with a levelling off and slow decline in the use of the sentence up until its abolition by the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

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[73] Ministry of Justice (2022). *Police, Crime, Sentencing and Courts Act 2022: Changes to release policy for serious offenders: Impact assessment.* MoJ067/2020.

[74] *Sentencing Act 2020, c4. s280.*

[75] Padfield, N., & Janes, L. (2024). The extended sentence-law and practice. *Criminal Law Review*, *5*, 288–304.

[76] *House of Lords written question HL3458, 30 November 2022.*

Figure 8: The number of people sentenced to life and IPP sentences in England and Wales

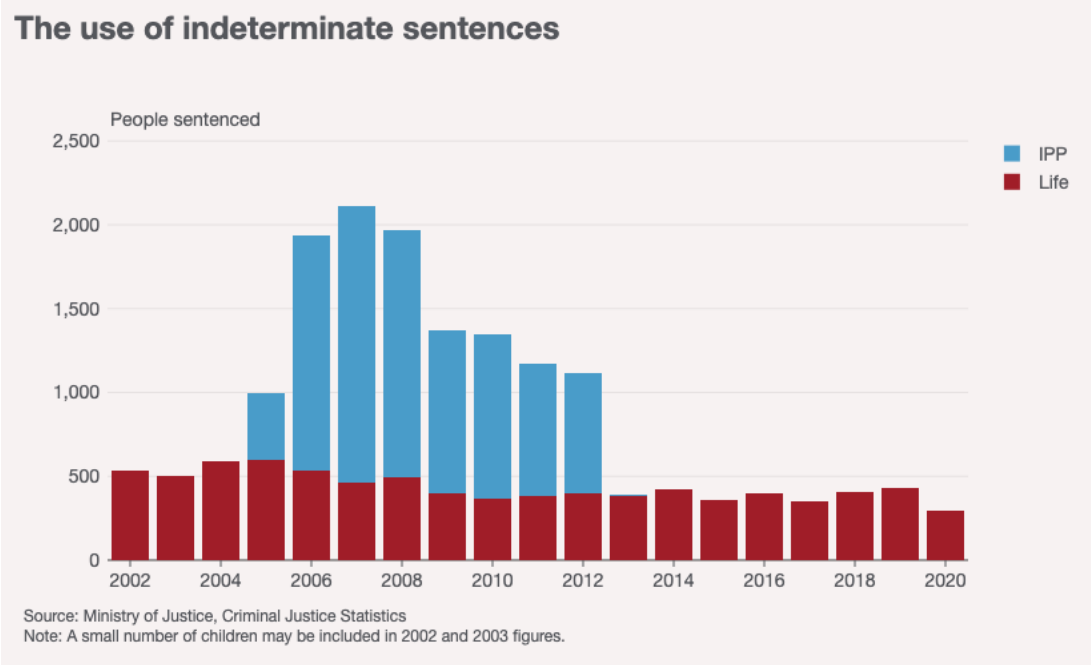


Figure 9 shows the number of people in prison **serving** an indeterminate sentence (either an IPP or life sentence) in each year from 2002 to 2020. It highlights how the history of the IPP sentence has impacted on the overall numbers of indeterminate sentenced prisoners. Numbers of indeterminate sentenced prisoners started to climb markedly from 2005 when the IPP was introduced and peaked at nearly 14,000 in 2012. From 2013, the year after the IPP sentence was abolished, numbers of indeterminate sentenced prisoners steadily declined and then stabilised at just under 11,000 in 2020. Of these, 1,969 were unreleased IPP prisoners, 1,359 were recalled IPP prisoners, 6,985 were unreleased life sentenced prisoners and 620 were recalled life sentenced prisoners.[77]

[77] Ministry of Justice. (2021). Table 1.9a and A1.14. *Offender management statistics quarterly: January to March 2021*. Ministry of Justice. https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-january-to-march-2021

These figures may include a small number of children as further disaggregation by age was not available.

Figure 9: The number of people in prison serving an indeterminate sentence in England and Wales

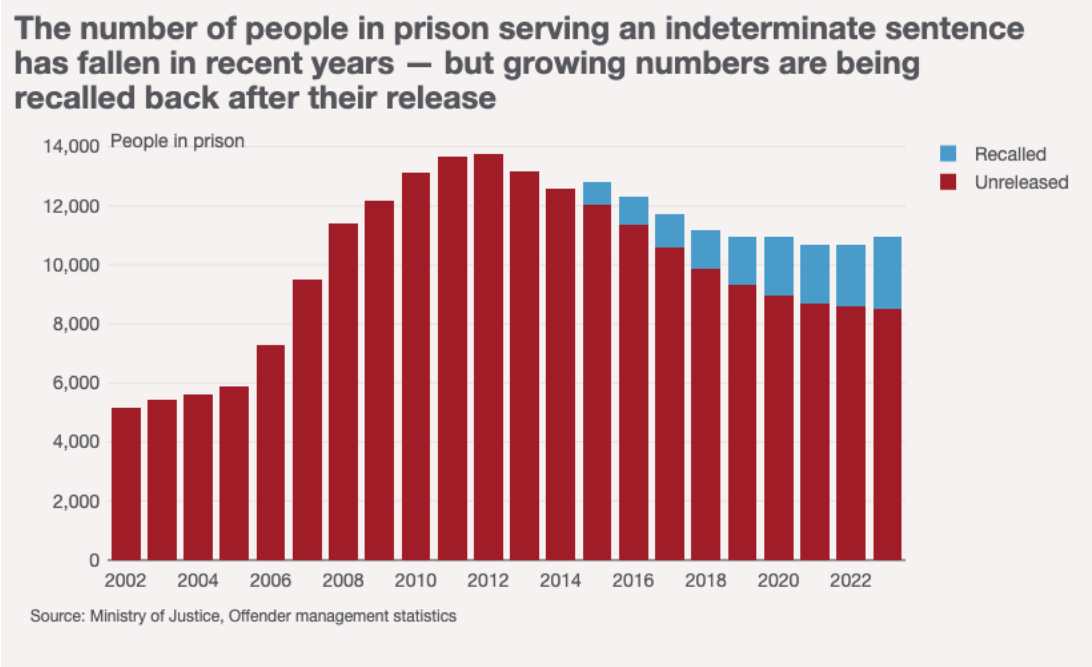
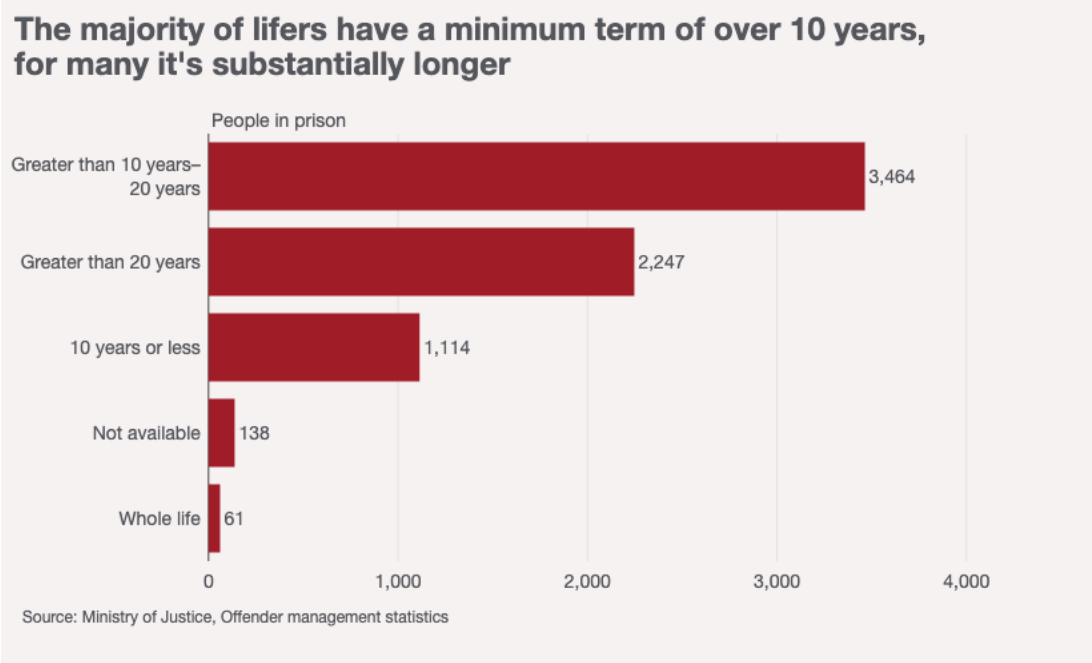


Figure 10 shows the number of life sentenced prisoners by tariff length in September 2021. Of the 6,971 life sentenced prisoners yet to be released from custody, nearly a third (32%) had a tariff of 20 years or more.[78]

Figure 10: People in prison serving a life sentence in England and Wales by tariff length

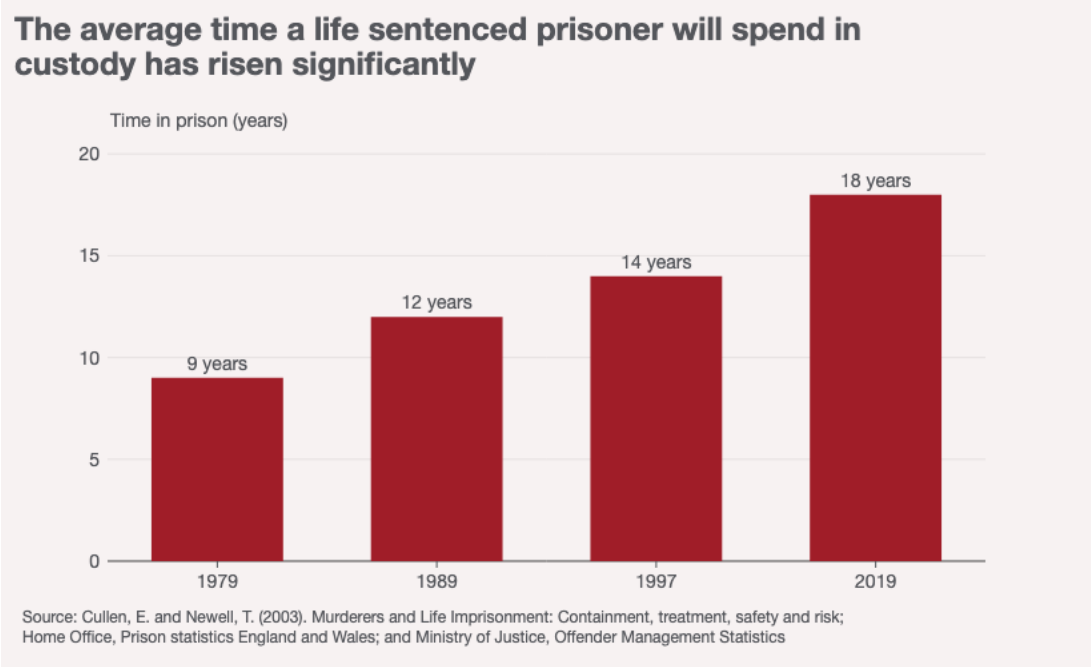


[78] Table 1.9a. Ministry of Justice. (2021). *Offender management statistics quarterly: April to June 2021.*

In his oral evidence to the Independent Commission into the Experience of Victims and Long-Term Prisoners, Professor Ben Crewe highlighted how use of the life sentence had evolved over the past five decades.[79] In 1968, the longest continuous period served by a 'lifer' who had been released since 1950 was 21 years. Only two serving prisoners had been in custody for a continuous term of over 15 years. Furthermore, fewer than 500 individuals were serving life sentences or detained 'at her Majesty's Pleasure'.[80]

Figure 11 shows the average time spent in custody by life sentenced prisoners since 1979. In 1979 the average time spent in custody was nine years. By 2019 that figure had doubled to an average of 18 years.

Figure 11: Average time served in prison for a life sentence in England and Wales



Decline in use of community sentences

Community sentences provide a robust and credible alternative to custody — especially for those people who would otherwise serve short prison sentences. Studies by the Ministry of Justice, which control for the differences in the offender characteristics of those on community sentences and those receiving short prison sentences, show that the proven reoffending rate of offenders on community sentences is consistently lower.[81] They are particularly effective for people with many

[79] Independent Commission into the Experience of Victims and Long-Term Prisoners. (2022). *Making sense of sentencing: Doing justice to both victim and prisoners*.

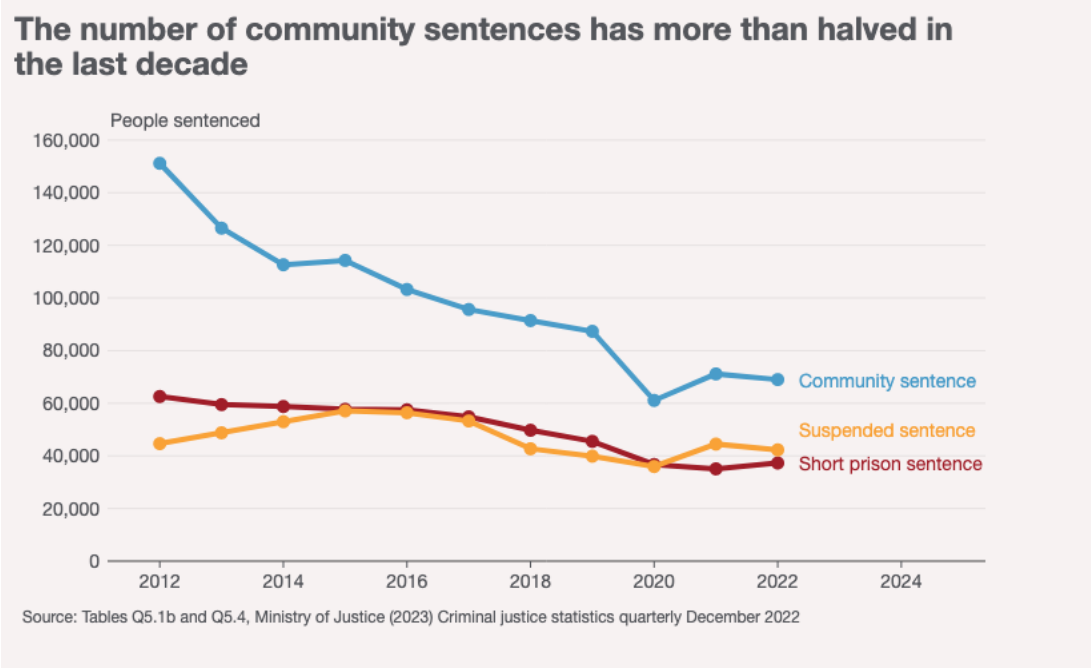
[80] Home Office. (1968). *The Regime for Long-term Prisoners in Conditions of Maximum Security. Report of the Advisory Council on the Penal System*. HM Stationery Office.

[81] Table 3 and Table 5, Ministry of Justice (2013). *Compendium of reoffending statistics and analysis 2010*. and Mews, A. et al. (2015). *The impact of short custodial sentences, community orders and suspended sentence orders on re-offending*. Ministry of Justice

previous offences, people aged under 21 or over 50, and people with mental health problems (see Theme 4).[82]

Despite this, as Figure 12 shows, their use has more than halved in only a decade. Research from the Centre for Justice Innovation has found that this is in part because relationships between courts and probation have been damaged by probation reforms, underinvestment, and the disruption of court closures.[83]

Figure 12: Number of sentences passed in England and Wales



The impact of harsher sentences on levels of crime and reconviction

Despite the rapid growth in the prison population, and the increased use of longer determinate and indeterminate sentences, evidence from the National Audit Office (NAO) shows that there is no link between the prison population and levels of crime.[84] International comparisons also show that there is no consistent link between the two.[85]

Despite this evidence, governments have continued to legislate to increase prison sentences lengths in the vain hope that things will be different when they increase the maximum penalty for a particular offence. In its inquiry on public understanding of

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[82] Hillier, J. and Mews, A. (2018). *Do offender characteristics affect the impact of short custodial sentences and court orders on reoffending?* Ministry of Justice.

[83] NAO. (2019). *Transforming Rehabilitation: Progress review*. and Whitehead. & Ely. (2019). Renewing Trust: How we can improve the relationship between probation and Justice Innovation. Referenced in: Centre for Justice Innovation. (2020). *Smarter Community Sentences*. p.2.

[84] National Audit Office. (2012). *Comparing international criminal justice systems*.

[85] Lappi-Seppälä, T. (2015). *Why some countries cope with lesser use of imprisonment*. University of Helsinki.

sentencing the Justice Committee found harsher standing has not only failed to make people safer, but that the public also hasn't noticed that sentences are objectively more punitive than they were 25 years ago.[86]

The increased use of recall

In a relatively short time, recall has become a significant driver in the growth of the prison population. As Figure 13 shows, between 2009 and 2014 the recall population had remained broadly stable, averaging at 5,445 people.[87] However, over the last decade the number of people in prison on recall has more than doubled, up from 5,260 in 2014 to 12,199 in 2024. This equates to 14% of the total prison population. Furthermore, the Ministry of Justice expects that the recall population will continue to rise, estimating that it will grow by a further 13% by 2026, to reach around 13,650 people.[88] Yet with the probation service averaging more than 2,300 recalls every month, this could prove to be an underestimate.[89]

Between April to June 2024 there were 9,782 licence recalls — a staggering 44% increase on the same quarter in 2023 (which was itself a 19% increase on the same quarter in 2022).[90]

"Whilst it is important that licence conditions are enforced, it is unclear to me what this scale of recall is achieving."[91]

Martin Jones, HM Chief Inspector of Probation

The growth of the recall population has seen three distinct phases, between 2014 and 2017; 2018–2020; and 2021–2024 — with the most significant growth taking place from 2018 onwards.

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[86] House of Commons Justice Committee. (2023). *Public opinion and understanding of sentencing* (HC 305). House of Commons.

[87] Table 1.Leg.3 and Table 1.A.2, Ministry of Justice. (2024) *Offender management statistics quarterly: January to March 2024*.

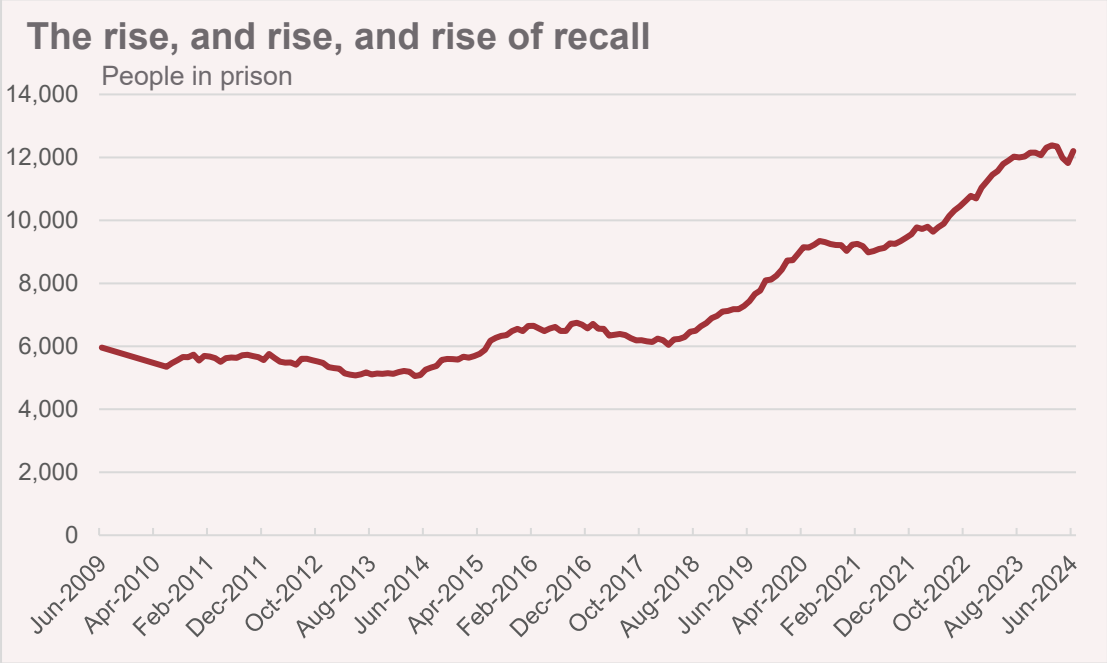
[88] Table 1.1, Ministry of Justice (2023). *Prison population projections: 2022 to 2027*.

[89] Table 5.Q.2, Ministry of Justice (2024). *Offender management statistics quarterly: April to June 2024*.

[90] Ministry of Justice (2024). *Offender management statistics quarterly: April to June 2024*. and earlier editions.

[91] Jones, M. (2024, October 30). *A statement from HM Chief Inspector of Probation, on the launch of an independent review of sentencing*. HM Inspectorate of Probation.

Figure 13: The population of people in prison following a recall in England and Wales



The Ministry of Justice, in its assessment of the drivers of the recent growth in the recall population, has said:

"The underlying longer-term factors for the increasing recall population remain the same (namely an increase in the average length of determinate sentences and an increase in the number of people serving indeterminate sentences or sentences with an extended licence), however over the most recent 12-month period the additional 'early releases' on End of Custody Supervised Licence (ECSL) have likely also had an inflationary impact on the recall population."[92]

[92] Ministry of Justice (2024). *Offender management statistics quarterly: April to June 2024.*

Theme 2: Structures

Key points

- Sentencing should be based on a structured and principled approach. However, particularly for more serious offences, it routinely only meets two of its five statutory purposes — punishment and protection of the wider public.
- The discretion of judges has been overly restricted by Parliament and the executive, often influenced by presumed penal populism.
- The consequence is a prison population which has nearly doubled in the past two decades and overly complex and restrictive sentencing framework.

Recommendations

- Strengthen independent sources of expert advice on sentencing policy available to ministers by establishing an independent advisory panel on sentencing or building on the existing powers of the Sentencing Council. Ministers should be required to consult on any proposed changes to sentencing policy and also respond to the advice they are given and give reasons if they depart from it.
- Strengthen the accountability of Parliament and government for the resource implications of the sentencing policies they propose or enact by placing a prison capacity statement to Parliament on a statutory basis.
- Legislate for the purposes of prison and place minimum standards of treatment and conditions in prison, including a requirement to reduce and eliminate overcrowding, on a statutory basis.
- Introduce a new mechanism at cabinet level to prevent the proliferation of unnecessary new criminal offences or sentencing legislation, similar to the arrangement agreed to by the UK coalition government 2010–2016.
- Replace the Parole Board with an independent Parole Tribunal which is part of HM Courts & Tribunals Service and enhance its resources.
- Protect and enhance judicial oversight of decisions affecting liberty after sentence.
- Establish a fully independent and accountable Women's Justice Board.
- Improve public understanding and knowledge of sentencing and opportunities to engage in deliberative discussion of criminal justice policies.
- Strengthen the statutory remit and role of the Sentencing Council in promoting public confidence in and understanding of sentencing.
- Review the five purposes of sentencing, considering the need for additional guidance and whether lessons can be learnt from the youth justice system which has one overriding purpose to reduce reoffending.

The role of the Government and Parliament, and how external campaigns influence policy

Sentencing should be based on a structured and principled approach, with judges afforded sufficient discretion to take account of individual needs and circumstances and balance the five statutory purposes of sentencing. In practice, the evidence we set out below suggests that the discretion of judges has been overly restricted and that sentencing, particularly for more serious offences, only routinely meets two of its five statutory purposes — punishment and protection of the wider public, and even then, sometimes only while the person is detained. [93]

The judiciary, Parliament and the executive all have a role to play. The concept of the separation of the powers should mean that each power is a healthy check and balance on the others. This is not true at present: judicial powers have been curbed by Parliament's restrictions on what it can do, often fuelled by perceived penal populism. Neither the independent scrutiny of parliament, the advice of the sentencing council, nor fiscal constraint on government spending have prevented legislation enacted by Parliament and implemented by governments over the years which have limited the discretion of the judiciary and vastly inflated sentence lengths and the numbers in prison. The consequence is a prison population which has nearly doubled in the past two decades and a prison system which is buckling under the weight of a rising prison population and limited resources.

This approach to penal policymaking has also contributed directly to the existing mess of statute that necessitated a consolidation exercise by the Law Commission resulting in the introduction of a single act to codify current sentencing law in 2020. The Sentencing Act 2020 represents a very significant achievement by the Law Commission, but it codifies rather than simplifies, as even a cursory glance at its provisions will establish.[94] If anything, the act which runs to 829 pages, demonstrates the extent to which sentencing law in England and Wales has become complex and extensive.[95] Since its enactment, sentencing law has been subject to further alteration and a series of specific changes related to particular offences. Given that in law the punitive impact of a custodial sentence relates principally to the time served in custody,[96] that impact is ever more quixotic, dramatically affected both by the length of the sentence and the date on which it was passed. For some offences it can even be altered mid-sentence by the intervention of the justice secretary, without reference to a court.[97]

The cumulative effects of these changes have been to tie the hands of judges so that, particularly in sentencing for more serious offences, punishment and public

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[93] See also Theme 6 for an evaluation of the limited evidence that 'prison works' in reducing risk of reoffending.

[94] *Sentencing Act 2020*. (2020). Legislation.gov.uk.

[95] Ibid

[96] As we set out in our response to this theme below, the punitive weight of a custodial sentence as experienced by prisoners is much more complex than simply the length of sentence passed, although this is undeniably an important factor. For instance, the variable quality of treatment and conditions in the prison estate adds another quixotic element to the individual experience of punishment.

[97] HM Prison & Probation Service. (2022). *Power to detain dangerous prisoners serving a standard determinate sentence policy framework*. Ministry of Justice.

protection become the overriding purposes of the sentence (see below for a fuller discussion of the purposes of sentencing).

For cases where the defendant is deemed to be dangerous, Parliament has legislated to limit the discretion of the court. The "dangerous offender" provisions of Part 10, Chapter 6 of the Sentencing Act 2020 (which applies to all convictions on or after 1st December 2020) means that the court may impose an extended or indeterminate sentence when a wide range of certain specifications are met.[98] In relation to the most serious offending, where release is wholly dependent on an assessment of future risk, there are currently adults in prison serving all of the following types of sentence:

- Mandatory life sentence
- Discretionary life sentences
- Detention at Her Majesty's Pleasure
- Imprisonment and Detention for Public Protection (IPP/DPP)

A person serving the following sentences will be subject to parole at an advanced stage of their custodial term and then released automatically if not released already by the Parole Board at a later date:

- Extended determinate sentence
- Extended sentence for public protection
- Section 85 extended sentence
- Extended sentence of detention
- Sentence for offenders of particular concern

In other areas, Parliament has legislated in ways that curtail the discretion of the court through the introduction of mandatory sentences or increased minimum terms.[99]

In relation to standard determinate prison sentences where release is automatic, the point of release will be drawn differently depending on the length of sentence, the offence and eligibility for early release on an electronic tag. The extension of HDC and introduction of an early release scheme (SDS40) in September 2024 in response to the capacity crisis, although necessary and welcome to prevent dangerous levels of overcrowding, has added a further layer of complexity. Even after release, the periods during which people may be recalled to prison, and on what grounds, vary considerably.

The complexity of the rules around release mean that prisoners are regularly released from prison on the wrong date especially when there are overlapping sentences being served.[100]

The impact of Parliament's legislative activity has had an inflationary impact on the length of sentences and the number of people in prison (see Theme 1).

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[98] *Sentencing Dangerous Offenders | The Crown Prosecution Service*. (2025, January 3).

[99] See our earlier evidence in Theme 1.

[100] Ministry of Justice. (2022). *HMPPS Annual Digest 2020/21*.

Penal populism

Penal populism is often cited in the academic literature as a key factor behind sentence inflation and the tendency of Parliament and the executive to meddle so readily in the operation of the sentencing framework. The term has been characterised as "politicians tapping into, and using for their own purposes, what they believe to be the public's generally punitive stance".[101] Penal populism can be understood as the way in which politicians use the public's presumed punitive views on crime to their own electoral advantage. In this formulation, penal populism is a political process where politicians compete to impose harsher prison sentences on offenders, often in the run-up to elections. It is characterised by:

- Media driven: Politicians use the media to promote their punitive policies.
- Denigrating experts: Penal populism often denigrates the views of experts and liberal elites.
- Shifting emphasis: Penal populism shifts the focus from protecting individual rights to protecting the public from those. [102]

The extent to which the public hold punitive attitudes on crime and the basis of those views has been the subject of some debate. As we outline in our response to Theme 7, research evidence suggests that the public supports proposals for harsher sentencing but does so based on significantly underestimating the severity of current sentencing practices.[103] When members of the public are engaged in deliberative discussion on the details of actual cases, evidence suggests that they become less punitive; indeed, less so that the judge passing sentence in the case.[104] We argue below for greater opportunities for members of the public to be involved in deliberative discussion of criminal justice policy.

Pratt has argued that "as with populism itself, penal populism usually takes the form of 'feelings and intuitions' rather than some more quantifiable indicator: for example, expressions of everyday talk between citizens which revolves around concerns and anxieties about crime and disorder; anger and concern about these matters volubly expressed in the media — not simply the national press or broadcasters; and a variety of new information and media outlets which allow the voices of the general public a much more direct airing — local newspapers and news sheets, talk-back radio and reality television."[105]

The real problem here is that measures which might be advocated for on the basis of popular feeling and intuitions do not necessarily make people safer. This is not to say that the voices and views of non-experts are not valid or should not have a say in the policy making process. However, the same voices, if given the choice between

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[101] A. Bottoms, "The Philosophy and Politics of Punishment and Sentencing," in C. Clarkson and R. Morgan (eds) The Politics of Sentencing Reform (Oxford: Clarendon Press, 1995); p40

[102] Pratt, J (2007) *Penal Populism*. Routledge

[103] Roberts, J. V., Bild, J., Pina-Sánchez, J., & Hough, M. (2022). *Public knowledge of sentencing practice and trends*. Sentencing Academy.

[104]

https://academic.oup.com/bjc/article-abstract/53/2/234/419719

[105] Pratt, J (2007) *Penal Populism*. Routledge

measures that work and will make them safer, and those that don't, would probably actually prefer the former.

