

PRISON  
REFORM  
TRUST



# Locked In?

Achieving penal change in the context of crisis and scandal

A discussion paper

Harry Annison and Thomas Guiney, with assistance from Zoë Rubenstein

A collaboration with the Building Futures Programme

## Acknowledgments

Harry and Tom would like to thank Zoë Rubenstein, Amy Peters, Public Policy Southampton, the Building Futures Team and all those who participated in the prison consultation exercises for their contributions to this project. We are indebted to the speakers and participants at our one-day symposium and all the constructive feedback we received on an earlier draft of this discussion paper. The opinions expressed in this publication are those of the authors. They do not purport to reflect the views of project participants or the Prison Reform Trust.

The section 'How are crises and scandals experienced by those in prison?' is based on original work led by Claudia Vince, Building Futures Programme, Prison Reform Trust

© 2023 Prison Reform Trust

ISBN: 978-1-908504-00-1

Cover image: Andy Aitchison

Printed by Conquest Litho

# Table of Contents

Introduction: taking crisis and scandal seriously	1
Our approach	2
Crisis? What crisis? Definitional problems	3
Framing the crisis: a note on power, politics and policy entrepreneurship.	5
Criminal justice: a system in perpetual crisis?	6
How are crises and scandals experienced by those in prison?	9
Why crises and scandal matter: control, safety and legitimacy	11
The legacy of crisis and scandal: risk, responsibility and blame	13
Conclusion: is a more progressive politics of crisis and scandal possible?	15
Appendix: reflections on a method of thinking, and talking, about crisis and scandal	17
References	19



## Introduction: taking crisis and scandal seriously

Permacrisis. Polycrisis. A global crisis. The language of crisis and scandal has permeated the public consciousness and now appears as a defining feature of our national conversation.

From the natural environment to the financial system, geopolitics to industrial relations, moments of crisis hold our attention and give concrete expression to a broader constellation of social anxieties. Crises bring the choices we face as a society into sharper focus and, for a fleeting moment in time, provide windows through which the general public can look upon the inner workings of closed institutions and systems.<sup>1</sup>

Every scandal, every crisis is defined by a unique chronology of events, people, choices and possibilities. Governments, organisations and individuals can, and frequently do, act in ways that prevent crisis or mitigate their impact. The decisions we take today will make moments of crisis more, or less likely, in the years and decades to come.

Leadership, culture, sound political judgement and effective regulatory systems can all make a difference but there are limits to the protection they afford. Recent history teaches us that episodic moments of crisis and scandal are a feature of all complex systems and nowhere is this more true than criminal justice.<sup>2</sup> While we can, and should, do all we can to lessen the impact of crisis and scandal, it is misguided to think we can avert them altogether.

How an organisation navigates a crisis is then just as much a feature of good governance as the careful work of prevention. And yet, it is also important to acknowledge that this is amongst the most difficult tasks in government. By their very nature, moments of crisis in criminal justice can be distressing, highly pressurised and confrontational. The momentum to assign blame and responsibility can be irresistible. Livelihoods may be lost, and reputations irredeemably tarnished.

In this context, crisis can become taboo, unspoken and reinforce unhealthy work cultures where a siege mentality predominates. It can be tempting to avoid talking about crisis altogether, to look instead to the future or treat the crisis as a state of exception where different rules apply. While understandable, we hope to persuade readers of this discussion paper that such an approach is ultimately self-defeating.

Moments of crisis and scandal are an ever-present feature of the political cycle<sup>3</sup> and the decisions taken in the heat of the moment can, and frequently do, have consequences and policy legacies that last for decades. The neat distinction sometimes drawn between 'normal' and 'exceptional' times is a convenient fiction that distracts us from how the criminal justice system operates.

Put simply: crisis and scandal matter.

## Our approach

In seeking to engage with these important themes we do not offer any easy answers to these challenges, nor seek to downplay the immense strain that moments of crisis and scandal can place upon those individuals and groups caught in the eye of the storm. The purpose of this discussion paper is categorically not to comb through past cases or present a simple blueprint for navigating the next crisis. Rather we seek to encourage an open, honest and constructive debate about crisis and scandal, and the role they play in shaping policy and practice.

By shining a light on these subterranean features of all criminal justice systems, we hope to support those with a stake in the penal system to better understand the forces at work during these periods of intense contestation, and help individuals, organisations and institutions to reflect upon the tools and resources they will need to navigate a more principled course during times of extraordinary turmoil.

It is only by thinking systematically about crisis and scandal, by learning from past experience and by drawing upon the collective knowledge and wisdom of policy makers, practitioners, penal reformers, prisoners and academic researchers, that we can hope to minimise harm, and in some cases, achieve progressive penal change in the context of crisis and scandal.

It is in this spirit of collaboration and knowledge exchange that this discussion paper was developed in partnership with the Prison Reform Trust. Our work draws upon an inter-disciplinary literature review and comparative case studies from a wide range of policy areas including criminal justice, immigration, housing, health and social care.<sup>4</sup> We present findings from a series of prisoner engagement exercises undertaken by the Prison Reform Trust Building Futures team to better understand how moments of crisis and scandal are experienced by those serving very long prison sentences.

Particular emphasis was placed upon bridging the gap between policy and research. The ideas presented here were discussed, tested and refined during a one-day symposium that brought together a diverse audience of academic researchers, politicians, criminal justice practitioners, media commentators, penal reformers, think tanks and those with first-hand experience of the criminal justice system. This method of structured exchange was particularly effective in stimulating new ways of thinking, and talking, about crisis and scandal and a summary of those conversations can be found in the Appendix to this discussion paper.

## Crisis? What crisis? Definitional problems

The words crisis and scandal are ubiquitous in contemporary culture and have a common-sense appeal. Not only do they provide a shared vocabulary for thinking about moments of peril, but these words are, by their very nature, flexible and evocative concepts that can be put to use in a variety of settings. This elasticity has its benefits, but the meanings in use of these essentially contested concepts are frequently complex, politically charged and characterised by definitional ambiguity.

For example, the Oxford English Dictionary defines crisis as ‘a vitally important or decisive stage in the progress of anything; a turning-point; also, a state of affairs in which a decisive change for better or worse is imminent’.

This definition, and its various sub-clauses, capture the two faces of every crisis and scandal. While it is true to say that crises and scandals represent periods of great adversity when difficult decisions must be made, they must also be understood as moments of rupture where, for better or worse, we cannot go back to the way things were.<sup>5</sup> Indeed, it was this creative tension that President John F Kennedy sought to convey at the height of the Cold War when he remarked (incorrectly) that when written in Chinese the word crisis is composed of two characters, “one representing danger, and the other, opportunity”.

- Crisis can refer to a critical juncture, heralding a risk of permanent decline: something must urgently be done to minimise negative outcomes.
- On the other hand, crisis can be treated as a welcome opportunity for significant beneficial change.<sup>6</sup>
- Crises can be narrow: a specific issue that needs to be resolved. Or they can be broad: a crisis of trust, a system in crisis.
- Scandal is often driven by media narration, and involves notions of morality, complicity and negligence.
- Crisis denotes (the need for) change, scandal denotes (arguments about) blame.

