

Prison Reform Trust response to Justice Select Committee Inquiry into public opinion and understanding of sentencing – July 2022

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 Prison Reform Trust provides the secretariat to the All Party Parliamentary Penal Affairs Group and has an advice and information service for people in prison.

The Prison Reform Trust's main objectives are:

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

www.prisonreformtrust.org.uk

Introduction

We welcome the committee's inquiry. The law on sentencing, both for particular offences and in general application, is changed with extraordinary frequency. But the hoped-for consequences of change are rarely evaluated, either in terms of their impact on criminal behaviour or on public confidence. Such limited evidence as exists strongly suggests that the faith placed by both main political parties in what more severe sentencing might achieve is misplaced, whether its intention is to affect behaviour or to inspire public confidence.

While the evidence on both public opinion and knowledge about sentencing is complex, it seems to point to two fairly clear conclusions:

- broadly speaking, a majority of the public supports proposals for harsher sentencing;
- but does so on a wholly mistaken understanding of the actual severity of sentencing now, and of the trend in sentencing over the last two or more decades.

This tends to foster a sterile debate. Politicians justifiably want to respond to what they hear on the doorstep. Pressure groups like PRT want more effort put into explaining what governments of all colours have already done in response to that concern. But neither approach offers any guarantee that sentencing law and practice will become more effective in meeting the 5 statutory purposes first laid out in the Criminal Justice Act 2003 and incorporated in s57 of the Sentencing Act 2020¹.

¹ [Sentencing Act 2020 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

By contrast, a readily observed and certain consequence of ever more punitive sentencing has been an overcrowded prison system failing to meet most of its core objectives. In 2017 we published an independent study that suggested the sentencing changes in just one Act – the Criminal Justice Act 2003 – had added 16,000 to the prison population in the intervening 14 years². The modest government projection for the impact of the Police Crime Sentencing and Courts Act 2022 is that it will add 700 to the prison population. Typically, changes in relation to individual crimes, such as animal cruelty, are judged to have only a negligible effect on prison numbers, but no cumulative study is ever commissioned. However, meeting the additional demand for prison places generated by a combination of longer sentences, later release dates and more police officers over the next 4 years is now projected to require an additional £4bn of capital expenditure³ with a probable additional annual running cost thereafter of close to £1bn at today's prices.

So why do governments place such faith in custodial penalties? The evidence that prison protects the public through incapacitation is notoriously thin. Even in the United States, where an enthusiasm for that approach has led to mass incarceration, the impact on crime rates appears to be negligible⁴. The evidence for either general or specific deterrence through more punitive sentencing is equally unconvincing⁵. Which all tends to leave increasing public confidence in pole position as the justification given for harsher sentences. It is now also being adopted by the current government as grounds for preventing the progression and release of people serving indeterminate sentences⁶. If there is in fact no link between a more punitive approach and any impact on public confidence, the basis for current policies on both sentencing and release is seriously flawed.

What does the public know about the current approach to sentencing in England and Wales?

Sentencing law and practice is immensely complex. 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 establish⁷. Since its enactment, sentencing law has been subject to further profound alteration in the Police Crime Sentencing and Courts Act 2022, and through a series of specific changes related to particular offences. Given that the punitive impact of a sentence relates principally to the element of it which is served in custody, 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 court⁸.

In relation to the most serious offending, where release is dependent on an assessment of future risk, there are currently adults in prison serving all of the following types of sentence:

² [What if there was no CJA 2003.pdf \(prisonreformtrust.org.uk\)](#)

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1038765/prisons-strategy-white-paper.pdf

⁴ [for-the-record-prison-paradox_02.pdf \(vera.org\)](#)

⁵ For a summary of the evidence generally, and a specific focus on children and young adults, see [Deterring Children From Crime Through Sentencing: Can It Be Justified? - Thomas Crofts, Enys Delmage, Laura Janes, 2022 \(sagepub.com\)](#)