In broad terms, the influence of penal populism provides a convincing explanation for the inflationary impact of sentencing policy over the past three decades. Scholars have identified a number of factors behind the influence of penal populism in the UK, including:

1. Media influence and crime reporting: The tabloid media has played a significant role in shaping public perceptions of crime and punishment. According to David Garland sensationalist media coverage of high-profile crimes has helped create a climate of fear and demands for harsher punishment.[106]
2. Political competition and "tough on crime" rhetoric: Since the 1990s, major political parties have engaged in what Tim Newburn calls a "bidding war" on criminal justice policy. Both Conservative and Labour governments have adopted increasingly punitive stances to appeal to voters.[107]
3. Public anxiety and social change: Jock Young's work suggests that economic insecurity, social fragmentation, and rapid cultural change have contributed to public anxiety about crime. This anxiety has often been channelled into support for more punitive measures.[108]
4. Declining faith in expert knowledge: Pat O'Malley's research highlights how public scepticism toward criminal justice experts and rehabilitation approaches has grown, with populist approaches favouring "common sense" punitive solutions over evidence-based policies.[109]
5. Victim-centred justice movements: The growing prominence of victims' rights movements has influenced penal policy. As documented by Sandra Walklate, this has sometimes led to policies that prioritise retribution over rehabilitation.[110]
6. Globalisation and immigration concerns: Research by Robert Reiner suggests that concerns about immigration and global mobility have fed into broader narratives about crime and punishment, often leading to more punitive approaches.[111]

Over the 30 years, penal populism has, to varying degrees, influenced the legislative agendas of different UK governments. Its influence can be seen in the manifestos of political parties seeking election and subsequent penal policy. For example, the 2019 Conservative Party manifesto is notable as an example of a criminal justice policy agenda substantially influenced by penal populism (see below). Its effect can also be observed in examples of penal policies created in response to crises and scandals which threatened to undermine public confidence in the functioning of a key part of

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[106] Garland, D. (2002). *The Culture of Control: Crime and Social Order in contemporary Society*.

[107] Newburn, T. (2017). Criminology. In *Routledge eBooks*.

[108] Young, J. (2007). *The vertigo of late modernity*.

[109] O'Malley, P. (2012). Risk, uncertainty and government. In *Routledge eBooks*.

[110] Walklate, S. (2012). Handbook of Victims and Victimology. In *Willan eBooks*.

[111] Reiner, R. (2007). *Law and Order: An Honest Citizen's Guide to Crime and Control*. Polity.

the criminal justice system.[112] The series of reforms to the parole system which followed from the decision by the Parole Board to release the taxi driver John Worboys are a good illustration of such policies. Civil society groups can also exert a significant influence over the direction of penal policy. For example, the introduction of a maximum penalty of two years (an increase from 12 months) for an assault on an emergency worker following a successful lobbying campaign by the public sector unions in the Police, Crime, Sentencing and Courts Act 2022.

Other competing penal reform agendas have at various times exerted more influence. For instance, the coalition government of 2010-2016 was notable for the reform minded instincts of its first justice secretary Ken Clark. However, arguably no administration of the past three decades has succeeded in shifting the dominant perceived penal populist paradigm. Clark himself was the subject of a populist backlash to his reform agenda which resulted in his replacement as justice secretary by the more punitive minded Chris Grayling in 2012.

The 2019 general election was dominated by issues of law and order and the manifesto of the winning Conservative Party was notable for its headline commitments to a number of punitive penal policies. As such, the legislative record of the 2019 Conservative government is instructive as to the influence of penal populism on the process of sentencing policy formation.

Table 1 outlines key legislation and provisions introduced during the 2019 Parliament. Where possible, the table indicates the source or origin of each provision and material to assist with analysis of their impact.

Table 1: Conservative government 2019–2024 legislative record on penal policy

Legislation	Key provision(s)	Source	Impact / analysis
The Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020	Abolished halfway release for those serving sentences for certain violent or sexual offences of seven years or above in favour of release at the two-thirds point.	Conservative party 2019 general election manifesto commitment (p.17): "We will introduce tougher sentencing for the worst offenders and end automatic halfway release from prison for serious crime."	It was estimated in its impact assessment to require an additional 2,000 prison places. See PRT briefing for House of Lords debate on 22 January 2020 for a detailed analysis of the order and its evidence base
The Terrorist Offenders (Restriction on Early Release) Act 2020	Abolished halfway release for certain terrorist offenders serving custodial sentences of seven years and above in favour of release at the two-thirds point.	One of a series of changes to terrorist legislation made after the terrorist attack at Fishmongers Hall in November 2019	
The Counter-terrorism and Sentencing Act 2020		One of a series of changes to terrorist legislation made after the terrorist attack at	See PRT's written evidence to the House of Common's public bill committee for a

[112] Annison, H., & Guiney, T. (2023). Locked In? Achieving penal change in the context of crisis and scandal. In *Prison Reform Trust*. Prison Reform Trust.

		Fishmongers Hall in November 2019	detailed analysis of the bill's provisions and their evidence base
	A new Serious Terrorism Sentence (STS) with a minimum 14-year custodial term and licence period set at the point of sentencing of a minimum of seven years and a maximum of 25 years		
	Certain serious terrorist offenders who receive an extended determinate sentence (EDS) must serve the whole of the custodial term in prison with no prospect of earlier release by the Parole Board		
	Prisoners convicted of terrorist or terrorist-connected offences cannot be released before the end of their custodial term or sentence without Parole Board approval.[113]		
Police, Crime, Sentencing and Courts Act 2022			The impact assessment estimated the legislation would increase the prison population by 700. See PRT's briefing for the House of Lords second reading for a detailed an analysis of the bill's provisions and their evidence base
	Powers to allow judges the discretion to impose whole life orders on offenders aged 18 to 20 in exceptional cases.	This change was precipitated in part by the remarks of Mr Justice Baker in sentencing Hashem Abedi, the brother of the Manchester Arena bomber. The court observed that it was unable to impose a WLO due to the Abedi's age but stated that it	

[113] Terrorist Offenders (Restriction on Early Release) Act 2020

		would have been a 'just sentence' in that case.	
	Provision to make a whole life order the starting point for the offence of pre-meditated murder of a child	Conservative party 2019 general election manifesto commitment (p.17): "For child murderers, there will be life imprisonment without parole".	
	Abolishing halfway release for certain serious offenders serving custodial sentences of four to seven years	Conservative party 2019 general election manifesto commitment (p.17): "We will introduce tougher sentencing for the worst offenders and end automatic halfway release from prison for serious crime.	
	For certain sexual offenders who receive a Sentence for Offenders of Particular Concern (SOPC), proposals to ensure the earliest point at which they can come before the Parole Board for consideration for release is two-thirds through their custodial term	The impact assessment suggests that the rationale for this provision was to better align the sentencing framework so that there was no longer a disparity between the earliest conditional release point for terrorism-related and child sex offence SOPCs	
	A new power to prevent automatic early release for offenders who become of significant public protection concern	When introduced the provision seemed to be targeted at individuals sentenced to a standard determinate sentence who had become radicalised in prisons and was part of the government's response to the Fishmonger's Hall attack. However, the accompanying policy framework for the provision includes risk of terrorist offending but also sexual and violent offending	
	A maximum penalty of two years (an increase from 12 months) for an assault on an emergency worker	Introduced following a successful lobbying campaign by the public sector unions.	
	Increase in the starting point for murder		

	committed by people under the age of 18.		
The Victims and Prisoners Act 2024			See PRT's briefing for the House of Lords second reading debate
	A "precautionary approach" to the release of "top tier" offenders with the introduction of a new power for the secretary of state to refer a release decision made by the Parole Board in relation to a member of this cohort to the Upper Tribunal or in sensitive cases the High Court.	This provision was the culmination of a series of reforms to the parole system which followed from the decision by the Parole Board to release the taxi driver John Worboys. The provision was significantly watered down during the parliamentary debate on the legislation. The original provision would have enabled the secretary of state to refuse a release decision by the Parole Board in the case of a "top tier" offender	This provision has not been brought into force as yet.

It is clear that the formal separation of powers has failed to provide a sufficient check on excessive interference by parliament and the executive in the discretion of the judiciary. On occasions, the executive has even been prepared to pose a direct challenge to the independence of the courts. In the last Parliament, Part 3 of the Victims and Prisoners Bill, as it was originally introduced to Parliament, contained provision to enable the secretary of state to refuse a release decision by the Parole Board in the case of a "top tier" offender. Although this power, which is yet to be implemented, was watered down in the resulting legislation for a power of referral to the High Court, this still represents a significant interference by the executive in the work of the board and its function as a court-like body.[114] This is a significant departure from the usual process in the High Court which requires an applicant to seek permission to review the legality of a Parole Board decision. It is unclear why such an unusual step is required given that there are already mechanisms for review by way of reconsideration and judicial review that are open equally to both the secretary of state and the prisoner. Similarly, in recent years provisions such as the "power to detain" have enabled increased control by the executive on liberty.[115]

Our existing mechanisms of independent scrutiny and oversight, while important in helping to diagnose the causes of the current prison capacity crises, have notably failed to prevent it from happening. The impact assessments of sentencing legislation provided by the Ministry of Justice are not independent and have often been inaccurate, as the debacle of the IPP sentence illustrates. Scrutiny afforded by the parliamentary select committees such as the House of Commons justice committee has at best succeeded in mitigating some of the worst aspects of proposals put forward by governments (a good example being changes made to part 3 of the Victims and Prisoners Act 2024). Despite powers existing for the Lord Chancellor to

[114] Victims and Prisoners Act 2024, s.61-2

[115] See Theme 1

request and assessment from Sentencing Council on the impact of sentencing proposals on prison resources, they have been rarely used.

The executive has a poor track record of predicting and planning for the impact of sentencing policy changes on penal resources, as the current capacity crisis demonstrates. The recent National Audit Office (NAO) report, *Increasing the capacity of the prison estate to meet demand*, makes a damning assessment of criminal justice policymaking by successive governments and its failure to account for the downstream impact on prison capacity and demand.[116] The report emphasises that the current prison capacity crisis is a consequence of previous governments' failure to align criminal justice policies with funding for the prison estate, leading to reactive solutions which represent poor value for money. Introducing tougher sentences led to steep increases in expected demand for prison places, while years of under-investment put the Ministry of Justice and HM Prison and Probation Service (HMPPS) in a weak position to respond to these increases.

The report states that a commitment, made by the previous government in 2021, to create 20,000 additional prison places by the mid-2020s, was "unrealistic and not prioritised". It concludes that the plans will not be delivered until 2031, will cost far more than estimated, and will be insufficient to meet the rising demand for places projected by the Ministry of Justice. The NAO says that the MoJ and HMPPS now expect the prison expansion plans to cost between £9.4bn and £10.1bn, which will be at least £4.2bn more than previous estimates stated in 2021. The NAO stresses in its analysis that until there is greater coherence between the government's wider policy agenda and funding for its prison estate, the current crisis position will not represent value for money.

Existing sentencing practices often fail to account for the distinct and often unmet needs of women in contact with the criminal justice system.[117] Many women continue to be sent to prison on short sentences. In 2023 almost two thirds (64%) of prison sentences given to women were for less than six months, despite widespread recognition that short prison sentences are harmful and ineffective.[118] Also, despite the previous government's Female Offender Strategy (2018) and Female Offender Strategy Delivery Plan 2022-25 the main aim of both of which was the reduce the numbers of women in prison. Implementation of these strategies has been slow. The new Women's Justice Board (WJB) provides a potential lever for change (see below).

Recommendations

Measures should be introduced to enhance the formal separation of powers between the judiciary, Parliament and the executive; and greater coherence restored to the process of penal policymaking. We identify five possible areas for improvement:

Strengthen independent sources of expert advice on sentencing policy available to ministers with a requirement for them to respond to that advice and give reasons if they depart from it

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[116] National Audit Office. (2024). *Increasing the capacity of the prison estate to meet demand.*

[117] See PRT's evidence on Theme 7 for more information on the distinct needs of women in contact with the criminal justice system.

[118] Outcomes by offence tool. Ministry of Justice. (2024). *Criminal justice statistics quarterly: December 2023.*

Under the Coroners and Justice Act 2009, the Lord Chancellor can refer a government policy proposal, or a government proposal for legislation, to the Sentencing Council for an assessment of the implications for prison resources. However, as the Justice Committee highlights in the report of its inquiry on public opinion and understanding of sentencing:

"In practice, there has only been one request made under this power by a Lord Chancellor, and the Council does not believe it is well placed to undertake such assessments. The Ministry of Justice does carry out its own impact assessments, but these are not independent. The result is that at present there is a lack of independent scrutiny of sentencing policy proposals, and in particular analysis of their downstream impact on resources. (Paragraph 94)."

The Committee recommends that:

"The MoJ should establish an independent advisory panel on sentencing to consider proposed changes to sentencing policy and to provide advice to ministers. The independent panel should bring together academic experts, the voluntary sector, and, importantly, representatives of victims of crime and their families. It is vital for the legitimacy of the independent panel that it should contain a diversity of opinion and a range of perspectives on sentencing. The panel should also conduct structured public engagement as part of its work. Its findings and advice should be publicly available. The MoJ should also instruct the independent advisory panel to conduct regular reviews of the statutory minimum and maximum tariffs for sentences to determine whether sentences are proportionate and consistent across different types of offence (Paragraph 95)"

We do not have a preference on whether a new independent advisory panel should be established, or whether a reformed Sentencing Council would suffice. However, it is essential that it must be able to deliver on the recommendations of the Justice Committee. Furthermore, we would recommend that this body should include membership of individuals with expertise in the administration of custodial sentences.

However, whether a new or existing body is employed, it should be a requirement that the government must consult on and receive advice on any proposed changes to sentencing policy and the body is appropriately resourced to provide that advice. That advice should be published independently, and the government should be required to respond to that advice before it brings forward any legislative proposals. The government should be required to publish its response and give reasons when it chooses to depart from the independent advice it receives.

Strengthen the accountability of Parliament and government for the resource implications of the sentencing policies they propose or enact

We welcomed the commitment made by the former justice secretary Alex Chalk in his statement on prison capacity to the House of Commons on Monday 16 October 2023 to introduce a new annual statement of prison capacity to be laid before both Houses of Parliament:

"This will include a clear statement of current prison capacity, future demand, the range of system costs that would be incurred under different scenarios and our and our forward pipeline of prison build."[119]

On 15 December 2024 the justice secretary Shabana Mahmood announced that the government would be taking forward this proposal with the publication of an annual prison capacity statement.

Building on this welcome change, the sentencing review should recommend that an annual statement to Parliament on prison capacity is placed on a statutory footing. This should include a requirement that the government must not enact policy which will increase prison numbers without assurance that it can provide sufficient capacity and meet minimum standards of decent and humane imprisonment (these standards should be set in statute according to agreed international human rights standards – see below).

We would also recommend the introduction of a new mechanism agreed at cabinet level to prevent the proliferation of unnecessary new criminal offences or sentencing legislation, similar to the arrangement agreed to by the UK coalition government 2010–2016.

Legislate for the purpose(s) of prison and place minimum standards of treatment and conditions on a statutory basis

The purpose(s) of prison need to be clearly defined in statute and accompanied by agreed minimum standards to ensure treatment and conditions are not allowed to deteriorate to the extent they have under the current capacity crisis. The last attempt to define the purposes of prison in statute was the Prison and Courts Bill 2017.120 This bill fell as a result of the announcement of the 2017 general election. The bill set out a statutory purpose for prisons, and that is welcome. But the purpose did not capture important elements of what a prison must achieve. In particular, the purpose must include the provision of an environment which is both decent and fair. This was a central conclusion of Lord Woolf's Inquiry into the disturbances at Strangeways and other prisons in 1990, and remains the essential foundation for everything else that a prison might achieve.

The purpose should also enshrine in statute the existing case law on what life in prison should be like, as set out in Raymond v. Honey (1982), which states that prisoners retain all civil rights not taken away expressly by parliament or by necessary implication of the fact of imprisonment (such as freedom of movement).

Establishing a statutory purpose of prison will require a comprehensive revision of Prison Rules, the secondary legislation already provided for by the Prisons Act 1952. Those revised rules should be organised by reference to the elements of the statutory purpose, and reserve to parliament the task of setting out essential minimum requirements that no administration should be free to alter without reference back to parliament. Legislation should make clear that prison rules should fulfil our obligations to meet norms and standards set out in international instruments to which we are a signatory, and to meet domestic legal requirements to avoid discrimination.

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[119] Hansard HC Deb. vol.738 cols.59-60, 16 October 2023.

[120] Prison Reform Trust (2017). *House of Commons second reading briefing to the Prisons and Courts Bill*.

In relation to standards of safety and decency, the statutory purpose(s) of prison should require that these revised prison rules should include but not be limited to:

- the provision of accommodation to a specification guaranteeing the cubic space within a cell, the circulation of fresh air, standards of heat and light, and access to sanitary and showering facilities;
- the prevention of overcrowding other than in an emergency and then only with a time limited authority conferred by Parliament;
- entitlements to minimum periods each day when the cell door is unlocked; and
- minimum standards governing the ability to communicate with individuals outside prison.

Replace the Parole Board with an independent Parole Tribunal which is part of HM Courts & Tribunals Service

We share the view of JUSTICE that "the current status of the Parole Board is incompatible with the idea of an independent judicial body making independent decisions about the release of prisoners without government influence. We believe that the Parole Board should become a Parole Tribunal – part of the Tribunals Service. The secretary of state should not issue guidance to the new tribunal and should not appoint its members – they should be appointed by an independent body such as the Judicial Appointments Commission. We also believe that the Tribunal should have the powers and resources that it needs to make timely and informed decisions as to release, and to afford full procedural rights to prisoners, avoiding the use of 'on the papers' decisions."[121] As a body charged with oversight of liberty affecting tens of thousands of people and public safety, it ought to enjoy a fully resourced and fully independent status to ensure confidence and fairness in its decision-making process.

Protect and enhance judicial oversight of decisions concerning liberty after sentence

Recent encroachments on the oversight of decisions concerning liberty should be reversed or not implemented to ensure fairness and confidence in the justice system. For example, statutory provisions that empower the executive to extend automatic release dates, refer Parole Board decisions to the High Court for review without permission or refer automatic release cases to the Parole Board should be reviewed. Recalls to prison should involve judicial oversight at an earlier stage and consideration should be given to decisions of the Parole Board on recommendations for open conditions to be binding, although the secretary of state will need to retain a discretion to return people to closed conditions for risk-related reasons.

An independent Women's Justice Board (WJB)

The overall aim of the recently established WJB chimes with that of the previous government's strategies, but the board must learn from the mistakes of its predecessors in its governance arrangements, timetables and funding allocation if it is to enact the ambition it seeks to deliver on – to reduce the number of women in prison. It must be given sufficient authority to be able to enact change. Ministerial

[121] JUSTICE (2022) *A parole system fit for purpose.*

commitment will enable delivery where progress to date has been slow. Overlapping responsibilities for women's criminogenic and wellbeing needs requires collaborative working by ministers from across government departments, NHS England and local authorities to ensure shared priorities, cooperative working and effective delivery at regional and local levels. Independence is an important factor in holding the government to account; ministerial commitment is necessary to 'unblock' challenges and ensure progress. This apparent conflict may be mitigated by ensuring transparency in progressing the establishment, work and progress of the WJB. Lessons should be learnt too, from the formation of the Youth Justice Board, which has been successful in drastically reducing children's imprisonment.

We agree with Dr Jenny Earle's recommendation that the WJB must be given a statutory remit to monitor and review the sentencing of women, including the outcomes of sentence, and conduct or commission research where gaps in the evidence are identified to inform ongoing improvements. The board must then have the power to enact the learnings. We urge the review to propose this as a way of embedding a commitment to improved sentencing outcomes for women.

Improve public understanding and knowledge of sentencing and opportunities to engage in deliberative discussion of criminal justice policies

The Independent Commission into the Experiences of Victims and Long-term Prisoners (ICEVLP) called for "A new national debate on how the most serious crimes are punished is needed, which considers the content of a sentence as well as its length; and looks rationally at the impact of sentence length on all of the statutory purposes of sentencing, not just punishment."[122] This call for a national debate was endorsed by the justice committee in the report on its inquiry on public opinion and understanding of sentencing.[123]

As part of its call for a national debate, the commission recommended the establishment of a "process which engages the public in a measured and transparent debate on sentencing policy in relation to serious crime. This would recognise that striking the right balance in these most high profile and distressing cases is not a matter of law alone. It would enable the public to become more informed about the realities both of serious crime and how it is punished through a process of open debate and deliberation.

"We believe there are lessons to be learnt from the Citizens' Assembly set up in Ireland in 2016 to consider several controversial political questions including the constitution of Ireland, abortion, fixed term parliaments, referendums, population ageing, and climate change. Participants were randomly selected to represent a broad cross section of Irish society. The assembly was chaired by an experienced former secretary general of the European Commission and supported by a secretariat. Over 18 months the assembly held regular meetings, took expert evidence and conducted a public consultation leading to the production of a report on each topic. The government was required to respond to each report in Parliament.

"Applied to the UK context, this process would help bring the public into an informed debate about how the most serious crime should be punished, but in a way that

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[122] Independent Commission into the Experience of Victims and Long-Term Prisoners. (2022). *Making sense of sentencing: Doing justice to both victim and prisoners*.

[123] House of Commons Justice Committee. (2023). *Public opinion and understanding of sentencing* (HC 305). House of Commons.

avoids it becoming a specific controversy or a subject of party-political competition. The debate would be supported through wider engagement with the media in order to inform the public of the work of the Assembly. This might in turn then allow the government and Parliament to reflect on the issue in a measured way and on a cross-party basis."

The role of the Sentencing Council

The Sentencing Council performs an important function by promoting greater transparency and consistency in sentencing through the publication of sentencing guidelines. It also has a remit to assess the impact of guidelines on sentencing practice and to promote awareness among the public regarding the realities of sentencing.

In our view, where the Council has been strongest is in the development of guidelines. While the current guidelines are not without fault, they have undoubtedly bought a greater degree of consistency and transparency to the sentencing process. By extension they may have contributed to public confidence in the criminal justice system. Where the Council has been weaker, is in the areas of its wider remit relating to promoting public confidence and awareness of sentencing practice, as well as some aspects of its monitoring and oversight of sentencing guidelines. Arguably these areas where not given sufficient priority in its founding statutory remit, and so were not given the attention or resource required.

As above, we recommend that the Council (or alternatively a separate sentencing advisory panel) play a greater role in providing independent expert advice to ministers on sentencing policy – a power which is already provided for in the Council's statutory remit but that is at the discretion of ministers and underused.

We also agree with ICEVLP that the government should strengthen the role for the Sentencing Council in promoting public confidence in and understanding of sentencing: "…The statutory remit of the Sentencing Council includes requirements to promote public awareness of the realities of sentencing, as well as through the publication of its guidelines to promote public understanding of, and confidence in, sentencing and the criminal justice system. These responsibilities deserve a higher priority in how the Council's limited resources are deployed.

"We believe that the best approach the Council could take to promoting public confidence would be to seek to address the lack of public knowledge of the realities of sentencing. This will require understanding public confidence, or the lack of it, in a more sophisticated way, recognising that there is no single view; and, in turn, addressing in its approach the factors that drive public confidence across a range of situations, places and demographic cohorts. This is likely to require the Council to respond more readily to factors which undermine public confidence, correcting inaccurate and misleading commentary, as well as independently promoting an accurate account. Given the extent of misinformation about sentencing spread by the mainstream and online media, and sometimes repeated in a political context, a more assertive approach from the Council is justified."

The statutory purposes of sentencing

Sentencing is a balancing act, bringing different aims and interests into conflict. The purposes of the sentence are set out in section 57 of the Sentencing Act 2020. Judges deciding a sentence are required to 'have regard' to the following aims:[124]

a) the punishment of offenders;

b) the reduction of crime (including its reduction by deterrence);

c) the reform and rehabilitation of offenders;

d) the protection of the public;

e) the making of reparation by offenders to persons affected by their offences.

Not every aim is equally relevant to every case. For example, some people convicted of a serious crime may pose relatively little ongoing risk to the public, and therefore stand in need of relatively little rehabilitative intervention except for that created by effects long term incarceration. It can also be difficult to see how some aims can be realised in practice: for example, the harms involved in a very serious offence can be difficult or impossible to put right, making 'reparation' something that can be achieved partially and indirectly at best. Nevertheless, the law requires sentencers to have regard to these aims, and thus the penal system is to some degree responsible for implementing them. If the balance of aims in a particular case is unclear, this can generate confused or contradictory objectives for those charged with implementing the sentence.

This raises the question of which aim is to take priority. In contrast to the youth justice system which has an overarching aim to prevent offending, the adult system does not have an overarching aim and the Sentencing Act does not state explicitly which purposes of sentencing have priority.[125] Careful definition and thought is required to make them compatible in principle (to say nothing of in practice).

In theory, courts have discretion to balance these aims. However, their discretion is constrained by many limitations prescribed by statute which tend to focus on punishment and public protection. Furthermore, sentences are implemented in accordance with sentencing guidelines which operate within the statutory scheme and tend to prioritise punishment by virtue of the process they follow.[126]

This is because the first step in this process is *always* to determine the deserved punishment, punishment is in effect the principal aim in practice. The scope to achieve all other aims of the sentence is shaped first by what punishment is required. Sentences therefore aim, first and foremost, to be *retributive*: to punish wrongdoing, proportionately to its seriousness.

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[124] These were originally enacted by the Criminal Justice Act 2003, but have since been codified, along with other earlier sentencing legislation, into the Sentencing Act 2020.

[125] When sentencing under-18s, s.37 of the Crime and Disorder Act 1998 requires sentencers to treat the prevention of offending (or reoffending) by persons under 18 as taking priority over the other aims.

[126] For example, Sentencing Council, 'Robbery: Definitive Guideline'; or (for statutory guidelines), Sentencing Act 2020 sec. 322.

For offences with mandatory or automatic sentences,[127] as we highlight above, Parliament has legislated to remove the courts' discretion to balance different sentencing aims. Instead, for some of these offences, the court must impose a determinate sentence of a certain length, a SOPC or an indeterminate sentence. This leaves other aims as an afterthought. Murder, for example, carries a mandatory life sentence, with the 'seriousness' of a given offence reflected only by adjusting the length (not the nature) of the minimum term to be served in custody.

In sentencing for the most serious crimes, the current legal framework puts the punishment of offenders and protecting the public above the other statutory aims of the sentence. But in delivering the sentence, and notwithstanding the lack of any statutory purpose for prison, HMPPS is tasked to undertake a range of activities directed at rehabilitation, and (less systematically) at reparation.

For less serious offences, particularly those on the cusp of custody or that may attract a community penalty, purposes of sentencing other than punishment and public protection may in practice begin to take more of a priority in sentencing decisions. For instance, in its recent consultation on a new imposition guideline, the Sentencing Council has taken steps to ensure that the five purposes of sentencing are actively considered.[128] It also proposes the inclusion of some principles that it believes are important to remind sentencers of on this topic, for example, that the weighting that each purpose of sentencing should be given will vary from case to case, and that both community and custodial sentences can fulfil all the purposes of sentencing.

Even here, however, the discretion of the court is constrained. Sentencers must take account of a range of statutory aggravating factors in sentencing, as well as minimum sentences for specific offences. Parliament has also legislated so that every community order must include a punitive element.

Chapter 4 of the ICEVLP report Making Sense of Sentencing includes a detailed discussion of the purposes of sentencing in relation to long sentences.[129] We recommend this chapter to the review and highlight the following points in relation to the five purposes:

Punishment

There is no obvious upper limit or constraint on retributive punishment. Upper limits have historically been determined by what societies have been willing to tolerate. As the death penalty has been abolished in more and more countries, life imprisonment, and within that whole life orders, has become the de facto upper limit used for the most serious offences in many countries. Meanwhile, punishments for other crimes often refer to the penalties imposed for the most serious crimes as a kind of benchmark in less serious cases, adjusting the penalties for less serious offences accordingly. Thus, if it gradually becomes the norm that the most serious crimes are

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[127] For a full list, see ss. 57(3) and 399, Sentencing Act 2020. Sentences under these 'dangerousness' provisions are imposed where the court believes that the offender poses an ongoing danger to the public, and the resulting sentence can be either indeterminate or extended (see Chapter 1, paragraphs 10-20), depending on the offence. In practice, most of the most serious offences which attract the longest and most severe sentences would fall into this category.

[128] Sentencing Council (2023) Draft: Imposition of community and custodial sentences

[129] Independent Commission into the Experience of Victims and Long-Term Prisoners. (2022). *Making sense of sentencing: Doing justice to both victim and prisoners*.

punished using an extremely long prison sentence, the penalties for other somewhat less serious crimes may rise in line with that maximum. The growth in sentence and tariff lengths at the top end of sentencing over the past few decades appears to confirm this logic.

Public protection

Long-term imprisonment can undeniably protect the public by incapacitating the person convicted and keeping them away from those they might go on to harm again. But this statement relies on other assumptions which need to be made clear. First, that the prisoner is truly 'dangerous'. Second, that the harms caused by imprisonment itself (to prisoners, their dependents and prison staff) do not 'count', as though those parties are not part of 'the public' requiring protection. There is plentiful evidence that imprisonment itself harms communities over the long term, and that longer and longer sentences (whether aiming for public protection or punishment) merely commit resources to maintaining a long-term prison population. Third, that public protection and risk reduction go hand in hand. As we have seen with IPPs, the sentence itself can make people more risky though hopelessness. All of this highlights how 'public protection' in its current form trades off different needs, rights and interests. This can obstruct the achievement of other aims of the sentence (such as achieving a fuller form of rehabilitation, or achieving more satisfactory outcomes for victims).