For these reasons, moments of crisis have often been understood as policy windows where creativity, innovation and opportunities for reform can flourish.<sup>7</sup> However, caution is often advised in the penal field. While it may be tempting to follow the Churchillian injunction to ‘never waste a good crisis’, a consistent body of research from the fields of history, psychology and political science reveals that moments of great upheaval can produce both reactive and progressive policy change.<sup>8</sup> Even the most well-intentioned reform agendas can be misappropriated or lead to changes that were unforeseen by their initial policy architects.<sup>9</sup>

Care must always be taken to deconstruct the crisis, to interrogate its common-sense appeal and to explore how these terms are mobilised as part of broader state-building projects.<sup>10</sup> Our research shows that the language of crisis and scandal is frequently used spatially to indicate the location or epicentre of a crisis (see Figure 1 below). Crisis may occur at an individual or institutional level. For example, the actions of individual prisoners and prison staff; failings in a specific probation office; or more fundamental concerns over the ability of criminal justice agencies to perform their core statutory duties. We can also observe moments of crisis at a strategic level where the role and capacities of the state are questioned.<sup>11</sup>

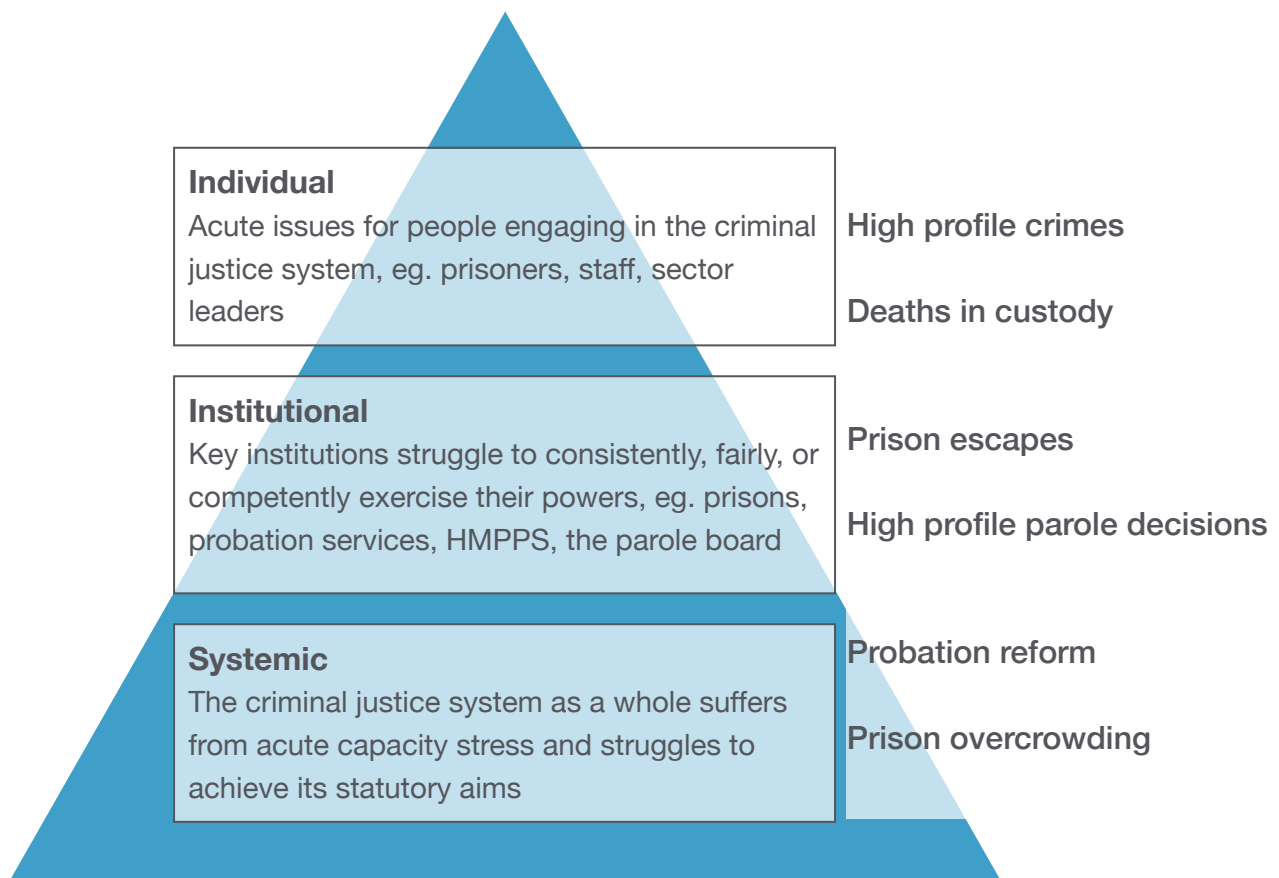


Figure 1: the ecology of crisis and scandal

In parallel to a longstanding interest in the ecology of a crisis, the terms can also be used thematically to construct broader political narratives. To draw together different events or happenings in order to present a broader evaluation of the performance of the criminal justice system. For example, one leading academic textbook has described the English penal system as being ‘in crisis’ since its first edition in 1992, with the authors identifying three structural weaknesses of contemporary criminal justice policy: (1) the crisis of penological resources, (2) the crisis of visibility, and (3) the crisis of legitimacy.<sup>12</sup>



## Framing the crisis:

### a note on power, politics and policy entrepreneurship

These tools can help us to explain why no two crises are ever the same, and why it is that even the same crisis, broadly conceived, can be framed in radically different ways according to our prevailing ideological assumptions, professional standing, or positionality within the penal system. While media reporting may coalesce around the human-interest story in ways that emphasise individual failings and blameworthiness, practitioners and policy-makers are more likely to focus on process and whether the correct procedures have been followed.<sup>13</sup>

As Hall et al noted in their ground-breaking study of the mugging ‘crisis’ of the late 1970s, the terms ‘crisis’ and ‘scandal’ are rhetorically powerful and convey symbolic weight.<sup>14</sup> When engaging with crisis and scandal we must always ask ourselves (a) who is (or is not) framing the crisis? And (b) what strategic aims are they seeking to achieve by framing the crisis in this way?

Or, to put this another way, penal policymaking involves ongoing contestation between a range of different views. In particularly intense moments of conflict, definitional battles are often in play: Is there a crisis? Of what? For whom? What should be done?

... calling something a crisis means to frame an issue as an urgent, structural threat that necessitates an urgent course of action to avert the danger.<sup>15</sup>

As recent debates over immigration,<sup>16</sup> the London riots of 2010<sup>17</sup> and direct-action campaigns on climate change<sup>18</sup> demonstrate, whether a particular moment being regarded as a ‘crisis’ – or not – is always bound up with questions of politics and power.<sup>19</sup> In this context, policy entrepreneurs (including government ministers) compete to successfully frame the crisis; how it is conceptualised, how it is discussed and how it should be responded to.