⁶ [Secretary of State's Directions to the Parole Board June 2022 - GOV.UK \(www.gov.uk\)](#)

⁷ [Sentencing Act 2020 \(legislation.gov.uk\)](#)

⁸ [Power to Detain Dangerous Prisoners Serving a Standard Determinate Sentence](#)

- Mandatory life sentence
- Discretionary life sentence
- Detention at Her Majesty's Pleasure
- Imprisonment for Public Protection (IPP)
- Life sentence for serious offences
- Life sentence for second listed offence
- Extended determinate sentence
- Extended sentence for public protection
- "Section 85" extended sentence
- Extended sentence of detention
- Sentence for offenders of particular concern

It is hardly surprising if the public doesn't feel particularly well informed about how sentencing operates, even for the most serious offences where the impact on public confidence might arguably be greatest.

That understandable confusion is certain to extend to the sentencing framework for less serious offences. In relation to prison sentences, and the dividing line between the period spent in custody and that served in the community, that line will be drawn differently depending on the type and length of sentence, eligibility for early release on an electronic tag, and the year in which a person was originally sentenced. A prisoner's personal circumstances outside prison will determine in many cases the point at which the most punitive element of their sentence comes to an end. Those with means to support themselves and stable accommodation will serve a less punitive sentence than those with no home and no job. Even after release, the periods during which people may be recalled to prison, and on what grounds, vary considerably. The complexity of sentencing law means that prisoners are regularly released from prison on the wrong date especially when there are overlapping sentences being served⁹.

In short, if the public really understood the anomalies and confusion within our sentencing framework there is no guarantee that their confidence would be increased. Repeated political promises to increase "honesty in sentencing" when the actual impact of successive governments has been to add to its complexity ring hollow.

In practice, however, much of the debate on sentencing surrounds not the structure of sentences but their perceived severity. In the crude language that has dominated since the mid-1990s, are sentences "tough" enough?

Here there is a good deal more evidence on which to draw. Most obviously, the actual severity of sentencing for serious offending has increased dramatically. The average length of determinate prison sentences for indictable offences, at just over 55 months, is more than two years longer than in 2008. The average minimum term for life sentences has risen from 13 years in 2000 to 20 years in 2020. Because sentences are so much longer, despite no comparable change in either crime or detection rates for serious offending, the number of people actually in prison serving determinate sentences of over 10 years has risen from 2,724 in 2011 to 8,720 in 2021. By any measure, and overwhelmingly because successive governments have legislated to make it so, sentencing is much tougher than it used to be. Governments have unquestionably delivered on that promise.

⁹ [HMPPS Annual Digest 2020/21 \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/91212/hmppps-annual-digest-2020-21.pdf)

The disturbing evidence of surveys on this issue, however, is that this appears to have gone not merely unnoticed but disbelieved. The committee's inquiry has been prompted in part by the outstanding work of the Sentencing Academy¹⁰. Their survey of public understanding of sentencing was highlighted in our publication, the Bromley Briefings Prison Factfile in January of this year¹¹. It confirmed to a substantial degree the findings of much earlier work by professors Mike Hough and Julian Roberts in 1998¹² and 2013¹³. Crucially, the consistent evidence appears to be that the public grossly underestimates the actual severity of sentencing for serious crime, including both the length of sentences and the probability of custody being the outcome in the first place.

These findings need to be read against the equally consistent survey evidence that the public generally wants longer sentences for serious crime¹⁴. Although there is good evidence that, faced with the full circumstances of a case in mock sentencing exercises, people tend to be less punitive than in the abstract, there can be no escaping that what politicians hear "on the doorstep" appears to be borne out by the survey evidence.

What this implies is two things. First, it suggests that part of the conversation both on the doorstep and in the opinion surveys has been missed out. The public have not been asked the question about what they want in the context of what they have already been given. Worse, they have been asked the question when they have a radically inaccurate appreciation of the facts.