Deterrence

There is little evidence to support the claim that prison sentences specifically can reduce crime through deterrence, or that longer and more severe sentences deter it more effectively. Ever-increasing penalties and prison terms might be justified on retributive grounds (i.e. they are what the offender deserves) or public protection grounds (i.e. they prevent the offender causing further harm), but there is little evidence to suggest that they reduce crime overall. Crime reduction through deterrence cannot be taken seriously as a rationale for increased penalties.

Rehabilitation

Ever more retributive prison sentences undermine any form of rehabilitation beyond risk reduction and 'psychological rehabilitation'. Certainly, it does not seem possible to fully restore what has been lost by the victim(s) of a serious crime. Similarly, even if prisoners experience benefits as a result of the sentence, what they have lost through lengthy imprisonment also cannot be restored, and many wish not to return to the lives they had before they were convicted. Nor, where their offending was at all grounded in circumstances beyond their control (such as poverty, victimisation, and so on), does simply punishing an offender appear to achieve a balanced form of justice.

Reparation

There may be some potential for the greater use of restorative justice to make the punishment of serious crimes more effective (though not necessarily more severe). For restorative approaches to replace retributive punishment would be an extremely radical move, unlikely to attract broad public support. Restorative justice on its own is also unlikely to fulfil the censuring aims of punishment—the need to declare that the offence was wrong and that the offender ought to suffer consequences for their part in it. It would be unacceptable if restorative justice were to result in victims having to endure public attempts by offenders to cast doubt on their culpability, or to blame their victims. However, with certain boundaries and caveats in place to define the

scope and the limits of a restorative approach, there is much to recommend an increased place for restorative approaches in sentencing serious crimes.

Review the purposes of sentencing

This discussion begs the question of whether the existing purposes of sentencing are the right ones or need to be reviewed. At present, sentences often do not meet these aims and there is a lack guidance as to which should be prioritised in which circumstances and who should be making those decisions.

There may be lessons which could be applied from the youth justice system where the prevention of offending (or reoffending) by persons under 18 is the overarching aim.[130] Accompanying this statutory purpose is a range of practical and structural arrangements designed to achieve this purpose, including multi-agency youth justice services that combine law enforcement and specialist workers and a wide spread of sentencing options that include intensive supervision in the community as well as custody for the most serious offences. In the last 20 years the number of children in custody has dropped in the by over 70%.[131] By contrast, the adult justice system has no statutory aim at all.

At the very least, improved guidance is needed on which purpose or purposes should be afforded priority and in which circumstances. Punishment needs to be defined clearly, with a deprivation of liberty (and all that entails but not more) being acknowledged as the height of punishment available today. Furthermore, there needs to be clarity that punishment is not always the same as ensuring public safety. As we highlight below, for indeterminate sentenced prisoners, experience of the preventative term can be more punitive than the bit that is intended as punitive. While any sentence for punishment should be carried out with a view to increasing public safety, once a person is in a preventative phase of their sentence, everything possible should be done to secure safe release so that there is a correlation between the aim of the sentence and the experience of imprisonment.

The punitive nature of different sentence types

Penal theorists have suggested four overarching questions to guide punishment frameworks in liberal-democratic societies:[132]

- What justifies a society in punishing offenders (ethics of punishment)?
- To whom may punishment justifiably be applied (distribution of punishment)?
- What principles should determine the amount of punishment received by each person (purpose of punishment)?
- What mode of punishment is desirable (consequences of punishment)?

In this section of our submission we address the fourth question. Our core contention is that sentencers need clear information and a better framework for assessing the consequences of punishment, in order to understand precisely how punitive a

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[130] Crime and Disorder Act 1998 s. 37

[131] Beard, J. (2022). *Youth Custody*. (Research Briefing CBP8557). House of Commons Library.

[132] See Bottoms, A. (2019). Penal censure, repentance and desistance. In A. du-Bois Pedain & A. Bottoms (Eds). *Penal censure: Engagements within and beyond desert theory*. Bloomsbury.

sentence is likely to be for an individual and to prevent the risk of compounding discrimination and disadvantage already faced by those with protected characteristics as defined by the Equality Act 2010. Below we outline evidence on the experience of punitiveness for people serving different types of custodial sentences, which are powerful but often subtle and therefore overlooked. They may also take some years to fully emerge.

We wish to particularly draw attention to the fact that although listed sentencing purposes may appear different and distinct, and certain sentences attempt to separate them, *all* may be experienced as punitive. For example, public protection sentences have a minimum term whose primary purpose is a just and fair punishment for the offence, followed by an extended or indefinite term where the purpose of detention is public protection. Both research evidence and our consultations with serving prisoners suggest that the public protection element of these sentences are experienced as highly punitive. Similarly, elements of rehabilitation can be experienced as punitive when they feel coerced or undertaken in a psychologically unsafe environment. The punitiveness of modern sentences goes beyond conventional understandings of punishment as deprivation of liberty. Below we set out different kinds of punishment that are experienced by people in prison.

Material hardship, stigma and social exclusion after custody

There is plentiful evidence demonstrating that punishment does not stop at the prison gate, and may frequently be described as *more* punitive than prison itself. Society is highly exclusionary towards ex-prisoners, and it can be tremendously difficult for them to compete for scarce resources like employment and housing. The presence of a criminal record also pervades many aspects of modern life, vasty inflating insurance premiums, preventing access to credit (or even any kind of bank account), and restricting online access in some cases, which is making it increasingly untenable to live a normal life after custody. Social exclusion is particularly common for certain kinds of offences, and following a high degree of media scrutiny, which can return when a person is up for parole. These social forces create a punitive experience far beyond the formal term of imprisonment.

Post-incarceration syndrome

Research has suggested that people released from long-term imprisonment suffer a distinct set of mental health symptoms, which have been conceptualised (though not formally listed) as a sub-type of PTSD. Symptoms include social-sensory disorientation (born of long-term confinement), chronic mistrust and paranoia, hypervigilance, hypersensitivity, choice fatigue, alienation, and a pervasive sense that freedom is only temporary and may be withdrawn at any moment.[133,134 ,135] These are direct consequences of adaptation to the prison environment, and are experienced as maladaptive when a person is released, disrupting reintegration and causing further pain and punishment, particularly when the symptoms impact on social and family relationships, or interfere with a person's ability to comply with their licence, and therefore risking recall.

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[133] Liem, M., & Kunst, M. (2013). Is there a recognizable post-incarceration syndrome among released "lifers"? *International Journal of Law and Psychiatry, 36*(3), 333-337.

[134] Liem, M. (2016). *After life imprisonment: Reentry in the era of mass incarceration.* New York University Press.

[135] Heinlein, S. (2013). *Among murderers: Life after prison.* University of California Press.

The permanent loss of relationships

There is evidence that people serving long sentences suffer strain and attrition of relationships that either cease to exist, or elements of them are irreversibly lost through missed milestones and changes, such as young children becoming adults while their parent is in prison. The parents of young prisoners serving long sentences will also age and may pass away during the prison term. More subtly but no less powerfully, relationships atrophy through fewer and fewer shared experiences, amplified by long periods of sameness and nothingness that characterises long prison sentences.[136,137,138,139]

Damaging effects on development

There is evidence that people imprisoned at a young age on a long sentence suffer damaging consequences to their development and maturation. Heavily incentivised regimes and programming, while providing structure and boundaries can also disrupt the development of agency.[140] Lack of freedom as a young adult can damage social development, as well as denying people the opportunity to develop the social capital that would otherwise assist them as they enter middle age. Releasing a person in their 30s or 40s who has been imprisoned in their teens and 20s, leads to a fundamentally more difficult navigation of middle adulthood.[141]

Dead time

In our consultations with long-serving prisoners, the phrases “dead time” or “nothing time” frequently emerge. They describe long periods of repetitiveness and non-activity on long sentences, punctuated by bursts of more stress and activity around key milestones, such as parole. Prisoners experience the unchangingness, boredom and lack of stimulation or frequent milestones in prison as painful and punitive, particularly if it is perpetuated by opportunities being offered to short sentenced prisoners owing to their more imminent release, which is experienced as distributivity unjust.[142]

Referred punishment to families and children

The fundamental justification of punishment is retribution for the wrongs inflicted by the individual. But prison is *not* an individual punishment. Prison sentences exert punitive effects on the families of prisoners, who have committed no crime yet

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[136] Hulley, S., Crewe, B., & Wright, S. (2016). Re-examining the Problems of Long-term Imprisonment. *British Journal of Criminology, 5*(4), 769-792.

[137] Crewe, B., Hulley, S. & Wright, S. (2020). *Life Imprisonment from Young Adulthood: Adaptation, Identity and Time*. Palgrave Macmillan.

[138] Hutton, M. & O’Brien, R. (2024). *A long stretch: The challenge of maintaining relationships for people serving long prison sentences.* Prison Reform Trust.

[139] HMP Rye Hill Building Futures Network Group (2024). *Who cares? A consultation on ageing and lost milestones in prison.* Prison Reform Trust.

[140] Cox A (2011) Doing the programme or doing me? The pains of youth imprisonment. *Punishment & Society, 13*(5), 592–610.

[141] Liem, M. & Garcin, J. (2014). Post-release success among paroled lifers. *Laws, 3*(4), 798-823.

[142] Jarman, B. & Vince, C. (2022). *Making progress? What progression means for people serving the longest sentences.* Prison Reform Trust.

experience the referred pains of their family member's sentence. Research evidence on these pains clusters into five impacts: damage to relationships; damage by the justice system; economic disadvantage; damage to health; and exclusion/stigma. These effects can be nuanced. For example, imprisonment of a father can challenge the relationship between mother and child, as children can suffer trauma, separation anxiety, social withdrawal and aggressive acting out. Effects can also be severe: a sudden drop in family income can threaten family members with homelessness, perpetuated by families bearing additional costs, such as travel to prison.[143]

Punishment through likely natural death in prison

Some prisoners face the prospect of dying in prison because the end date is beyond their natural life expectancy. Penal Reform International has recently called on policymakers to apply constraints in such circumstances, which align with the UN Minimum Rules for the Treatment of Prisoners,[144] as high likelihood of dying in prison is an overlooked, and severe punishment that frequently fails to satisfy the principle of proportionality. It can occur either through lengthy determinate terms that will exceed a person's natural life expectancy or indefinite preventative detention (such as the IPP sentence). 2,694 people are serving an IPP sentence in England and Wales.[145] PRT frequently speaks to such prisoners facing the prospect of dying in prison through its work on the Building Futures programme. It is experienced as an additional punishment, particularly when their stark circumstances appear unacknowledged by a progression system that expects them to focus on post-release goals.[146,147,148] These prisoners experience widespread and intense feelings of hopelessness, adding additional punishment through removal of definite release prospects, and a life beyond imprisonment.

Building on the above experienced effects of punishment, we suggest that the following questions should be considered when judging the extent of punishment that a prison sentence will inflict. They take into account the evidence on what is known about actual punitive effects, beyond the assumed central punishment of deprivation of liberty.

Will the sentence disadvantage a person in securing accommodation after custody?
Will the sentence disadvantage a person in securing employment after custody?
Will the sentence disadvantage a person in securing financial services after custody, including insurance, basic credit and bank accounts?
Will the sentence result in social exclusion after custody?

[143] Dominey, J., Ellis, S. & Lanskey, C. (2021). *Supporting families of people in prison and on probation.* Clinks.

[144] Penal Reform International, Jimada, Z., van Zyl Smit, D. & Appleton, C. (2024). *Informal life imprisonment: A policy briefing on this harsh, hidden sentence.*

[145] Ministry of Justice (2024). Table 1.Q.4, Prison population: 30 September 2024. *Offender management statistics quarterly: April to June 2024.*

[146] Pryce, J. (2024). *Growing old and dying inside: Improving the experiences of older people serving long prison sentences*. Prison Reform Trust.

[147] Jarman, B. & Vince, C. (2022). *Making progress? What progression means for people serving the longest sentences.* Prison Reform Trust.

[148] HMP Rye Hill Building Futures Network Group (2023). *Progression within a prison: What does it mean and what does it look like?* Prison Reform Trust.

Does the length of the sentence make it likely that the person will experience negative post-incarceration symptoms after custody?
Does the length of the sentence make it likely that the person will permanently lose particular social relationships through bereavement, maturation of children or growing apart?
Does the length of the sentence and age of the person make it likely that they will suffer negative effects on their development and maturation?
Does the length of the sentence and age of the person disadvantage them in the social capital they will have accumulated on release?
Does the length of sentence mean it is likely the person will experience long periods of dead time/nothing time?
Is the sentence likely to damage family relationships (including relationships between family members)?
Is the sentence likely to subject family members to additional economic hardship?
Is the sentence likely to subject family members to additional social exclusion/stigma?
Is the sentence likely to subject family members to additional ill health (including mental health conditions and stress-related illnesses)?
Is the prisoner likely to die in prison through natural death?
Does the sentence involve preventative detention?

These dimensions of punishment should inform detailed guidance on who the purposes of sentencing are applied. In Theme 6 we recommend the introduction of a new statutory requirement to consider the impact of a custodial sentence on a person when setting a custodial term.

Theme 3: Technology

Key points

- The use of technology to prevent or replace the use of custody is important and should continue to be explored.
- The use of Electronic Monitoring is a deprivation of liberty and should be recognised as such in sentencing decisions.
- Use of Electronic Monitoring carries significant risks and its imposition should be subject to appropriate safeguards, with proper consideration of the impact on people with protected characteristic.
- The risk of net-widening should be mitigated whenever Electronic Monitoring is being considered.

Electronic monitoring (EM) can be employed both as a cost-effective alternative to custody and as a tool to assist with the support and supervision of people on licence or subject to a community order or suspended sentence. An electronically monitored curfew represents a serious deprivation of liberty and needs to be recognised as such and not a soft option. Section 240A of the Criminal Justice Act 2003 outlines the calculation for the credit an offender is entitled to for time spent on an electronically monitored curfew. The credit is half a day in custody for each day spent on the curfew.

Furthermore, as we outline in the evidence review below, there are risks around the increased use of electronic monitoring, including the potential for net-widening, exacerbating stigma and mental ill health and negative impacts on family members. Work to improve public confidence in tagging must be matched by it being used efficiently and effectively without discrimination and harm.[149]

A body of evidence (highlighted below) suggests EM is more effective when combined with other supervision and support mechanisms within the community. EM can also be used inappropriately, for instance in cases where there is a risk of domestic violence. Consideration of whether to impose EM should be assisted by a detailed examination of the defendant's circumstances in a pre-sentence report. It should also be remembered that courts have an option to impose a curfew without enforcement with EM. In many circumstances this may be appropriate to the gravity of the offence and risk of breach.

New and emerging technologies also have potential both to enhance existing arrangements for the monitoring and supervision of offenders as well as offer new strategies and approaches to crime reduction. The application of new and emerging technologies such as AI also pose complex legal and ethical challenges.[150]

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[149] PRT is aware of a current case of an older woman who was too frail to have the tag fitted and as a consequence was returned to custody. We are also aware of cases involving individuals with health conditions who could not have a tag fitted or who could not have health interventions because of a tag.

[150] Brader, C. (2022, November 23). *AI technology and the justice system: Lords committee report*. UK Parliament.

There is considerable political and policy interest in the application of EM and other technologies, not least from this current sentencing review. We hope the review points a credible way forward for EM and new technologies that is both alive to their potential; but also realistic about some of the risks and the challenges involved in the implementation of any national programme of technological change. PRT's response to this theme highlights a recommendation from our 2021 report on Home Detention Curfew (HDC) on the use of GPS technology. To assist the review in its consideration of this issue, we also provide a summary of the research evidence on the use of electronic monitoring.

Increasing the uptake of Home Detention Curfew (HDC)

PRT's 2021 report on Home Detention Curfew (HDC) considered ways in which use of HDC could be expanded and enhanced as an effective alternative to custody and tool for resettlement and reintegration.[151] One of its recommendations was for increased use of GPS electronic monitoring (EM) technology in order to enhance the monitoring of individuals on a curfew and thereby increase eligibility and take up of the scheme.

The piloting by the Ministry of Justice of GPS Electronic Monitoring (EM) technology shows the potential for it to be used to increase the uptake and expand the use of HDC. Existing curfew monitoring is limited to monitoring curfew conditions and not precise location. GPS monitoring enables offender managers to accurately pinpoint a person's location at any given time. GPS allows offender managers to place additional restrictions outside of the curfew, for instance, by restricting where an individual can go by creating an exclusion zone around a set geographical area.

In 2016, the government launched a pilot scheme into the use of GPS EM technology in two pilot areas. Pilot area 2 in Bedfordshire, Northampton, Cambridgeshire and Hertfordshire focused on the use of the technology in early release from prison, including for those eligible for HDC, those being considered for rerelease following a recall, offenders released on licence who may otherwise be recalled to prison, and certain parole cases.

The evaluation of the pilot found that partner agencies were enthusiastic about the prospect of using GPS location monitoring to help monitor and manage compliance with bail, sentence, and licence conditions. Key learning points included the importance of clear communication across and within partner agencies to enable a consistent approach to delivery, and the need for sufficient time and resources to develop the infrastructure to support the wider rollout of GPS location monitoring. [152]

GPS Electronic Monitoring (EM) technology allows governors and directors of prisons greater discretion in granting HDC to individuals who might otherwise be considered ineligible on risk grounds. If used appropriately, it could also be used to extend the use of HDC to people who may be currently presumed ineligible. NOMS Electronic Monitoring Global Positioning System toolkit for partner agencies states that:

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[151] Prison Reform Trust. (2021). *Home Detention Curfew: Expanding eligibility and improving efficiency*.

[152] Kerr, J., Roberts, E., Davies, M., & Pullerits, M. (2019). Process evaluation of the Global Positioning System electronic monitoring pilot: Qualitative findings. Ministry of Justice.

"In cases where the HDC board is minded recommending refusal on risk grounds, consideration should be given to whether the risks identified by the offender might be adequately managed via a GPS tag. The offender manager must be consulted in any case where the Board is minded to recommend use of the GPS tag.

Electronic location monitoring should not be used as an additional condition in cases where the offender would have been released on HDC anyway under a curfew monitored by EMS. The decision maker must be of the view that it is the additional GPS location monitoring capability that makes the difference between a refusal and a grant of HDC. For example, where there is a need for an exclusion zone, but the individual is assessed as unlikely to comply with that condition without electronic location monitoring." [153]

The potential of GPS technology for monitoring curfew conditions is now recognised in the MOJ/HMPPS Home Detention Curfew Policy Framework (paragraph 4.5.11).[154] However, as far as we are aware, there is no publicly available data on the availability or use of GPS technology for the purposes of enforcing a curfew. Therefore, we do not know the extent to which its roll out has led to an increase in the authorisation of individuals who might otherwise have been refused access to HDC.

International evidence on use of EM

PRT evidence review

To assist the review in the consideration of this theme, PRT has sifted the research literature on international evidence on tagging and identified 24 papers covering these key points. We provide a summary of the evidence below:

- There is evidence of an association between tagging and reduced recidivism from Sweden;[155] Norway;[156] New Zealand[157] and Israel.[158] A German study found no relationship.[159]

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[153] National Offender Management Service. (n.d.). *Electronic Monitoring Global Positioning System: Toolkit for partner agencies*.

[154] Ministry of Justice. (2024). *Home Detention Curfew (HDC) Policy Framework*.

[155] Al Weswasi, E., & Bäckman, O. (2024). The effects of replacing incarceration with electronic monitoring on crime, mortality, and labor market exclusion. *Journal of Quantitative Criminology*.

[156] Andersen, S., & Telle, K. (2022). Better out than in? The effect on recidivism of replacing incarceration with electronic monitoring in Norway. *European Journal of Criminology, 19*(1), 55-76.

[157] Hawkes, A., Sellbom, M., & Gilmour, F. (2024). Under surveillance: Does Global Positioning System monitoring of offenders reduce recidivism? *Criminology & Criminal Justice, 24*(4), 862-881.

[158] Shoham, E., Yehosha-Stern, S., & Efodi, R. (2015). Recidivism among licensed-released prisoners who participated in the EM Program in Israel. *International Journal of Offender Therapy and Comparative Criminology, 59*(9), 913-929.

[159] Meuer, K., & Woessner, G. (2020). Does electronic monitoring as a means of release preparation reduce subsequent recidivism? A randomized controlled trial in Germany. *European Journal of Criminology, 17*(5), 563-584.

- Scandinavian countries made good use of natural experiments arising from policy changes to establish evidence of reduced recidivism over 2[160] and 10[161] year follow-up periods, when comparing people subject to electronic monitoring with broadly equivalent groups who were not.
- There is also evidence from Scandinavia that tagging help people to retain their access to the labour market (Sweden,[162] Norway[163]), is associated with increased educational attainment[164] and reduced social welfare dependence in younger offenders (Denmark),[165] as well as educational attainment and early earnings of *children* of tagged offenders (Sweden).[166]
- Amongst people on parole, one USA study found that offenders on EM took longer to fail on parole, although there was no difference in violations committed over a 1-year period between those tagged and those not.[167] Another USA study found that sex offender parolees had a reduced failure rate compared to those not on EM.[168] In New Zealand, one study found that tagging was associated with lower violent and non-violent reoffending in parolees over a 2-year follow-up period.[169]
- There are concerns from youth justice authors about the enhanced stigma of tags for young people and tags contributing to adultificaton of young offenders.[170,171]

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[160] Andersen, S., & Telle, K. (2022). Better out than in? The effect on recidivism of replacing incarceration with electronic monitoring in Norway. *European Journal of Criminology, 19*(1), 55-76.

[161] Al Weswasi, E., & Bäckman, O. (2024). The effects of replacing incarceration with electronic monitoring on crime, mortality, and labor market exclusion. *Journal of Quantitative Criminology*.

[162] Ibid.

[163] Andersen, S., & Telle, K. (2022). Better out than in? The effect on recidivism of replacing incarceration with electronic monitoring in Norway. *European Journal of Criminology, 19*(1), 55-76.

[164] Larsen, B. O. (2017). Educational outcomes after serving with electronic monitoring: Results from a natural experiment. *Journal of Quantitative Criminology, 33*(1), 157-178.

[165] Andersen, L. H., & Andersen, S. H. (2014). Effect of electronic monitoring on social welfare dependence. *Criminology & Public Policy, 13*(3), 349-379.

[166] Graham, H. (2022). Electronic monitoring: Tagging offenders in a culture of surveillance. *Probation Journal, 69*(1), 117-118.

[167] Omori, M. K., & Turner, S. F. (2015). Assessing the cost of electronically monitoring high-risk sex offenders. *Crime & Delinquency, 61*(6), 873-894.

[168] Finn, M., & Muirhead-Steves, S. (2002). The effectiveness of electronic monitoring with violent male parolees. *Justice Quarterly, 19*(2), 293-312.

[169] Hawkes, A., Sellbom, M., & Gilmour, F. (2024). Under surveillance: Does Global Positioning System monitoring of offenders reduce recidivism? *Criminology & Criminal Justice, 24*(4), 862-881.

[170] Deuchar, R. (2012). The impact of curfews and electronic monitoring on the social strains, support and capital experienced by youth gang members and offenders in the west of Scotland. *Criminology & Criminal Justice, 12*(2), 113-128.

[171] Arnett, C. (2018). Virtual shackles: Electronic surveillance and the adultification of juvenile courts. *Journal of Criminal Law & Criminology, 108*(3), 399-454.

- There is also evidence from several countries that tagging is experienced as punitive and psychologically painful. It has been found to cause social strain and chronic stigma, which can disrupt pro-social relationships (Scotland,[172] Australia[173]). Its constant presence can also induce a sense of "virtually never-ending stress" (Belgium).[174] Home searches, communication monitoring and long-term data storage also invade privacy and reduce autonomy.[175]
- Tagging can have both positive and negative effects on social capital, disrupting links to anti-social influences and encouraging reconnection with pro-social ones. But being on tag can disrupt employment and ability to meet family responsibilities.[176]

Scottish government evidence review

The Scottish government has also published a helpful review of the published literature on the uses, challenges and successes of electronic monitoring for people with convictions and on bail.[177] We provide a summary below:

Technology

- The effectiveness of EM is affected by technical issues and the type of monitoring system.
- There are differences in outcomes between Radio Frequency (RF) and Global Positioning Systems (GPS) EM technologies. Some studies found GPS EM is more likely to reduce reoffending/non-compliance than RF.

Remote Alcohol Monitoring

- Remote Alcohol Monitoring (RAM) differs from other uses of EM because the main aim is to manage or reduce alcohol consumption.
- There is a limited evidence base on the effectiveness of RAM, however a limited number of empirical studies suggest promising results for the use of RAM.
- A pilot conducted in London in 2014 evidenced a 92% compliance rate with RAM for monitored people on community sentences over 12 months and concluded there were a number of positive opinions and experiences of alcohol abstinence monitoring.[2]

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[172] Deuchar, R. (2012). The impact of curfews and electronic monitoring on the social strains, support and capital experienced by youth gang members and offenders in the west of Scotland. *Criminology & Criminal Justice, 12*(2), 113-128.

[173] Hwang, Y., Simpson, P., & Butler, T. (2021). Participant experiences of a post-release electronic monitoring program for domestic violence in New South Wales, Australia. *Journal of Criminology, 54*(4), 482-500.

[174] de Spiegeleir, S. (2021). The daily surveillance experience: being detained under an electronic bracelet. *Deviance Et Societe, 45*(2), 289-318.

[175] Kirk-Werner, G. (2024). Pains of privacy: Mapping carceral practices onto electronic monitoring. *Theoretical Criminology*.

[176] Hucklesby, A. (2008). Vehicles of desistance? The impact of electronically monitored curfew orders. *Criminology & Criminal Justice, 8*(1), 51-71.

[177] The Scottish Government. (2019). *Electronic monitoring: uses, challenges and successes*.

- One of the recommendations of the 2016 Scottish Government Working Group paper was on legislative change, including the introduction of legislation which would enable the use of RAM.[3]

Community supervision and support

- A body of evidence suggests EM is more effective when combined with other supervision and support mechanisms within the community.
- In most jurisdictions EM is understood as a tool in a wider network of community support and supervision of monitored people.

EM and reintegration

- The relationship between EM and reintegration of monitored people is a complex one and is dependent on how reintegration is defined.
- EM can be used to encourage a pro-social lifestyle by incentivising compliance with the conditions of release, encouraging engagement with treatment, counselling, positive recreational activities, facilitating an offender's return to their family, reinforcing day-and-night rhythms, and discouraging association with criminal associates.
- EM can be can be flexibly applied dependent on offence, offender demographic, and the conditions necessary for release,[4] and its flexible use can be used to incentivise reintegration.
- EM can provide opportunities for the construction of positive social capital, in that it allows family responsibilities and relationships to be maintained and increases the likelihood of the monitored person gaining or maintaining employment.
- However, in some cases EM can have a negative impact upon the monitored person's family, particularly those who reside within the same address.

The impact of EM on reoffending and reconviction rates

- Caution must be taken when comparing the reconviction rates of those on HDC from those who are released straight from custody, as it likely that individuals who have been granted HDC pose a lower risk of reoffending, so the results may not be directly comparable. However some reconviction studies have controlled for risk to ensure the results are more comparable.
- There are mixed but promising results regarding reoffending, reconviction and failure/breach rates with use of EM.
- Some evidence suggests EM reconviction rates for monitored people are lower, or similar, compared to matched groups who serve their full sentence in custody.

The cost of EM

- The available evidence suggests EM costs less than imprisonment.
- There is a limited evidence base on the cost incurred by the whole system operational costs of EM.
- EM's cost effectiveness is conditional on a number of factors.

The ethical considerations of EM

- There are number of ethical concerns and considerations associated with the use of EM related to its impact on the individual and use in the wider justice system.
- In some cases, EM can result in feelings of stress, stigma and shame for the monitored person, and can sometimes negatively affect their family or co-habitants.
- EM can allow net widening or penological drift, whereby individuals who would not be sanctioned otherwise are monitored by EM.

EM and domestic abuse

- In cases of domestic abuse, the purpose of EM is different to that in cases of non-domestic crime. Bilateral Electronic Monitoring (BEM) monitors both an perpetrator's compliance with the conditions of sentence and protects victims of domestic abuse by monitoring the perpetrator's movements in relation to the victim.
- Research on BEM in cases of domestic abuse suggests it makes the justice system more victim-centric and can improve victims' feelings of safety, empowerment and provide space to reassess the relationship and their future circumstances.
- Domestic abuse perpetrators' experience of EM is varied and overall the evidence base relating to the use of EM with domestic perpetrators is limited.

Children

The HM Inspectorate of Probation has provided a helpful summary of the evidence in relation to children:[178]

- Studies have shown that electronic monitoring (EM) can have both positive and negative impacts. On the one hand, EM can potentially reduce chances to violate curfews, break criminal connections, and lead to improvements in family life.
- On the other hand, wearing a tag can cause discomfort or feelings of shame, and there are risks around increased family tensions, anti-social behaviour, and use of alcohol/drugs. There is also a risk of exacerbating existing inequalities.
- Assessment is a key component of successful use of EM, building a complete picture of the child's life, including their family relationships and the suitability of their accommodation.
- Attention needs to be given to the potential for net-widening and net-deepening, and the value of combining EM with mentoring and intensive support.

