Sixteenth Report of Session 2017–19

Report, together with formal minutes relating to the report

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Justice Committee

The Justice Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Justice and its associated public bodies (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General’s Office, the Treasury Solicitor’s Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

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**Summary**

Over the past 25 years, the prison population has grown significantly from 44,246 in 1993 to 82,384 as at December 2018. Capacity has not kept pace with demand and many prisons are now deemed to be overcrowded. Whilst the number of people in prison has remained roughly stable since 2012, the amount spent on prisons has fallen in recent years. The Ministry of Justice currently has a gap in its finances across 2018–19 and 2019–20 which equates to £1.2 billion. We heard that this equates to a reduction in the prison population of roughly 20,000 prisoners. We conclude that ploughing funding into building prisons to accommodate prison projections is not a sustainable approach in the medium or long-term. There must be a focus on investing in services to reduce the £15 billion annual cost of reoffending and prevent offenders from continually returning to prison, thereby reducing the size of the prison population.

David Gauke, the Justice Secretary, set out in his speech on prisons in February 2019 that there is a very strong case to abolish sentences of six months or less altogether. We agree with him and recommend that the Government should introduce a presumption against sentences of less than six months. We believe that this approach will be more financially sustainable and will do more to reduce the cost of reoffending to society. We further recommend that when changes are being made to sentencing legislation in Parliament, the Ministry considers what more it might do to make Parliamentarians aware of the likely impact on increasingly restrained resources.

We conclude in this Report that the ability of former prisoners and those on community sentences to access appropriate support in the community is vital to supporting their rehabilitation and reducing reoffending in the future, potentially reducing the repeated use of imprisonment. We welcome the Government’s recognition of the need for the new iteration of the Transforming Rehabilitation programme to address the shortcomings of the previous one in terms of funding for probation services.

The nature of the prison population is rapidly changing. A higher proportion of offenders are in prison for serious violent or sexual offences. The average age of the prison population is also rising. Many prisoners have mental health problems, making it difficult for them to navigate the criminal justice system, and levels of literacy are often low. All these factors and others make managing the current cohort of prisoners extremely challenging.

Our Inquiry also heard that the rise in the prison population in recent years has resulted from a greater proportion of those convicted being given a custodial sentence and custodial sentences becoming longer. This has been driven by a complex set of factors. The most significant explanation has been legislative factors created by a series of political and policy choices by successive Governments and parliaments.

The Ministry has rightly focussed on safety and decency in prisons, however this has come directly at the expense of rehabilitation and purposeful activity. The Ministry needs to refocus its efforts to maintain a dual approach to maintain safety and decency, as well as improve rehabilitation. We heard during our Inquiry that regime restrictions related to staffing shortages and other disruptions severely undermine the delivery of rehabilitative services including education, mental health treatment, substance misuse.
treatment and offending behaviour programmes. This results in immeasurable wasted costs and does not represent an efficient or effective use of funds. The nature of regimes and restricted access to rehabilitative activities has a cyclical impact on the degradation of regimes and safety, owing to the boredom and frustration of prisoners enduring impoverished regimes, which can in turn lead to violence and self-harm.

We also found that, whilst progress made on the Prison Estates Transformation Programme is welcome, the new-for-old strategy is not working as intended. Sites for new prisons have proven difficult to obtain, older and decrepit prisons have been forced to remain open owing to population pressures and receipts from the sale of existing sites do not cover the cost of building new prisons. The backlog of maintenance continues to grow, and many prisoners continue to live in cells designed for fewer people. On the Ministry’s current spending trajectory, it will take many years before these major issues are resolved. We recommend that as part of its Justice 2030 project the Ministry develops a realistic, properly costed, long-term estate strategy, that enables it to meet the needs of an ever-changing prison population. This should include provision for trials of alternative approaches for accommodating and caring for elderly and otherwise infirm prisoners, for women who do not represent a high risk to the public, and for the treatment of young adults to resolve the long-standing anomaly of the sentence to detention in a young offender institution no longer meaning that they are accommodated in suitably specialist provision.

This Report finds that we are now in the depths of an enduring crisis in prison safety and decency that has lasted five years and is taking significant additional investment to rectify, further diverting funds from essential rehabilitative initiatives that could stem or reverse the predicted growth. There is a grave risk that we become locked in a vicious cycle of prisons perpetually absorbing huge amounts of criminal-justice related spending, creating a perverse situation in which there is likely to be more “demand” for prison by sentencers in areas where they have less access to effective community alternatives.

We conclude that addressing the crisis in the sustainability of our prisons calls for a serious open public debate about the criminal justice system, the role that prison can and cannot play, and its affordability. We are pleased that the Prisons Minister and Justice Secretary have acknowledged this, but, regardless of the political climate, this cannot be just a long-term aspiration. We call for greater transparency to enable the public and others to understand the true costs and the challenging and testing nature of decisions which need to be made about public spending on prisons and other aspects of criminal justice. This should form the first step of the Justice Secretary’s ‘national conversation’ about these matters, which cannot continue to be hidden behind either prison gates or within the Ministry of Justice.
Introduction

The Committee’s inquiry

1. When we launched our inquiry in September 2017, all the indicators of prison safety were illustrating a deterioration in prison standards, year-on-year. There were concerns about the impact of 15% budget reductions over the 2015 to 2020 spending review period on the safety and decency of the prison estate, in addition to the reduction in the number of prison officers between 2010 and 2015. The prison population had risen by 20% over the previous 15 years and growth in the prison population had recently exceeded prison population projections, placing pressure on the prison estate which had limited headroom. Future projections indicated that the population would continue to grow up to 2022, despite England and Wales together already having the highest imprisonment rate in western Europe. The Government had committed to expand the prison estate by 10,000 places and to closing outdated prisons. This provided a timely opportunity for us to undertake an inquiry on the size of the prison population and the Government’s strategy for managing it.

2. The Ministry of Justice as a whole, which funds public and private sector prisons, is under very significant financial pressure. Mike Driver, Ministry of Justice Chief Financial Officer, confirmed to us when giving evidence that the Ministry was managing a funding gap in its finances of £1.2 billion across 2018–19 and 2019–20. The projected rising prison population therefore presents a challenge.

3. The terms of reference were:

- What is the current and projected make-up of the (sentenced and unsentenced) prison population in England and Wales up to 2022?
- What has led to the current size and make-up of the prison population?
- To what extent are these factors taken into account in prison population projections?
- What is the Ministry of Justice’s existing strategy for managing safely and effectively the prison population?
- What are the implications of the likely rise in the population for the resources required to manage prisons safely and effectively?
- What impact does reducing reoffending by existing prisoners and those under the supervision of probation services have on the size and make-up of the prison population?
- What is Her Majesty’s Prison and Probation Service’s current capacity to manage safely and effectively the prison population?