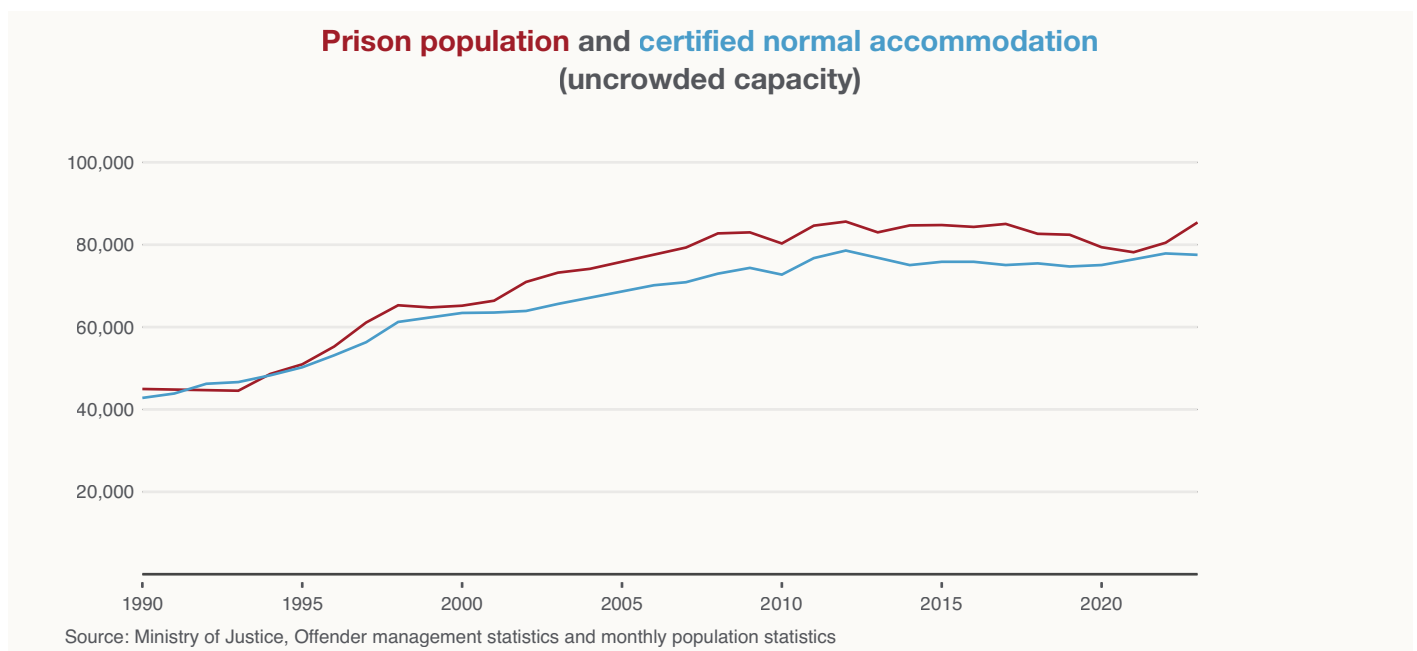
## Criminal justice: a system in perpetual crisis?

While parallels can be drawn here to neighbouring areas of public policy, such as education, health, welfare and immigration, criminal justice appears to generate crises of a particular type, intensity and frequency.

The penal system occupies a unique position at the intersection between citizen and state. Each, and every day, the criminal courts, parole panels, and prison and probation staff are expected to make decisions that balance the competing claims of justice, fairness, liberty and personal responsibility.<sup>20</sup> Above all else, criminal justice is an inherently people-centric service and this human quality imbues moments of penal crisis with an immediacy and emotional power that is often missing from broader policy debates over monetary policy or the delivery of goods and services.<sup>21</sup>

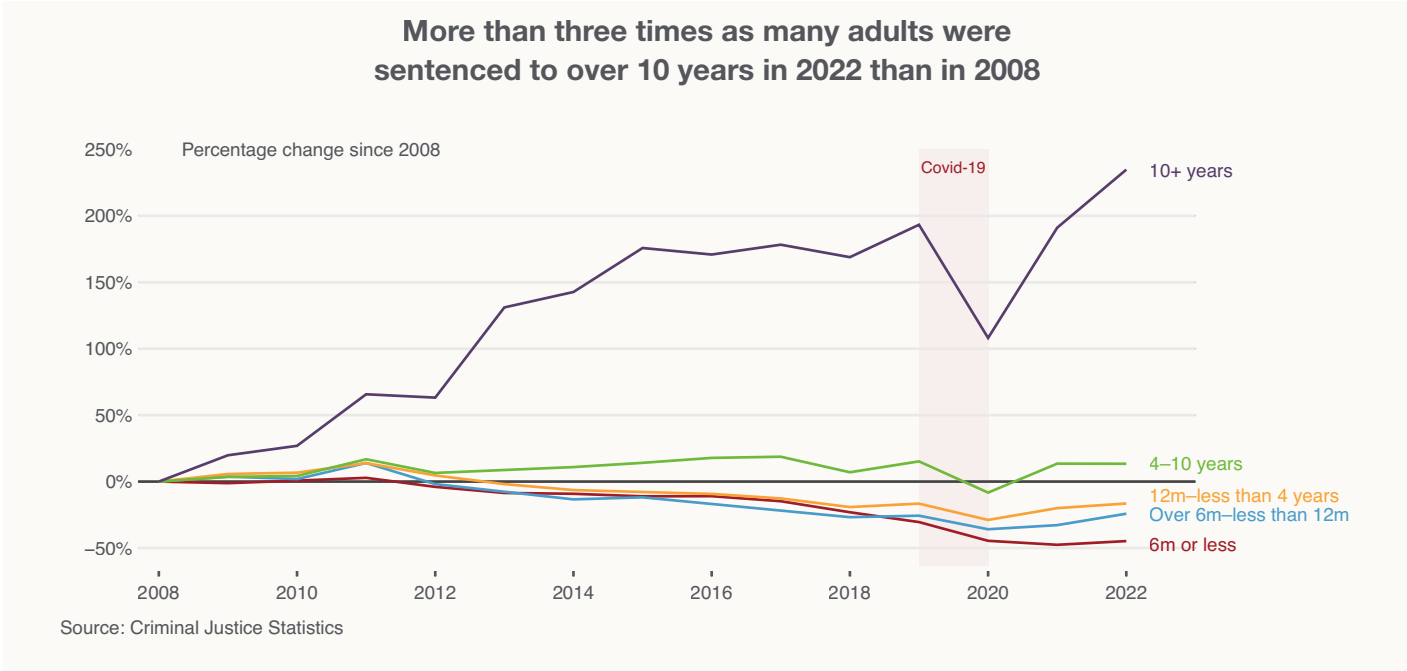
It must also be noted that the way moments of crisis and scandal are experienced in criminal justice are dynamic and constantly evolving. Not only is the crisis shaped by its broader national context, but these moments of peril reflect important shifts in both the aims and techniques of punishment over time.<sup>22</sup> Where once the penal system was pre-occupied by high-profile prison escapes, the indignity of ‘slopping out’ and a series of scandals relating to the abuse of those placed into the care of the state, moments of penal crisis have in recent years often been seen against a backdrop of “chronic capacity stress” as the penal system struggles to cope with a growing and more complex population.<sup>23</sup>

The broad contours of this general picture will be familiar to many readers. England and Wales currently reports the second highest incarceration rate in Western Europe<sup>24</sup> and in the past thirty years the average prison population almost doubled from a figure of 42,000 in 1992 to a little over 82,000 in January 2023.<sup>25</sup> Faced with unprecedented population growth the prison estate has been overcrowded in every year since 1994 and there are currently 16,300 people held in overcrowded accommodation—more than a fifth of the entire prison population (see Figure 2).<sup>26</sup>



**Figure 2: The average prison population and ‘Certified Normal Accommodation’ (CNA) of the prison estate in England and Wales, 1990-2022**

As a result of recently announced government policies the prison population is expected to rise still further to around 98,700 by 2026<sup>27</sup> and these challenges of scale are further compounded by the changing profile of the prison population. The past ten years has seen considerable growth in the long-term prison population (see Figure 3). People serving life sentences now spend much longer in prison before release: 18 years on average, compared to 13 years in 2002. Particular issues are presented by a large cohort of indeterminate sentence prisoners who do not know when or if they will be released, or what they need to do to progress through the prison estate.<sup>28</sup>



**Figure 3: Change in sentence lengths for determinate sentence prisoners in England and Wales, 2008-2022**

It must also be noted that these long-term shifts in penal policy and practice have occurred against the backdrop of sustained budgetary pressure. Between 2010–11 and 2014–15, HM Prisons and Probation Service (HMPPS) experienced real-term cuts to its operational budget of approximately 20%<sup>29</sup>, with enforced austerity measures impacting upon front-line staffing, recruitment and the retention of experienced prison and probation staff.<sup>30</sup>