England and Wales

For a detailed discussion of some of the issues that have emerged with the national roll out of EM we refer to the review to the following:

- HM Inspectorate of Probation (2022) The use of electronic monitoring as a tool for the Probation Service in reducing reoffending and managing risk

[178] HM Inspectorate of Probation. (n.d.). *Electronic monitoring.*

https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2022/01/Electronic-monitoring-thematic-inspection.pdf

- National Audit Office (2022) Electronic monitoring: a progress update https://www.nao.org.uk/wp-content/uploads/2022/01/Electronic-monitoring-a-progress-update.pdf
- Ministry of Justice (2023) Corporate report: Electronic Monitoring in the Criminal Justice System https://www.gov.uk/government/publications/electronic-monitoring-in-the-criminal-justice-system/electronic-monitoring-in-the-criminal-justice-system

Theme 4: Community sentences

Key points

- Research shows that community sentences are more effective than short prison sentences at reducing reoffending, and the positive impact is even more marked for people with mental ill-health, and for those who have many previous convictions (more than 50).
- Receiving treatment for drug and alcohol addictions in the community can reduce reoffending, with research showing both fewer people reconvicted, and fewer offences committed in the two years following treatment.
- Yet the use of community sentences dropped by around half since 2010, in part, because relationships between courts and probation have been damaged by probation reforms, underinvestment, and the disruption of court closures.
- Requirements attached to community orders should be relevant, achievable and tailored for the person in receipt of the order. Proportionality in these circumstances is key to ensure people are not being set up to fail.
- The range of disposals available to people with learning disabilities should be developed further. For example, there is still no Community Sentence Treatment Requirement specifically for people with learning disabilities, or people who are neurodiverse.
- Greater use of community sentences has the potential to deliver better outcomes at reduced cost to the government. Women's centres, which provide safe, non-stigmatising settings for women to address issues surrounding their offending behaviour can play a vital role in reducing reoffending.
- Developments such as Problem-Solving and Intensive Supervision Courts; Community Sentence Treatment Requirements; and deferred sentencing could further support the effective delivery of community-based sentences if built upon and backed by sufficient resource.
- A greater use of community sentencing should be accompanied by a review of the use of Out of Court Disposals.

Community sentences provide a robust and credible alternative to custody – especially for those people who would otherwise serve a short prison sentence. A community sentence can fulfil all statutory purposes of sentencing. In the imposition of community and custodial sentences guideline, the Sentencing Council states:

"Community orders can fulfil all of the purposes of sentencing. In particular, they can have the effect of restricting the offender's liberty while providing punishment in the community, rehabilitation for the offender, and/or ensuring that they offender engages in reparative activities."[179]

[179] Sentencing Council. (2017). *Imposition of community and custodial sentences*.

Unlike short prison sentences, community sentences allow for maintenance of jobs, housing, family ties and childcare responsibilities, all of which are factors that reduce the risk of reoffending. Research has suggested that community sentences also address underlying factors which lead to offending, and repair harms caused by it.[180] Community sentences work most effectively when they are subject to a multi-disciplinary approach, with joined up working between agencies as well as long-term sustainably funded community provision.

Reoffending rates are difficult to measure, with published figures usually turning to reconviction as a proxy measure. But reconviction can be affected by many factors, including the ability of police to detect crime, and the priorities they set in doing so.[181] We refer to published material on reconvictions as the best available indicator. Research has found that community sentences are more effective than short prison sentences at reducing reoffending:[182]

- The Ministry of Justice's own evidence shows that reconvictions rates are lower for people on community orders than short custodial sentences, and the positive impact is even more marked for people with mental ill-health, and for those who have many previous convictions (more than 50).[183]
- Research has found receiving treatment for drug and alcohol addictions in the community can reduce reoffending. A study by Public Health England found a 44% reduction in the number of reoffenders, and a 33% reduction in the number of offences committed in the two years following treatment.[184]
- For women specifically, women released from prison are more likely to reoffend, and reoffend sooner, than those serving community sentences.[185]

In the draft guidance on the imposition of community sentences the Sentencing Council recognises that "numerous and frequent previous convictions might indicate an underlying problem (for example, an addiction) that could be addressed more effectively through a community order with relevant requirements and will not necessarily indicate that a custodial sentence is necessary". This is an especially important consideration when the context of a person's offending is related to multiple and complex needs, including, for example, unmet mental health need, financial hardship or experience of abuse.

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[180] Centre for Justice Innovation. (2020). *Smarter Community Sentences*.

[181] Prison Reform Trust. (2023). *Bromley Briefings Prison Factfile. January 2023*. p.52

[182] Ministry of Justice. (2013). *2013 Compendium of re-offending statistics and analysis*.

[183] Hillier, J. & Mews, A. (2018). *Do offender characteristics affect the impact of short custodial sentences and court orders on reoffending?*. Ministry of Justice.

[184] Ministry of Justice. & Public Health England. (2017). *The impact of community-based drug and alcohol treatment on re-offending*.

[185] Hedderman, C. & Jolliffe, D. (2015). *The Impact of Prison for Women on the Edge: Paying the Price for Wrong Decisions, Victims & Offenders*. An International Journal of Evidence-based Research, Policy, and Practice. 10, 152–178.

Resources and powers of the probation service

The use of community sentences dropped by almost half (48%) for women, and 56% for men between 2010 and 2024.[186] Research from the Centre for Justice Innovation has found that, at least in part, this is because relationships between courts and probation have been damaged by probation reforms, underinvestment, and the disruption of court closures.[187]

This may also be linked to challenges since the reunification of the probation service. The Institute for Government commended the transition but found there was a loss of innovations from independent providers.[188] Since the reunification, 28 of the 45 Probation Delivery Units inspected have been rated the lowest ranking of "inadequate" and 22 as "requiring improvement".[189] Even with a recruitment drive, there is a shortage of probation staff, with a shortfall of 1,702 FTE against target staffing levels.[190] When caseloads are stretched, this may hamper the ability of provide detailed support. This is particularly the case for 'lower risk' individuals, who may not be receiving the coverage needed, so can drift more towards a higher severity of offending and become caught up in the cycle of imprisonment.

Stretched probation caseloads may also hamper ability to provide detailed PSRs. A decline in the use of community sentences is also likely to be linked to the reduction in the use of Pre-Sentence Reports (PSRs).[191] The Centre for Justice Innovation has found that courts are over 10 times more likely to impose a community sentence if a PSR is conducted.[192] Often, when there are pressures on capacity and court backlogs, oral on the day PSRs are favoured. However, these PSRs are often compiled hurriedly and are unlikely to include all the relevant information a sentencer needs to assess the full picture. Standard PSRs – the most detailed type of report – have almost entirely been phased out, falling by 95% since 2011.[193] Recent research by HM Inspectorate of Probation found that less than half of all inspected court

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[186] Ministry of Justice. (2024). Outcomes by Offence data tool: June 2024. *Criminal justice system statistics quarterly: June 2024*.

[187] NAO. (2019). *Transforming Rehabilitation: Progress review*. and Whitehead. & Ely. (2019). Renewing Trust: How we can improve the relationship between probation and Justice Innovation. Referenced in: Centre for Justice Innovation. (2020). *Smarter Community Sentences*. p.2.

[188] Johal, R. & Davies,. N. (2022). *Reunification of probation services*. Institute for Government.

[189] Russell Webster. (2024). How good is your probation service?

[190] HMPPS & Ministry of Justice. (2024). *HM Prison and Probation Service workforce quarterly: September 2024*.

[191] Whitehead, S. (2018). *The changing use of pre-sentence reports*. Centre for Justice Innovation.

[192] Whitehead, S. (2018). *The changing use of pre-sentence reports*. Centre for Justice Innovation.

[193] Whitehead, S. (2018). *The changing use of pre-sentence reports*. Centre for Justice Innovation. Referenced in Prison Reform Trust. (2023). *Bromley Briefings Prison Factfile. January 2023*. p.11

reports were sufficiently analytical and personalised to the individual to inform the court's decision making.[194]

A further reason for the reduction in community sentences may be linked to the lack of mental health beds, treatment centres and wraparound provision within the community. Evidence suggests that some people in contact with the criminal justice system who are in mental crisis are being remanded to prison for their own protection or sent to prison as a place of safety. Women in prison seem to be particularly vulnerable to this, with an increase in the number of women held under these provisions at a number of prisons.[195] The introduction of the Mental Health Bill to parliament provides a welcome step forward in changing this practice. It also introduces provisions to set time limits for transferring prisoners to hospitals. For this provision to have the intended outcome, adequate investment must be made available, including for a professional workforce to deliver the new legislative requirements.[196]

The use and efficacy of different requirements

As outlined above, and reflected in the Sentencing Council guidelines, community sentences can fulfil all requirements of punishment. Whilst is often politically popular to place emphasis on the need for community sentences to be 'tougher' or 'more punitive', it is important to note that in their current form, community sentences do contain punitive elements by virtue of the fact a person's liberty is restricted.[197] The court must also impose at least one punitive condition as part of the community order.[198]

As part of a community sentence, sentencers must include at least one specified requirement from a menu of options with the aim of addressing the person's needs and encouraging rehabilitation.[199] Guidance states the requirements must be the 'most suitable for the offender'.[200] Some requirements will be more effective in promoting positive outcomes than others, and this is likely to differ from person to person. The Sentencing Council has suggested further research on this would be helpful.[201]

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[194] HM Inspectorate of Probation. (2024). *The quality of pre-sentence information and advice provided to courts – 2022 to 2023 inspections*. See also Webster, R. (2024, September 2). Less than half of Pre-Sentence Reports good enough. *Russell Webster*.

[195] IMB. (2023). *Mental health concerns in women's prisons*.

[196] Prison Reform Trust. (2024). *Prison Reform Trust Briefing on Part III of the Mental Health Bill: House of Lords, Second Reading, Monday, 25 November 2024*.

[197] Sentencing Council. (2017). *Imposition of community and custodial sentences*.

[198] Hamilton, M. (2021). *The effectiveness of sentencing options: A review of key research findings*. Sentencing Academy.

[199] Ibid.

[200] Sentencing Council. (2017). *Imposition of community and custodial sentences*.

[201] Gormley, J., Hamilton, M. & Belton, I. (2022). *The Effectiveness of Sentencing Options on Reoffending. The Sentencing Council*.

It is crucial that requirements attached to community orders be relevant, achievable and tailored to be most suitable for the person in receipt of the order. Particular attention needs to be given to tailoring punitive elements of community sentences for those who may have more difficulties adhering to requirements. This could include young people, women and people with particular support needs such as mental ill health, learning disabilities and substance misuse problems. See below and also PRT's response to Theme 7 of this review, which outlines some of the distinct needs of these groups. Proportionality in these circumstances is key to ensure people are not being set up to fail.

It will not always be possible to predict how a person will respond to requirements of a community order. Probationers have reported that "parts of community sentences that are intended to be rehabilitative are intrusive, even painful, while others experience punitive sanctions such as unpaid work as motivating and even enjoyable" so often community sentences are experienced differently from "what is intended by judges and lawmakers".[202] Therefore it is important to have a person centric approach at all times, so requirements can be adapted where necessary. This should be done by a person with professional expertise, in order to accommodate any disability and/or other protected characteristics in accordance with the Equality Act. In these circumstances, care must be taken to ensure that a more punitive response is not imposed in the absence of appropriately adapted requirements.

Tailored supervision for certain cohorts[203]

People with learning disabilities

There is already recognition that short custodial sentences often do not result in positive outcomes. For people with learning disabilities there are additional concerns about the disruption a prison sentence can cause to often fragile support arrangements including: housing, employment, relationships and paid or family support. People with learning disabilities often find it particularly difficult to transfer learning from one setting to another, so rehabilitation interventions are more likely to be successful if delivered in the person's usual environment where they can be practiced every day, as opposed to a prison environment.

Similarly to the above, for those people with learning disabilities, reasonable adjustments may be key in facilitating successful completion of community sentence requirements, without leaning into more a more punitive response. It will also be key for the person being sentenced to fully understand what is required of them.

More work should be done to develop the range of disposals available to people with learning disabilities. For example, there is still no Community Sentence Treatment Requirement (CSTR) aimed specifically at people with learning disabilities, or even people who are neurodiverse.

Women

The evidence on what works for women in contact with the criminal justice system is clear. The government's recognition of this was reflected in the announcement of a new Women's Justice Board which will focus on community alternatives to

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[202] Bowen, P. (2020). *Smarter Community Sentences*. Centre for Justice Innovation

[203] This section should be read in conjunction with Theme 7.

imprisonment.[204] Here, it is less about being ambitious in developing new approaches to the sentencing of women, but instead investing in, and implementing the approaches we already know work.

The use of community sentences for women has dropped by almost half (48%) since 2010.[205] This decline is use is of particular concern as community alternatives provide better outcomes for women than short prison sentences. Women are more likely to be primary carers, and often enter the criminal justice system with multiple and complex needs.[206] The previous government's own Female Offender Strategy focuses on the importance of early interventions and community-based solutions[207] but a series of inquiries since publication in 2018 criticised the lack of governance, and implementation of the strategy.[208] The recent government announcement of a new Women's Justice Board (WJB) to "reduce the number of women in custody by using early intervention and tackling the root causes of offending" is a welcome development which will further this agenda.

An important part of this picture is a sustainably funded network of women's centres. Women's Centres[209] play a vital role in reducing offending and reoffending by co-locating a range of health, social care and justice services in safe, non-stigmatising environments.[210] However, these centres are often working with short-term inconsistent funding, making it difficult to run effectively.

Greater use of community sentences has the potential to deliver cost-savings to the government, especially if used as an alternative to custody for women. In the women's estate, given the large proportion of women serving short sentences, significant cost savings could be achieved through a sustained focus on reducing the use of short sentences and increasing the uptake of community alternatives. The cost of a place in prison is £52,121.[211] By contrast, the cost of support at a women's centre ranges from £1,223 to £4,125 per woman, depending on needs. Furthermore, women's centres can play a vital role in reducing reoffending, providing safe, non-stigmatising settings for women to address issues surrounding their offending behaviour such as access to support with abusive relationships.[212]

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[204] Ministry of Justice. (2024, September 23). Extra support for women through the criminal justice system announced. *GOV.UK*.

[205] Ministry of Justice. (2024). Outcomes by Offence data tool: June 2024. *Criminal justice system statistics quarterly: June 2024*.

[206] Ministry of Justice. (2018). *Female Offender Strategy*.

[207] Ministry of Justice. (2018). *Female Offender Strategy*.

[208] Prison Reform Trust. (2022). *Why focus on reducing women's imprisonment?*

[209] For more information, see the Women's Service Map from the National Women's Justice Coalition.

[210] Radcliffe, P., & Hunter, G. (2013). *The development and impact of community services for women offenders: an evaluation*. ICPR.

[211] Women's Budget Group. (2020). *The case for sustainable funding for women's centres*.

[212] Radcliffe, P., & Hunter, G. (2013). *The development and impact of community services for women offenders: an evaluation*. ICPR.

In one consultation, women with lived experience of the criminal justice system told us about the potential barriers to receiving a community sentence if they had previous experience of custody. Many of the women we spoke to said once you had been to prison, sentencers were reluctant to give community sentences or explore alternatives to custody. One woman said:

"The thing is once you have been to prison once, then that's all you get is custodial."[213]

Young adults

There is a growing recognition amongst policy makers and practitioners of the importance of taking account of the distinct needs of young adults (aged 18-25) in the criminal justice system. Evidence shows that "maturation is a slow process which can last until a person's mid- or, in some cases, late-20s".[214] Maturation can impact cognitive skills, increasing risk taking and making individuals more likely to behave impulsively.[215] These factors can influence how individuals interact with the criminal justice system, including the nature and pattern of their offending and their ability to comply with statutory requirements.[216] It is therefore important that maturity is taken into account and viewed as important as chronological age. In response to the Justice Committee's 2017 inquiry on young adults[217] the government highlighted the need to develop targeted and high-quality community sentences for this cohort.[218]

Innovative approaches to support and supervision, including using technology

There have been some key policy developments in support of community alternatives which, if built upon and backed by sufficient resource, could enable effective delivery.

Problem-Solving (PSCs) / Intensive Supervision Courts (ISCs)

There are various models of these courts across England, but all take a person-centred approach to sentencing and offender management. The court offers a community sentence with specific components as an alternative to a custodial sentence for a target group, with the aim of reducing reoffending and improving outcomes.[219] The Police, Crime, Sentencing and Courts Act introduced legislative

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[213] Prison Reform Trust. (2020). *Women's Voices – London. Report of the User Voice London Women's Council.*

[214] HM Inspectorate of Prisons. (2021*). Outcomes for young adults in custody.* p.9.

[215] Johnson, S., Blum, R. & Giedd, J. (2009). Adolescent maturity and the brain: the promise and pitfalls of neuroscience research in adolescent health policy. *Journal of Adolescent Health,* 45(3), 216– 221, referenced in HM Inspectorate of Prisons. (2021). *Outcomes for young adults in custody*. p.9.

[216] Sentencing Council. (2019). *General guideline: overarching principles*.

[217] House of Commons Justice Committee. (2016). *The treatment of young adults in the criminal justice system* (HC 169).

[218] Ministry of Justice. (2017). *Government Response to the Justice Committee's Seventh Report of Session 2016-17: The treatment of young adults in the criminal justice system.*

[219] Mentzou, A., & Mutebi, N. (2023). *Problem-solving courts* (POSTnote 700). UK Parliament.

provision for five ISC pilots. Early feedback is positive, and the interim evaluation is due early 2025, which should be considered within this review.

Community Sentence Treatment Requirements (CSTRs)

CSTRs are a form of community sentence which aim to address the root causes of offending behaviour and improve health outcomes. Treatment requirements are available for alcohol, drugs and mental health, and may be combined. There has been increased investment in CSTRs in recent years. Early evidence showed increased confidence among sentencers and more CSTRs issued in those areas.[220] An evaluation by the Ministry of Justice demonstrated that for those with identified mental health issues, mental health treatment requirements attached to court orders were associated with significant reductions in reoffending where they were used, compared with similar cases where they were not."[221]

Deferred sentencing

Courts have the power to defer sentencing for up to six months.[222] Deferring sentencing is particularly appropriate for people who have had significant changes in personal circumstances and are often used when the custody threshold has been crossed, but there is potential for the sentence to be suspended.[223] Deferring sentencing for young adults for example, could be particularly effective in diverting them from a potentially damaging custodial sentence.[224]

The 2020 White Paper, *A Smarter Approach to Sentencing* encouraged greater use of deferred sentencing, yet it remains an option which is currently under-utilised by the courts.[225] Deferred sentencing offers courts an opportunity to put individuals in meaningful community programmes whilst retaining an option of an alternative disposal based on engagement and compliance.[226] It may also give a valuable opportunity to engage in restorative justice initiatives, which would not be possible if the court moved to sentence immediately.[227]

A number of groups have called for deferred sentencing to be used more, "… in particular for young adults, female offenders, pregnant offenders as well as individuals commencing or undertaking treatment."[228] For example, in cases where the person being sentenced has dependent children, harm to these children can be

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[220] Ministry of Justice. (2018, August 9). Vulnerable offenders steered towards treatment. *GOV.UK*.

[221] Hillier, J. & Mews, A. (2018). *Do offender characteristics affect the impact of short custodial sentences and court orders on reoffending?*. Ministry of Justice.

[222] Roberts, J., Freer, E. & Bild, J. (2022). *The Use of Deferred Sentencing in England and Wales: A Review of Law, Guidance and Research*. Sentencing Academy.

[223] Freer, E. (2022). Deferred Sentencing: A review of practice. *Sentencing Academy*.

[224] Sentencing Academy. (2024, July 16). *A new vision for young adult sentencing*. T2A.

[225] Roberts, J. V., Freer, E. & Build, J. (2022). The Use of Deferred Sentencing in England and Wales. Sentencing Academy.

[226] Bowen, P. (2020). *Delivering a Smarter Approach: Deferred Sentencing*. Centre for Justice Innovation.

[227] Roberts, J. V., Freer, E. & Build, J. (2022). The Use of Deferred Sentencing in England and Wales. Sentencing Academy.

[228] Ibid.

minimised if the sentence is deferred to allow for proper arrangements to be made.[229] This would be in line with the Joint Committee on Human Rights recommendation from their 'right to family life: children whose mothers are in prison' report.[230] Deferred sentencing can be particularly appropriate for young adults "whose personal and professional lives are changing rapidly".[231]

The types of offences for which people should be dealt with outside of the court system

Whilst we appreciate that out of court resolutions are out of scope of the review, we welcome the intention to consider whether more people should be diverted away from the court system. As part of this, the review should consider the use of Out of Court Disposals (OOCDs).

OOCDs offer a way of resolving a situation without going to court. They are a valuable part of the justice system, without which, there would be no way for low-level and first-time to be swiftly dealt with.[232] OOCDs can be "efficient and effective response to criminal behaviour, in particular in the case of low-level offending by first time offenders".[233] In the past, the simple caution has had a positive record in reducing reoffending.[234] A new two tier code of practice on Diversionary and Community cautions has recently been implemented with the intention to ensure greater consistency in their use. Monitoring and evaluation of this approach, and outcomes is key. PRT previously raised concerns on the focus on making cautions 'tougher' and more punitive. Any condition attached to the OOCDs are imposed on the recipient, even rehabilitative and reparative conditions may not be experienced by the recipient as such. For conditions to beneficial they need to be proportionate, achievable and facilitate positive change for the perpetrator and victim.[235] Community resolutions also play a vital role in the process of diversion. These resolutions have no conditions attached and no requirements for an admission of guilt.

An important part of the picture in diverting people away from the court system is Liaison and Diversion (L&D) services. These services are available in police stations and courts, and identify people who have a mental health need, learning disability, substance misuse or other vulnerabilities when they first come into contact with the criminal justice system. It is not a disposal, but a way of identifying needs and vulnerabilities for them to be met as part of a disposal, or to be diverted out of the criminal justice system into treatment and care if appropriate. L&D services achieved

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[229] Minson, S. (2020, March 24). *Safeguarding Children when Sentencing Parents : Information for sentencing courts*.

[230] Joint Committee on Human Rights. (2019). *The right to family life: children whose mothers are in prison* (HC 1610).

[231] Roberts, J. V., Freer, E. & Build, J. (2022). The Use of Deferred Sentencing in England and Wales. Sentencing Academy.

[232] Shaw, D. et al. (2022). *The use of out-of-court disposals and diversion at the 'front end'*. Crest Advisory.

[233] Gibson, C. (2021). *Out of court disposals: A review of policy, operation and research evidence*. p.2.

[234] Criminal Justice Alliance. (2020). *A smarter approach to sentencing?*.

[235] Revolving Doors Agency. (2022). *Amending the Police, Crime, Sentencing and Courts Bill*.

full coverage across England in March 2020.[236] L&D services improve overall health outcomes and support people in the reduction of re-offending.[237]

The use of fines in the hierarchy of sentences

Fines are a key part of the sentencing structure. They are the most common type of sentence passed by the court, in 2022 around 79% of all people who offended received a fine.[238] However, it is important to note that often many people who offend are on low incomes, have high levels of debt and may rely on benefits for support. Any non-payment of fines may not be wilful but may be as a result of the lack of ability to pay. Sentencers must be clear that imposing fines which recipients are unable to pay may reinforce their financial exclusion and so their likelihood of reoffending. Provision for support for debt and money management should be made available whenever a fine is imposed, and guidance on how to pay the fine should also be provided.

Making better use of community sentences by changing magistrates' sentencing powers

It is clear that despite the wide range of options covered by community sentences and their great scope for effective reduction in offending, they are not sufficiently used at present.

One proposal to increase the use of community sentences, and at the same time reduce pressure on the Crown Court backlog, would be to enhance powers of magistrates in relation to community sentences. This could include options to increase the duration and requirements of the sentence falling short of restrictions on liberty. By removing the powers of magistrates to sentence to deprivation of liberty except for a breach, defendants would be more likely, where possible, to elect to remain in the magistrates' courts.

Powers by Magistrates to deprive a person of their liberty should be reserved purely for instances where a community sentence has been beached. Powers to impose a term of imprisonment for breach should be strictly prescribed an only apply where also else has failed or is not possible, including a doorstep curfew and then electronic monitoring.

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[236] NHS commissioning. (n.d.). *About liaison and diversion*.

[237] Disley, E. et al. (2021). *Findings from the national evaluation of Liaison and Diversion services in England*. RAND.

[238] Sentencing Council. (n.d.). *Fines*.

Theme 5: Custodial sentences

Our recommendations

- A presumption should be introduced that all sentences of deprivation of liberty of three years or less should be served in the community unless there are exceptional circumstances. In such instances electronic tagging should only be used where necessary, or if a doorstop curfew without tagging does not work.
- Where custody cannot be avoided, a period in the community under Home Detention Curfew (HDC) should be built into the sentence as the norm, with the removal or revision of statutory exclusions and non-statutory presumptions.
- Improvements should be made to ensure that HDC operates fairly and in a way that does not compound discrimination due to the difficulty of providing a suitable address. This may require the creation of a statutory duty to ensure the provision of suitable long-term accommodation and support.
- A new statutory requirement should be introduced to consider the impact of a custodial sentence on a person when setting a custodial term.
- Pre-sentence reports should be required in all cases where custody is contemplated, rather than the current position which leaves it to the court's discretion and should consider the impact of custody on the individual.
- The complex range of custodial sentences should be simplified to ensure that they can be clearly understood for all concerned.
- Increased judicial independence and individualised sentencing.
- Sentence lengths should be reviewed by an independent body with a view to reducing them to counter sentence inflation.
- A review of how automatic release operates in determinate sentence cases should be overseen by an independent body.
- Extended sentences should be reviewed with a particular focus on how the options for release operate.
- Decisions affecting liberty after sentence should be subject to additional judicial oversight.
- Short, fixed term recalls of 28 days or less should be abolished. They cause immense pressure on the prison estate and serve no purpose.
- Standard recalls should be subject to a comprehensive review.
- Post-sentence supervision should be scrapped. A period of post-sentence supervision for people serving short sentences adds nothing other than liability to being returned to prison for a breach.
- A new statutory duty should be created for public bodies to support prison leavers to settle into the community through the provision of key long-term services which meet their distinct needs.

A better understanding of punishment as a deprivation of liberty rather than just prison

Sentencing needs to be better understood as a spread of options, many of which fall short of prison but nevertheless are legitimate, and sometimes more effective, ways of meeting the purpose of sentencing.

The Sentencing Act 2020 provides for deprivation of liberty as the most severe punishment available in England and Wales. Yet, deprivation of liberty need not be synonymous with prison. People can be deprived of their liberty in hospitals and the community. The punishment element of a custodial sentence is designed to be the deprivation of liberty. Yet the state of prisons means that it is often experienced as so much more than that (see Theme 1).

According to NHS England, in 2022–23 an estimated 300,000 applications were received to deprive people of their liberty who were believed at the time to lack the mental capacity to consent to the arrangements for their care. These applications are outside the criminal justice system and do not involve electronic tagging.[239] The necessity for formal applications arose due to an acknowledgement by the Supreme Court of the seriousness of depriving a person of their liberty.[240]

Many people in the criminal justice system are deprived of their liberty in the community throughout the criminal justice process. These include being on police and court bail; on licence in the community; and doorstop or electronically monitored curfews. Legislation recognises time on an electronic curfew as a deprivation of liberty such that it will automatically count as time served on remand.[241] Time spent on curfew as a condition of police bail can also count towards time served.[242] Increasingly, significant parts of the punitive phase of sentences are spent in the community under Home Detention Curfew (HDC) which has been extended significantly in the recent years, with further changes to be implemented in June 2025 (see Theme 6).

A presumption that custodial sentences of under three years should be served in the community

The Sentencing Act 2020 permits the secretary of state to make such arrangements for detention as he or she thinks fit in the case of a child (section 260) and there is no reason why similar provision cannot be legislated for adults.

In many cases that might be the most effective way to better achieve all the aims of sentencing, while reducing the pressure on the prison estate and avoiding the pains of imprisonment that go beyond a deprivation of liberty, creating what McNeill et a refer to as “temporal, spatial and relational disruptions of imprisonment”.[243]

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[239] NHS England. (2023). Mental Capacity Act 2005, Deprivation of Liberty Safeguards, 2022-23. NHS Digital.

[240] Cheshire West and Chester Council v P [2014] UKSC 19

[241] Criminal Justice Act (2003), section 240A

[242] *R v Whitehouse* [2019] EWCA Crim 970

[243] McNeill, F, Crockett Thomas, P, Cathcart Frödén, L, Collinson Scott, J, Escobar, O & Urie, A (2022). Time after time: Imprisonment, re-entry and enduring temporariness. in N Carr & G Robinson (eds), Time and Punishment: New Contexts and Perspectives. 1st

There is copious evidence that short sentences of 12 months or less do not work.[244] It should be remembered that a person with a sentence of 12 months or less would not usually spend more than 6 months on prison (unless they are recalled). If the use of HDC is to continue as proposed or even expanded (see below), then a person with a "three year sentence" could serve as little as six months in custody (with an automatic release date at 40 or 50%, preceded by up to a year on tag) and it is for this reason that the suggested presumption is set at three years, so short, disruptive and damaging periods in prison are avoided.

If prison terms of three years and under presumed to be served in the community, prison can be preserved for the most serious of offences and those who need to be detained for public safety: with less pressure on the prison estate, there should be greater scope to enable prison to be experienced in ways that mirror the purposes of sentencing and reduce the harm experienced that goes beyond the deprivation of liberty.

We recommend the creation of a presumption that all sentences of deprivation of liberty of three years or less should be served in the community unless there are exceptional circumstances. In such instances electronic tagging should only be used where necessary, or if a doorstop curfew without tagging does not work.

Greater and more flexible use of Home Detention Curfew (HDC)

Where custody cannot be avoided, a period in the community under HDC should be built into the sentence as the norm.

Until 2024, HDC was only available for a limited number of prisoners and certainly no more than a third of the prison population. It operates on a completely discretionary basis. Until June 2024, anyone serving four years or more was excluded, and people serving sentences for certain serious offences are excluded altogether and others are "presumed unsuitable" which means that HDC is still possible at the discretion of the governor on the basis of "exceptional" grounds, which are not clearly defined. Anyone being released on HDC will need their accommodation to be approved for that purpose and will not be released if they do not have approved accommodation. The HDC policy is set out in a policy framework document.[245]

Piecemeal changes have seen extensive expansion of the scheme:

- October 2002: It was extended from a maximum of 60 days to a maximum of 90 days.
- April 2003: It was extended to a maximum of 135 days.
- June 2023: It was extended to a maximum of 180 days.
- March 2024: a previous lifetime ban on eligibility for HDC for any prisoner who had previously been recalled to prison for a breach of their curfew conditions was replaced with a ban for those who have been recalled within two years of their current sentence.
- June 2024: people serving sentences of four years or more became eligible.