1 Q56 Mike Driver
2 Q457 Simon Boddis
4. We have held eight evidence sessions and have taken evidence from 21 organisations, covering a wide range of stakeholders and commentators, as well as those tasked with delivery. We heard from Ministers on 23 June 2018 and 11 December 2018. During the course of the inquiry, the Committee held one-off evidence sessions following highly critical inspection reports on HMP Liverpool and on HMP Birmingham, and where relevant, we have incorporated some of the evidence taken at these sessions into our report. We also held an informal seminar looking at cross-cutting issues related to crime and attended evidence sessions held by the Health and Social Care Committee on its inquiry into Prison Health.

5. The first section of this report sets out the Ministry’s current approach to managing the prison population, and the present and projected make-up of the prison population. Chapter 1 looks at the Ministry’s current strategy for prisons, as well as the financial sustainability of its approach. In Chapter 2, we first summarise the evidence we received on the nature of the present prison population. In particular, we heard that many groups within the population have complex and challenging needs. We go on to consider current projections for how the prison population will change in the near future. Chapter 3 looks at the factors which are contributing to the current and projected growth.

6. The second section of the report looks at two of the Ministry’s objectives as set out in its Single Departmental Plan. They are: getting the basics right by providing decent, safe and modern prisons that tackle criminal activity and drug abuse, whilst providing strong incentives for prisoners to reform (Chapter 4); ensuring a sustainable prison population by exploring options for, and building confidence in, non-custodial sentences and by tackling reoffending though a cross-Government approach (Chapter 5). Our concluding remarks are set out in chapter 6.

7. Our inquiry was not explicitly about making recommendations for how the prison population could be reduced, although some of the evidence we received makes reference to this. Our intention in undertaking this work has been to shine a light on the size and nature of the prison population, and the Ministry’s plans to manage projected rises, and to draw conclusions about the sustainability of Government policy. During the course of our year-long inquiry, the Government’s policy focus has shifted from primarily concentrating on prison safety and decency and modernisation of the prison estate, to an acknowledgement that the rate of imprisonment is too high and that it could be reduced through sentencing reforms.

8. We concluded taking evidence in December 2018, and while the report was in preparation the Secretary of State for Justice, Rt Hon David Gauke MP, set out on 18 February 2019, his vision for a “smart” justice system and posed three fundamental questions about the existing approach:

   (1) Does our approach to sentencing reduce crime when reconviction rates are so high?

   (2) Are we running prisons in a way which maximises opportunities for turning offenders around?

   (3) Should we be looking for better and alternative ways of punishing people for their crimes?
9. We evaluate the evidence we received in the light of this significant shift, which had been hinted at by Ministers during the course of our inquiry, and make conclusions and recommendations to assist the Government as it pursues answers to these questions and its welcome change in direction, and as we approach the 2019 Spending Review.
1 The Ministry’s current approach to managing the prison population and its financial sustainability

10. As we noted in the introduction, the Ministry’s strategy for managing the prison population and project growth has changed course during our inquiry. This chapter sets out the Ministry’s current approach and considers the financial sustainability of the prison population at its current size.

The Justice Secretary’s speech to Reform

11. On 18 February 2019, the Secretary of State for Justice, Rt Hon David Gauke MP, set out his vision for a new approach to sentencing and the use of imprisonment, which appeared to recognise the question of the sustainability of the prison population, whilst not explicitly mentioning the scarcity of resources. He made reference to:

- A focus on effective alternatives to custody in the community and more punitive sanctions on certain criminals
- A shift in resources from ineffective prison sentences to probation, including potential abolition of custodial sentences of fewer than 6 months
- Exercising caution in continuing to increase sentence length as a response to concerns over crime
- Holding a national debate about what justice, including punishment, should look like in modern time.

The Prisons Minister’s perspective

12. In June 2018, the Prisons Minister, Rory Stewart MP, told us that he saw two solutions to managing the prison population: predicting the future prison population and providing prison places or looking at the drivers of that population and trying to influence them. He believed the latter would be a significant challenge. In our final evidence session in December, he acknowledged that, while he had succeeded in securing “hundreds of millions” of extra resources from the Treasury for prison building and security measures, in order to overcome overcrowding it would be necessary to do that “every year for about the next 20 years”. He acknowledged that this meant it was necessary to have “serious conversations about sentencing”, restore the faith of the judiciary in community sentences, and encourage them to use community sentences more when appropriate. He explained to us that in the short-term his focus was on prison safety and decency, in the medium term it was on rehabilitation and in the longer-term on a reduction in the prison population. In relation to long-term planning, the Ministry of Justice has embarked on a
horizon scanning project, Justice 2030, to identify the main trends that could impact the justice system and what they might mean for citizens, the state, the Government and the department, and how they might respond to them under a ten-year strategy.

**The Ministry’s objectives for prisons**

13. In the Ministry’s Single Departmental Plan, published in May 2018, the Secretary of State for Justice set out a narrower set of priorities for 2018/19, three of which have direct relevance to our inquiry:

- Get the basics right by providing decent, safe and modern prisons that tackle criminal activity and drug abuse, whilst providing strong incentives for prisoners to reform.
- Ensure a sustainable prison population by exploring options for, and building confidence in, non-custodial sentences and by tackling reoffending though a cross-Government approach.
- Maintain a continued tight grip of departmental finances.6

He restated the objective, set out in the previous Plan, for the Ministry to provide prison and probation services that reform offenders.7 In the remainder of this chapter we set out the detail of the Ministry’s overall approach.

**The Prison Safety and Reform White Paper**

14. Existing strategy is framed largely around the November 2016 White Paper *Prison Safety and Reform*. This set out what the Ministry described in its written evidence to us as an ambitious agenda to modernise the prison estate, improve education and empower prison governors, to help tackle violence, reduce reoffending and keep staff and prisoners safe. Our predecessor Committee examined some of these plans in its reports *Prison Reform: Governor empowerment and prison performance* and *Prison Reform: Part 1 of the Prisons and Courts Reform Bill*.8 The latter had been intended to be the centrepiece of the then Government’s legislative ambitions, which were constrained to some extent by the fall of the Bill at the 2017 general election. We were told by the Ministry of Justice in December 2017 that it was developing an update to the White Paper, along with an action plan. This has not been published.

15. There have been four Secretaries of State for Justice in the last three years. Several of our witnesses expressed concern that in that time prisons policy has been characterised by piecemeal announcements and delays.9 The Prison Reform Trust (PRT) described the Government’s approach to prison reform between February 2016 and December 2017 as comprising “a multitude of ambitious policy announcements and a plethora of promised

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reviews and consultations on how to achieve them.” While PRT welcomed a consultative approach, they suggested that the pace at which action is taken after a review is completed “might be said to lag behind the alacrity with which reviews are set up in the first place”. One clear example of the impact of changes in leadership is that the Ministry of Justice consulted on a female offender strategy in early 2017. We were subsequently told on several occasions that such a strategy was ‘forthcoming’ and it was eventually published in June 2018. Similarly, plans to devolve the commissioning of education provision to governors slipped from April 2017 to April 2019. We discuss these strategies further later in this chapter.

16. The relative funding commitments towards different activities to improve safety and reform have also shifted over time. The extent to which some policies remain priorities for the Ministry of Justice is unclear. For example, the plan to empower prison governors by devolving funding to deliver key strategies and refreshing leadership training launched in November 2016 and the data-driven approach launched in June 2016. On the other hand, each change has created fresh impetus for reform, and under the current administration the intensity of effort in the last twelve months has notably increased.