The second implication, which can only be a supposition, is that the continual promise to make sentencing tougher is part of what creates that mistaken factual view. Why would a politician promise to make sentencing harsher if it hasn't been getting weaker?

How does the public access information on sentencing?

The report prepared for the Sentencing Council in 2019¹⁵ gives a nuanced account of how the public gets information about sentencing, and makes a series of recommendations in support of a pragmatic aim of greater balance. However, while much of the frustration of organisations like PRT which campaign for a more moderate use of imprisonment centres on the role of the media, and some sections of it in particular, it would be naïve to imagine that stories about overall trends in sentencing practice are about to supplant lurid headlines about exceptional cases.

But the public narrative need not be wholly in the gift of editors with audiences to sustain. The Sentencing Council report is coy about the impact of the use of sentencing policy as a party-political weapon. The technique came to prominence in the 1990s with the New Labour mantra of "tough on crime, tough on the causes of

¹⁰ [Public Knowledge of Sentencing Practice and Trends – Sentencing Academy](#)

¹¹ [Winter-2022-Factfile.pdf \(prisonreformtrust.org.uk\)](#)

¹² Hough, M. and Roberts, J.V. (1998) Attitudes to Punishment Findings from the 1996 British Crime Survey. Research Findings, 64, London: Home Office

¹³ Hough, M. et al. (2013) Attitudes to Sentencing and Trust in Justice: Exploring Recent Trends from the Crime Survey of England and Wales. London: Ministry of Justice

¹⁴ Marsh, N. et al. (2019) Public Knowledge of and Confidence in the Criminal Justice System and Sentencing. London: Sentencing Council

¹⁵ [Public Knowledge of and Confidence in the Criminal Justice System and Sentencing \(sentencingcouncil.org.uk\)](#)

crime”, but has been used regularly ever since as a simple way of signalling alleged political difference. In desperate straits at PMQs on 6 July this year, the Prime Minister of the day responded to the Leader of the Opposition with

“He talks about integrity, but he has voted time and time again against sanctions on criminals that would put them behind bars.”¹⁶

So in a single sentence, a senior politician manages to create the false impression both that one party systematically reduces the severity of sentencing and that the only penalty that counts is imprisonment. Sentencing policy is reduced to a convenient political “meme” or signal.

A very similar phenomenon is easily observed in debates on the parole system. In May this year, the Justice Secretary reacted to the Parole Board’s decision to release the woman convicted of killing “Baby P” by tweeting that her actions were “pure evil” and justified a radical overhaul of the Parole Board¹⁷. Inevitably such a reaction invites a debate on whether punishment has been sufficient, not on the issue of whether the person represents a risk of serious further offending. Amidst the policy chaos that has engulfed the parole system ever since the controversy surrounding the board’s recommendation to release John Worboys in 2018, the government has now revived the idea that a person’s release from custody and progress through the system should be determined in part by an assessment of its impact on “public confidence”. At no stage has the government responded by reminding the public that minimum punishment periods for indeterminate sentences have been hugely increased by statute, and that the parole board’s record in terms of avoiding the commission of serious further offences is remarkably strong.

It would be both impractical and wrong in principle for the general public to have access to the huge volume of material on which the parole board relies to take a decision on risk in any individual case. And it is easy to understand why high-profile cases can place ministers in an invidious position, defending a system which mitigates rather than eliminates risk, and which inevitably revives public outrage about crimes committed often decades earlier. No-one doubts the strength of feeling expressed in the messages ministers receive from their constituents or through the media. But it cannot be sensible to respond to public and media outrage by simply ignoring salient facts and making no effort to explain why the system operates as it does. It is particularly disappointing that the Justice Secretary should have done so in this instance when the Parole Board itself has co-operated fully with measures to increase its transparency, through giving reasons for decisions and allowing generous media access to the board’s work.