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[244] Mutebi, N., & Brown, R. (2023). *The use of short prison sentences in England and Wales* (POSTbrief 52). UK Parliament.

[245] Ministry of Justice. (2024). *Home Detention Curfew (HDC) Policy Framework*.

- December 2024: it was increased to a maximum 365 days (coming into force from 3 June 2025).[246]

HDC is an effective tool for easing the transition from custody to the community as well as managing existing and future prison population pressures. The aim of the scheme is to assist the transition from custody to the community and ease population pressures on the prison estate.

In 2021, we published '*Home Detention Curfew (HDC): expanding eligibility and improving efficiency*'.[247] At that time, when extensions to HDC were being considered, the Ministry of Justice identified the following benefits:

"Earlier resettlement will limit the harmful effects of custody and have a positive impact for offenders and their families...Reducing the prison population will contribute to improving the conditions for both offenders and staff and enable prisoners to feel safer, calmer and readier to engage in their rehabilitation."[248]

Since publishing the report several of its recommendations have been introduced, as outlined above.

However, additional restrictions have been introduced at the same time to increase the number of presumed exclusions for HDC by offence type. For example, from 6 June 2023 anyone serving a sentence of imprisonment for stalking, harassment, coercive control or non-fatal strangulation and suffocation offences is presumed unsuitable for HDC.

Entitlement to HDC should be based on a rounded assessment of the individual and their circumstances, and should not be excluded on account of a person's offence. Blanket policies of this kind are an imperfect guide to determining suitability for HDC, as they fail to take account of the dynamic nature of risk and a person's capacity to change.

By providing greater opportunities and incentives for prisoners to demonstrate the progress they have made during their sentence, the state validates its commitment to all the purposes of sentencing, not just punishment.

We recommend that HDC should be used more flexibly. Statutory exclusions and non-statutory presumptions should be removed or revised so that a broader set of considerations can be considered in determining eligibility for HDC.

If non-statutory presumptions are to remain in place, there should be much better guidance about how such decisions should be made to encourage consistency and the ability for anyone who can be safely released on HDC to be released.

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[246] King's Printer of Acts of Parliament. (2024). *The Home Detention Curfew and Requisite and Minimum Custodial Periods (Amendment) Order 2024.*

[247] Prison Reform Trust. (2022). *Home Detention Curfew: expanding eligibility and improving efficiency.*

[248] Ministry of Justice. (2019). *Extension of Home Detention Curfew period: Impact Assessment, The Criminal Justice Act 2003 (Early Release on Licence) Order 2019.*

Significant efforts should also be made to ensure that HDC operates fairly and in a way that does not compound discrimination by virtue of the fact that those with protected characteristics may be more likely struggle to provide suitable addresses. This may need to involve a statutory duty to ensure the provision of suitable long-term accommodation and support for people in prison eligible for HDC.

At present, for example, women with children, will need their accommodation to be subject to a range of additional checks which may mean they find it harder to secure approved accommodation for HDC than a single person.

Reforming HDC as suggested would expand the benefits of HDC to even more prisoners and improve rehabilitation and resettlement outcomes. This could be done relatively quickly, as most existing offence-based presumptions are written in policy guidance rather than legislation.

Reducing the average length custodial sentences and minimum terms

Deprivation of liberty should continue to be the highest form of punishment but a closed prison should be the highest form of that and only used where absolutely necessary.

Where a deprivation of liberty, including prison, is necessary for public safety, it should be for the shortest possible period. This is currently required by law in theory.[249] However, as Theme 1 shows, the expanded use of prison in the last 20 yeas suggests it has not happened in practice.

Sentence lengths and minimum terms have expanded exponentially because of increased starting points and minimum and maximum sentences. The only way to counter excessive sentence inflation is to reduce it significantly. The extent to of this reduction should be overseen by an independent panel (see Theme 2 and below).

Increased judicial independence and individualised sentencing

Sentencing should be an individualised process where it is not fixed by law. Statutory regimes that fix sentences at a certain type and level restrict the ability of the judiciary to sentence according to the needs and circumstances of individuals (Theme 2).

The use of mandatory minimum sentences has been the subject of intense scrutiny in the United States where it has been identified as a great contributor to sentence inflation.[250] It circumscribes judicial discretion at the outset and fails to enable individual needs of the defendant to be considered either at all or unless there are exceptional circumstances.

Recent cases involving mothers and babies have demonstrated just how important it is for judges to have the freedom to set the right sentence, taking into account all the

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[249] Saadi v United Kingdom ECtHR (Application no. 13229/03, para. 70)
[250] Nellis, A., PhD. (2024, February 15). *How mandatory minimums perpetuate mass incarceration and what to do about it*. The Sentencing Project.

factors to enable judicial discretion to act as intended.[251] Where sentences are prescribed by statute and involve "mandatory" minimums, it becomes particularly difficult to do this. Courts less likely to get sentences right first time where sentences are subject to presumptions that can only be rebutted in exceptional circumstances. Two recent cases illustrate that while pregnancy (and/or the impact on dependent children) is also capable of amounting to exceptional circumstances justifying departure from mandatory minimum sentencing provisions, this is not always factored in, sometimes with dire consequences.[252]

In light of this, there should be a review of all mandatory sentencing provisions, save for murder, which is the subject of a separate review. Where there is room for discretion in the interests of justice or exceptional circumstances, guidance should be issued to encourage greater flexibility to take account of individual needs and circumstances and prevent compounding discrimination.

Building on the theme of the benefits of individualised sentencing, it is arguable that there should be a new and clear statutory requirement to take into account the impact of a custodial sentence on a person when setting a custodial term. There is a strong case that both the "intended and unintended consequences of the penalty which the judge imposes are all part of 'sentencing' law and practice".[253]

There are many examples of instances where conditions in custody have been used to justify a shorter sentence. During the Covid-19 pandemic, and in light of the severe regime restrictions in prison designed to contain the spread of the virus a number of Court of Appeal decisions recognised that severity of conditions *may* be factored into sentencing.[254] However, caselaw is clear that any reduction remains discretionary.[255]

In the case of children, the "corrosive effect" of custody has been recognised as relevant to the length of any sentence to be imposed.[256] In cases that are on the cusp

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[251] For a good summary of the law on sentencing mothers, see Level Up (2023) *Legal Toolkit: Representing pregnant woman and mothers in the criminal justice system*.

[252] See Bassaragh [2024] EWCA Crim 20 in relation to firearms where the appellant did not know she was pregnant at the point of sentence and had to go through a high risk pregnancy in prison, and Charlton [2022] 2 Cr App R (S) 18 in relation to a third strike burglary who also did not know she was pregnant at the point of sentence, a factor which was taken into account subsequently by the Court of Appeal in substituting a prison sentence with a suspended sentence.

[253] Padfield, N. (2020). *Epilogue: Shaping the Future of Sentencing.*

[254] See for example, R v Manning 2020] 4 WLR 77, *Asghar* [2020] EWCA Crim 1796; *Edwards* [2021] EWCA Crim 485 , *Pritchard* [2020] EWCA Crim 1877; *Barron* [2021] EWCA Crim 234; *McDonald* [2021] EWCA Crim 272. and *Cooke* [2021] EWCA Crim 372.

[255] See *Howard* [2021] EWCA Crim 495.

[256] See R v Woodhouse [2020] EWCA Crim 970 and paragraph 6.49 of the Overarching Guideline on Children and Young People which states: "The welfare of the child or young person must be considered when imposing any sentence but is especially important when a custodial sentence is being considered. A custodial sentence could have a significant effect on the prospects and opportunities of the child or young person and a child or young person is likely to be more susceptible than an adult to the contaminating influences that can be expected within a custodial setting. There is a high reconviction rate for children and young people that have had custodial sentences and there have been many studies profiling the

of the custody threshold or where a custodial sentence is likely to be short, this may be a good reason not to pass one at all.[257]

In the case of children, Sentencing Council guidelines also advises sentences to have regard to the impact of custody on a child's prospects in the community, such as whether it will affect their entitlement to long-term leaving care support from children's social services (§1.17).[258]

There are also examples of cases where the conditions in custody are particularly harsh due to concerns around ill-health or a disability may justify a reduction in sentence, although the courts retain a discretion as to what weight such concerns are accorded.[259]

Given the growing cohorts of people who may find prison and the consequences of incarceration particularly damaging, combined with the woeful deterioration in conditions in prisons in recent years, there is a strong case for a statutory requirement for the court to consider, on an informed basis, the likely impact of custody on an individual.

Information on this should be included in pre-sentence reports. Pre-sentence reports should be required in all cases where custody is contemplated, rather than the current position which leaves it to the court's discretion.[260]

The development and implementation of any of these proposed changes should be overseen by an independent body (see Theme 2 and below).

Simplify the range of custodial sentences available

The sheer range of sentences available and the variations in how they operate is unsustainable and confusing (see Theme 2 and Appendix 1). There is a strong case for simplifying custodial sentences to ensure that they can be clearly understood for all concerned. Sentences should have a clear purpose and operate in a way that reflects their purpose, so that preventative phases are not experienced as overly punitive and appropriate resources are put in to enable release. Sentences that do not operate as intended, such as the IPP and arguably the EDS which have increased in number exponentially and do not appear to serve the intended purpose, should be reviewed (see below).

A review of sentence types should be overseen by an independent body (Theme 2 and below).

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effect on vulnerable children and young people, particularly the risk of self harm and suicide and so it is of utmost importance that custody is a last resort."

[257] See *Att.-Gen.'s Refs. No. 65 of 2012* [2012] EWCA Crim 3168; *McCann* [2020] EWCA Crim 1781

[258] Sentencing Council (2017) *Overarching Guideline on Children and Young People.*

[259] The case of Bernard [1997] 1 Cr App R (S) 135 sets out the principles to consider but also emphasises that the fact custody will be significantly harder will not automatically result in a reduced sentence.

[260] See Sentencing Act (2020), s30; see also Robinson, G. (2022). *Pre-Sentence reports.* Sentencing Academy.

Simplify automatic release and restrict executive interference

The history of automatic release is set out at Theme 1 above.

The rationale behind changes to automatic release points has varied in the space of just two years between increasing them extensively to enhance public confidence to reducing them extensively to ease pressure on the estate on the basis that there is little evidence of the impact on public confidence.

The increases to two-thirds for certain serious offences is justified as follows in the impact assessment to the Police, Crime, Sentencing and Courts Act 2022: [261]

"While there is limited evidence that longer custodial sentences reduce reoffending or have a deterrence effect on overall crime, ensuring that offenders spend longer in custody will protect the public for the additional time and may improve the public's confidence in the justice system." [262]

However, the same assessment conceded that the shorter period on licence could have the opposite effect:

"These offenders will still be subject to stringent licence conditions and will be liable to be recalled to prison for the remaining third of their sentence following release, though it is unknown whether a reduced licence period will have any impact on offender rehabilitation or likelihood to reoffend."

The decrease to 40% for a huge number of people on standard determinate sentences has been justified as a temporary measure to reduce the "ticking time bomb" of pressure on prison capacity.[263] In the accompanying impact assessment, the possible impact on public confidence was noted in passing and weighed against the lack of evidence of the "retribution effect":

"It is possible that the general public will feel less content that justice has been seen to be done (reduced retribution). It could be seen that some offenders are not serving their current sentence lengths and therefore there is reduced retribution for the crimes committed. However, evidence on this retribution effect is limited so it is difficult to draw robust conclusions on the size of this impact, or if it is indeed a cost to the general public."

Following the latest changes, the current array of automatic release arrangements are far too complex to be sustained. They are set out in detail in appendix 1. In summary, they include the following:

- Release at 40% for all standard determinate cases unless expressly excluded
- Release at 2/3rd point for certain standard long determinate sentences for sexual and violent offences, depending on the length of sentence and the age of the person when convicted
- Release at 50% for all other standard determinate sentences

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[261] Home Office. (2022) Changes to release and sentencing policy governing serious and dangerous offenders: Equalities Impact Assessment.

[262] Ministry of Justice. (2022) Police, Crime, Sentencing, Courts Act 2022: Changes to release policy for serious offenders, Impact Assessment.

[263] Ministry of Justice. (2024, July 12). Lord Chancellor sets out immediate action to defuse ticking prison 'time-bomb.' *GOV.UK*.

- Release at the end of the custodial term for those on extended determinate sentences if they have not been released on parole already

Given lack of evidence that longer custodial sentences reduce reoffending or have a deterrence effect on overall crime and the absence of any evidence that changing the release point has on the reduction of reoffending, public protection, or deterrence there is no justification for administrative changes in release dates of sentences that have been imposed by the courts in full awareness of the nature and gravity of the offence. In particular, increases in automatic release dates represent additional punishment that has not been subject to due process and is likely to foster feelings of helplessness, despair and grievance on those affected, undermining other stated purposes of sentencing.

The way in which sentences operate need to be simplified so there is greater consistency and certainty around release dates. All determinate sentences should have a clear and consistent automatic release date on licence, which cannot be amended upwards and should not be higher than the half-way point of the custodial term.[264] This could be made clear to defendants, victims and the wider public at the point of sentence to enable a greater sense of honesty and transparency in sentencing.

A review of how automatic release operates in determinate sentence cases should be overseen by an independent body (see Theme 2 and below).

There should also be a statutory prohibition on the executive extending automatic release dates after a person is sentenced, blocking Parole Board decisions or referring automatic release cases to the Parole Board. Once a person is sentenced, they should be entitled to know with certainty the latest point at which they might be released or considered for release and decisions about their liberty should be subject to judicial safeguards.

Reviewing the efficacy and operation of extended sentences

Extended determinate sentences (EDS) and their predecessor, Extended Sentences for Public Protection (EPP) comprise of a custodial term plus extended licence for individuals who have been deemed “dangerous” by the courts but no not meet the criteria for an indeterminate sentence.[265]

The original 2003 EPP sentence involved discretionary release at half-way point of custodial term and then automatic release at end of the custodial term. It was amended by the Criminal Justice and Immigration Act 2008 to make initial release automatic at the halfway point of the custodial term.

The Legal Aid Sentencing and Punishment of Offenders Act 2012 introduced the EDS – in its original form, it contained a two-tier release system:

[264] It is noted that SDS40 was introduced as an emergency measure and sets release at the 40% point for many standard determinate sentences. There may be a strong case for this to be considered as the universal release point in the future.

[265] See Theme 1 for a more detailed summary of the history and operation of extended sentences.

- Where there was a custodial period of less than 10 years, and the offence was not one listed in the Criminal Justice Act 2003 automatic release at two-thirds of the custodial term.
- Where the custodial period was 10 years or more; or the extended sentence was imposed for a Sch.15B offence, eligibility for release by the Parole Board after two-thirds of that term and automatic release at end of the custodial term.

The Criminal Justice and Courts Act 2015 removed the possibility of any automatic release before the end of the custodial term: All extended sentence prisoners ae now entitled to a Parole Board review at the two-thirds point of the custodial term with automatic release at the end of the custodial term.

In view of the exponential rise the in the number of EDSs, the sentence should be reviewed. A review should consider what purpose it is seeking to achieve, whether it is meeting its intended purpose and whether, in all the circumstances, there is a place for this sentence in the range of sentencing options available. At the very least, the release mechanisms for EDSs should be revised to bring it back to its original purpose which was to ensure that people on this sentence had a longer licence period.

Consideration should be given to the reverting to the 2008 position for its predecessor sentence (extended sentences for public protection) of automatic release at the half-way point of the custodial term which will always mean a longer licence period than with a standard determinate sentence and has the benefit of certainty and simplicity. Alternatively, a variation of the 2012 position where those serving less serious EDS sentences could be released automatically at the half-way point (in line with our recommendations on other standard determinate release mechanisms) and those serving longer custodial terms or for more serious offences could become eligible for parole at the half way point but automatically released at the two-thirds point, ensuring the principle of extended supervision.

Review the operation of recall and post sentence supervision

Recall

Following release from prison prior to the end date of the sentence, current sentencing practice requires individuals to be on licence in the community by the probation service for the remainder of their sentence. This is a relatively recent development: as noted in Theme 1, there was a time when recall following release as not an option. During that time the threat of recall back to custody — potentially for the remainder of their sentence — hangs over them should they fail to comply with their licence conditions.

"The aim of a period 'on licence' is to protect the public, to prevent you from re-offending, and to help you settle back into the community. The licence conditions are not a form of punishment, so they must be fair and necessary. Excessive licence periods can often leave a person feeling that they are being held back. It can prevent people from applying for work — as along with the stigma of being an ex-offender — the licence conditions themselves can act as a barrier."

Building Futures Network member

As noted in Theme 1, far too many people in prison are there because they have been recalled for non-compliance or criminal allegations that would not otherwise meet the threshold for remand. As of March 2024, around 15% of people in prison were there because they had been recalled.

The increased length of custodial sentences and the creation of new release points along with extended periods of licence and supervision, are trapping more people within the orbit of probation for longer and risk undermining efforts to enable people to move on with their lives:

"As sentences have grown longer, so has the number of people being supervised by the probation service. Nearly 60% of the service's caseload are people being prepared for release or being managed in the community. This has been a seismic shift of focus. As a result, there is a danger the probation service becomes focused on supervision and ensuring compliance with rules rather than seeking to turn lives around. It would be reasonable to consider pruning that caseload. Until 2014, those serving less than twelve months in custody were not supervised by the probation service at all, nor could they be recalled to custody."

Martin Jones, HM Chief Inspector of Probation[266]

Our Building Futures programme has been considering the experiences of release and resettlement for long-sentenced prisoners. While this work is still ongoing, some of its preliminary findings are relevant to the sentencing review.[267] Despite the challenges of resettling back into the community following a long period in custody, the disruptive nature of imprisonment means that many of these emerging findings will also be of relevance to those serving shorter sentences.

Prisoners described feeling like they were "under probation's thumb", viewed only with suspicion. For those people, probation offered no support or assistance in reintegration or facilitated moving on. Almost every participant said they felt under supported by organisations and by the criminal justice system when making the transition to the community. Those fortunate to return to family and loved ones — or be assisted by them — described them as a saving grace or the only ones who really cared.

"Probation has moved away from the old social worker model and it can now feel for some that they are just ticking a box. A lot of people talk about asking for help from their probation officer, only to be told it's not their job. They feel stuck as they have to get permission from probation to do anything."

Building Futures Network member

For those who had been released from prison five years ago or more, attending probation felt like a constant reminder of the worst thing they had ever done. It felt like the clearest indication that they were not free, and they wanted to apply for supervision to be suspended. Even if participants had a "good" probation officer, almost everyone said they would not feel comfortable speaking about the challenges they faced in the community for fear it could be misconstrued as risky and lead to their recall.

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[266] Jones, M. (2024, October 30). *A statement from HM Chief Inspector of Probation, on the launch of an independent review of sentencing*. HM Inspectorate of Probation.

[267] Ailie Rennie for Building Futures, forthcoming

The probation service continues to recover from the Transforming Rehabilitation debacle; its subsequent reunification; the staffing challenges and increased pressure on caseloads. The Probation Reset, introduced this year to alleviate probation workload pressures, has reduced active contact between probation staff and those on licence during the final third of the licence period, unless a person meets defined exemption criteria.[268]

Short, fixed term recalls of 28 days or less should be abolished for the same reasons that short prison sentences should no longer be used (see above). They cause immense pressure on the prison estate and serve no purpose.

Standard recalls should be reviewed completely with a completely open mind, bearing in mind that there was a time when they did not exist at all and until 2014, recall was not an option for short sentences. As with so many recent changes, Probation Reset was introduced because of operational overwhelm, rather than a conscious desire for reform. However, it presents an opportunity to rethink the necessity and purpose of supervision on licence.

If recall is to remain an option, there should be at the very least a judicial filter whereby the recall must be brought before a Magistrate who can confirm suitability for recall, if necessary, requesting additional relevant information to form a view. The person would still be entitled to a full Parole Board review if the recall proceeds but such a judicial filter may provide a check and balance on what can otherwise be a seriously long deprivation of liberty which is triggered by administrative action. This course of action was proposed in a report published by JUSTICE in 2022.[269] This is not an especially radical or new idea. Recall decisions have only been administrative and initiated by the Probation Service since the introduction Crime and Disorder Act 1998.[270] In Scotland the Parole Board will take decisions about recall in some cases, and in Northern Ireland all cases — unless it is not in the public interest to await a decision.[271]

Post sentence supervision

Post sentence supervision was introduced to ensure that short term prisoners serving under 2 years would have at least a year of community supervision by the Offender Rehabilitation Act 2014 (ORA). Previously they would have received no statutory supervision or support from the Probation Service.

Since its introduction, the number of people recalled back to custody has increased significantly — particularly amongst women. More than 14,000 people serving a sentence of less than 12 months were recalled to prison in the year to June 2024 under the ORA measures — a rise of over 42% in just one year. In the most recent

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[268] Ministry of Justice. (2024). *Offender management statistics quarterly: January to March 2024*. and HM Prison and Probation Service. (2024). *Probation Reset* [Slide pack].

[269] JUSTICE. (2022). *A Parole System fit for Purpose*.

[270] Ministry of Justice (2023). *Recall, review and re-release of recalled prisoners policy framework*.

[271] Prisoners and Criminal Proceedings (Scotland) Act 1993. s17. and The Criminal Justice (Northern Ireland) Order 2008. s28.

quarter — April to June 2024 — the number of these ORA recalls surpassed that of non-ORA recalls for the first time.[272]

There usually is more than one reason for recalling a person on licence, but the vast majority are for non-compliance, rather than suspected further offending. Of all ORA recalls in the year to June 2024, less than a quarter involved a charge of further offending (22%), nearly four in five involved non-compliance (79%), nearly half involved failure to keep in touch (49%), and over a quarter involved failure to reside (26%).[273]

It is essential to situate the ideal of this in the current context of a probation system that is on its knees. It cannot even commit to supervising all those still serving their licence period of their sentence, as demonstrated by Probation Reset which removes supervision for the last third of the licence period in less serious cases.

In this context, the ongoing use of post sentence supervision cannot be justified. It adds nothing other than liability to being returned to prison for a breach.

Replacing or complementing liability to recall with bespoke and long-term support on release from prison

As noted above, many people are recalled to prison because they do not have enough support in the community when they leave prison. We agree with the assessment of Kelly Grehan, Policy Manager at Revolving Doors, who spent 20 years working as a probation officer:

"Disengagement, especially in the context of situations such as loss of housing, points to the need for extra support, not punishment. We must face the fact that people leaving prison require this support."[274]

The primary duty of probation services should be to protect the public by enabling people to live crime-free lives in the community, helping them to find practical solutions to the challenges they face after leaving custody.

However, we are concerned that a lack of confidence amongst an overstretched and less experienced workforce is undermining the critical role between probation staff and those they supervise.

We recommend creating a new statutory duty on public bodies to support prison leavers to settle into the community through the provision of bespoke key long-term services. This will be essential if reforms to prison sentences are to work and not further compound discrimination for those who will otherwise struggle to settle into the community successfully on account of their protected characteristics.

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[272] Table 5.Q.2, Ministry of Justice (2024). *Offender management statistics quarterly: April to June 2024*. and Table 5.2, Ministry of Justice (2023). *Offender management statistics quarterly: April to June 2023.*

[273] Table 5.Q.2 and 5.Q.10, Ministry of Justice (2024). *Offender management statistics quarterly: April to June 2024.*

[274] Grehan, K. (2024, April 26). Recalls in crisis: What needs to change? *Revolving Doors*.

Independent oversight of custodial sentences and their impact

The case for an independent body to oversee sentencing and its impact is made in Theme 2, and this should oversee any changes to custodial sentences as its top priority.

Theme 6: Progression of custodial sentences

Our recommendations

- Sentence planning processes and procedures should be reviewed to ensure that the operation of custodial sentences match their intended purpose. For those who do need to be detained, they should be given the necessary opportunities and empowered to use their time purposefully towards safe release.
- Establish a separate inquiry to understand how risk-based decision-making affects progression and release.
- Better use should be made of open prisons, making them easier to get to and ensuring that, once in open conditions, prisoners, including those with protected characteristics, are appropriately supported and able to progress effectively through their sentence towards safe release.
- Release on temporary licence should be used more extensively, including its use for prisoners held in closed conditions, to enable sentences to better fulfil the aim of rehabilitation.
- The burden should fall to the state to justify continued detention once the punitive phase or minimum term of an indeterminate sentence has been completed.
- The High Court's power of review should be extended to enable a reduction in the minimum term at the halfway point in indeterminate sentences with minimum terms of ten years or more for exceptional progress to incentivise positive behaviour.
- Any discretionary incentivised scheme should be in addition to a coherent and consistent early automatic release scheme for determinate sentence prisoners and the use of home detention curfew.

Progression through a sentence from custody to community

Progression refers to the processes that enable people in prison to move through the system towards release. This includes participating in formal programmes and interventions designed to reduce their risk levels as well as spending time in different prison spaces, including lower security conditions.

In this section we examine the established routes of progression and highlight some of the hurdles that people currently experience when trying to progress through their sentence.

The importance of progression and sentence planning

Throughout the Building Futures programme, we have consulted with hundreds of long-term prisoners. Many have noted that they spend years — and sometimes

decades — of 'nothing time' where they feel stagnant and stuck in the system, unable to engage in meaningful activities or development opportunities.[275]

"There is always someone who is a higher priority than you that needs the space [on an intervention] leaving the initial (huge) bulk of your sentence with nothing productive to do."

(Man serving an extended determinate sentence, HMP Rye Hill)

This lack of structure and purposeful activity exacerbates feelings of frustration and despair. Furthermore, prisoners report frustration with the perceived 'moving of the goalposts', where criteria for progression appear inconsistent or ever-changing, undermining trust in the system and their motivation to engage constructively.[276]

"Progress? Which part? Serving a life sentence longer than I have lived—is that normal? It felt as if the prison estate did not even know what to do with us. The reality is lifers at the beginning of our sentences were just warehoused like livestock…sadly many lifers, myself included, saw progression as somewhat of a myth."

(Man serving a life sentence, HMP Coldingley)

One Building Futures Network member, who is currently serving a life sentence in the community after spending more than 30 years in prison, explained that effective planning for progression, and the ability to demonstrate trust during a sentence provides a win-win outcome for the public, and for prisoners:

"The goal of wanting to return a prisoner to the community at the earliest stage gets buy-in from the offender. A sentence plan which is incentivised with achievable goals and targets creates hope and will focus most prisoners' minds. We need to get prisoners who are not at risk of absconding into open prisons much earlier than the current three-year mark. The earlier prisoners can get to open conditions and get into the workforce on release on temporary licence or education, the more likely they are to desist from offending."

Through our consultation work, many prisoners reported feeling confused by what is being asked of them, uncertain about how they were meant to progress or use their time positively and productively.[277] This applied not only to those whose release was conditional, but those serving sentences with a certain release date too. Yet for those serving long and indeterminate sentences, their route to freedom is determined by sentence progression, and so holds particular concern for them.[278]

When access to progression is lacking, hope for the future can quickly dissipate. Unless this void is offset with other opportunities for work and purposeful activities, then prisoners will use their initiative to create them — not always to the benefit of the wider prison community.

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[275] Jarman, B. & Vince, C. (2022). *Making progress? What progression means for people serving the longest sentences*. Prison Reform Trust.

[276] Ibid.

[277] Ibid.

[278] Ibid. and Prison Reform Trust. (2024). Invisible Women: Understanding women's experiences of long term imprisonment, Briefing 3: Progression.

Years spent without hope, opportunity or a plan to work toward release clearly undermine other purposes of sentencing, including reform and rehabilitation; the reduction of crime; the protection of the public; and the making of reparations. Added to this, lack of clarify around risk assessment and how that affects meaningful progress towards release causes frustration for many prisoners (see Appendix 2). We recommend a separate inquiry to understand how risk-based decision-making affects progression and release.

Sentence planning: the aspiration, and the reality

Prison service guidance already outlines the steps that should be taken to ensure sentenced prisoners have a sentence plan.[279] However, the worsening conditions in prison and lack of resources mean that they are often not prepared in a timely way, updated regularly or indeed implemented. There is a mismatch between what guidance says should happen, and the reality.

Offender Management in Custody (OMiC) was introduced in 2018 with the intention that:

"Every prisoner should have the opportunity to transform their lives by using their time in custody constructively to reduce their risk of harm and reoffending; to plan their resettlement; and to improve their prospects of becoming a safe, law-abiding and valuable member of society."[280]

Many respondents to Building Futures consultations have spoken positively about the keyworker scheme — which forms one element of OMiC. This was frequently built on a solid foundation of regular contact with the same supportive keyworker.

Respondents also recommended that officers on the wings, whom they saw and interacted with daily, should be more directly involved in recording information relevant to progression as they are most likely to notice positive changes in behaviour — rather than Prison Offender Managers (POMs) and Community Offender Managers (COMs) where relationships were distant and remote.[281]

For those who were less positive, they often reported rarely seeing their keyworker, or their keyworker changing too regularly for them to establish a constructive relationship.[282]

"I've been here since 2017 and I've now had 11 caseworkers. I don't even like meeting them now because I know they won't be here the next time I see them. It's retraumatising meeting with new caseworkers. Every time I have to relive what happened and it triggers me.

(Woman serving a life sentence, HMP Send)

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[279] See Ministry of Justice. (2018). *Manage the Custodial Sentence Policy Framework.* and Ministry of Justice.(2015). *Sentence planning: PSI 19/2014, PI 13/2014.*

[280] Ministry of Justice. (2018). *Manage the Custodial Sentence Policy Framework.*

[281] Jarman, B. & Vince, C. (2022). *Making progress? What progression means for people serving the longest sentences.* Prison Reform Trust.

[282] Prison Reform Trust. (2024). Invisible Women: Understanding women's experiences of long term imprisonment, Briefing 3: Progression.

Whilst the intentions of OMiC are sound, roll-out was disrupted by the Covid-19 pandemic and has continued to be complicated by staff shortages and the prison capacity crisis.[283] For OMiC to have real impact, staff must have the resources, time and support to deliver its ambitions. We recommend that OMiC should be reviewed as part of a move towards active and well-resourced sentence planning for a smaller number of prisoners based on earliest safe release.