**Data-driven approaches**

17. Another of the Ministry’s aspirations is to become a data-driven department as part of its plan for the department to become smaller, simpler and smarter. Richard Heaton wished to see data and evidence as the “engine for reforms to prisons”. He envisaged that this meant, for example, unblocking data flows in the justice system; bringing a ‘what works’ approach to the whole system, to generate scale, enhance existing activity, fill gaps, and allow more decisions to be better informed; and the use of predictive analytics to find better ways of delivering services, and of shaping policy advice. These aspirations are less prominent in the 2018/19 departmental plan; an objective to “provide high quality analytical services to enable data driven policy and operational decision making” has replaced the previous objective to “put evidence at the heart of the justice system, opening up our data, analysis and research, and improving our information management”.

18. In the White Paper, the previous Government indicated that a new resource could be established to support the use of evidence on interventions to reduce reoffending, including by synthesising evidence and building the evidence base through trials of new approaches. In May 2018, the Ministry published Areas of Research Interest which referred to working “in partnership to strengthen our strategic evidence base” and contributing to “filling knowledge gaps”. In relation to prison and probation services, this acknowledged that the criminal justice system is complex and expensive system to run and identified that research evidence on how best to reduce reoffending tends to be high level. Although Rory Stewart told us that the Ministry commissions a lot of economic analysis, the Department identified that there is a lack of evidence on the costs and benefits of interventions—and

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10 Prison Reform Trust (PPP0023)
11 Prison Reform Trust (PPP0023)
12 It has not been possible to locate the Government’s call for evidence or consultation. See submission by Women in Prison, which contains the consultation questions (PPP0022).
13 Heaton, R., 5 ways we are putting data in the driving seat, Civil Service Blog, 27 June 2016
14 Heaton, R., 5 ways we are putting data in the driving seat, Civil Service Blog, 27 June 2016
16 Ministry of Justice, Prison Safety and Reform, Cm9350, November 2016
17 Q103
on which part of the system the costs and benefits fall—and need for a more in-depth understanding of what works with whom, and how. Nevertheless, the Ministry did not explain specifically how it would address this and it was not accompanied by a dedicated funding commitment to further research.18

19. We noted during our inquiry that the Ministry has published evidence on prison violence, for example, and has launched, in collaboration with other Government departments, pilots on homelessness, and drug and alcohol treatment for people on community sentences. We consider these in more detail later in our report.

Specific strategies

The back to basics approach

20. The Ministry has adopted a ‘back to basics’ approach, announced by the Prisons Minister, Rory Stewart MP, when he appeared before us to discuss the poor performance of HMP Liverpool, having been in the job for two weeks. He considered that society should look after prisoners:

We should be deeply ashamed as a society if people are living in filthy, rat-infested conditions with smashed-up windows, with high rates of suicide and violence […] We are tough and we are clear on prisoners: if you commit an offence, your punishment is to go to prison. But we do not torture people in prisons through unsanitary conditions, and we must never allow that to happen.19

21. As an example, he referred to broken windows as being important as they can also create “a general morale problem for prison officers”. He explained that his philosophy applied to “the whole system and culture” as well as the minimum standards acceptable. When he appeared before us again six months later, the Minister reiterated the importance of safety and decency but emphasised that this was not at the expense of rehabilitation. He explained:

The key is that it is not an either/or; it is an and […] I assure you that [HMPPS] are also doing an enormous amount. They are pushing ahead with an education and employment strategy. They are pushing ahead with a new approach to rehabilitation. They are designing new NHS partnership contracts that the governors are central to, all of which is about rehabilitation. Finally, they are bringing probation officers into prison to work with long-term prisoners in order to address questions of reoffending.20

We consider the question of decent and modern prisons in the next chapter.

18 Ministry of Justice, Areas of Research Interest, May 2018
19 Q115
20 Q659
**The Ten Prisons project**

22. The Ministry is targeting £40m at selected prisons to develop a coordinated approach to improve safety, security and decency. The ‘10 Prisons Project’ focuses on improving living conditions, preventing drugs from entering the premises, and enhancing the leadership and training available to governors and their staff.\(^{21}\) On announcing the project in August 2018, the Prisons Minister pledged to resign in a year if violence and drug misuse had not improved in those establishments.\(^{22}\) He considered that he would be successful if there had been a 10 to 25% reduction in assaults. The intention is for the approach to be replicated in other prisons should it prove successful.\(^{23}\) Michael Spurr explained:

> I hope we can demonstrate through additional staff, discrete searching teams and so on, that we can get on top of drugs, alongside investment in treatment—some of the stuff the Government are looking to do to tackle mental health and drug use in wider society.

23. Successive Secretaries of State for Justice have adopted similar targeted approaches albeit with significantly less investment. For example, Rt Hon Michael Gove targeted £12.9m at 69 prisons, with enhanced funding for three of them, following our predecessor’s 2016 damning report on *Prison Safety* which documented a rapidly worsening decline in standards.\(^{24}\) Rt Hon Liz Truss increased staff in 10 prisons.\(^{25}\) Rt Hon David Lidington sought to bolster leadership, training and audit in the 26 most difficult prisons.\(^{26}\)

**Wider rehabilitative strategies**

24. A key part of the Prison Safety and Reform agenda has been the creation of a series of strategies designed to reform prisons and arrangements for prisoners’ release. Rachel Tuffin of the What Works Centre for Crime Reduction highlighted that the research evidence on what needs to be in place to reduce reoffending relates to preparation for leaving prison, particularly in relation to education, employment and accommodation.\(^{27}\)

**Education and employment**

25. Those released from prison are much less likely to continue committing crime if they have a job or have participated in education.\(^{28}\) Yet only 17% of ex-offenders are in PAYE work (i.e. paying income tax and national insurance as an employee) a year after coming out of prison and only half of employers say they would even consider employing an ex-

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21 The ten prisons are: HMP Hull; HMP Humber; HMP Leeds; HMP Lindholme; HMP Moorland; HMP Wealstun; HMP Nottingham; HMP Ranby; HMP Isis; and HMP Wormwood Scrubs.
22 BBC News, Prisons minister Rory Stewart: I’ll resign if drugs and violence don’t go down, 17 August 2018
23 Q664
24 Letter from Rt Hon Michael Gove MP, former Lord Chancellor and Secretary of State for Justice to the Chair, Justice Committee, 30 June 2016; Justice Committee, Sixth Report of Session 2015–16, Prison Safety, HC625
25 Letter from Sam Gyimah MP, former Parliamentary Under-Secretary of State for Justice to the Chair, Justice Committee, 28 February 2017
26 Oral evidence taken on 25 October 2017, HC418, Q41
27 Q183
28 Ministry of Justice, Education and employment strategy, Cm9621, May 2018, para 20 stated that Ipsos MORI research commissioned by the Ministry of Justice (MoJ) and Department for Education (DfE) in 2015 showed that offenders who participate in education are significantly less likely to reoffend within 12 months of release – 7.5 percentage points less likely.
offender. The Education and Employment Strategy, published in May 2018, aims to “put offenders on a path to employment as soon as they step foot in prison.”