Reconviction rates for those leaving prison in England and Wales remain poor. Overall, 42% of adults leaving prison reoffend within 12 months, and this figure rises to 59% for those serving sentences of less than 12 months.<sup>31</sup> On many key metrics, HM Inspectorate of Prisons has determined that the outcomes for prisoners are not sufficiently good (see Figure 4).<sup>32</sup>

What emerges here is a penal system that is coping rather than flourishing. While the prison system has largely succeeded in keeping a lid on major prison disturbances – save for those at HMP Birmingham in December 2016 – over time, the moral performance of the penal system has faltered.<sup>33</sup> In some regards, prison and probation services in England and Wales were more resilient during the COVID-19 global pandemic than might have been feared. However, deeper underlying issues have emerged in the aftermath, including staff recruitment and retention; reduced regimes within prisons; increasing prison populations; and ongoing restraints on funding.<sup>34</sup>

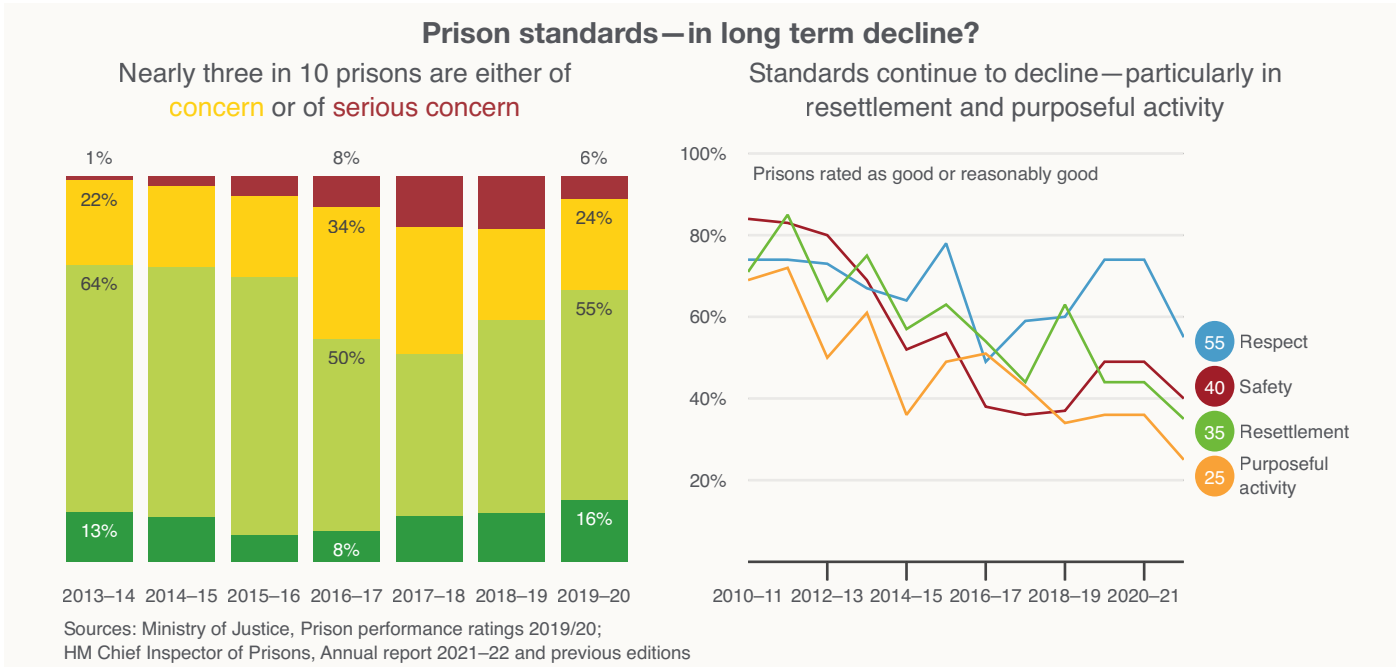


Figure 4: Prison standards – in long term decline?

If we think about a crisis or scandal as the tip of a far larger iceberg, then a clearer understanding of both the spatial and thematic dimensions of these issues can help us to locate them within a broader context. They reveal the scale of the ‘hidden crisis’ within our criminal justice system, they offer a potent reminder of just how quickly we can become desensitised to scandalous conditions, and they invite far greater sensitivity to the early warning signs of conditions that may ‘trigger’ the next crisis or scandal.

## How are crises and scandals experienced by those in prison?

The insights outlined above can help us to piece together the ‘big picture’ of what is happening within our penal system. But what does this all mean in practice for the individuals behind the numbers who so often lack a voice in these debates? How are moments of crisis and scandal viewed by those with first-hand experience of criminal justice?

The Prison Reform Trust Building Futures programme aims to give a voice to people serving sentences of over 10 years in custody, providing them with the space to advocate for themselves, bringing about change from within the system and shedding light on the human cost of long-term imprisonment.<sup>35</sup>

Through consultation, advocacy and research, the programme is working alongside those with direct experience of long-term imprisonment to demonstrate the true impact of ever-increasing sentence lengths. These relationships have presented a unique opportunity to learn from and amplify the voices of those with first-hand experience of the criminal justice system.

The Building Futures team conducted a series of engagement activities in order to explore the ways in which crisis and scandal might be salient issues for respondents. In many cases this included the impact of high profile cases, such as the Worboys/Radford decision that resulted in the forced resignation of the then Parole Board Chair.<sup>36</sup> However, the issues referred to by prisoners also included a broader range of moments and policy decisions, including:

- Staffing issues, particularly in relation to time out of cell
- Fishmongers Hall (the killing of two young people in 2019 by a convicted terrorist at a London event involving prisoners, academics, practitioners and others)
- The book ban
- David Norris sharing photos from a prison cell
- Jon Venables’ reconviction
- Parole Root and Branch review<sup>37</sup>
- Changes to Parole Board decision-making, in particular changes made by the Justice Secretary to the likelihood of approval for transfer to open conditions.<sup>38</sup>
- Overcrowding

Respondents highlighted the impact of ‘knee-jerk’ responses on people in prison, with inmates often subject to changes which are experienced as collective punishment.

*‘Crisis and scandal’. Whenever I hear these words in relation to the prison system, I think ‘what are they going to take off us next?’*

Sometimes seemingly small changes to life in custody had a significant impact on wellbeing.

*At various times the changes have been changes to things allowed i.e., jewellery and I know this sounds daft but I had a necklace of my dad before he died with a little pendant saying ‘daddy’s little girl’. Some time after he passed this new rule came in saying you could only have a religious pendant. It really broke my heart having to hand this in and subsequently I handed it out and it was stolen. It was something I can never replace.*

At the same time, there was a sense that responses to crises achieve little substantive change, whilst having a negative impact on prisoners.

*Usually after a crisis there is an argument that something has to change, or 'must be done' but in reality nothing changes and we go from one crisis to another and you learn that you don't really matter and changes normally have a negative impact on you as a prisoner.*

It can feel like an endless cycle.

*We've come out of the covid 'crisis' and are now in a staffing 'crisis', this will lead to prisoners getting frustrated - no progression, no work, no education, no hope. Violence and disruption will follow the frustrations and this will be used by the media to point out how bad we are and regimes will get worse.*

For some, it seemed a downward spiral leading to further crises.