Sentence planning: what needs to change

Sentence planning processes and procedures should be reviewed to ensure that the operation of custodial sentences match their intended purpose. For those who do need to be detained, they should be given the necessary opportunities and empowered to use their time purposefully towards safe release.

For anyone serving a sentence that includes an element of preventative detention, everything possible should be done to secure safe release at the earliest opportunity. This includes making sure that the person affected understands exactly how their sentence operates; what they need to do to progress; and when the key points for review, progression and release are.

In the past, legal aid was available to support prisoners though sentence planning, but this was abolished as part of reforms to legal aid in 2013.[284] Legal accountability has had a considerable impact on improving prisoner welfare, and access to legal advice and assistance can act as a safeguard against frustrations and abuses of power by the state. This is especially important when considering the role of incentivisation and progression towards release. We recommend that legal aid should be restored.

Sentence plans should be better structured, with assessments of need and risk made at an early stage, and progress reviewed at least twice a year (and more often if required). If people need it, they should also have access to independent advocacy support.

The Care Programme Approach in mental health settings, provides a helpful model, and could be mirrored within prisons.[285] These are multidisciplinary meetings which bring together those directly and indirectly involved in the care of the patient and take place every six months.

The patient is fully involved and can be legally represented or supported by an independent advocate. The meetings provide an opportunity to regularly reflect on the patient's journey to recovery and discharge, and important upcoming stages such as the possibility of application to the Mental Health Tribunal.

For prisoners who are struck and at an impasse, a system like Care (Education) and Treatment Reviews should be considered. These are used by the NHS for people with autism and learning disability who are detained in mental health hospitals. The reviews aim to ensure that patients do not become stuck in the system. They involve

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[283] HM Inspectorate of Probation. (2022, November 2). *Offender Management in Custody model 'simply not working'.*

[284] For a summary of the changes to legal aid provision for people in prison see The Howard League v SSJ and our response to the original proposals to cut legal aid for people in prison.

[285] NHS England. (2022). *Care Programme Approach: NHS England position statement.*

a comprehensive review of the person's care, including independent scrutiny and an expert by experience.[286]

As we highlight in our evidence in Theme 1, women face distinct difficulties, including their mental and physical health; contact with family and children; and concerns around fertility. Therefore, sentencing planning for women requires particular care, thought and attention to ensure that their particular needs are met in preparation for safe release. At HMP Bronzefield women highlighted the importance of having opportunities to plan for the future, and to give back as a way of progressing through their sentences.[287] One woman talked about helping to develop a creative therapy group, to instil pride through painting, poetry, music, and other creative outlets. Several women suggested that opportunities to share guidance and advice with people entering custody on a long sentence would be beneficial, noting that this type of peer support is lacking.

Let us do something purposeful so we can pay our way in society rather than society paying for us. (Woman serving a life sentence, HMP Bronzefield).

Provision and efficacy of offending behaviour programmes

Offending behaviour programmes (OBPs) are structured interventions that target factors with a statistically significant relationship to reoffending. They aim to give people strong internal risk management skills, so that external controls can be relaxed. This is achieved by focusing on the development of psychological skills, such as insight into offending; self-control; managing emotions; problem solving; and relationship skills.

The international evidence base underpinning programmes is strong, and programmes which adhere to established design principles have been found to produce significant reductions in reoffending,[288] including some British OBPs.[289,290] Large meta-analyses have estimated a reduction in reoffending of 10–12% on average for those who complete a programme, versus equivalent clinically suitable individuals who do not. For comparison, this has been described by academics as larger than the effect size of aspirin on heart attacks, a conventionally accepted treatment.[291]

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[286] NHS England. (n.d.). *Care (Education) and Treatment Reviews.*

[287] Vince, C. and Evison, E. (2022). *Invisible Women: Hope, health, and staff-prisoner relationships.* Prison Reform Trust.

[288] Andrews, D., Zinger, I., Hoge, R., Bonta, J., Gendreau, P., & Cullen, F. (1990). Does correctional treatment work? A clinically relevant and psychologically informed meta-analysis. Criminology, 28(3), 369-404.

[289] Friendship, C., Blud, L., Erikson, M., Travers, R., & Thornton, D. (2003). Cognitive-behavioural treatment for imprisoned offenders: An evaluation of HM prison service's cognitive skills programmes. *Legal and Criminological Psychology, 8*(1), 103-114.

[290] Wakeling, H., Beech, A. R., & Freemantle, N. (2013). Investigating treatment change and its relationship to recidivism in a sample of 3773 sex offenders in the UK. *Psychology, Crime & Law, 19*(3), 233-252.

[291] For a detailed discussion of the 20th century international evidence base and development of British offending behaviour programmes see Hollin, C. R., & Palmer, E. J. (2006). Offending Behaviour Programmes: History and Development. In *Offending Behaviour Programmes: Development, Application, and Controversies* (pp. 1–32). Wiley

Because they directly target empirically derived risk factors, OBPs are an attractive option for sentence planners. Their roots in a robust evidence base also give them credibility with risk decision-makers. This means that many long serving prisoners will have OBPs placed on their sentence plans. Their progression then becomes dependent on completing them, as well as being judged to have reduced their risk by doing so.[292]

Despite some recent controversies with the findings of the evaluations of two particular OBPs — the Sex Offender Treatment Programme (SOTP)[293] and RESOLVE[294] (a programme addressing violence risk factors) — OBPs continue to form a core part of progression, particularly for those serving long sentences.

In our consultation with prisoners, most respondents believed that completion of OBP objectives in the sentence plan was a necessary — but insufficient — factor in their progression. Whilst no other forms of personal development — however positive — appeared likely to be recognised as reducing the risk of reconviction or serious harm:

"As for what has allowed my progression through my sentence it has been my undertaking of offender behaviour programmes. This is when my progression officially started on paper I guess — because good behaviour and maturity are not enough."

(Man serving a life sentence, HMP The Mount)

However, there is too much focus on the completion of accredited courses and interventions or Offending Behaviour Programmes (OBPs), which as we explore in the following section are often in short supply and, in some instances, have been found wanting on evaluation.[295] It is now acknowledged that developing protective factors such as employability, creativity and healthy pro-social interests and relationships, can be key to desistence.[296] However, prison often restricts, rather than enhances, an individual's opportunities to develop these.

Access to offending behaviour programmes

Despite their importance in demonstrating positive engagement and sentence progression, once again it is the availability of places and how they are allocated which ultimately determines a prisoner's experience of their sentence.

Difficulties and delays in accessing places on OBPs were frequently raised in our consultation with prisoners. Respondents said shorter-sentenced prisoners were

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[292] Jarman, B., & Vince, C. (2022). *Making progress? What progression means for people serving the longest sentences*. Prison Reform Trust.

[293] Mews, A., Di Bella, L., & Purver, M. (2017). *Impact evaluation of the prison-based Core Sex Offender Treatment Programme*. Ministry of Justice.

[294] Robinson, C., Sorbie, A., Huber, J., Teasdale, J., Scott, K., Purver, M., & Elliott, I. (2021). *Reoffending impact evaluation of the prison-based RESOLVE offending behaviour programme*.

[295] See, for example, the widely publicised concerns about the now discontinued Sex Offender Treatment Programme.
Mews, A., Di Bella, L., & Purver, M. (2017). *Impact evaluation of the prison-based Core Sex Offender Treatment Programme*. Ministry of Justice.

[296] HM Inspectorate of Probation. (n.d.). *Desistance – general practice principles*.

offered priority access to available opportunities, whereas the prison appeared to expect longer-sentenced prisoners to wait:

"The only people who seem to progress through the system are determinate sentenced prisoners who have a couple of years left. Most of these don't really want to move [to a prison delivering the OBP] or need to [to show reduced risk]."

(Man serving a sentence of Imprisonment for Public Protection, HMP Garth)

"I have tried to access offender behaviour programmes in the various prisons I have been to and have been told I still have too long left to serve. You're at the bottom of the list. I have also had the same problems with access to higher education. I have too long to serve or I can't get funding. Both programmes and education are on my sentence plan so this is a huge frustration for me."

(Man serving a life sentence, HMP Rye Hill)

Whilst this is understandable from the perspective of resource allocation, it does little to incentivise prisoners who may have to wait years before they are given the opportunity to demonstrate that they are engaging positively with their sentence, and working to reduce their level of risk.

Rather than sentence progression being incentivised by the prison service, the current system acts as a brake on an individual's progress. This means that prisoners experience sentence progression at a speed dictated to them by official provision, rather than at a rate dictated by their changing risks of reconviction or serious harm, or commensurate with their own sense of personal progress or achievement.

Lessons from offending behaviour programmes

OBPs were not originally developed as part of a regime of indefinite sentencing and uncertain release dates, and there have been unintended consequences of tying them so closely securing freedom, which undermines the benefits they offer.

While incentivised progression may be intuitively appealing in securing behavioural compliance, it underestimates the psychological vulnerability required to engage in programmes. Talking about your past, your emotions, and your offending behaviour is different to, for example, banging up on time, going to work, or training in a skill.

A cornerstone of therapeutic practice is that client engagement *must* be voluntary and consensual because of its invasive nature,[297] which is complicated by coercive nature of imprisonment.[298] Tying OBPs to securing freedom on an indefinite sentence creates fertile ground for coercion despite the best efforts of staff. Equally importantly, it encourages prisoners to learn the "right" ways to get through a programme, and discourages honesty, both of which undermine the processes of genuine psychological change.[299] Prisoners told us they *wanted* the support and

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[297] Allan, A. (2017). A principled approach to ethical issues for psychologists in prisons and secure settings. In *Routledge eBooks* (pp. 269–282).

[298] Day, A., Tucker, K., & Howells, K. (2004). Coerced offender rehabilitation – a defensible practice? *Psychology Crime and Law*, *10*(3), 259–269.

[299] Warr, J. (2019). 'Always gotta be two mans': Lifers, risk, rehabilitation, and narrative labour. *Punishment & Society*, *22*(1), 28–47.

development programmes could offer, but struggled to deal with the pressure that came with tying them to parole success.

In preparation for a forthcoming report on offending behaviour programmes, PRT conducted a consultation with 101 indefinitely sentenced prisoners about their OBP experiences and proposed improvements. Prisoners told us that five things matter most to them if they must complete an OBP to progress — timing; choice; certainty; accountability and staff.

- They wanted the flexibility to take up a programme place when they were ready, and to have regular access to support during their sentence.
- They understood that indefinite sentences created coercive conditions beyond the control of staff, but *within* that framework they wanted more choice and involvement in assessment; decision-making; intervention format and keyworkers.
- They also understood that sentence plans may have to change due to new information, but they wanted good quality assessment early, to give as much certainty as possible to their sentence plan and reduce the likelihood of "moving the goalposts".
- Given the high stakes of the programmes on determining their liberty, prisoners wanted increased accountability and transparency about programme processes and effectiveness, as well as independent routes of appeal and means of seeking a second opinion.
- Lastly, many prisoners spoke positively of OBP staff as the hinge upon which programmes experience could turn. Good relationships could mitigate the strain of OBPs on indefinite sentences. But equally well this meant that poor staff could alienate people from programmes. People therefore wanted well-trained and experienced staff, and we have suggested that prisoners could be involved in recruitment.

The use of open prisons and increased use of release on temporary licence

The rehabilitative benefits of open conditions — and particularly release on temporary licence (ROTL) — should be available to as many people as reasonably possible. Writing in his 2023–24 annual report, HM Chief Inspector of Prisons Charlie Taylor reported that open prisons play "a vital role in preparing men and women for release", and that they "generally had the best outcomes of all prison categories, with an increased focus on rehabilitation".[300]

Better use of open conditions should be made: it should be easier to access, provide appropriate support for people, including those with protected characteristics, who are placed there.

[300] HM Inspectorate of Prisons. (2024). *HM Chief Inspector of Prisons for England and Wales, Annual Report 2023–24*. https://hmiprisons.justiceinspectorates.gov.uk/hmipris_reports/annual-report/

The benefits of open prison conditions

Evidence from Norway,[301] Finland,[302] Australia[303] and Scotland[304] shows that release from open conditions is associated with reduced levels of reoffending compared to release from closed prisons. Furthermore, evidence suggests that this effect is not simply a reflection of the population who are sent to open prisons.

In one Italian study[305] prisoners were allocated at random to closed and open conditions. It found that one year spent in an open prison was associated with a 10% decrease in recidivism over a three-year period — comparable to the impact associated with offending behaviour programmes.[306]

In England and Wales, the most promising evidence we have is an analysis of quality of life in prisons, which found that open prisons had the highest quality of life scores, and in turn high scores were associated with reduced reoffending.[307]

There is also evidence for how open prisons achieve these benefits. Their environment can foster key ingredients known to facilitate desistance, including increased hope, agency, coping mechanisms, and family ties.[308] A German study found that prisoners released from open prisons had better quality release circumstances than those from closed prisons, suggesting the former can better assist with release preparation.[309]

The superior ability of open prisons to prepare people for release is underscored by a detailed study of HMP Warren Hill, a flagship closed prison in England and Wales: Researchers described it looking like everything we know about 'better prisons' and

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[301] Graunbøl, H., Kielstrup, B., Muiluvuori, M., Tyni, S., Baldursson, E., Gudmundsdottir, H., Kristofferson, R., Krantz, L. & Lindsten, K. (2010). Return: A Nordic relapse study among correctional clients.

[302] Ibid.

[303] Botello, C. (2017). *Women's imprisonment and recidivism: An illustrative analysis of Boronia Women's Pre-Release Centre (Western Australia) and progressive/open prison systems in Norway and Sweden.* Unpublished masters thesis. University of Western Australia.

[304] Hancock, P. G., & Raeside, R. (2009). Modelling factors central to recidivism. *The Prison Journal*, *89*(1), 99–118.

[305] Mastrobuoni, G., & Terlizzese, D. (2022). Leave the door open? Prison conditions and recidivism. *American Economic Journal Applied Economics*, *14*(4), 200–233.

[306] Lösel, F. (1995). The efficacy of correctional treatment: A review and synthesis of meta-evaluations. In J. McGuire (Ed.) What works: Reducing reoffending – Guidelines from research and practice *(pp. 79-111)*. John Wiley & Sons.

[307] Auty, K. M., & Liebling, A. (2019). Exploring the Relationship between Prison Social Climate and Reoffending*. *Justice Quarterly*, *37*(2), 358–381.

[308] Marder, I., Lapouge, M., Garrihy, J. & Brandon, A. (2021). Empirical research on the impact and experience of open prisons: State of the field and future directions. *The Prison Service Journal, 217*, 3-9.

[309] Schüttler, H., & Hahnemann, A. (2022). Der Einfluss der Unterbringung im offenen Vollzug auf die Entlassungssituation unter Berücksichtigung statischer und dynamischer Risikofaktoren. *Monatsschrift Für Kriminologie Und Strafrechtsreform*, *105*(4), 275–292.

explicitly designed to assist with release preparation, but found that prisoners released from there still struggled greatly to transition back into the community.[310]

Inspectors have also found additional benefits from being held within open prison conditions. During their inspection of two women's open prisons in 2023–24, they found that "women were much less likely to self-harm, even when they had a history of doing so…[and] women cited the space, freedom, support from staff and peers, and progression opportunities as protective factors".

However, recent policy changes outlined below and the pressure on prison places have both undermined the essential role that open prisons play in preparing people to reintegrate back into their communities.

Eligibility for open conditions

The policy on open conditions has changed considerably in recent years, but for most of the last 20 years, it has recognised and reflected the rehabilitative benefits of open conditions and that those serving indeterminate sentences should generally expect to progress to them where this can be done safely.

For fixed term prisoners, a move to open conditions is a matter for the secretary of state and the prison service alone. For indeterminate prisoners, the usual process is for the secretary of state to seek advice from the Parole Board, after which they will decide whether to approve any recommendations.

Prior to 2022, secretary of state directions to the Parole Board began with the recognition that "a period in open conditions can in certain circumstances be beneficial for those indeterminate sentence prisoners (ISPs) who are eligible to be considered for such a transfer".

However, a new — more restrictive — suitability test for open conditions was introduced in June 2022 for people serving indeterminate sentences by former justice secretary Dominic Raab. The new test was part of a package of changes to the system with the aim of "keeping dangerous criminals off the streets".[311] This is a sadly yet another example of policy being created in response to individual cases, as we have explored in Theme 2.[312]

Despite being relatively short-lived — the changes were largely scrapped in July 2023 by his successor Alex Chalk — they created a profound shift in who was deemed appropriate for open conditions. The introduction of criteria that a move to open conditions should be "considered essential", and that a move should not undermine public confidence in the criminal justice system led to a dramatic decrease in the number of prisoners being transferred to open conditions.

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[310] Liebling, A., Laws, B., Lieber, E., Auty, K., Schmidt, B. E., Crewe, B., Gardom, J., Kant, D., & Morey, M. (2019). Are hope and possibility achievable in prison? *The Howard Journal of Crime and Justice*, *58*(1), 104–126.

[311] Ministry of Justice. (2022, March 30). Parole reform to keep dangerous prisoners off streets. *GOV.UK*.

[312] Sky News. (2022, March 30). *Raab to unveil crackdown on dangerous criminals with parole board reform.*

In the first quarter of 2022, 91% of Parole Board recommendations for a transfer to open conditions were accepted by the Ministry of Justice. In the first quarter of 2023, just 16% of Parole Board recommendations were accepted.[313]

The number of accepted recommendations has increased since then — but very slowly — and they have not returned to their previous level. Since August 2024, almost two-thirds have been approved.[314] Whilst the majority of the reforms were reversed by Alex Chalk, the current policy remains more restrictive than the pre-2022 policy and requires there to be a "wholly persuasive case" for open conditions — a term which remains undefined and overly subjective.[315]

In response to the space in open conditions freed up by this new policy and the on-going capacity crisis, in 2023, HMPPS began to move a large number of fixed term prisoners to open conditions administratively. The Temporary Presumptive Recategorisation Scheme (TPRS) was described as "an urgent measure designed to facilitate the presumptive recategorisation of prisoners from category C to category D to make the best use of the prison estate".[316]

However, an influx of short-term prisoners to open conditions created significant challenges, as illustrated by the HMIP report on Kirkham in December 2024. The report found that as a result, the prison was "no longer fulfilling its core purpose" and had received "too many short-staying prisoners who were unprepared for open conditions and did not qualify for release on temporary licence (ROTL)". [317]

Following consultation with prisoners serving indeterminate sentences and long determinate sentences, many have reported difficulties in accessing open prisons because of unclear or shifting criteria. The absence of transparency in decision making about who can go to an open prison — and when — fosters confusion and frustration, particularly for those who have already completed work to reduce their level of risk. Some assessments are perceived by prisoners as overly cautious. This means they are held in higher security settings, despite appearing to meet the requirements for progression to an open prison.[318]

When inspectors visited the women's open prison HMP Askham Grange, they found that it was "only at 73% of its capacity, even though there were plenty of suitably assessed women in the closed estate".[319]

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[313] Prison Reform Trust. (2023, August 3). *Alex Chalk reverses Dominic Raab's damaging changes to open conditions transfers*.

[314] House of Commons written question 17260, 5 December 2024.

[315] HM Prison and Probation Service (2023) Secretary of State's Directions to the Parole Board 1 August 2023

[316] HM Prison and Probation Service. (n.d.). *Temporary Presumptive Recategorisation Scheme (TPRS): TPRS Op Guidance V 2.0*. Inside Time.

[317] HM Inspectorate of Prisons. (2024). *Report on an unannounced inspection of HMP Kirkham*.

[318] Jarman, B., & Vince, C. (2022). *Making progress? What progression means for people serving the longest sentences*. Prison Reform Trust.

[319] HM Inspectorate of Prisons. (2024). *HM Chief Inspector of Prisons for England and Wales, Annual Report 2023–24*.

TPRS highlights the impact that resourcing challenges have on the effective delivery of the purposes of sentencing beyond punishment. We would be extremely concerned at any move to make TPRS more permanent or extend its use, given the very different needs of short-term and long-term prisoners in securing their release.

The open estate plays a valuable role in acting as an intermediate step between prison and release to the community. However this role has been undermined by TPRS, and the placement of people wholly unsuited to benefit from the opportunities that open conditions provide. It is vital that this core function is restored to enable prisoners who need to demonstrate their readiness for release to effectively progress through their sentence.

In the case of indeterminate prisoners, the secretary of state has a discretion to progress those who are suitable without awaiting a Parole Board review and should make better use of this power.[320]

Where the secretary of state is unable or unwilling to progress a person to open conditions without a parole review, the test for transfer should be centred on the aim to release people at the earliest possible point in the preventative phase. We recommend that the test applied by the secretary of state should match the current test applied by the Parole Board which focuses on the risk of abscond and suitability for open conditions in terms of risk: the requirement for a wholly persuasive case should be removed. Consideration should also be given to making the decisions of the Parole Board on transfers to open conditions binding, on the understanding that the secretary of state retains the discretion to return a person to closed on the basis of concerns about risk (see Theme 2 above).

As well as revisions to the test for ISPs, there should be opportunities to progress to open conditions at an earlier point in the sentence for people on all sentences.

At present, the secretary of state's policy is for applications from ISPs to be made three years prior to the Parole Eligibility Date.[321] A person can apply for a pre-tariff review advancement four and a half years before their Parole Eligibility Date, but this will only be granted by the secretary of state in exceptional circumstances. For those on fixed term sentences including EDS, there is a complicated calculation that needs to be conducted which can sometimes mean there is insufficient time to enable a person to really benefit from open conditions.

Consideration should be made to changing or removing the time limits for applications to open conditions so that full use can be made of them to the benefit of all concerned. An additional option, as in other jurisdictions, is to set automatic progression points at which a person would progress to open conditions unless there were particular concerns about safety.

The lack of investment in open conditions means that there is often a lot less staffing and support there, meaning that those with protected characteristics cannot readily benefit from them. More support in open conditions for people with protected characteristics to avoid discrimination.

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[320] R (Guittard) v The Secretary of State for Justice [2009] EWHC 2951 (Admin)

[321] Ministry of Justice. (2023). *Generic Parole Process Policy Framework*.

Serious consideration should be given to increase the capacity of the open estate as part of the prison building programme given its clear benefits (when appropriately resourced).

The benefits of ROTL

ROTL is available from open conditions for ISPs and from closed conditions in theory for determinate prisoners, but its use at present is limited.

The important role of schemes such as ROTL, to support someone back into the community ahead of their release, are a vital component in the success of open conditions. During their inspection of the women's open prison HMP East Sutton Park, inspectors found "over 80% of women had access to ROTL and many had full-time, paid employment in the community with national companies, which meant that they could transfer to a job near home on final release".

Furthermore, "an impressive 60% of the women released into paid employment were still in work six months later. At Askham Grange, over three-quarters of the population were accessing some form of ROTL, and nearly half of the women had an education, skills or work placement in the community, much of which was paid employment".

There is no legal bar to the use of ROTL from closed conditions and it should be used more extensively to enable sentences to better fulfil the aim of rehabilitation.

Hurdles to progressing through indeterminate sentence

As set out in Theme 1, the life sentence has evolved in parallel to these developments since the abolition of the death penalty for murder in 1965. Today, most life sentences are a conventionally understood form of indefinite sentence: a judge imposes a minimum term that must be served, then the person is held indefinitely in prison until granted release by the Parole Board; then they serve the rest of their life on licence and may be recalled to prison. Mandatory, discretionary and automatic life sentences all work this way. The exception is the Whole Life Order, under which a person *will* serve their whole life in prison with certainty. The distinction between mandatory, discretionary and automatic life sentences is a matter of the offences, and offence history for which they may (or must) be imposed. There is much to be said about the history of each sentence and their management.[322] However, for the purposes of this theme, the focus is how a prisoner progresses through the sentence towards safe release.

The operation of indeterminate sentences relies on a precise understanding of each person's offending, and delivery of interventions that surgically target risk factors. However, it is important to be realistic about how much punishment can be perfectly personalised. The IPP sentence sought to do this and failed, resulting in a grave injustice. Furthermore, the psychological effect of not having a release date has

[322] Appleton, C. (2010). *Life after life imprisonment.* Oxford University Press.

proved to be deeply damaging to IPP prisoners, and may undermine the rehabilitative purpose of sentencing.[323,324 ,325]

In addition to the psychological barriers posed by indeterminate sentences, prisoners face the practical barriers of demonstrating readiness for release once the punitive phase of the sentence is over. At present there is no clear statutory burden on either the state or the prisoner to prove this, although in reality, for most people in prison the burden falls on them with the obvious frustration that much of what they need to be able to demonstrate they are safe is out of their control.[326] The new "public protection" test in the Victims and Prisoners Act 2024 does not provide any clarity as to where the burden lies.[327] The JUSTICE report concluded that once the punitive phase is over, the burden should fall to the state to justify continued detention: this is a recommendation that should be given serious further consideration.

The traditional way for prisoners to demonstrate risk reduction is through the completion of risk reduction interventions, which can take the form of accredited courses, unaccredited courses or one to one work. However, there are serious problems relating to the provision of such work that need to be addressed as a matter of urgency.

As noted above, prisoners also may demonstrate their risk reduction through improved behaviour and the development of protective factors: yet in an overcrowded and under-resourced system, this is not always possible. Negative entries are much more commonly recorded than positives and the absence of negative entries is often not deemed to be indicative of a reduction in risk.

Finally, readiness for release can be demonstrated through successful temporary releases into the community. However, as noted above there many problems with the capacity and availability of the open prison estate and ROTL for those serving indeterminate sentences.

If prisoners are to be released safely at the earliest opportunity, it requires a well-resourced Parole Board that can conduct regular reviews of progress, and prisoners to be given access to the necessary opportunities to demonstrate their readiness for release. As we highlight in our evidence in Theme 2, this would be best achieved through the creation of an independent Parole Tribunal under His Majesty's Courts and Tribunal Service.

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[323] Shingler, J., Sonnenberg, S. J., & Needs, A. (2020). Psychologists as 'the quiet ones with the power': understanding indeterminate sentenced prisoners' experiences of psychological risk assessment in the United Kingdom. Psychology Crime and Law, 26(6), 57

[324] Harris, M., Edgar, K., & Webster, R. (2020). 'I'm always walking on eggshells, and there's no chance of me ever being free': The mental health implications of Imprisonment for Public Protection in the community and post-recall. *Criminal Behaviour and Mental Health*, *30*(6), 331–340. https://doi.org/10.1002/cbm.2180

[325] Wright, S., Hulley, S. & Crewe, B. (2021). *The challenges and needs of people serving long life sentences from a young age.* Clinks.

[326] For an excellent summary of the law on the burden of proof in Parole Board reviews see, paragraphs 2.27 to 2.33 of JUSTICE. (2022). *A Parole System Fit for Purpose*.

[327] Victims and Prisoners Act (2024), s.58.

The role of incentivisation in sentence progression

The notion of incentivisation for people in prison is entrenched and embedded into the system — prison works on a system of rewards and sanctions that govern everyday life in prison.[328]

It is one thing for prisoners to maintain basic behaviour in return for simple perks such as visits and other basic privileges.

However, when it comes to incentivising progression through the sentence itself with the reward of release, it is much more complicated, especially if the releasing body needs to satisfy itself that the public would be safe if the individual is released.

The difficulties of IPP prisoners in accessing interventions to progress towards release was examined in the litigation. The House of Lords acknowledged the state's "systemic failure" to provide the resources required to demonstrate a sufficient reduction in risk for release on parole.[329] Of course, the Parole Board does direct the release of many indeterminate prisoners, suggesting that many are able to take up opportunities to progress towards release. However, the concept of "earning" release, firmly places the burden on the prisoner which is problematic for the reasons outlined above. It can also compound discrimination faced by those with protected characteristics, of whom there are many in prison, as they may be less likely to be able to access resources and support on release.

Another form on incentivisation that currently exists in the system relates "minimum term reviews": these now only apply to individuals who committed murder as children and were sentenced before they turned 18.[330] They enable minimum terms to be reduced on or after the individual has served half of the minimum term if the High Court considers they have made "exceptional and unforeseen progress". Minimum term review decisions are public and provide a detailed and fascinating insight into a young person's capacity to change over time and illustrate the role that hope can provide in incentivising a person to genuinely change and excel. Victims are supported to provide statements, and if properly supported in this process, can gain an insight into what the offender has been doing that would not usually be available for many years to come. Minimum term review judgments sometimes chart transformational change across all areas of a person's life, including their general behaviour, attitude to their offending, their development of skills, relationships and contributions to the community. They powerfully illustrate the motivational pull of a judicial review of the minimum term of life sentences and serious consideration should be given to extending them to all indeterminate sentences with a long minimum term of ten years or more. For the same reasons, the bar on such reviews introduced by the Police, Crime, Sentencing and Courts Act 2022 on any person convicted of murder, who committed the offence as a child but happened to turn 18 before sentence, should be reversed.[331]

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[328] Ministry of Justice and HMPPS. (2024). *Incentives Policy Framework*.

[329] Wells v Parole Board [2009] UKHL 22.

[330] See R (Quaye) v SSJ [2024] EWHC 211 for a summary of how minimum terms work and recent changes to the process

[331] See R (Quaye) v SSJ [2024] EWHC 211 on why this change was problematic.

In the case of determinate sentences where no finding of dangerousness has been made, it is possible to see that release could be offered as a reward for good behaviour rather than exceptional progress or evidencing risk reduction.

The legislative provision in the Texan model for “good conduct time” provides that “an inmate may accrue good conduct time, in an amount determined by the department that does not exceed 15 days for each 30 days actually served, for diligent anticipation in an industrial program or other work program or for participation in an agricultural, educational, or vocational program provided to inmates by the department.”[332]

However, this must be seen in the overall context of the release mechanisms in that jurisdiction which provide that “eligible offenders are released onto mandatory supervision when their calendar time served added to their good time credit equals the length of their prison sentence.”[333]

Given the lack of resources in our current system and the difficulties prisoners have in accessing education and other interventions, if automatic early release or HDC were to be replaced by a good time model, there would be a real risk that it would lead to increased time in prison. Therefore, any discretionary incentivised scheme for determinate sentenced prisoners ought to be in addition to a coherent and consistent early automatic release scheme and HDC.