This included the following plans:

- putting governors in full control of the education provided in their prisons so they can tailor it to their specific prison populations and for the local jobs market;
- looking at how in-cell technology could support prisoner learning;
- expanding the use of workplace ROTL to get prisoners who have earned it, and who have been properly risk-assessed, into workplaces; and,
- creating the New Futures Network to persuade employers to take on ex-prisoners, and create opportunities for existing prisoners.

**Families**

26. Research shows that prisoners who receive visits from family members are 39% less likely to reoffend. The devolution of family services budgets to facilitate the implementation of the recommendations of Lord Farmer’s review on prisoners’ family ties took place in October 2017. Lord Farmer concluded that maintaining or re-establishing family ties should be placed at the heart of prison reform as a key element of a rehabilitative culture. He made recommendations to the Ministry of Justice, HMPPS, and governors on how to achieve this. These were adopted by the Ministry in its implementation plan published in August 2018, although it acknowledged that some recommendations required ‘longer-term, structural reforms’. Lord Farmer has been commissioned to conduct a similar review on family ties for female prisoners.

**The female offender strategy**

27. The female offender strategy, published in June 2018, is a broader strategy which sets out the Ministry’s vision that where appropriate, women should be given the support they need to address their offending behaviour in community settings and that custody should be used as a last resort. The Ministry’s aspiration is that by taking a “gender-informed approach”, outcomes will improve for female offenders. This comprises:

- adapting prison environments to the needs of female offenders, through improvements to safety, health and well-being, as well as the links between female offenders and their families;
- empowering local areas to build multi-agency, whole-system models to meet the needs of female offenders and women at risk of offending;

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31 National Information Centre on children of offenders, *Updates on the implementation of recommendations resulting from the Farmer Review*, August 2018, page 1
32 Ministry of Justice, *Secretary of State launches dedicated strategy to ‘break the cycle’ of female offending*, 27 June 2018
33 Crest Advisory (ppp0039)
- a joined-up approach across Government at a national level and between agencies and services at a local level to deliver a holistic response; and
- an evidence-based approach to what works, and pilots to test potential solutions and to ensure scalability.

28. The strategy was accompanied by a cross-Government commitment to invest £5 million in community provision for female offenders, including a £3.5 million fund for 2018–19 and 2019–20, £2 million of which is for female offenders who have experienced domestic abuse. The remaining £1.5 million is capital funding in 2018–19, to support the development of community-based residential support. We consider this strategy in more detail in chapter 5.

Towards an overarching strategic approach?

29. We encountered concerns over the course of our inquiry regarding the clarity of the Government’s overall strategy since the fall of the Prisons and Courts Bill, which would have enshrined into law that a key purpose of prison is to reform and rehabilitate offenders, as well as punish them for the crimes they have committed. The former Prison and Probation Ombudsman believed that the “greater clarity of accountability and purpose” promised by the Bill remained necessary, as did the need to strengthen through legislation the role of scrutiny bodies and the relationship to HMPPS and the Ministry. Anne Fox of Clinks regretted the loss of the statutory purpose for prisons when the Bill fell. Our predecessor Committee had recommended a further purpose of achieving a decent and fair environment for prisoners. The Prisons Minister believes that reform can be achieved without legislation, a conclusion drawn by our predecessor Committee, although it advocated legislating to strengthen the position of the Prison and Probation Ombudsman and National Preventive Mechanism. The Government must legislate in the next Queen’s Speech on the purpose of prisons and to strengthen the statutory foundations of the Prison and Probation Ombudsman and National Preventive Mechanism, as our predecessor Committee recommended in 2017.

30. In relation to each of the specific strategies, we heard concerns about the strength of the approach being taken and the detail of implementation. For example, when we discussed the strategies with Anne Fox of Clinks, she said:

Some of them lack detail on the outcomes they are seeking to achieve, exactly how implementation will happen, at what stage and how it will be measured. There is a woeful lack of resource. I know we do not always like to mention it, but it is important to mention that most of them are underfunded, if funded at all.

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35 Q391 [Mrs Anne Fox]
36 Prisons and Probation Ombudsman (ppp0031)
37 Q391
40 Q391; see also Q426
31. Dr Paradine of Women in Prison, Juliet Lyon of the Independent Panel on Deaths in Custody, and Jessica Southgate of Agenda called for a clear, timetabled plan, with targets and costings for each element of the Female Offender Strategy. Similar observations were made about other strategies, including the lack of commitment of sufficient resources to achieving the outcomes desired. In relation to the employment and education strategy Mark Fairhurst of the POA said:

… let’s be serious about rehabilitation. Give us the funds, and let’s give prisoners a 30-hour working week, but pay them a half-decent wage. Then, when they are released, they will not have to rely on a £45 release grant or on the state; they will have savings to go out with, and maybe they can put down a deposit on a flat. At least they will be able to get by until they are sorted out. Make them work 30 hours a week or educate them for 30 hours a week. Give them vocational skills that can help them to gain employment on release. But that takes a major investment. People are just playing with words at the moment.

32. Anne Fox called for a wider strategy drawing together the existing plans, and for the existing strategies to have clear implementation targets that would then drive the data; from that should flow information and dissemination of good practice through the operational teams in HMPPS. She cited the implementation of the Farmer Review as an example of a strategic approach that has “flourishes of good practice”, including clear governance (with ‘owners’ in the MOJ and HMPPS, a steering group which includes operational leads, and ongoing contact with Lord Farmer); an implementation plan; and published updates with access to good practice.

33. In the remainder of our report, we set out the detail of the Ministry’s activity on the overarching objectives and assess progress on them in the wider context of the Government’s recently stated approach.

34. The frequent changes in Ministers at the MOJ and the inevitable changes in priorities that follow have hindered the sustained implementation of an overarching strategic approach to prisons policy. A clear dedicated effort will be needed to ensure that the ever-worsening decline in safety, which has now been going on for five-years, is reversed. Reversals in cuts in spending on prisons and investment into staffing, training, infrastructure and guidance will be needed and the Secretary of State for Justice and the Prisons Minister must demonstrate decisive action to achieve this.

35. We also welcome the Ministry of Justice’s efforts to devise strategies that seek to address some of the factors that contribute to reoffending. The philosophy behind each of the individual strategies is welcome, but the current overall approach is largely a collection of operational policies and lacks a coherent means of driving reform, including processes that link plans, data on outcomes, and the evaluation and dissemination of good practice. They are also woefully under-resourced and it is unclear what resources, if any, have been allocated to future planning. There should be

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41 Qq343–344 [Dr Kate Paradine; Jessica Southgate]; Q349 [Juliet Lyon]
42 Q392 [Helen Berresford]; Q203
43 Q203
44 Q426; See also Q392 [Helen Berresford]
an overarching strategy for reoffending and a clear vision for what prisons will look like in the future. The Ministry’s rehabilitative strategies should each be underpinned by clear governance arrangements, action plans, timetables and resources.