In short, one opportunistic ministerial response under pressure can undo any amount of carefully orchestrated outreach and public education. The public can scarcely be expected to have confidence in a system which their elected government seems so eager to trash. The cynical use of sentencing policies as political ammunition by both main parties over nearly 3 decades cannot be blamed on the media.

What are the barriers to improving public awareness of how sentencing works?

¹⁶ [Prime Minister - Hansard - UK Parliament](#)

¹⁷ [Dominic Raab rebukes Parole Board for release of Baby P’s mother | Baby P | The Guardian](#)

To what extent does public understanding of sentencing affect public confidence in the criminal justice system?

What could be done to improve public understanding of sentencing?

It will be apparent from our evidence that we see the complexity of sentencing law as a significant barrier to improving public awareness and, in turn, public confidence in that aspect of the criminal justice system. That much is recognised in repeated political ambitions to restore “honesty in sentencing”¹⁸, but in practice complexity has been increased rather than reduced by successive governments. Simplification is the right goal, but would require a cross party pact to change the way sentencing policy is currently used for perceived political advantage. In practice, without that change in political behaviour, it is hard to see how any public information campaign could gain traction.

What is public opinion on sentencing, and how can it be ascertained or measured?

To what extent should public opinion inform sentencing policy and practice?

As we stated in the introduction to our evidence, we think the key features of public opinion on sentencing are both reasonably clear and remarkably consistent over time. In particular:

- a majority feel that sentencing in the abstract is too lenient
- but faced with the specific circumstances of real cases, the same public will tend to favour less punitive and more rehabilitative responses than the system actually provides

However, the committee’s final question is surely the most important.

There can be no argument with the proposition that a government has a responsibility to maintain public confidence in criminal justice. The alternative is anarchy. But public confidence is manifestly not coterminous with public opinion about sentencing. Moreover, as a proxy for measuring public confidence, public opinion about sentencing has significant drawbacks. Polling on criminal justice regularly demonstrates that people can hold apparently opposing and inconsistent views simultaneously. And it should come as no surprise that public opinion in the immediate aftermath of a very shocking individual case may be different from what might emerge from a facilitated discussion in a focus group. In short, a sentencing policy that is driven by a desire to satisfy public opinion is probably doomed to eternal chaos.

Given that most people’s real experience of crime relates to much lower level offending than that which commands the attention of national media, better measures of public confidence probably relate to that day to day experience. The British Crime Survey for many years provided a rich seam of evidence on which to

¹⁸ An example from 2005 both of this ambition and of the use of punishment as a tool for political division [Howard: Honesty in sentencing :: Conservative Party Speeches :: SayIt \(mysociety.org\)](#)

draw¹⁹, and consistently suggested that confidence was linked to experience of low level crime and anti-social behaviour. However, boosting public confidence through tackling those issues is very much more complicated and difficult to achieve than passing legislation to make sentencing more severe. How much more straightforward it is to punish rather than prevent.

Sentencing is a function of the Crown, and for good reason. It must balance retribution with mercy, punishment with an attempt to prevent repetition. The reasonable expectations of the community, including the victim, must be weighed against the fair treatment of the perpetrator of a crime. Those immensely solemn and difficult judgements have disappeared from both our parliamentary and public debate on sentencing. So the Prison Reform Trust wholeheartedly supports the call for a new national debate made by Bishop James Jones, Chair of the Independent Commission into the Experience of Victims and Long Term Prisoners in the Commission's report "Making sense of sentencing", published earlier this year²⁰.

We urge the Committee to lend its weight to that call.

¹⁹ An example from 2015 at this link [Public confidence in the Criminal Justice System – findings from the Crime Survey for England and Wales \(2013/14\) \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/441112/public_confidence_in_the_criminal_justice_system_-_findings_from_the_crime_survey_for_england_and_wales_2013_14.pdf)

²⁰ [Independent Commission into the Experience of Victims and Long-Term Prisoners – Home \(icevlp.org.uk\)](https://www.icevlp.org.uk/)