[332] *Government code chapter 498. Inmate classification and good time*.

[333] Texas Department of Criminal Justice (n.d.) Parole Division — Types of Release.

Theme 7: The individual needs of victims and offenders

Transparency in sentencing

Public confusion around sentencing is understandable.[334] Similarly, prison by its very nature, makes it difficult to achieve transparency in how the sentence is carried out to the outside world. The Independent Commission into the Experience of Victims and Long-Term Prisoners (ICEVLP), chaired by the Right Reverend James Jones KBE, found:

"prisons make it very difficult to achieve 'moral' and 'social' rehabilitation, because both imply some role for the outside community in recognising and endorsing an offender's claim to have 'changed'. Prison secludes prisoners from the world around them, and society more generally knows little about what happens in them. As a result, it is not at all transparent to victims and the wider public how in fact sentences attempt to reform offenders, how difficult a task this is in practice, nor how contradictory some of the other aims of the sentence are."[335]

The commission found that lessons could be learnt from the Parole Board, which had recently taken steps forward to improving the openness, transparency and accountability of decision making by publishing summary decisions.[336]

Public views on sentencing

The 2019 Sentencing Council commissioned research on public confidence in sentencing found increased knowledge about sentencing correlated with higher levels of confidence in the system.[337] But sentencing law and practice is complex. Repeated political ambition to restore 'honesty in sentencing' has, in practice, done the opposite with successive governments increasing rather than reducing complexities. Whilst the Sentencing Act 2020 represented a significant achievement by the Law Commission, it codifies rather than simplifies.[338] Since its enactment, sentencing law has been further altered by a series of acts. So, it is hardly surprising the public does not feel well informed about how sentencing works. This is especially true for the most serious offences, where the impact on public confidence may well be the greatest. Broadly speaking, most of the public supports proposals for harsher sentencing but does so based on significantly underestimating the severity of current sentencing practices.[339] When members of the public are engaged in deliberative discussion on the details of actual cases, research evidence suggests that they become less punitive; indeed, less so than the judge passing sentence in the case.

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[334] For an explainer on prison sentences, see Prison Reform Trust. (2024). *Bromley Briefings Prison Factfile*. pp. 8-12.

[335] Independent Commission into the Experience of Victims and Long-Term Prisoners. (2022). *Making sense of sentencing: Doing justice to both victim and prisoners*. p.71.

[336] Independent Commission into the Experience of Victims and Long-Term Prisoners. (2022). *Making sense of sentencing: Doing justice to both victim and prisoners*.

[337] Marsh, N., McKay, E., Pelly, C., & Cereda, S. (2019). *Public knowledge of and confidence in the criminal justice system and sentencing*. Sentencing Council.

[338] Sentencing Act (2020)

[339] Roberts, J. V., Bild, J., Pina-Sánchez, J., & Hough, M. (2022). *Public knowledge of sentencing practice and trends*. Sentencing Academy.

The ICEVLP consulted victims and family members affected by crime; prisoners; and conducted a written consultation. A key recommendation was the need for a national debate on sentencing, underpinned by three specific proposals for taking the work forward.[340] These are:

- A Law Commission review of the sentencing framework for serious offences
- A Citizens' Assembly on sentencing policy
- Strengthening the role of the Sentencing Council in promoting public confidence in and understanding of sentencing

The first recommendation has been carried forward through the work of this sentencing review. We are also pleased that the Law Commission has been tasked with conducted a review of murder sentencing.

As we recommend in Theme 2, we urge the sentencing review to adopt the second and third recommendations of ICEVLP as means to improve understanding of sentencing legislation and practice; foster a more informed public debate; and instigate a more open criminal justice system.

The views of victims on sentencing

It is right the review considers the impact of sentencing decisions on victims. Evidence does suggest some overlap between what victims and defendants value in their experience of the criminal justice system. Research has shown victims' views are often shaped by how their case is handled, and many express strong interest in ensuring the offender does not commit further offences.[341] For defendants, it is important they are treated fairly, and that perception can directly impact their levels of compliance with and progression in their sentence.[342] An unfair process, therefore, does a disservice to all concerned.

Specifically focusing on victims, the ICEVLP found they, and their families often feel overlooked, disregarded, neglected, marginalised and further traumatised by the criminal justice system. Summing up and sentencing were detailed as the most confusing and complex aspect of the whole process for victims, with confusion around what the sentence given meant and entailed. Though it is a requirement that the judge outlines what the sentence given entails, the commission found this was not always provided and often victims were not present for sentencing hearings. Similarly, few victims had an explanation given of precedent and sentencing guidelines.[343]

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[340] Independent Commission into the Experience of Victims and Long-Term Prisoners. (2022). *Making sense of sentencing*.

[341] See for example: Strang, H. (2002). Repair or revenge. In *Oxford University Press eBooks*.

and Shapland, J., Robinson, G., & Sorsby, A. (2011). Restorative justice in practice. In *Willan eBooks*.

[342] Beijersbergen, K. A., Dirkzwager, A. J. E., & Nieuwbeerta, P. (2015). Reoffending after release. *Criminal Justice and Behavior*, *43*(1), 63–82.

[343] Independent Commission into the Experience of Victims and Long-Term Prisoners. (2022). *Making sense of sentencing*.

It is important to note whilst the ICEVLP did not hear calls for shorter sentences, the commission did find any ideas that lengthening sentences might placate victims, and their families was "wholly wrong" and that "to imagine that punishment or payback rehabilitates victims is a delusion".[344]

Sentencing for offences that are primarily committed against women and girls
When considering sentencing for offences which are primarily committed against women and girls (VAWG) the review must understand the overlap of victim and offender status for women.

There are strong links between women's experience of domestic and sexual abuse and coercive relationships, and their offending. Many women in prison have been victims of more serious offences than the ones they are accused of, with a growing body of research indicating that women's exposure to physical, emotional and sexual abuse, including coercive control, is for some a driver to their offending.[345],[346]

Whilst murder sentencing is out of scope of the review, the panel should have regard to the recommendations from the Domestic Homicide Sentencing Review.[347] The review did not include recommendations to introduce new starting points for murders preceded by controlling or coercive behaviour against the murder victim or new minimum starting points for all murders committed using a knife or other weapon. The independent chair of the review Clare Wade KC is clear that she is against such proposals and if enacted they would likely bring about unintended consequences.[348] We have every sympathy for the victims of these heinous crimes. However, bringing forward unevidenced proposals does them a disservice.[349]

Tailoring sentencing to specific groups

While there may be merit in tailoring sentencing to specific groups, any generic approach should recognise that each specific group is made up of individuals with a wide range of different strengths and needs. Individual needs may be multiple, often unmet, based in trauma and intersectional.

Equal treatment does not mean treating every person who offends the in same way. Equal outcomes from sentencing requires positive responses to individuals' criminogenic, health and social care needs. Where underlying circumstances are different, different approaches will be needed to achieve equitable outcomes. Tailoring sentencing to specific groups could be a useful starting point. A Pre-

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[344] Independent Commission into the Experience of Victims and Long-Term Prisoners. (2022). *Making sense of sentencing*. P.28.

[345] Prison Reform Trust. (2017). *"There's a reason we're in trouble": Domestic abuse as a driver to women's offending*.

[346] See also Vince, C. & Evison, E. (2021). *Invisible Women: Understanding women's experiences of long-term imprisonment*. Prison Reform Trust.

[347] Wade, C., KC. (2023). *Domestic Homicide Sentencing Review*. Home Office.

[348] Wade, C., KC. (2024, September 15). *Coercive and controlling behaviour to become statutory mitigating factor – Clare Wade KC comments on Government's response to Domestic Homicide Sentencing Review*. Garden Court Chambers.

[349] See also Prison Reform Trust. (2024). Prison Reform Trust response to The Ministry of Justice murder sentencing consultation.

Sentence Report should then provide information about an individual's criminogenic, health and social care needs to further tailor the sentence and how the person is managed.

We welcome the review's recognition of certain groups; however, in focusing on certain groups it is important that individuals not in those groups, especially people with protected characteristics are not de-prioritised.[350] We have concentrated our response where PRT's expertise lies.

Women

Women were sent to prison on 5,985 occasions in the year to March 2024 – either on remand or to serve a sentence.[351] Women tend to commit less serious offences than men. For example, 'theft from shops' was the most frequent offence, accounting for 40% of women's prison sentences of less than six months in 2023.[352] In 2023 almost two thirds (64%) of prison sentences given to women were for less than six months, despite widespread recognition that short prison sentences are harmful and ineffective.[353]

The high level of multiple unmet need experienced by many women in the justice system is well documented.[354] An effective response to women with multiple needs requires government departments and professional services to integrate system and support around the individual. Early intervention can help prevent women's contact with justice services and costly crisis responses. A whole system approach to women in the criminal justice system assesses her needs and provides gender specific multi-agency support.[355]

The Sentencing Council recently consulted on the imposition of community and custodial sentences guideline.[356] Its draft guideline includes a section on women who are being sentenced to better reflect the distinct experiences and needs of women in contact with the criminal justice system. The new guideline is yet to be published, but would reflect the importance of tailoring sentencing as a useful starting point.

For women, a standard PSR, the most detailed type prepared in advance (not on the day) should be routine. Ensuring full disclosure of relevant information, which may be sensitive and distressing for women, and adequate record checks are important to ensure effective sentencing and outcomes.

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[350] ·As recommend in Theme 6, pre-sentence reports should be required in all cases where custody is contemplated, rather than the current position which leaves it to the court's discretion and should consider the impact of custody on the individual.

[351] Table 2.Q.1. Ministry of Justice. (2024). Prison receptions: January to March 2024. *Offender management statistics quarterly: January to March 2024.*

[352] Ministry of Justice. (2024). Outcomes by Offence Data Tool: December 2023. In *Criminal Justice System statistics quarterly: December 2023.*

[353] Ibid.

[354] Prison Reform Trust. (2024). *Bromley Briefings Prison Factfile*. pp.49-51.

[355] Ministry of Justice. (2018). *A whole system approach for female offenders. Emerging evidence.*

[356] See Prison Reform Trust. (2024). *Prison Reform Trust response to The Sentencing Council consultation on the Imposition of community and custodial sentencing guideline.*

Evidence suggests that women are not always willing to disclose childcare responsibilities for fear of their child/children being taken into care, including adoption. Women are, however, more likely to be primary carers than men. In 2020 it is estimated that more than 17,500 children were separated from their mother by maternal imprisonment.[357] Overall, when a mother is imprisoned around 9% of children are cared for by their father [358] compared to nearly three-quarters of children who live with their mother when their father is imprisoned.[359]

Parental imprisonment can double the risk in children of poor mental health and place them at greater risk of poverty, poor health and insecure housing.[360] The Court of Appeal decision in R v Petherick outlines the court's duty to investigate sole or primary caring responsibilities of defendants and the need to take these responsibilities into account in sentencing decisions.

The UK has also ratified the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders 2010 (Bangkok Rules), which state non-custodial sentences are preferrable for women with dependent children, and if a custodial sentence is necessary, it should only be given after considering the best interests of the child and ensuring appropriate provision has been made for the child.[361],[362] The Sentencing Council has recently added 'pregnancy, childbirth and post-natal care' as a dedicated mitigating factor.[363]

PRT's "This is me" toolkit of resources lays out how a Child Impact Assessment framework can be integrated into sentencing processes to ensure the rights, needs, and best interests of children are considered.[364] The toolkit includes a call to action, where sentencers can:

- Be made aware of the serious impact on children when a parent, and in particular a mother, is remanded or sentenced to custody;
- Be proactive in seeking information about whether a defendant has caring responsibilities;
- Request a written, detailed PSR for all primary carers;

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[357] Kincaid, S., Roberts, M. & Kane, E. (2019). *Children of Prisoners: Fixing a broken system.* Crest Advisory.

[358] Baroness Corston. (2007). *The Corston Report: A report by Baroness Jean Corston of a review of women with particular vulnerabilities in the criminal justice system*. Home Office.

[359] Referenced in: Williams, K., Papadopoulou, V. & Booth, N. (2012). *Prisoners' childhood and family backgrounds*. Ministry of Justice.

[360] Prison Reform Trust. (2018). *Leading change: the role of local authorities in supporting women with multiple needs*. p.10.

[361] United Nations Office on Drugs and Crime. (2011). *United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders with their Commentary*.

[362] See also Minson, S., Nadin, R. & Earle, J. (2015). *Sentencing of mothers: Improving the sentencing process and outcomes for women with dependent children*. Prison Reform Trust.

[363] Sentencing Council. (2024). *Sentencing pregnant women and new mothers*.

[364] Beresford, S. (2020). *"This is Me": A Child Impact Assessment toolkit.* Prison Reform Trust.

- Request a Child Impact Assessment for any children affected to ensure they are recognised within court proceedings and their best interests are taken into account;
- Avoid remanding a woman to prison when a custodial sentence is unlikely;
- Make every effort to divert women away from prison; and
- Provide the opportunity for sole carers to make necessary care arrangements for children before entering prison if a custodial sentence is unavoidable.

Problem-Solving Courts (PSCs) and the Ministry of Justice commissioned Intensive Supervision Courts (ISCs) provide a good example of when taking an individualistic approach works in practice, and where caring responsibilities can be considered.[365]

These courts include a range of distinct models with the aim of providing a person-centred approach to sentencing and offender management. This is enhanced by regular reviews on progress, undertaken by the sentencing judge. Good progress is praised and any difficulties identified early and dealt with swiftly.

The white paper, 'A smarter approach to sentencing', identified PSCs as a "key approach to addressing offenders' individual needs with the aims to reduce re-offending and improve effectiveness of rehabilitation in the justice system".[366] Whilst there is a significant international evidence base of the effectiveness of PSCs, there is limited evidence from the UK because of inconsistent implementation and evaluation.[367] In July 2022 the then government announced three court pilots (known as Intensive Supervision Courts[368]), one of which is women specific. Early feedback is positive, and the interim evaluation is due early 2025, which should be considered within this review.

Young adults

There are 11,316 young adults in prison in England and Wales, accounting for 13% of the total prison population.[369] There are now half as many young adults in prison as there were 13 years ago.[370]

PRT is a member of the Transition to Adulthood (T2A) Alliance and shares the view that there should be a separate overarching guideline for sentencing young adults up to and including the age of 25. We would also support exploration by the review of whether this group would benefit from separate governance and oversight within the criminal justice system, similar to that afforded to children by the Youth Justice Board.

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[365] Ministry of Justice. (2023, June 28). Pioneering initiative to force offenders to get clean or face jail time. *GOV.UK*.

[366] Mentzou, A., & Mutebi, N. (2023). *Problem-solving courts* (POSTnote 700). UK Parliament.

[367] Ibid.

[368] Ministry of Justice commissioned Problem Solving Courts are now known as Intensive Supervision Courts (ISCs).

[369] Ministry of Justice. (2024). Table 1.3, *Offender management statistics quarterly: July to September 2023*.

[370] Ministry of Justice. (2023). Table A1.7, Offender management statistics quarterly: July to September 2023.

In the past decade there has been growing recognition amongst policy makers and practitioners of the importance of taking account of the distinct needs of young adults (aged 18-25) in the criminal justice system. There is a substantial body of evidence which shows that individuals "do not enter adulthood as they turn 18 or 21 years of age; instead, maturation is a slow process that can last until a person's mid- or, in some cases late-20s".[371] Maturation can impact cognitive skills, increasing risk taking and making individuals more likely to behave impulsively.[372] In terms of brain physiology, the development of traits such as maturity and susceptibility to peer pressure appear to continue until at least the mid-twenties.[373] These factors can influence how individuals interact with the criminal justice system, including the nature and pattern of their offending and their ability to comply with statutory requirements.[374] There is also evidence which suggests that 20-25 year olds are the most likely age group to desist from offending.[375] Therefore, it is important that a young adult's developmental maturity is taken into account throughout the criminal justice process, and should be regarded as important as their chronological age.[376] This maturation leads to distinct needs, and so criminal justice interventions should take on a developmental approach.[377]

Currently there is no standalone guideline from the Sentencing Council on young adults. There are overarching principles for children, which applies to under 18-year-olds. "The divide between children and adults in the sentencing process, presently drawn at the age of 18, does not accord with the realities of young adults' development".[378] The council recently consulted on the imposition of community and custodial sentences guideline, and within this included a new section on young adult offenders. The new guideline is yet to be published, but we hope to see the inclusion of this section once it is. The Scottish Sentencing Council has made more progress in this area, with a 'Sentencing young people guideline' which applies to people under 25 years old at the time of conviction.[379]

Young men and women from Black, Asian and ethnic minority communities may face further discrimination throughout the sentencing process due to "adultification" bias. This form of bias results in people being perceived as more mature than they are, or

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[371] HM Inspectorate of Prisons. (2021*). Outcomes for young adults in custody*. p.9.

[372] Johnson, S., Blum, R. & Giedd, J. (2009). Adolescent maturity and the brain: the promise and pitfalls of neuroscience research in adolescent health policy. *Journal of Adolescent Health,* 45(3), 216– 221, referenced in HM Inspectorate of Prisons. (2021). *Outcomes for young adults in custody*. p.9.

[373] Royal College of Psychiatrists. (2015). *Written evidence submitted by the Royal College of Psychiatrists to the House of Commons Justice Committee inquiry into young adult offenders*. HC 937, 13 October 2015.

[374] Sentencing Council. (2019). *General guideline: overarching principles*.

[375] Prison Reform Trust. (2020). *Prison Reform Trust response to the Sentencing Council consultation: What next for the Sentencing Council? – September 2020*.

[376] See http://www.t2a.org.uk/

[377] The Howard League for Penal Reform. (2018). *Sentencing Young Adults: Making the case for sentencing principles for young adults*.

[378] The Howard League for Penal Reform. (2018). *Sentencing Young Adults: Making the case for sentencing principles for young adults*. p.10.

[379] Sentencing Academy. (2024, July 16). *A new vision for young adult sentencing*. T2A.

"less innocent and less vulnerable".[380] Whilst adultification affects children, it can also impact young adults. Evidence suggests that black children and young adults may also be at particular risk.[381]

Older adults

The prison population is ageing, with around 17% of people in prison aged 50 and over. By July 2025 the population aged 50 years and over is projected to increase from 14,193 (November 2022) to 14,800.[382] The increase is being driven both by longevity of the general population as well as specific patterns of crime and sentencing.[383] Prison conditions "regime constraints, poor living conditions and the threat of violence" disproportionately affect older people in prison, and they tend to have poorer health than the general population.[384]

For this group of people, compassionate release as part of their sentence becomes all the more important. People in prison can apply for early release under compassionate grounds, including medical reasons and particular family circumstances.[385] Medical grounds may include conditions such as dementia. The Howard League have suggested that if prisoners can no longer remember or understand why they are imprisoned, it is unlikely that they will be rehabilitated or deterred by their sentences. As such they suggest continuing to hold them in prison them does not fulfil penal aims.[386]

PRT's National Lottery funded Building Futures programme recently published a report providing insights into the age-specific experiences of men and women aged 50 and over who are serving long prison sentences. Based on consultation with 121 men and women in 39 prisons a key recommendation of the report was that:

"The Ministry of Justice should collate an up-to-date, thorough evidence-base for consideration of grounds for compassionate release. This decision-making process should be authentically compassionate, with consideration of an individual's current 'risk' relevant to their frailty, and the most human response to their health and circumstances. Clear justification of the outcomes should be shared."[387]

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[380] Independent Office for Police Conduct. (2024). *Bitesize learning: Adultification*. p.1.

[381] HM Inspectorate of Probation. (2021). *The experiences of black and mixed heritage boys in the youth justice system. A thematic inspection by HM Inspectorate of Probation*. See also Davies, J. (2022). *Adultification bias within child protection and safeguarding.* HM Inspectorate of Probation.

[382] Ministry of Justice. (2021). *Prison population projections 2021 to 2026, England and Wales*.

[383] Price, J. (2024). *Growing old and dying inside: improving the experiences of older people serving long prison sentences*. Prison Reform Trust.

[384] Davies, M., Hutchings, R., Keeble. & Schlepper., L. (2023). *Living (and dying) as an older person in prison*. Nuffield Trust. p.3.

[385] Ministry of Justice and HM Prisons and Probation Service. (2022). *Early release on compassionate grounds policy framework*.

[386] House of Commons Justice Committee. (2020). *Ageing prison population: Fifth Report of Session 2019-21*.

[387] Price, J. (2024). *Growing old and dying inside: improving the experiences of older people serving long prison sentences*. Prison Reform Trust.

We urge the panel to consider this recommendation.

Disability

A 2012 study estimated that 36% of people in prison had a disability, compared to 19% of the general population.[388]

Legislation requires reasonable adjustments to be made to ensure equal outcomes between disabled people and their non-disabled peers based on individual need. Disability, in particular psychosocial and neurodivergent disabilities, are especially important factor in sentencing decisions given relevance to culpability and personal mitigation.[389] Liaison and Diversion (L&D) services are available in police custody suites and the criminal courts to help identify when suspects and defendants have particular disabilities and/or support needs. This includes, for example, mental health needs, communication disabilities, learning/intellectual disabilities and autism. Information from L&D informs criminal justice decision making, including PSRs.

There are occasions, however, when individuals are not seen by L&D services and important information for sentencing purposes concerning a person's health, capacity and support needs is not available. Further, not everyone with a disability is prepared to share information about their condition and what adjustments may be necessary and not all disabled people are aware of their disability. To ensure disabled persons needs are recognised and met effective procedures should be in place to identify need and respond appropriately. Greater investment in L&D services and intermediaries are two examples of how this can be achieved.

PRT's "No One Knows" report remains the strongest published account of the experiences of prisoners with learning disabilities, including their experiences of policy custody and court.[390] The 2021 report "Working in community settings with people with learning disabilities and autistic people who are at risk of coming into contact with the criminal justice system" provides an authoritative account of working with people with learning disabilities in community settings.[391]

Community Sentence Treatment Requirements (CSTRs) should offer the opportunity to divert people with mental ill health from short custodial sentences. CSTRs seek to address the root causes of offending in order to improve outcomes. CSTRs reflect the link between offending, alcohol and drug misuse and mental ill health by offering treatment requirements for alcohol, drugs and mental health. In particular, primary care Mental Health Treatment Requirements (MHTRs) have shown positive results in improving outcomes and reducing reoffending.[392]

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[388] Cunniffee, C. et al. (2012). *Estimating the prevalence of disability amongst prisoners: Results from the Surveying Prisoner Crime Reduction (SPCR) survey*. Ministry of Justice.

[389] Prison Reform Trust. (2020). *Prison Reform Trust response to the Sentencing Council consultation: What next for the Sentencing Council? – September 2020.*

[390] Talbot, J. (2008). *No One Knows: Prisoners' voices: Experiences of the criminal justice system by prisoners with learning disabilities and difficulties*. Prison Reform Trust.

[391] Langdon, P. E. & Murphy, G. H. (2021). *Working in community settings with people with learning disabilities and autistic people who are at risk of coming into contact with the criminal justice system*. Health Education England.

[392] Chalam-Judge, R. & Martin, E. (2024). *Evaluation report: The impact of being sentenced with a community sentence treatment requirement (CSTR) on proven reoffending*. Ministry of Justice.

People from Black, Asian and ethnic minority backgrounds

There is a statistically significant association between ethnic minority background and the odds of receiving a custodial sentence. Black people are 53% more likely to be sent to prison for an indictable offence at the Crown Court, and Asian people 55% more likely, even when factoring in higher not guilty plea rates.[393] If our prison population reflected the ethnic make-up of England and Wales, we would have over 9,000 fewer men and boys in prison[394] — the equivalent of 12 average-sized male prisons.[395]

Given evidence of disproportionate outcomes for people from Black, Asian and ethnic minority backgrounds, priority should be given to assessing the impacts on these individuals, as well as people from faith backgrounds.

The 2017 Lammy Review highlighted sentencing as an area of concern.[396] The review identified a lack of trust in the justice system among Black, Asian and ethnic minority communities as a key issue, and the main factor behind a higher rate of not guilty pleas in these groups compared to people from white ethnic backgrounds. It was the higher rate of guilty pleas that accounted for much (although not all) of the disproportionately more punitive response of the justice system to people from Black, Asian and ethnic minority backgrounds compared to people from white ethnic backgrounds.

The review concluded that building trust in the justice system among people from Black, Asian and ethnic minority communities was essential work but that it would not happen overnight, and in the meantime the justice system needed to make more use of interventions that did not rest on plea decisions. The review recommended that the deferred prosecution model pioneered by Operation Turning Point should be rolled out across the adult and youth estate.

As we outline in our response to Theme 4, we would support the greater use of deferred prosecutions. As the Lammy review identifies, people from Black, Asian and ethnic minority communities are among the groups who would be likely to benefit from their greater use.

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[393] Hopkins, K., Uhrig, N. & Colahan, M. (2016). *Associations between ethnic background and being sentenced to prison in the Crown Court in England and Wales in 2015.* Ministry of Justice.

[394] Table 11. Kneen, H. (2017). *An exploratory estimate of the economic cost of Black, Asian and Minority Ethnic net overrepresentation in the Criminal Justice System in 2015.* Ministry of Justice.

[395] Table 1.8. Ministry of Justice. (2023). Offender management statistics quarterly: April to June 2023.

[396] Lammy, D. (2017). *The Lammy Review: An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System.*

Appendix 1 — How sentences operate in practice

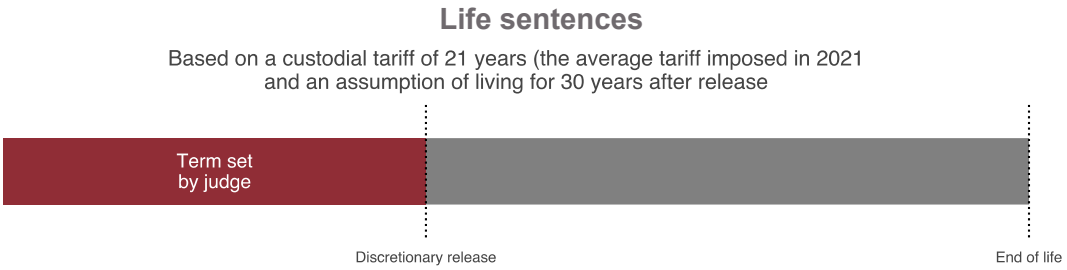
This appendix sets out the evidence on the recent changes in the operation of discretionary and automatic release, to illustrate their combined role in driving up the prison population.

To improve understanding of the complexities of the current sentencing legislation, we have included a series of visual aids to show the relevant proportions of a sentence to be served in custody; when someone becomes eligible for release; and any licence or supervision periods.

Indeterminate sentences

People serving an indeterminate sentence do not know if, or when they will be released from prison and may spend many years in custody beyond the minimum term originally imposed by the court.

In England and Wales there are two categories of indeterminate prison sentences for adults — life sentences and Imprisonment for Public Protection (IPP). Both sentences have a minimum custodial term that must be served, after which they become eligible for discretionary release by the Parole Board. If a person serving a life sentence is granted discretionary release, they will remain on licence for the rest of their life and may be recalled to prison.

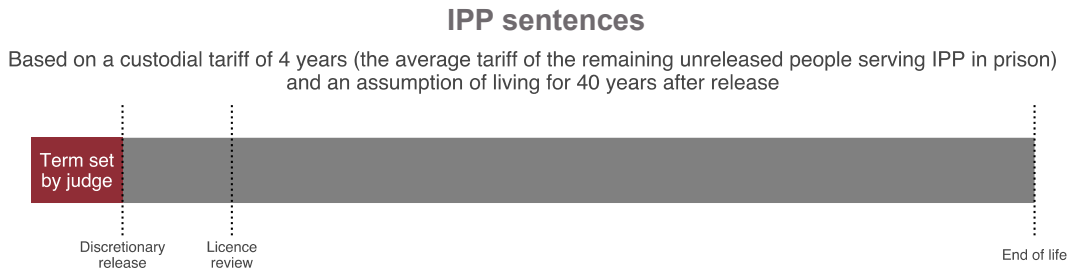


Life sentences last forever in some form, but the prospect of release is indefinite for most, except for those serving a Whole Life Order who will, in all but the most exceptional circumstances, spend the rest of their life in prison.

An IPP sentence imprisons people indefinitely based on what they might do, as well as what they have done. People serving an IPP received a minimum term in prison (sometimes known as a tariff) based on their crime. They are then detained in prison indefinitely, potentially for the rest of their life, until the Parole Board decides they are safe to release. They must then be managed indefinitely on licence in the community, and may be recalled to prison for an indefinite period.

IPP prisoners have an additional review by the Parole Board three years *after* their first release. Either their licence is lifted (and sentence ended), or if the licence is left in place, the sentence ends after a further two years without recall (a recall during that time will reset this).[397]

In the case of the IPP the sentence *may* end altogether, or *may* last for life if a person cannot meet the test for release or subsequently termination — there is no certainty of the outcome.



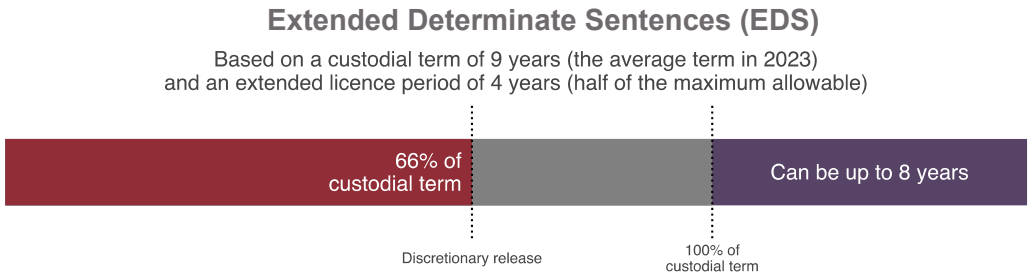
Discretionary release

There are currently three types of sentences that utilise discretionary release from custody—the Extended Determinate Sentence; Sentences for Offenders of Particular Concern; and the Standard Determinate Sentence for terrorism related offences.