36. The Ministry of Justice and HMPPS are increasingly making more transparent and positive use of the evidence base in articulating the rationale for strategic approaches. This is essential if the public are to better understand who is in prison and how best to stop them from committing further crime. The creation of a small number of pilots which will be properly evaluated is welcome. Nevertheless, piloting is only helpful if expansion in programmes which prove successful are followed through and funded. The Ministry should set out in its response to this report how it intends to replicate those pilots which prove effective to the extent necessary to achieve substantial reductions in reoffending.

The financial implications of the current system and the need to invest

37. We welcome the courage of the Prisons Minister and Justice Secretary in raising the profile of the financial choices that need to be made and to think “more imaginatively about different and more modern forms of punishment in the community”. Nevertheless, we note that neither have made an explicit commitment to reduce the prison population. Rory Stewart explained:

"I am not going to reduce the prison population just to save money. If somebody ought to be in prison, they ought to be in prison and my job is to go to the Treasury and get the money to pay for that prisoner place, to drive up the baseline."

His vision was for there to be “a realistic relationship between the number of people in prison and the amount of money it costs to look after them” including the minimum conditions necessary to look after someone and stop them reoffending. Accordingly, to inform the next Spending Review, he planned to present the Treasury with “very detailed realistic costings on what it actually costs to run a prison at a particular population level.”

38. We have heard compelling evidence for a similar narrative about the realistic costs of community sentences, treatment for drugs or alcohol misuse and mental health, for example, driven by the Reducing Reoffending Group. The Justice Secretary has committed to one aspect of this by indicating his intention for transferring resources from prison to probation. Our evidence shows strongly the need for a broader approach, with several witnesses believing that this was vital to create sustainable change in the prison population. The Centre for Crime and Justice Studies and Justice Episteme thought that future spending reviews should make explicit the role of non-justice agencies in reducing crime and quantifying the benefits of different approaches across justice, health and social care in particular.

45 Qq110–111
46 Q111
47 Q113–114
48 Q112
49 Centre for Crime and Justice Studies and Justice Episteme (ppp0016)
39. If the Justice Secretary wishes to adopt such an approach it will be necessary to make the case to the Treasury for a gradual shift in resources over a sustained period. In the short-term it is unlikely to be feasible to take resources out of the prison budget; indeed the baseline for prisons spending should increase. While Rory Stewart was content to make the case to the public for going to the Treasury to ask for more money for prisons to reduce reoffending, he was less convinced that it would be possible to do so for more fundamental reform.\(^50\) This will require public and political consent. In relation to this, Dee Anand said:

> Let’s face it: it is an area and a topic of great political sensitivity and not a lot of public buy-in. We need to change the conversation and move it away from prisons being places that are full of terrible people who have done terrible things. Of course, they have committed crimes, but prisons are in fact full of very vulnerable people who need support to help them change. We need to change the conversation in strategic and political circles. We need to change the public mindset that comes down from top-level strategic thinking. We need to engage the public a bit more. I would like to see that as part of the policy, and part of the function of this Committee too. The focus can then be made much easier on turning prisons into places of rehabilitation, safety and change rather than purely punitive organisations and institutions that the public can forget about.\(^51\)

40. Such an approach would also require greater depth of analysis than the Ministry currently undertakes. The Ministry identified in its research interests that it does “not always know where we are best to direct limited resources for maximum benefit” and stated:

> Offenders serving custodial or community sentences may be offered a range of interventions to address their offending behaviour and other needs. Our understanding of the effectiveness of the options available to achieve just and sustainable outcomes is variable, and where it is stronger the evidence is not always comparable.\(^52\)

41. We heard that such an approach is possible. Rachel Tuffin pointed to interesting examples of other jurisdictions which had undertaken detailed work to apply research to their spending plans for prisons and probation to successfully make the arguments for a change in approach. For example, in the US, the Pew Foundation has encouraged states to look at their budgets and think about where correctional resources are going and then to think about how they could move money around and invest more in wraparound services, to reduce their prison budgets.\(^53\) Previous Justice Committees have made the case for such an approach in their reports *Cutting crime: the case for justice reinvestment* and *Crime reduction: a co-ordinated approach*. Women in Prison proposed that a targeted approach be taken to alter prison population projections in each area with a high use of prison through a plan for community investment.\(^54\)

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50 Q115
51 Q305
52 Ministry of Justice, *Areas of Research Interest*, May 2018, page 16
53 Q185
54 Women in Prison (ppp0022)
42. There are numerous inefficiencies and lost opportunities in the system. The Government itself estimates that the cost of reoffending is £15 billion per year and it is therefore disappointing that Chief Inspector of Prisons concluded in his annual report for 2017–18 that the effectiveness of education, skills and work had declined, as had the activity outcomes of prisoners overall. Similarly the upkeep and maintenance of the estate represents a significant cost to the system. The Government has committed to build 10,000 new prison places, but the Ministry was awarded £1.3 billion to invest in the prison estate in the 2015 spending review and that has not been spent, with only one new prison, HMP Berwyn, being completed in the period. The backlog of maintenance across the estate is significant. The Ministry told us that to replace all the windows in HMP Birmingham will cost £6.1 million. It cannot be efficient to continue to spend money maintaining often dilapidated buildings, many of which were built in Victorian times. It is ineffective and inefficient in economic terms and does not represent smart justice.

43. Maintaining a tight grip on finances is a laudable aim, but it is not sustainable if it results in driving down standards of decency and fails to capitalise on opportunities to reduce reoffending. We do not consider that the Government’s existing approach to prison reform is sufficient to resolve major structural deficits to provision to reduce crime. Modernising the prison estate is imperative but ploughing funding into building prisons to accommodate prison projections is not a sustainable approach in the medium or long-term. Our evidence demonstrates an urgent need for significant additional resources for cross-departmental provision to reduce reoffending. This would save the Ministry money in the long-term and would reduce the cost to society of reoffending in the long-term. We are open-minded about the solutions and encourage the Government and wider public to be so, too. We agree with the Justice Secretary that there is a need for a refreshed narrative around the use of imprisonment and how as a society we wish to deal with crime. We are encouraged by his direction of travel in examining the role that prisons should play in modern society. This should include an explicit recognition that social problems cannot be meaningfully addressed through the criminal justice system. This is not only a moral imperative but also now a financial necessity.

44. The Government must recognise the extent of the impact of reductions in funding during the current Spending Review period for prisons and probation services on the quality of these essential public services, relative to the size of the overall resource commitment. We welcome the Ministry’s proposed approach to amassing evidence about the funding required to deliver decent and well-performing prisons for the next Spending Review. Nevertheless, resources to close the hole in the Ministry’s finances, address major maintenance problems and run decent and rehabilitative prisons up to 2022 are unlikely to be found. We note the additional £18 million resource DEL and £13 million capital DEL announced as part of the 2018 Budget for measures in support of prison decency, but this is not sufficient. There appears to be some way to go to ensure that there is evidence of sufficient strength to convince the Treasury to change direction. Once the Ministry has a clear picture of the current and projected costs of running prisons over the next Spending Review period, we recommend that they are published.