*People in prison suffered greatly before the Strangeways riots and everything that was achieved has been systematically removed, and the only way to exact real change the first time was the riots! So how many crisis or scandals will prisoners put up with before another Strangeways happens!*

Crises are often defined 'from above', by those with more power. Viewed 'from below', differing issues can be viewed as crises, or mutually accepted crises can be experienced quite differently. For example:

*Every time there was yet another change of ministers it felt like a crisis and still does. They all want to attract votes and being tough on prisons and prisoners always seems to be a vote catcher. Prison and rehabilitation shouldn't be a political football for any political party.*

Alternatively, respondents highlighted the disjunct between what they perceived to represent meaningful responses to crises and the responses of those in power.

*Overcrowding is a crisis but the response was to build more prison spaces, rather than abolish sentences that make it impossible (or close) to get released.*

We have seen that crisis and scandal are highly consequential for many people serving long sentences. This involves substantive impacts, including the increasing length of sentences that are being imposed, as well as negative experiences in terms of the quality of prison conditions. This also involves psychological impacts, including concerns about the potential impact of future scandals on people's progression towards release, and their lack of control over such dynamics.

A recurring theme of the symposium was the importance of collective memory: thinking, experiences, and understandings of criminal justice that are shared by a range of stakeholders, including those with lived experience of prison and other relevant institutions. This represents a crucial repository of knowledge and insight, well placed to guide policy thinking, to advise on how it might be experienced by different groups, and to ensure that hard-learned lessons from previous periods of crisis and scandal do not fall away over time.

# Why crises and scandals matter: control, safety and legitimacy

The consultation responses outlined here provide a powerful reminder that crises and scandals have real world consequences that can endure for decades.

As one political commentator famously observed, ‘as politics create policies, so policies also remake politics’.<sup>39</sup> Whether they relate to prison disturbances or high-profile parole decisions, penal crises are moments in time and space when the political system is forced to confront the realities ‘on the ground’. In turn, the decisions made in response to the crisis will shape the policy options available to the next generation of policy-makers with responsibility for administration of the penal system.

In some cases these effects will be felt immediately, but it is often the slow-burn and cumulative effect of decisions that chip away at legitimacy that cause considerable damage to prisons, the parole system and probation services.<sup>40</sup> As Lord Woolf noted in his landmark report following the riots at Strangeways Prison in 1990, prisons cannot function on the basis of a pervasive and increasingly formidable security apparatus alone. In practice, a stable and well-functioning prison system is built upon the building blocks of security, control and justice. They are in other words interdependent and complementary.<sup>41</sup>

Since the publication of this report a consistent body of research has demonstrated that even in closed penal institutions like the prison, perceptions of legitimacy are closely associated with trust, voluntary rule compliance and cooperation with authority.<sup>42</sup> In this context, fair procedures, staff conduct, consistent application of the rules and interpersonal relationships can all help to build and strengthen procedural fairness in key criminal justice settings like prison, probation and parole hearings.<sup>43</sup>

While histories of criminal justice in England and Wales indicate that some incidents of crisis and scandal have eventually led to progressive reform – the Maxwell Confait case<sup>44</sup>, the Woolf Report, or the tragic murder of Zahid Mubarek and the families’ fight for justice, to take but a few examples – these cases can perhaps be considered the exception to the norm in a more punitive climate. As recent high-profile scandals in policing have shown, legitimacy can take years to build, seconds to break, and forever to repair. Once it is lost, no amount of investment in control, discipline and security alone will be sufficient to deliver a fair, humane and effective criminal justice system.

These observations bring us full circle to our initial characterisation of the two faces of crisis and scandal: one representing danger, the other, opportunity. There can be little doubt that moments of crisis and scandal in the penal field can undermine legitimacy and shift the balance of government policy in favour of discipline and control. However, there is nothing inevitable about these policy choices, and insights from both research and practice demonstrate that it is possible to insulate criminal justice institutions from moments of crisis and help individuals to act in ways that safeguard, and in some cases, begin to rebuild legitimacy.

### **Murder of Zahid Mubarek**

In January 2000, 19-year-old Zahid Mubarek was sentenced to a ninety-day custodial sentence in Feltham Young Offender's Institution in London. In February of that year, Robert Stewart, also 19, with a history of violent racism, was transferred from another prison to the only available space in the wing, in Mubarek's cell. In the early hours of the day Mubarek was due to be released, 21 March 2000, Stewart attacked him with a table leg while he was in bed. Mubarek was taken to hospital in a coma and died in hospital a week later due to the injuries he had sustained. In 2004, Zahid's family won the right to an independent public inquiry into the killing. The Report of the Zahid Mubarek Inquiry was published in 2006 and made 88 recommendations, highlighting specific failures which led to the event, and systemic issues at Feltham and other institutions which created an unsafe environment.

As one review of the evidence concludes, it is possible to build procedural fairness in the criminal justice system by investing in and helping to nurture the following four key attributes. These should not only guide 'on-the-ground' interactions, but also wider strategic decisions on criminal justice:

- **Voice:** providing opportunities for prisoners to participate in decision-making. This should include formal mechanisms of consultation, such as service user councils, and ongoing dialogue between staff and inmates during the course of their everyday interactions.
- **Neutrality:** decisions should be based on the consistent application of rules rather than on personal opinions or prejudices of authorities.
- **Treatment with respect and dignity:** when people feel demeaned or subjected to negative stereotypes, they may view themselves as diminished and disrespected beyond what is appropriate when dealing with the law.
- **Trust in authorities:** if people feel that those in authority are acting out of a sincere desire to do what is right, then they are more likely to view authorities as acting fairly. Conversely, where individuals think that an authority is not concerned about their well-being, they may react negatively to their actions.<sup>45</sup>



## The legacy of crisis and scandal: risk, responsibility and blame

Viewed in these terms, moments of crisis and scandal present a unique constellation of challenges for those key criminal justice agencies with responsibility for the maintenance of a safe, stable and effective penal system.

Moments of crisis and scandal frequently take on a life of their own as they intersect with, and become amplified by, the media cycle and the vicissitudes of the political system.<sup>46</sup> In the most serious cases they can spiral into fully fledged moral panics that once triggered can become increasingly disconnected from the testimonies of victims, prisoners, families and staff, as well as the stated aims of the justice system.<sup>47</sup>

When faced with a penal crisis it can be tempting to double-down on those policy levers most closely associated with security, control, discipline and earned privileges. In a climate where individuals are understandably fearful of crime and demands for security are common, the general public may be more sympathetic to 'tough' or authoritarian policy solutions than might otherwise be the case.<sup>48</sup> Individuals and organisations may become more rigid and locked into pre-existing beliefs, while more serious political questions are likely to be escalated to those further up the hierarchy and removed from the day-to-day experience of imprisonment.

It is also apparent that moments of crisis and scandal in the penal field are increasingly entwined with questions of risk and managerialism.<sup>49</sup> Where once, discourses of crisis looked back in time to the motivations and moral culpability of those responsible for the crisis, our gaze is now firmly orientated towards the future. Why was the crisis not predicted? Was the risk fully understood and managed appropriately? How can our actuarial systems and working practices be improved to manage the threat posed by these 'unknown unknowns'?