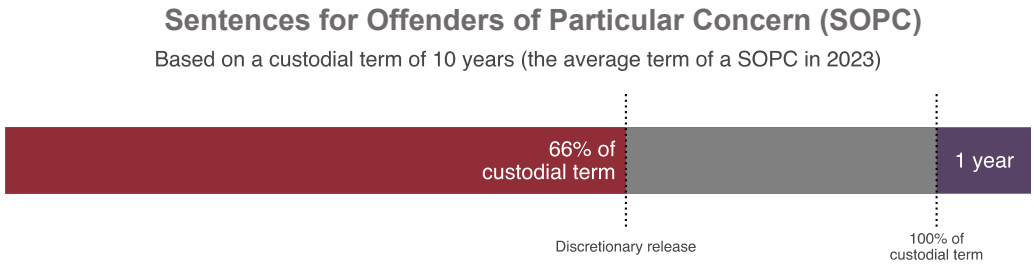
The first, and most widely used, is the Extended Determinate Sentence (EDS). The EDS consists of a custodial term followed by an extended period on licence, both of which are set by the judge at sentencing. People serving an EDS become *eligible* for discretionary release two thirds of the way through their custodial term, but *may* serve the whole term in prison, after which they are released automatically.[398] However they may be recalled for an indefinite period during their extended licence phase. This period on licence lasts for up to five years for people convicted of violence, eight years for sex offences and 10 years for terror offences.

397 Section 31A of the Crime (Sentences) Act 1997, as amended by s66 of the Victims and Prisoners Act 2024

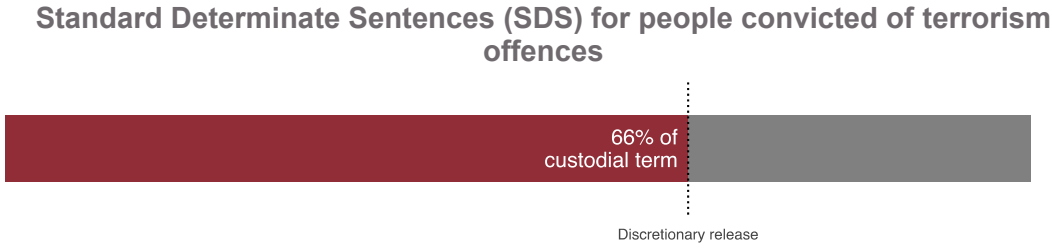
398 The exception is EDS given for terror offences. People who receive this must serve their whole custodial term in prison and are then released automatically.



The second, introduced in 2015, are Sentences for Offenders of Particular Concern (SOPC). The sentence has an almost identical structure to EDS, with a custodial term given and eligibility for discretionary release occurring at the two-thirds point. For all qualifying offences, the court will impose an extended licence period of one year. In 2023 the average custodial term for SOPC sentences was 10 years, meaning they also involve a substantial period of indeterminacy, and are governed similarly to life and IPP sentences.



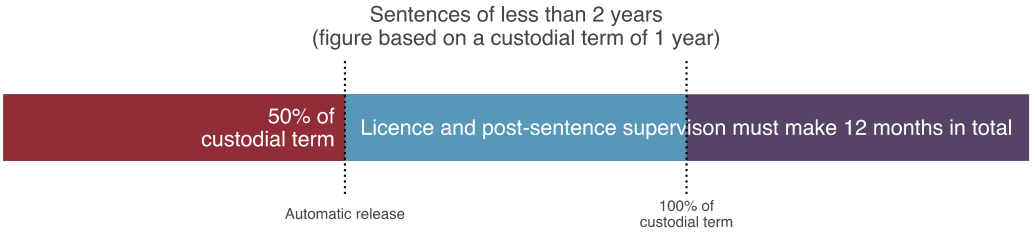
Finally, in the wake of the attack at Fishmongers' Hall, the Terrorist Offenders (Restriction of Early Release) Act 2020 amended the release point for people serving a Standard Determinate Sentence for terrorism related offences. This made release discretionary, rather than automatic, at the two-thirds point. The legislation also applied retrospectively, meaning that anybody already serving a relevant sentence would see their automatic release now become discretionary.



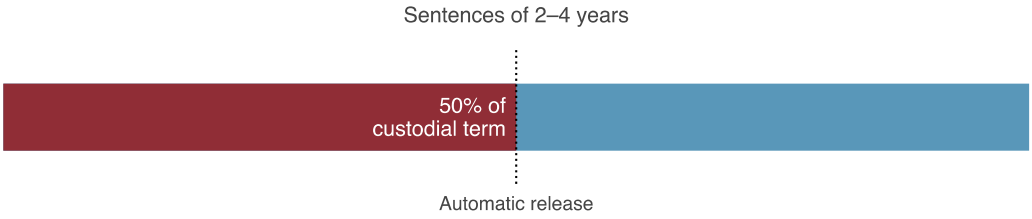
Standard determinate sentences

Standard determinate prison sentences have a set length, and an automatic release date in most circumstances. The length is decided based on the offence and certain personal and offence-related circumstances.

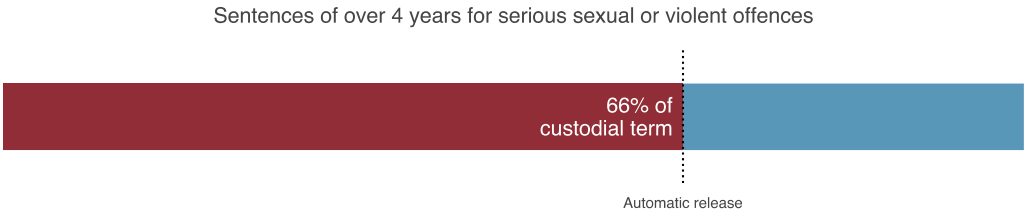
People serving a standard determinate sentence of less than two years are automatically released halfway through their sentence. They serve the rest under supervision by the Probation Service, which will include licence conditions. A period of post-sentence supervision is added on to any time served on licence in the community, to make a total supervision period of 12 months. If they breach their licence conditions, they can be recalled to prison for the remainder of their sentence.



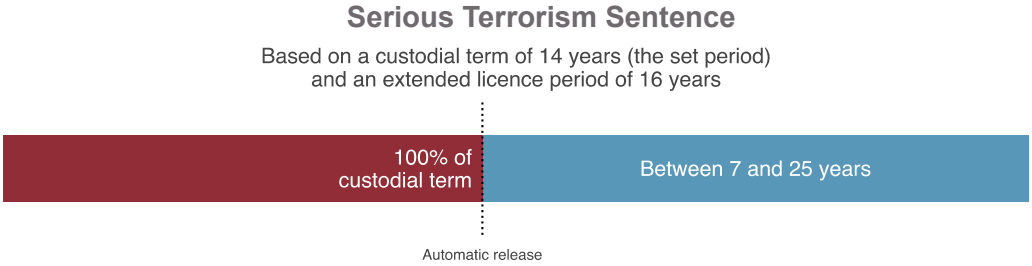
People serving standard determinate sentences of less than four years are usually automatically released halfway through their sentence. Unlike people serving sentences of less than two years, there is no additional period of post-release supervision.



People serving standard determinate sentences of more than four years are released two-thirds of the way through their sentence if they are convicted of serious violent or sexual offences. If they are not convicted of such offences, they are released at the halfway point.



Serious Terrorism Sentences impose a minimum custodial period of 14 years which must be served in full, followed by an extended licence period of between 7 and 25 years.



Appendix 2 — Reforming the role of risk assessment in custodial sentence progression

A core contention of our submission is that for an increasing number of prisoners, sentence progression is pervasively governed by risk assessment, and that its role in achieving just and effective outcomes has not been sufficiently scrutinised. Such scrutiny is inherently challenging because of the highly technical nature of risk assessment. But it is important because decisions to delay progression or extend detention based on risk result in longer stays in custody, and therefore may be a driver of the rising prison population.

In this section, we aim to summarise the features of custodial risk assessments and sensitise the review to key limitations and debates described by academics and practitioners. We suggest that investigating risk assessment would unlock new insights into reforming progression through identifying where unnecessarily risk-averse decision-making may occur, and the mechanisms that facilitate it. This scrutiny should include how risk assessment works in practice, its effects (intended and unintended), its applicability to specific cohorts, and how professional debates and critiques apply in the modern sentencing context. The Prison Reform Trust intends to begin work in this area in 2025.

The public protection purpose of sentencing rests on efforts to predict the future by detaining someone based on what they might do, in contrast to punishment, which rests on providing censure for a past act. The 21st century expansion of public protection sentences has increased reliance on risk assessment tools and frameworks to aid selection of the "right" people to progress at multiple points in a sentence. Risk assessment aims to:[399]

- Predict the likelihood that a person will commit a harmful act, specify what that act is most likely to be, and whether it would be seriously harmful.
- Describe the triggers and circumstances ("risk factors") that would lead to that act.
- Prevent the act via a risk management plan that mitigates identified risk factors.

The evolution and key types of risk assessment

We all weigh up the likelihood of hazards occurring, and how serious they would be if they happened. However, research evidence indicates that when using intuition alone, humans are not very good risk assessors. We overly rely on personal experiences rather than data, pay more attention to low likelihood high harm events, and make insufficient contextual adjustments.[400]

Criminal justice academics and practitioners have spent decades attempting to create tools that accurately assess reoffending risk. Impetus came in the late

[399] Lavoie, J., Guy, L. & Douglas, K. (2009). Violence risk assessment: Principles and models bridging prediction to management. In J. Ireland, C. Ireland & P. Birch (Eds). *Violent and sexual offenders: Assessment, treatment and management (pp.3-26).* Willan.

[400] Siegrist, M. & Arvai, J. (2020). Risk perception: Reflections on 40 years of research. *Risk Analysis, 49*(51), 2191-2206.

1980s/early 1990s, with emergence of the penological principle of targeting limited resource at people where they would have most effect. This required effective classification, and the "high risk offender" became a useful category to guide resource allocation, as well as cohering with social discourses on public safety in a risky world.[401]

Broadly speaking, there have been four generations of risk assessment tools used with forensic populations,[402] but in practice tools from all generations still feature somewhere in the system. The first generation called "unstructured clinical judgement" was highly reliant on expert opinion – usually from forensic psychiatrists – following file review and interview. When investigated, the method has proved barely better than chance, thought to be because it relies so much on the professional conducting the assessment, who may vary widely in approach.[403]

In the late 80s/early 90s, efforts to assess risk shifted from an art to a science. Algorithms were developed based on (at that time) large datasets of offenders who had gone on to reoffend and those who had not. These second-generation risk assessments assigned weights and scores to factors statistically most highly associated with reoffending, and produced a probability judgement – either a % likelihood of reoffending or a relative judgement (low/medium/high) with defined probability boundaries for each. Most of us are familiar with this method of assessment, which is commonly used to calculate insurance premiums.

Algorithmic tools are used by HMPPS as a classificatory tool to inform suitability for offending behaviour programmes,[404] and scores may be taken into account in progression-related decisions like recategorisation; ROTL and HDC. They are also used as a baseline from which to judge subsequent progress.

The third generation of risk assessments are called "structured professional judgement" (SPJ) tools. They were developed in response to the limitations of algorithmic tools, which were criticised for not providing a holistic view of the individual, while trying to avoid a return to the subjectivity of unstructured clinical judgement.[405] They guide the risk assessor through a process that directs them to only pay attention to risk factors empirically linked to reoffending, to make a reasoned judgement about their presence in, and relevance to the individual, to make an overall judgement on level of risk, to produce a "formulation" of risk (a narrative explaining why a person comes to offend), and to make a reasoned

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[401] Feeley, M. M., & Simon, J. (1992). The new penology: Notes on the emerging strategy of corrections and its implications. *Criminology, 30*(4), 449-474.

[402] Garrington, C. & Boer, D. (2020). Structured professional judgement in violence risk assessment. In J. Wormith, L. Craig & T. Hogue (Eds.). *The Wiley handbook of what works in violence risk management (pp.145-162)*. Wiley-Blackwell.

[403] Singh, J., Grann, M. & Fazel, S. (2011). A comparative study of violence risk assessment tools: A systematic review and metaregression analysis of 68 studies involving 25,980 participants. *Clinical Psychology Review, 31*(3), 499-513.

[404] See for example, HM Prison and Probation Service (2020). *OASys sexual offending predictor (OSP): Guidance for treatment managers.*

[405] Hart, S., Douglas, K., & Guy, L. (2017). The structured professional judgement approach to violence risk assessment: Origins, nature, and advances. In D. Boer, A. Beech, T. Ward, L. Craig, M. Rettenberger, L. Marshall, & W. Marshall (Eds.), *The Wiley handbook on the theories, assessment, and treatment of sexual offending (pp. 643–666)*. Wiley Blackwell. http://dx.doi.org/10.1002/9781118574003.wattso030

speculation on the scenarios under which a person might reoffend. Fourth-generation risk assessment tools still follow the SPJ process, but add more emphasis to generating practical risk management plans and understanding what may drive a person's desistance as well as their offending.[406]

SPJ tools are used widely across HMPPS to guide high-stakes decision-making about progression or release.[407] For example, they frequently form the basis for psychological risk assessments completed by psychologists for the Parole Board, and they underlie aspects of OASys assessments.

The SPJ risk assessment process is more holistic and individualised than the algorithmic method, but presents another set of issues. Greater discretion creates fertile ground for assessor bias, and makes assessments more difficult to challenge,. It relies on well-trained assessors with adequate professional supervision, and doing it well is resource-intensive.[408] Some authorities now advise a convergent approach utilising actuarial and SPJ instruments,[409] though whether this eliminates the disadvantages of each is unclear.

Known limitations and professional debates about risk assessment

While risk assessment tools are frequently designed for use by non-specialists with only basic training,[410] risk assessment itself is highly complex, and there are critiques that have relevance to sentence progression because of their potential real-world consequences. Below is a summary of the complexities of risk assessments described by academics and practitioners. Drawing any conclusions about the validity or impact of these complexities is beyond our remit as an organisation, and without further evidence. However, we contend that they are worthy of greater scrutiny in how they affect sentence progression for long-term prisoners.

How risk-related decision-making is communicated to prisoners. The logic of risk assessment is frequently poorly communicated to, or understood by prisoners.[411] The *process* of arriving at risk judgements, including the reasoning made in connecting custodial behaviour to post-release behaviour are frequently left unarticulated in a sufficiently clear way. This leads to frustration among prisoners, whose progression is dependent on risk assessments that can seem arbitrary or disconnected from their actions. This disconnect fosters demotivation, as prisoners

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[406] See for example, Douglas, K. S., Hart, S. D., Webster, C. D., Belfrage, H., Guy, L. S., & Wilson, C. M. (2014). Historical-Clinical-Risk Management-20, Version 3 (HCR-20V3): Development and Overview. *International Journal of Forensic Mental Health*, *13*(2), 93–108.

[407] See for example, The Parole Board for England and Wales (2024). *Risk assessment guidance.*

[408] Ibid.

[409] Risk Management Authority (2019). RATED: Risk assessment tools evaluation directory. RMA.

[410] See for example, Kropp, P. & Hart, S. (2004). The development of the Brief Spousal Assault Form for the evaluation of risk (B_SAFER): A tool for criminal justice professionals. Department of Justice Canada.

[411] Attrill, G., & Liell, G. (2007). Offenders' views on risk assessment. In N. Padfield (Ed.), *Who to release? Parole, fairness and criminal justice (pp. 191-201).* Cullompton: Willan.

perceive the system as unfair and overly punitive, and feel powerless to meet opaque and unachievable criteria.[412]

'I've had four negative entries in the last year for late bang-up. This is completely unrelated to my risk of reoffending and is more due to the high levels of frustration on the wing. I've had a huge number of positives and these negatives aren't even enough to change my IEP level from enhanced to basic. Yet I'm now being told I haven't got my recategorisation because of them. The only thing this impacts is my motivation. I might as well do what I want if my progress is going to be stopped over something that isn't even relevant.'

(Building Futures Working Group member, Swaleside)

How risk ratings are interpreted by decision-makers. Research evidence shows that decision-makers interpret risk-related information inconsistently.[413] 'High risk' can be conflated with high certainty of an event happening, for example. However, these labels are tied to specific base rates of offending and to specific definitions that may become obscured. For example, in the underlying data used to calibrate the OSP-C (a tool used to assess risk of contact sexual reoffending) 0.7% of the sample with a 'low risk' rating reoffended within five years, compared to 4.4% with a 'high risk' rating.[414] This means that men assessed as high risk were over five times more likely to commit a reoffence (and therefore a better target for limited resources), but the probability in absolute terms is still rather lower than the label 'high risk' might suggest to nonspecialists. There are best practice guidelines for communicating risk-related information, but evidence suggests these are used inconsistently in practice, particularly by probation officers.[415]

The problem of applying aggregate data to individuals. A reoffending probability of 65% from an algorithmic risk assessment tool means that, in a group of 100 people with characteristics similar to the person assessed, 65 went on to reoffend and 35 did not. This means that individual is similar to both 65 people who reoffended and 35 who did not. While the tool is helpful for telling us something about offending in a group of people, academics have argued that these kind of probabilities are less helpful in understanding individuals.[416,417] Similarly a banding of 'medium' risk tells us a person may offend – or that they may not. Such bandings

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[412] Jarman, B. & Vince, C. (2022). *Making Progress? What progression means for people serving the longest sentences.* Prison Reform Trust.

[413] Hilton, N., Scurich, N. & Helmus, L-M. (2015). Communicating the risk of violent and offending behaviour: Review and introduction to this special issue. *Behavioural Sciences and the Law, 33*(1), 1-18.

[414] Howard, P. & Wakeling, H. (2021). *Comparing two predictors of sexual recidivism: The Risk Matrix 2000 and the OASys Sexual Reoffending Predictor.* Ministry of Justice.

[415] Storey J., Watt K., & Hart S. (2015) An examination of violence risk communication in practice using a structured professional judgment framework. *Behavioural Sciences and the Law, 33*(1), 39–55

[416] Prins, S. J., & Reich, A. (2021). Criminogenic risk assessment: A meta-review and critical analysis. *Punishment and Society, 23*(4), 578-604.

[417] Greene, T., Shmueli, G., Fell, J., Lin, C.-F., & Liu, H.-W. (2022). Forks over knives: Predictive inconsistency in criminal justice algorithmic risk assessment tools. *Journal of the Royal Statistical Society Series A: Statistics in Society, 185*(2), S692-S723.

may be useful for allocating resources to groups, but they can obfuscate more holistic consideration of the individual nature of a person's offending and needs.

The time-limited nature of risk judgements. Risk assessments restrict the validity of their estimates to a specified timeframe – usually 12 months.[418] The longer the time horizon, the more difficult it is to make accurate predictions.[419] This principle encounters two difficulties in the context of long sentences. Firstly, the Parole Board is directed to make a judgement on risk beyond the formal end of a person's sentence – an open ended, lifelong period, which is different to the risk assessment principle of time limitedness.[420] Secondly, evidence from published[421] and forthcoming[422] Building Futures work points to a kind of time blindness experienced by prisoners from risk decision-makers. People 20 years into a sentence feel treated as their distant pre-prison selves, or that risk management plans do not reflect the fact that they will have aged several decades by the time of release. This suggests that risk is sometimes inappropriately treated as a stable property of a person, rather than a time-limited and context-dependent prognostic.

The exclusionary nature of risk judgements. Algorithmic tools can act in an exclusionary or restrictive way that leaves routes of progression uncertain for some prisoners. Offending behaviour programmes' clinical suitability criteria often excludes people assessed as low risk, as evidence suggests limited impact on this group.[423, 424] This is to ensure only people who stand to benefit from programmes are given a place, but the culturally prominent place of programmes in unlocking progression (despite no formal statement that they are necessary) can leave prisoners feeling anxious and stuck.[425] Individuals may also be denied release or recalled if the system cannot provide the risk management resources it has said must be in place (such as a place at Approved Premises, an electronic monitoring tag, or expensive substance misuse treatment). The logic of extended detention due to system failures is experienced as fundamentally unjust by prisoners.

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[418] The Parole Board for England and Wales (2024). *Risk assessment guidance*.

[419] Daffern, M., & Ogloff, J. (2017). Assessment issues in offending populations in secure settings. In J. Ireland, C. Ireland, M. Fisher & N. Gredecki (Eds.) *The Routledge international handbook of forensic psychology in secure settings.* Routledge.

[420] See paragraphs 5.1 and 5.2 of The Parole Board for England and Wales (2022). Types of cases guidance. Parole Board.

[421] Jarman, B. & Vince, C. (2022). *Making Progress? What progression means for people serving the longest sentences.* Prison Reform Trust.

[422] Ellis, S. (forthcoming). *Programmed for release? Doing offending behaviour programmes on an indefinite sentence.* Prison Reform Trust.

[423] Ministry of Justice (2022). Descriptions of CSAAP accredited programmes. Offending behaviour programmes and interventions. Ministry of Justice.

[424] Andrews, D. & Bonta, J. (1990). Classification for effective rehabilitation. *Criminal Justice & Behavior, 17*(1), 19-52.

[425] Crewe, B., & Ievins, A. (2020). 'Tightness', recognition and penal power. *Punishment & Society, 23*(1), 47-68.

The fallacy of objectivity. The scientific nature of algorithmic tools can be seen as impartial and credible in a way that human judgements are not.[426] However, evidence suggests that algorithmic tools produce systematically biased outcomes for particular groups,[427] and it can take time for these to become apparent, or be revised. Structured professional judgement tools are also prone to assessor bias,[428] and international evidence suggests that the processes in place to mitigate this may not be appropriate or in line with what is known about bias mitigation generally.[429] Risk assessment tools are inexorably tied to the social world and all its biases, and it is worth paying more attention to how this may apply to sentence progression.

The complexities of abstraction and making causal links. In some instances, a reasoned judgement about how identified risk factors drive offending is uncomplicated. For example, a person who violently offends solely when drunk, high on cocaine and in the presence of adult male peers. In other instances, leaps of logic become more tenuous. For example, "drug use" may be an identified risk factor for the above person, but it is highly contextual and not all drug use would indicate an increase in risk. Some risk factors are also highly abstract, such as "pro-criminal attitudes". These are defined widely enough to include directly offence-supportive attitudes, moral positions on illegal acts, or generally anti-authority attitudes.[430] Good assessor training can address abstraction, however the IPP sentence illustrates the complexity of doing so. Historically, IPP prisoners making statements about the illegitimacy of their sentence may have had it attributed to attitudinal issues linked to risk, rather than understood as a psychologically coherent response to their unique legal circumstances, as is increasingly the case now. Such grey areas open up room for variable interpretation in linking present behaviour to future behaviour.

False positives and false negatives. A good risk assessment tool must be "sensitive" enough to flag people most likely to reoffend. Otherwise it may produce false negatives (people who go on to reoffend when the tool did not pick them up). But the tool must also be "specific" enough to identify *only* those most likely to reoffend. Otherwise it may produce false positives (people who are flagged as reoffenders but do not reoffend). It has been argued in the academic literature that the metrics used to assess the accuracy of risk assessment tools do not sufficiently take false positive rates into account.[431] In other words – a tool may do well at correctly identifying those who go on to reoffend, but also drags in those who don't.

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[426] Werth, R. (2019). Theorizing the performative effects of penal risk technologies: (Re)producing the subject who must be dangerous. *Social & Legal Studies, 28*(3), 327-348.

[427] Eckhouse, L., Lum, K., Conti-Cook, C., & Ciccolini, J. (2019). Layers of bias: A unified approach for understanding problems with risk asssessment. *Criminal Justice and Behavior, 46*(2), 185-209.

[428] Kemshall, H. (2020). *Bias and error in risk assessment and management.* Academic insights 2021/14. HM Inspectorate of Probation.

[429] Neal, T., & Brodsky, S. (2016). Forensic psychologists' perceptions of bias and potential correction strategies in forensic mental health evaluations. *Psychology Public Policy and Law, 22*(1), 58-76.

[430] For an example of assessment criteria see item H9 of Douglas, K., Hart, S., Webster, C., & Belfrage, H. (2013). *HCR-20V3: Assessing risk of violence – User guide*. Simon Fraser University.

[431] Douglas, T., Pugh, J., Singh, I., Savulescu, J., & Fazel, S. (2017). Risk assessment tools in criminal justice and forensic psychiatry: The need for better data. *European Psychiatry, 42*, 134–137.

Applying a tool to a group it has not been normed on. Risk assessments gain their predictive ability from data. The group that provides the data used to calibrate a risk tool is called the "reference group". A core principle of assessment is to only use tools that have been normed on a reference group that is similar to the person being assessed, because tools may not perform as accurately with members of different groups.[432] Academics have argued that the success of risk assessments with decision-makers has resulted in inappropriate leaps of context and application, without sufficient evidence of effectiveness.[433,434] This problem has particularly affected women and ethnic minority prisoners. Efforts have been made to address this in tool adaptations,[435] but the risks of misapplication remain when group differences are under-recognised. For example, it could be argued that the distinct circumstances of an IPP sentence (its abolished status, widespread illegitimacy, indeterminacy, and being years beyond tariff) make them a distinct group upon which risk tools may perform differently. Mental ill health may be a direct consequence of the sentence rather than an offence-related risk factor, for example. There is also growing evidence base that risk assessment systematically biases outcomes for ethnic minority groups.[436] Academics studying the use of risk assessment in Australasia and Canada have also argued that risk assessors fail to take culture, historic oppression and its social consequences into account when assessing Indigenous offenders.[437] In the case of *Ewert vs. Canada* these concerns led to a judicial direction for Correctional Services Canada to pause and review their use of risk assessments with Indigenous prisoners.[438]

The distorting effect of risk assessment on rehabilitation. There is an evidence base of qualitative studies which have examined the felt effects of risk assessment on long serving prisoners. Effects observed include feeling immense pressure to "perform well", which undermines the conditions of psychological safety needed to engage in genuine change, and discouraging openness and honesty – both necessary bedrocks of rehabilitation.[439,440] The high stakes of risk assessment have

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For an excellent summary version submitted to the 2022 Justice and Home Affairs Committee inquiry on new technology and its application to the law, see https://ora.ox.ac.uk/objects/uuid:afab3428-89a0-403a-978e-32b993e0399b/files/sf7623d36s

[432] Coaley, K. (2010). An introduction to psychological assessment and psychometrics. Sage.

[433] Douglas, T., Pugh, J., Singh, I., Savulescu, J., & Fazel, S. (2017). Risk assessment tools in criminal justice and forensic psychiatry: The need for better data. *European Psychiatry*, *42*, 134–137.

[434] Prins, S. J., & Reich, A. (2021). Criminogenic risk assessment: A meta-review and critical analysis. *Punishment and Society, 23*(4), 578-604.

[435] Risk Management Authority (2019). *Female additional manual.* RMA.

[436] Sreenivasan, S., DiCiro, M., Rokop, J., & Weinberger, L. E. (2022). Addressing systemic bias in violence risk assessment. *PubMed*, *50*(4), 626–635.

[437] Woldgabreal, Y., Day, A., & Tamatea, A. (2020). Do risk assessments play a role in enduring the 'color line'? *Advancing Corrections, 10,* 18-28.

[438] Ewert v.Canada. SCC 30, 13 June 2018.

[439] Warr, J. (2019). 'Always gotta be two mans': Lifers, risk, rehabilitation, and narrative labour. *Punishment & Society, 22*(1), 28-47.

[440] Waldram, J. (2010). Moral agency, cognitive distortion, and narrative strategy in the rehabilitation of sexual offenders. *Ethos, 38*(3), 251-274.

also greatly strained the relationship between psychologists and long-serving prisoners due to the excessive power disparity it creates between them.[441]

The inability to challenge risk-related decisions. Risk assessments rely heavily on a prisoner's written record, which means any inaccuracies can affect decisions made about them.[442] We frequently hear from prisoners that getting inaccuracies changed – even straightforward facts that could be independently verified – is extremely difficult to do with no clear process. There is also poor awareness of independent routes of appeal or review, with complaints handled internally, and risk assessors described as unchallengeable.[443] The reliance on psychological expertise creates an accountability gap, with the usual independent bodies such as HMIP or IMB unlikely to be able to comment meaningfully on the quality of risk assessment work. Psychologists are regulated by the Health & Care Professions Council, to whom prisoners can refer directly and should be told about this. However, the HCPC do not directly inspect sites. Public records of fitness to practice reviews barely feature prison psychologists – unusual for a group that deals with a vulnerable population and forms the largest professional sub-group of forensic psychologists.[444] It is unclear why this is the case. A low reporting rate may indicate particularly good and diligent work and supervision processes, or it may signal difficulty in prisoners being independently heard.

We suggest that any reforms to sentence progression should be informed by a thorough understanding of the role of risk assessment, and how well-known critiques and limitations of the process are (or are not) addressed in practice, with particular attention to any overlooked areas of systematic bias, and where there is systemic vulnerability to risk-averse decision-making. For example:

- Are risk assessment tools fit for purpose with the populations they are applied to?
- Are decision-makers/assessors using them well?
- Are there any systematic areas of bias?
- Are assessments conducted fairly, with appropriate routes of appeal?
- Is risk averse decision making a contributor to population inflation? If so, how?

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[441] Shingler, J., Sonnenberg, S., & Needs, A. (2020). Psychologists as 'the quiet ones with the power': understanding indeterminate sentenced prisoners' experiences of psychological risk assessment in the United Kingdom. Psychology, Crime & Law, 26(6), 571-59

[442] Crewe, B. (2011). Soft power in prison: Implications for staff–prisoner relationships, liberty and legitimacy. *European Journal of Criminology, 8*(6), 455-468.

[443] Ibid.

[444] Health & Care Professions Tribunal Service (n.d.). Recent decisions. Accessed 10 January 2025.