45. The Treasury must now be able to recognise the wider implications of the decision not to invest in the prison and probation systems in recent years. It should take this into account for the future. *The Spending Review exercise for 2020 to 2025 should be broadened to encompass a more systemic approach to managing the £15bn a year costs of reoffending. This should include downstream measures, which are out of the control of the Ministry of Justice. To inform such an approach, the Reducing Reoffending Group should commission urgently a systemic review of cross-departmental activity to reduce crime, including mapping demand and identifying trends in the funding and outcomes achieved by a range of public agencies over the current Spending Review period. Such analyses have been conducted to positive effect in other jurisdictions, notably the US, enabling a shift in resources from prisons to community measures. In the medium-term, the Ministry must conduct a wide-ranging and transparent consultation on its Justice 2030 project, which should be broadened out to consider the cross-departmental impact on demand for criminal justice services. Should the Government choose not to undertake such work itself, we propose that an independent commission should be established to consult on and create a sustainable strategic approach to prison and crime reduction policy up to 2030. A similar commission was set up in Scotland, reporting in 2008 and the Commission on Justice in Wales, chaired by Lord Thomas of Cwmgiedd is currently underway.*
# The prison population current and projected

## The current prison population

46. Over the past 25 years, the prison population has grown significantly from 44,246 in 1993 to 82,384 as at December 2018.\(^{56}\) Having increased steadily during much of this period, it has been relatively stable since 2010 and has recently fallen, with a reduction of 2,312 places over the last 12 months.\(^ {57}\) The availability of prison places to accommodate this population is assessed in terms of usable operational capacity. In December 2018, the population was 2,816 lower than capacity, an increase of 490 on the headroom there was 12 months previously, despite an overall reduction in the number of prison places available.\(^ {58}\)

47. Nevertheless, the current population is overcrowded as it is above the in-use certified normal accommodation threshold of 75,005, assessed by HM Prison and Probation Service as facilitating a good, decent standard of accommodation.\(^ {59}\) Overcrowding is not evenly spread across the estate. In December 2018, 72 out of 118 prisons had populations that exceeded their in-use certified accommodation threshold. This includes prisons such as HMP Wandsworth, HMP Pentonville and HMP Leeds.

![Figure 1: Prison population 2010–2017](source: House of Commons Library, UK Prison Population Statistics, Number CBP-04334, 23 July 2018)

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\(^{57}\) Ministry of Justice, *Population bulletin: weekly 29 December 2017*, January 2018  
Box 1: Prison population key terms

**Usable Operational Capacity** of the estate is the sum of all establishments’ operational capacity less 2000 places. This is known as the operating margin and reflects the constraints imposed by the need to provide separate accommodation for different classes of prisoner i.e. by sex, age, security category, conviction status, single cell risk assessment and also owing to geographical distribution.

The **certified normal accommodation (CNA) threshold** is the number of prisoners a prison can hold without being crowded. **In-use CNA** is the number of prisoners a prison can hold in in-use cells without being crowded. This is otherwise known as **uncrowded capacity**.


48. The Ministry of Justice published statistics detailing the make-up of the prison population at 31 March 2018:

   a) The largest part of the population (88%) is made up of sentenced prisoners. Of those, 14% have indeterminate sentences. An indeterminate sentence is one which does not state a specific period of time or release date.

   b) Those prisoners serving Indeterminate Sentences of Imprisonment for Public Protection (IPP) account for 3% of the population. Prisoners serving life sentences made up 9% of the population.

   c) The remainder of the population comprises remand prisoners awaiting trial or sentence (12%) and non-criminal prisoners, such as those imprisoned for the non-payment of fines (1%).

   d) One in every four sentenced prisoners (26%) is in prison for an offence of ‘violence against the person’. Sex offenders make up 19% of the population, the highest level since 2002.

   e) Foreign national offenders (FNOs) represent 11% of the total prison population. The most common nationalities, after British Nationals, were Polish people, who made up 9% of the FNOs population, Albanian (8%) and Irish (8%). The number of foreign national prisoners has been falling.

   f) The vast majority of the population is male (95%).

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62 IPPs were “designed to ensure that dangerous violent and sexual offenders stayed in custody for as long as they presented a risk to society. Under the system, a person who had committed a specified violent or sexual offence would be given an IPP if the offence was not so serious as to merit a life sentence. Once they had served their “tariff” they would have to satisfy the Parole Board that they no longer posed a risk before they could be released.” IPPs were abolished in 2012, but a number of prisoners serving IPP sentences remain in prison. (House of Commons Library, Sentences of Imprisonment for Public Protection, Number 06086, 25 October 2017).
64 Remand prisoners are those awaiting trial.
67 Prison Reform Trust (ppp0023)
g) In terms of age profile, nearly a third of prisoners (30%) are aged between 30 and 39. Those aged between 60 and 69 made up 4% of the populations and 2% were over the age of 70. 1% of prisoners were aged between 15 and 17.69

h) The breakdown in the ethnicity of the overall population is 73% white and 27% Black, Asian or Minority Ethnic (BAME).70 This has remained broadly consistent, as the split is the same as in 2012–13.71 However, in the youth custodial estate the proportion of BAME children is rising.72

Figure 2: Proportion of prisoners by sentence type

Source: House of Commons Library, UK Prison Population Statistics, Number CBP-04334, 23 July 2018

49. The number of children in the secure youth estate has fallen significantly from a monthly average of 2,932 in 2008 to 894 in 2018.73 Children aged between 15 and 17 made up 95% of the youth population, with those aged 17 accounting for 53% of the population.74 The proportion of children who are from an ethnic minority background increased from 26% in 2008 to 45% in 2018. In particular, as highlighted by Rt Hon David Lammy MP in his independent review into the treatment of, and outcomes for, Black, Asian and

69 Ministry of Justice, Her Majesty’s Prison and Probation Service Offender Equalities Annual Report 2017–18, November 2018, table 1.4
72 Youth Justice Board, Youth Justice statistics: 2017 to 2018, page 41, 31 January 2019
73 Youth Justice Board, Youth Justice statistics: 2017 to 2018, supplementary table 7.3, 31 January 2019
74 Youth Justice Board, Youth Justice statistics: 2017 to 2018, page 40, 31 January 2019
Minority Ethnic (BAME) individuals in the criminal justice system, the percentage of black children as a proportion of all children in the secure estate rose from 14% in 2008 to 25% in 2018.75

50. Our witnesses drew attention to cohorts of the population that they considered warranted particular attention, including: older prisoners (over the age of 50); women; under 18s; BAME groups; people maintaining their innocence (denying that they had committed offences they had been convicted for); and, people serving indeterminate sentences for public protection. Each of these groups has needs that are complex and challenging in nature, requiring specific action by the Ministry of Justice.76

The complex and challenging nature of the prison population

51. Our witnesses have highlighted various ways in which prisoners’ needs may be complex and challenging, enabling us to piece together a picture of the characteristics from a range of surveys and other data sources. This ranges from prisoners facing multiple, overlapping vulnerabilities including mental ill health, trauma and substance misuse to those exhibiting challenging behaviours including personality disorders.77 The prevalence of many of these characteristics in the existing or projected prison population is not routinely monitored or published in a transparent manner, either for each prison, or for the population as a whole.