In this context, moments of crisis and scandal are stripped of their moral quality and re-interpreted as risks to be managed like any other. Prison staff are expected to continually assess, classify and manage the risk presented by those placed into their care. The Parole Board for England and Wales is required to assess the risk posed by a particular offender and its performance is measured against an increasingly impoverished understanding of the Serious Further Offence (SFO) rate. The Probation Service is narrowly focused on offender management and in this context recall to prison is recast as a success of risk management rather than a failure of rehabilitation and long-term desistance from crime.<sup>50</sup>

### **Release of John Worboys**

In 2009, John Worboys, a London taxi driver, was convicted of 19 serious sexual offences committed between 2003 and 2008. He was sentenced to the now abolished Imprisonment for Public Protection (IPP) with a minimum tariff period of eight years to be served in prison. After nine years, in December 2017, the Parole Board of England and Wales decided to release Worboys, now known as John Radford. Two of Radford's victims, alongside the Mayor of London and News UK, brought a judicial review of the Parole Board decision. The Court described it as a 'difficult, troubling case with many exceptional features'. It upheld the challenge, finding that the Parole Board should have sought further information on a number of issues. Following the decision, a second parole hearing was held and concluded that Radford should remain in custody. Since then, wider changes have been introduced to the parole system, including the publishing of decision summaries and the introduction of a reconsideration mechanism.

On those rare occasions where these risk management systems do fail, moments of crisis and scandal can amplify concerns about the most 'dangerous' and high-risk offenders. Not only do these techniques pose difficult ethical questions about risk, moral desert and further net widening of the penal system.<sup>51</sup> But moments of crisis and scandal often create political spaces where populist and punitive debates can flourish: fear of dangerous 'others'; the demonisation of 'out of touch' penal experts; longer and more punitive sentences; and exclusionary measures and austere regimes that promote control at the expense of safety and legitimacy.

When taken as a whole then, there is an ever-present danger that responses to specific crises descend into scapegoating of individuals, perhaps as an effort at blame avoidance.<sup>52</sup> There is a risk that any ongoing 'progressive' efforts are swiftly abandoned, treated as being outside of a narrow conception of what is politically acceptable.<sup>53</sup> Old battles may have to be fought again and again as moments of crisis and scandal are forgotten, misremembered or transformed entirely as they enter into the institutional memory of large and complex organisations.

## Conclusion: is a more progressive politics of crisis and scandal possible?

The analysis presented here challenges the neat compartmentalisation of steady state and state of exception policy-making. Far from the exception to the rule, episodic moments of crisis and scandal emerge as critical components of the policymaking cycle. Policy decisions made under conditions of crisis can alter the delicate equilibrium of control, safety and legitimacy that underpins the delivery of an effective penal system. These complex policy legacies can endure for decades in ways that shape the options available to successive generations of penal policymakers.

It is also apparent that criminal justice continues to generate crises and scandals of a particular intensity, and this means that those with an interest in penal reform must be just as adept in navigating a principled course through moments of peril as they are through calmer waters. In moments of great tragedy, it is right that our primary aim should be to minimise harm, but our analysis has also shown that we cannot shy away from the difficult work of achieving progressive penal change in the context of crisis and scandal.

In our view, the uniquely challenging nature of this subject matter has resulted in a rather piecemeal and impoverished discussion of this vital feature of all criminal justice systems. All too often discussion of crisis and scandal in the penal field has fixated upon the leadership of certain heroic individuals, or the value of crisis management techniques that seek to contain the problem and control the narrative. These are no doubt relevant, but a more holistic examination is required.

While every moment of crisis and scandal will present unique challenges, the participants in this project – politicians, policy-makers, practitioners, victims and those with first-hand experience of the penal system – did nonetheless identify a number of cross-cutting themes that we believe provide a constructive basis for future discussion. Of course, there can never be a one true answer for penal policy, or for how stakeholders should respond to particular developments. But in many cases the simple act of institutional reflection on moments of crisis and scandal is likely to be an important first step in helping to encourage fresh thinking on how we build a more humane, fair and effective penal system.

In this context, we offer the following thoughts, questions and reflections to help stimulate new ideas and new conversations in this area:

### i. Building practical 'literacy' of crisis and scandal:

- When engaging with crisis and scandal we must always ask ourselves: (a) who is (or is not) framing the crisis? And (b) what strategic aims are they seeking to achieve by framing the crisis in this way?
- Greater understanding of the spatial and thematic dimensions of crises and scandals can help us to navigate these events with greater precision and confidence.
- Institutional memory and collective wisdom emerge as vital resources during moments of crisis and scandal. Not only must these resources be cultivated but mechanisms must exist to listen to, and learn from, the expertise of staff and those with first-hand experience of the prison system.

ii. Leadership, accountability and transparency:

- Staff and senior leaders embody the authority of the penal system. The decisions made during moments of crisis and scandal are critical in exemplifying the value of procedural fairness. They cannot be considered exceptions to the rule, where anything goes.
- In this context, it is important to invest in reflexive institutional cultures where senior leaders are empowered to acknowledge mistakes, to take responsibility and to explain rule changes in ways that are procedurally fair and transparent.

iii. 'Cooling down' vs contesting the crisis:

- Moments of crisis and scandal always present with two faces: one representing peril and the other, opportunity. This basic ambiguity presents a number of strategic challenges that should be discussed and debated by individuals, groups and organisations seeking to achieve progressive penal reform.
- Moments of crisis and scandal can create policy windows where the general public may be more sympathetic to 'tough' or authoritarian policy solutions than might otherwise be the case. In such cases there may be value in the use of 'cooling devices' intended to draw the heat from the politics of crime.<sup>54</sup>
- In parallel, there are also times when moments of crisis and scandal represent rare moments of opportunity where the moral performance of the penal system is the focus of public attention. In such cases, a failure to contest the framing of the crisis – or link a specific development to wider structural issues – could have significant consequences.

iv. Articulating shared or collective values:

- Crisis and scandal are highly contested moments of political conflict where a range of policy entrepreneurs, with different types and amounts of political power compete over the framing of events: Is there a crisis? Of what? For whom? What should be done?
- In such cases, purely technocratic responses that focus on narrow points of policy and procedure are unlikely to gain traction within the national conversation. It requires compelling narratives that speak to ongoing debates over place, identity, history and tradition, as well as fundamental values of democracy, fairness, liberty and security.

v. The importance of good governance and a healthy regulatory environment:

- Moments of crisis and scandal illustrate the importance of a robust and balanced regulatory framework with the necessary powers to identify 'hidden crises' and conditions that may 'trigger' the next crisis and scandal.
- As a series of government reports and independent enquiries have noted (often in the context of crisis and scandal) there are limits to centrally imposed, top-down command and control. HM Inspectorate of Prisons, the Prisons and Probation Ombudsman (PPO), Independent Monitoring Boards, the Council of Europe, an independent Parole Board, external penal reform charities and victims groups all have a role to play.

## Appendix: reflections on a method of thinking, and talking, about crisis and scandal

The Prison Reform Trust, in collaboration with Universities of Southampton and Nottingham, held a one-day Chatham House Rule symposium to share perspectives on the impact of crisis and scandal on criminal justice, and how one might best respond. Stakeholders in attendance included people with experience of long-term imprisonment, senior leaders in prison governance, academics, politicians, journalists and third sector stakeholders.

This symposium was supported by:

- Desk-based literature review, to explore how crisis and scandal is conceptualised in criminal justice scholarship.
- Case study analysis, examining relevant case studies in other policy areas.
- A small-scale consultation conducted by the Building Futures team, engaging with members who have experienced long term imprisonment.

### Emergent insights

#### What do crisis and scandal look like?

Participants noted that these concepts tend to be spoken about in one of two ways. First, as ‘spasms’ of media attention and frenzy, which inevitably have an impact on prisons and those living and working within them. However briefly they enter the public consciousness – often framed as ‘scandals’ – they can have long term ramifications. Experienced participants noted that these spasms can seem to come and go in a cyclical fashion. Participants with lived experienced observed that for them, it can often feel like the individuals subject to the criminal justice system are not perceived to matter.