- The Royal College of Psychiatrists noted that there are significantly higher rates of neurodevelopmental disorders such as ADHD, autistic spectrum disorder, learning disabilities, personality disorder and dependence on and harmful use of drugs and alcohol in prisons than in the rest of the population.78

- Prisoners have often had prior experiences of disadvantage, abuse and violence. A 2012 Ministry of Justice report on prisoners’ childhood and family backgrounds noted that 53% of women and 27% of men reported experiencing emotional, physical or sexual abuse as a child.79 46% of women prisoners are known to be victims of domestic violence and 53% have histories of emotional, physical or sexual abuse.80

- People in prison have typically experienced a higher frequency of bereavement and are more likely to have experienced bereavement from traumatic deaths, such as murder or suicide.81 Moreover, 46% of women and 27% of men have attempted suicide at some point in their lives before custody, compared with just 6% of the general population.82

76 See for example Professor Hardwick ([PPP0056]), Agenda ([PPP0064]), Transition to Adulthood (T2A) Alliance ([PPP0003]), Centre for Criminal Appeals ([PPP0021]), Independent Monitoring Boards (IMBs) ([PPP0059]), Henry Jackson Society ([PPP0072])
77 See for example Women in Prison ([PPP0022]); Agenda ([PPP0006]); Clinks ([PPP0005]); Royal College of Psychiatrists ([PPP0013]); Prisons and Probation Ombudsman ([PPP0031]); Q187 [Richard Garside]
78 Royal College of Psychiatrists ([PPP0013]); Headway - the brain injury association ([PPP0020]); Waymarks ([PPP0037])
79 The Howard League for Penal Reform ([PPP0020]); Ministry of Justice, Prisoners’ childhood and family backgrounds, March 2012, page 9
80 Agenda ([PPP0006]). See also Fair Play For Women ([PPP0011])
81 Research Network on Severe and Multiple Disadvantage, *A Literature Review into the prevalence and impact of loss and bereavement on individuals experiencing severe and multiple disadvantage*, December 2018.
82 Q354
• Substance misuse and addiction can be a cause or contributing factor to an individual being sent to prison, with one survey estimating that 70% of offenders have reported misusing drugs before entering prison according to the British Medical Association.\textsuperscript{83} The Inspectorate of Prisons find that 42% of women and 28% of men report a drug problem on arrival.\textsuperscript{84}

• In the Surveying Prisoner Crime Reduction survey, 63% of prisoners had been suspended or temporarily excluded from school, and 42% had been permanently excluded or expelled.

• The Prison Reform Trust's Bromley Briefing cited the following statistics:
  
  - 42% of prisoners (32% for women and 43% for men) had been expelled permanently from school.
  
  - A survey of prisoners sentenced in 2005/06 found that only 53% had any qualifications at all, compared with 85% of the general population.
  
  - 20–30% of people in prison have learning disabilities or difficulties that interfere with their ability to cope with the criminal justice system.
  
  - 25% of women and 15% of men in prison reported symptoms indicative of psychosis.
  
  - 36% of prisoners are estimated to have a physical or mental disability.\textsuperscript{85}
  
  - Headway, the brain injury association, estimated that up to 60% of the prison population have a history of acquired brain injuries.\textsuperscript{86}
  
  - The former Prison and Probation Ombudsman highlighted to us how prisoners differ from the general population in the prevalence of mental health issues:

\begin{table}[h]
\centering
\begin{tabular}{|l|c|c|}
\hline
 & Prisoners & General population \\
\hline
Schizophrenia and delusional disorder & 8% & 0.5% \\
Personality disorder & 66% & 5.3% \\
Neurotic disorder (e.g. depression) & 45% & 13.8% \\
Drug dependency & 45% & 5.2% \\
Alcohol dependency & 30% & 11.5% \\
Source & Singleton et al 1998 & Singleton et al 2001 \\
\hline
\end{tabular}
\caption{Comparison of the prevalence of mental health issues across the prison population and the general population.}
\end{table}

\textsuperscript{83} British Medical Association (BMA) (ppp0024)
\textsuperscript{84} HM Inspectorate of Prisons (ppp0036)
\textsuperscript{85} Prison Reform Trust, Prison Reform Trust, Bromley Briefings Prison Factfile, 2018; Clinks (ppp0005)
\textsuperscript{86} Headway (PPP0020)
52. The prison population has become increasingly challenging in nature, with prisoners often having complex health and social needs. Many have learning disabilities or mental health conditions, such as psychosis, that make it difficult to cope with the criminal justice system and places an addition burden on the prison service to manage their needs. The Ministry needs acknowledge the challenge it faces and demonstrate that it has a long-term strategy to deal with these.

**Overrepresentation of BAME individuals**

53. One, as yet, unexplained challenge is the overrepresentation of BAME people in prisons proportionate to the general population documented in successive reviews. Most recently, Rt Hon David Lammy MP’s review into the treatment of and outcomes for black and minority ethnic people in the criminal justice system has highlighted the significant effect of disproportionality in prisons. Mr Lammy adopted an inclusive definition of BAME, which included gypsy, Roma and traveller populations. Across the whole system, 25% of prisoners are BAME, despite making up only 14% of the population. Disproportionality is particularly pronounced in the youth justice system; Mr Lammy anticipated this would get worse before it got better. In the year since his review the proportion of under 18s in youth custody who are BAME has increased by 1% to 45%; up from 25% ten years ago. Youth convictions often impact the future life chances of those young people. The Lammy Review cited that in the five years to 2017, 22,000 BAME children had their names added to the Police National Database, including for minor offences such as police reprimands. The proportion of Muslims in prison has almost doubled in a decade.

**Violent and sexual offenders**

54. One contributor to a more challenging population is the greater proportion of prisoners who have committed high-harm crimes i.e. violent and sexual offences. This has increased from 40% of the population to 60% over the last seven years. Within prisons, we heard evidence that prisoners are more likely to be violent than they were in the past. The trade unions representing operational staff in public and private sector prisons—Prison Officers Association and Community—and the Chief Executive of HMPPS all agreed that contemporary prisoners had a greater propensity to violence and lack of respect for authority than had historically been the case. Mark Fairhurst said that disruptive prisoners constituted approximately 5% of the population. He explained how the population had changed over the course of his career as a prison officer:

> There are [now] very few old-school prisoners, as I call them, who are career criminals. Most of them are big gangsters. They show staff the utmost respect. They just want to keep their heads down and get on with their sentence. What you have now is a society issue. You are getting feral young...
kids who have no respect for authority, have no respect for themselves and have bullied their way through life. They have no language other than violence and they do not like the word no.95

55. In July 2018 the Ministry announced that it was launching a new digital tool to enable prisons to build a more detailed picture of the types of risk each offender may pose, including violence, escape or becoming involved in organised crime. The new system draws on law enforcement databases, rather than just offence type and sentence length, and will allow prison staff to use intelligence to take action to prevent and disable criminal networks.96