Second, some spoke of the prison system in a state of ‘permacrisis’, where constant pressures create a prevailing sense that the system is only just coping. This is most frequently in the context of population, and there is an awareness that when there is a sudden unexpected spike in population this can create a sudden crisis. For managers and policy makers in this situation, this poses challenges to efforts to achieve longer-term improvements to the criminal justice system.

#### Who gets to frame a crisis?

If crisis can lead to significant long-term change, the question of who gets to frame a particular situation as a crisis is important. Participants explored who is able to influence such framing, and with what effects. A valuable emergent insight was the potential for significant dissonance between perceptions and framing of crises by power-holders, and by those subject to the criminal justice system.

#### Decision-making in times of crisis? Engaging the public or avoiding scrutiny

There was an awareness that there is much more public scrutiny in this area than in the past, and a lower tolerance for a lack of transparency. When exploring how policymakers can respond

constructively to crises, different opinions were shared as to how policy makers and other stakeholders should act in relation to the public:

- Insulation: in light of the emotive nature of criminal justice, efforts to achieve progressive penal change are best conducted in a manner to attract as little public attention as possible
- Engagement: recognise that public views are not as instinctively punitive as often painted, and thus engage the public in the fostering of a more progressive, rehabilitative policy agenda.
- Mindfulness: a ‘middle ground’ position, where policy and practice is developed in a manner that is not led by public opinion, but recognises that public confidence in the system must be maintained if it is to succeed.

#### Never waste a good crisis?

Opinions varied as regards whether moments of acute crisis represent a welcome opening for encouraging change, or whether progressive measures are best pursued in calmer moments.

This connected with discussions about the nature of crisis and scandal in criminal justice: is the system – and media reporting of it – essentially in a state of ‘permacrisis’? If so, what implications does that have for deciding when to act?

#### ‘Something must be done’

Often, crises are responded to with the refrain ‘something must be done’. The need for leaders to take firm action, to maintain public confidence, was recognised, as was the extent to which this might come into tension with the need for sustainable, long-term planning and consistent policy.

#### Utilising collective memory

A recurring theme of the symposium was the importance of collective memory: thinking, experiences, and understandings of criminal justice that are shared by a range of stakeholders, including those with lived experience of prison and other relevant institutions. This represents a crucial repository of knowledge and insight, well placed to guide policy thinking, to advise on how it might be experienced by different groups, and to ensure that hard-learned lessons from previous periods of crisis and scandal do not fall away over time.

In particular, this form of collective memory has the potential to ensure that policy decisions taken – perhaps especially those in the teeth of a crisis or scandal – do not lose sight of the likely impact on those subjected to them, including prisoners, families or victims of crime.

By bringing together actors with varied orientations to the issue of penal policymaking, with very different experiences in terms of handling, responding to and experiencing the ramifications of crises, we have generated insights which are not only new, but which may not have been arrived at through traditional methods of investigation. We suggest that this method – in which we brought people with experience of imprisonment directly into conversation with people with responsibility for, or interest in, prison governance – might model a means of handling crisis and scandal in the future.

# References

- <sup>1</sup> See Girling, E., Loader, I., Sparks, R. (2000). *Crime and Social Change in Middle England: Questions of order in an English town*. London: Routledge.; Jennings, W., Farrall, S., Gray, E., & Hay, C. (2020). 'Moral Panics and Punctuated Equilibrium in Public Policy: An Analysis of the Criminal Justice Policy Agenda in Britain'. *Policy Studies Journal*, 48(1), 207-234
- <sup>2</sup> Downes, D., and Newburn, T. (2023). *The Official History of Criminal Justice in England and Wales. Volume IV: The Politics of Law and Order*. London: Routledge.
- <sup>3</sup> Rhodes, R.A.W. (2011). *Everyday Life in British Government*. Oxford: Oxford University Press.
- <sup>4</sup> Thanks to Amy Peters for her support in the gathering and analysis of relevant case studies.
- <sup>5</sup> Chambliss, W. J. (1977). 'Editorial statement', *Contemporary Crises*, 1, pp. 1–4.
- <sup>6</sup> Annison, H. (2021). '2020 - a year of crisis or Kairos? Part One', *ECAN Bulletin*. Howard League for Penal Reform.
- <sup>7</sup> Kingdon, J. (2011). *Agendas, Alternatives, and Public Policies* (2nd ed). Longman.
- <sup>8</sup> See e.g., Staw, B. M., Sandelands, L. E., & Dutton, J. E. (1981). 'Threat Rigidity Effects in Organizational Behavior: A Multilevel Analysis'. *Administrative Science Quarterly*, 26(4), 501–524.
- <sup>9</sup> Guiney, T., Rubin, A. & Yeomans, H. (2023). 'Path dependence and criminal justice reform: Introducing the special issue'. *The Howard Journal of Crime and Justice*, 62, 3–10.
- <sup>10</sup> Hall, S. (1978). *Policing the Crisis : Mugging, the state, and law and order*. London: Macmillan; Cohen, S (1972). *Folk Devils and Moral Panics* Abingdon: Routledge.
- <sup>11</sup> Hay, C. (1999). 'Crisis and the Structural Transformation of the State: Interrogating the Process of Change'. *The British Journal of Politics and International Relations*, 1(3), 317–344; Xenakis, S. (2022). 'Punishment, political economy and crisis: Disciplining labour through state-corporate surveillance in the “neoliberal heartlands”', *European Journal of Criminology*, 19(3), pp. 332–348.
- <sup>12</sup> Cavadino, M., Dignan, J., Mair, G. and Bennett, J. (2019). *The Penal System: An Introduction*. 6th Edition. London: Sage.
- <sup>13</sup> Greer, C., & McLaughlin, E. (2018). 'Breaking Bad News: Penal Populism, Tabloid Adversarialism and Brexit'. *The Political Quarterly*, 89(2), 206-216; Jewkes, Y. (2004). *Media and Crime*. London: Sage.
- <sup>14</sup> Hall, S., Critcher, C., Jefferson, T., Clarke, J. and Roberts, B. (1978). *Policing the crisis: Mugging, the state and law and order*. London: Macmillan.
- <sup>15</sup> Henderson, L. (2014). 'What it means to say “crisis” in politics and law', *E-International Relations*. Available at: <https://www.e-ir.info/2014/03/05/what-it-means-to-say-crisis-in-politics-and-law> [accessed 26 January 2023].
- <sup>16</sup> Stumpf, J. (2006). 'The Crimmigration Crisis: Immigrants, crime, and sovereign power'. *The American University Law Review*, 56(2), 367.
- <sup>17</sup> Newburn, T., Jones, T., & Blaustein, J. (2018). 'Framing the 2011 England Riots: Understanding the Political and Policy Response'. *Howard Journal of Crime and Justice*, 57(3), 339-362.
- <sup>18</sup> Jackson, W., Gilmore, J., & Monk, H. (2019). 'Policing unacceptable protest in England and Wales: A case study of the policing of anti-fracking protests'. *Critical Social Policy*, 39(1), 23-43.
- <sup>19</sup> Hall, S. (1978). *Policing the Crisis : Mugging, the state, and law and order*. London: Macmillan.
- <sup>20</sup> Gelsthorpe, L., and Padfield, N. (2003). *Exercising Discretion : Decision making in the criminal justice system and beyond*. Cullompton: Willan.
- <sup>21</sup> For discussion of criminal justice and emotions, see Karstedt, Loader and Strang (eds, 2011). *Emotions, Crime and Justice* London: Hart.
- <sup>22</sup> Crewe, B., and Liebling, A. (2017). 'Reconfiguring Penal Power'. In Liebling, A., Maruna, S., and McAra, L. (Eds). *The Oxford Handbook of Criminology* (6th Ed). Oxford: Oxford University Press.
- <sup>23</sup> Bastow, S. (2013). *Governance, Performance, and Capacity Stress: The Chronic Case of Prison Overcrowding*. London: Palgrave Macmillan.
- <sup>24</sup> See World Prison Brief data, available at <https://www.prisonstudies.org/world-prison-brief-data>
- <sup>25</sup> Ministry of Justice (2020). *Story of the Prison Population 1993–2020, England & Wales*. Website: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/930166/Story\\_of\\_the\\_Prison\\_Population\\_1993-2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/930166/Story_of_the_Prison_Population_1993-2020.pdf)
- <sup>26</sup> Prison Reform Trust (2022). *Bromley Briefings Prison Factfile Winter 2022/* London: Prison Reform Trust, p.23
- <sup>27</sup> Ministry of Justice (2021). *Prison Population Projections: 2021 to 2026*. Website: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1035682/Prison\\_Population\\_Projections\\_2021\\_to\\_2026.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1035682/Prison_Population_Projections_2021_to_2026.pdf); see also Guiney, T. & Yeomans, H. (2023) 'Explaining penal momentum: Path dependence, prison population forecasting and the persistence of high incarceration rates in England and Wales'. *The Howard Journal of Crime and Justice*, 62, 29–45.
- <sup>28</sup> Jarman, B., and Vince, C. (2022). *Making Progress? What progression means for people serving the longest sentences*. London: Prison Reform Trust.
- <sup>29</sup> Prison Reform Trust (2022). *Bromley Briefings Prison Factfile Winter 2022*. London: Prison Reform Trust, p.24.
- <sup>30</sup> HMPPS (2022). *HMPPS Annual Report and Accounts 2021-22*. London: HMSO.
- <sup>31</sup> Ministry of Justice (2019). *Proven Reoffending Statistics: January to March 2017*. London: MoJ.
- <sup>32</sup> HMIP (2022). *HM Chief Inspector of Prisons Annual Report: 2021 to 2022*. London: HMSO, p.33.
- <sup>33</sup> Auty, K.M. & Liebling, A. (2020). 'Exploring the Relationship Between Prison Social Climate and Reoffending'. *Justice Quarterly*, 37(2), 358–381.
- <sup>34</sup> Simpson, P.L., Butler, T.G. (2020). 'Covid-19, Prison Crowding, and Release Policies. *British Medical Journal* 369:m1551 ; User Voice (2022). *Coping with COVID*. London: User Voice.
- <sup>35</sup> See website for more information about the Building Futures Programme: <https://prisonreformtrust.org.uk/project/building-futures/>
- <sup>36</sup> Annison, H., and Guiney, T. (2022). 'Populism, Conservatism and the Politics of Parole in England and Wales'. *The Political Quarterly*, 93(3), 416-423.
- <sup>37</sup> Ministry of Justice (2022). *Root and Branch Review of the Parole System*. London: HMSO.
- <sup>38</sup> See 'The long view—The changing face of parole' by Martin Jones, Chief Executive Officer, Parole Board of England and Wales writing in the Bromley Briefing Prison Factfile January 2023: <https://prisonreformtrust.org.uk/wp-content/uploads/2023/02/January-2023-Bromley-Briefings.pdf>
- <sup>39</sup> Skocpol, T. (1992). *Protecting soldiers and mothers : The political origins of social policy in the United States*. Cambridge: Harvard University Press.

- 
- <sup>40</sup> Annison, H. (2019). 'Transforming Rehabilitation as 'Policy Disaster': Unbalanced policy-making and probation reform'. *Probation Journal*, 66(1), 43-59.
- <sup>41</sup> Woolf, L. (1991). 'Prison Disturbances April 1990; Report of an Inquiry by the Rt. Hon. Lord Justice Woolf and his Honour Judge Stephen Tumim'. London: HMSO.
- <sup>42</sup> See e.g., Carrabine, E. (2005). 'Prison Riots, Social Order and the Problem of Legitimacy'. *British Journal of Criminology*, 45(6), 896-913; Liebling, A., & Arnold, H. (2005). *Prisons and their Moral Performance : A study of values, quality, and prison life*. Oxford: Oxford University Press; Sparks, R.J. and Bottoms, A.E. (1995) 'Legitimacy and order in prisons', *The British Journal of Sociology*, 46, 45-62; Tankebe, J., & Liebling, A. (2013). *Legitimacy and Criminal Justice : An international exploration*. Oxford: Oxford University Press.
- <sup>43</sup> Beetham, D. (1993). 'In Defence of Legitimacy'. *Political Studies*, 41(3), 488-491; Tyler, T. (2010). 'Legitimacy in corrections: Policy implications'. *Criminology & Public Policy*, 9(1), 127.
- <sup>44</sup> Rock, P. (2021). *The Official History of Criminal Justice in England and Wales: Vol II Institution Building*. London; Routledge.
- <sup>45</sup> Summarised from Tyler, T. (2010). 'Legitimacy in corrections: Policy implications'. *Criminology & Public Policy*, 9(1), 127: pp.129-130.
- <sup>46</sup> Hall, S. (1978). *Policing the Crisis : Mugging, the state, and law and order*. London: Macmillan.
- <sup>47</sup> Jennings, W., Farrall, S., Gray, E. and Hay, C. (2017). 'Moral Panics and Punctuated Equilibrium in Public Policy: An Analysis of the Criminal Justice Policy Agenda in Britain', *Policy Studies Journal*, 48(1), pp.207-234.
- <sup>48</sup> Bottoms, A. E. (1995). 'The Philosophy and Politics of Punishment and Sentencing' in Clarkson, C. and Morgan, R. (eds.) *The Politics of Sentencing Reform*. Oxford: Clarendon Press; Pratt, J. (2007). *Penal Populism*. Abingdon: Routledge.
- <sup>49</sup> Feeley, M., and Simon, J. (1992). 'The New Penology: Notes on the emerging strategy of corrections and its implications'. *Criminology*, 30(4), 449-474.
- <sup>50</sup> Annison, H. (2020). 'Re-Examining Risk and Blame in Penal Controversies: Parole in England and Wales'. In: Pratt J, Anderson J (eds) *Criminal Justice, Risk and the Revolt Against Uncertainty*. Basingstoke: Palgrave Macmillan, pp. 139-163.
- <sup>51</sup> Phelps, M. (2013). 'The Paradox of Probation: Community Supervision in the Age of Mass Incarceration'. *Law & Policy*, 35(1-2), 51-80.
- <sup>52</sup> Dingwall, G., & Hillier, T. (2015). *Blamestorming, Blamemongers and Scapegoats*. London: Policy Press: Chapter 7.
- <sup>53</sup> Hood (2011). *The Blame Game : Spin, bureaucracy, and self-preservation in government*, Princeton University Press.
- <sup>54</sup> Loader, I., & Sparks, R. (2011). *Public Criminology?*. Abingdon: Routledge.







Moments of crisis and scandal are an ever-present feature of the political cycle and the decisions taken in the heat of the moment can, and frequently do, have consequences and policy legacies that last for decades. The neat distinction sometimes drawn between 'normal' and 'exceptional' times is a convenient fiction that distracts us from how the criminal justice system operates.

By shining a light on these these important themes, we hope to support those with a stake in the penal system to better understand the forces at work during these intense periods. This discussion paper encourages a conversation about the tools and resources needed to navigate a more principled course during times of extraordinary turmoil.