Figure 3: Prisoners convicted of violent or sexual offences as a percentage of the overall population

Prison population projections to 2022 and beyond

56. The Ministry of Justice publishes prison population projections on an annual basis. In 2017, when we commenced our inquiry, prison population projections that were then available up to 2022 predicted that the population would stay stable until June 2019 before increasing to 88,000 in March 2022.98 Although in their latest projections the Ministry continues to predict a steady increase, it has revised the figure down, estimating that by June 2022 the prison population will be approximately 85,800, with a maximum of 90,900, and minimum of 80,800.99

95 Q210; See also Community (ppp0069)
96 Ministry of Justice, Justice Secretary launches fresh crackdown on crime in prison, 10 July 2018
97 Figures for all years are taken as at June of that particular year
98 Ministry of Justice, Prison Population Projections 2017 to 2022, England and Wales, August 2017, page 4
Alongside growth in the size of the prison population, the projections anticipate some changes in the types of offenders. The populations of over 60 and over 70-year-olds in prison are projected to increase, both in absolute terms and as a proportion of the total prison population.\footnote{100} The number of prisoners serving indeterminate sentences is expected to continue to fall from 9,862 in June 2018 to 8,100 in June 2022. This follows the abolition of Indeterminate Sentences of Imprisonment for Public Protection (IPPs) in 2012. The number of prisoners serving custodial sentences of four years or more is expected to rise.\footnote{101} The Ministry explained to us in its written evidence that the prison population projections are underpinned by analytical models relating to the criminal courts and offender management that project demand. They include an analysis of the factors driving the changes to the prison population, including: the nature of offences entering the courts; the nature and length of sentences, including the volume of indeterminate prison population including IPPs, Extended Determinate Sentence (EDS) and parole hearings.\footnote{102}

As with any forecast, there is a degree of uncertainty in the projections. The Minister, Rory Stewart, told us:

“If you ask us to be confident on whether our figures are going to get up to 93,000 or 89,000 by 2022, it is very difficult to do. That is, I am afraid, asking our statisticians to do stuff they are not very good at doing. It is no accident that this red thing on my graph expands like a trumpet, because the further out you go in time, the more uncertain projections become.”\footnote{103}

The Ministry of Justice explained that “future changes in policy or the behaviour of the police or sentencers, for example, may be unclear or unexpected at the time of the projection, as well as uncertainty in the level of demand expected to come through the courts.”\footnote{104} The projections do not factor in the Government’s new position on short prison sentences, for example. The Ministry has shifted its prison capacity planning to accommodate the worst-case scenario of projections, rather than the median estimate as had hitherto been the case.\footnote{105}
59. We were told by the Ministry that the projections “include forecasts of the make-up of the population where they drive demand or are required for the effective management of the prison population”. It therefore has projections for sentence length, age group and gender. Nevertheless, the projections do not presently take into account social or economic factors that affect both levels of crime and reoffending, despite the Minister accepting that the projections can be driven by social behaviour. For example, the Centre for Crime and Justice Studies noted that countries with higher income inequality tend to have higher prison populations. The Criminal Justice Alliance was concerned that projections do not account for trends in certain key cohorts which are disproportionately overrepresented, such as BAME (Black, Asian and minority ethnic) people. When we asked the Prisons Minister for his assessment of the factors which create demands on prisons and probation which are outside the control of the Ministry he did not include social factors, but referred to crime rates and reporting levels; changes in crime trends and severity; and police resourcing and charging practice.

60. The prison population is projected to grow for the foreseeable future. Prison population projections are limited in their focus on criminal justice system specific factors and the likely age and gender of prisoners. We consider that the projections should not be produced solely for the purposes of understanding the absolute numbers of prison places required, and of what nature, but also to ensure that governors and other commissioners are able to provide facilities and interventions that enables them to manage the prison population safety and effectively, with the ultimate outcome of preventing further crime when those imprisoned re-enter society. The existing

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106 Ministry of Justice, PPP0008, para 10
107 Centre for Crime and Justice Studies (ppp0016)
108 Criminal Justice Alliance (ppp0018)
approach limits the scope for thinking more laterally about how best to accommodate the challenging and complex needs of those remanded in custody and sentenced to imprisonment as part of a longer-term strategy. The more challenging mix of those sentenced to custody is likely to be partly attributable to the impact of wider social policies which do not currently factor into the Ministry’s planning.

61. **Trends in ethnicity and the social drivers of complex and challenging behaviour should be more explicitly identified in modelling of the future prison population to inform a more comprehensive planning strategy which is properly resourced to manage effectively people in custody.** Understanding the reasons for ethnic and racial disproportionality and seeking to reduce it must form part of a longer-term strategy for ensuring the sustainability of the prison population. The Ministry must monitor and take seriously the trend of racial and ethnic disparity in the prison population. We intend to carry out further work in this area.

**Implications of projections for resources**

62. Rory Stewart, Minister of State for Justice, wrote to us on 21 August 2018 setting out that funding for prisons had fallen in real terms from £2.61 billion in 2010–11 to £2.14 billion in 2017–18, a fall of £466 million.\(^{109}\) The Institute for Government has assessed that, between 2009–10 and 2017–18, spending on prisons in real terms has fallen by 16%.\(^ {110}\) As the prison population has been broadly stable since 2012, the direct cost per prisoner has fallen in nominal terms from £26,801 in 2010–11 to £24,151 in 2017–18. This rose slightly in the last year: the equivalent figure for 2016–17 was £22,933.\(^{111}\)

*Figure 5: Cost per prisoner between 2010–11 and 2017–18*

Source: Ministry of Justice, Prison performance statistics, various years. Figures use the direct cost per prisoner for each year.

\(^{109}\) Letter from, Rory Stewart, Minister of State for Justice, to the Chair, Justice Committee, regarding a follow-up to the evidence session on the inquiry into Prison population: 2022, 21 August 2018

\(^{110}\) Institute for Government, Prisons Performance Tracker, 2018

\(^{111}\) Ministry of Justice, Costs per prison place and cost per prisoner 2017 to 2018 summary, June 2018 and Costs per place and cost per prisoner by individual prison establishment 2011–12, October 2012
63. The Prison Reform Trust commissioned Julian Le Vay, a former finance director of the prisons service, to analyse the Ministry’s prison reform programme. He found “that the Ministry’s current ambitions are inadequately funded to the tune of £162m in 2018–19, rising to £463m in 2022–23.”\(^{112}\) We have not verified this, and when we put the figure to Mr Driver he said he was “comfortable” with the funding allocated to HMPPS, and this had been accepted by the chief executive.\(^{113}\)

64. Nevertheless, there is clearly a funding gap. To manage this in the short-term, the Ministry agreed with HM Treasury that capital funding not utilised for building new prisons could be used to fund current spending. £235 million was switched in this way in 2017–18; a further £150 million has been switched in 2018–19.\(^{114}\) Mr Driver admitted that the Ministry “certainly should not be using investment funding to prop up running costs on an ongoing basis.”\(^{115}\) The Prisons Minister acknowledged that in future there was a need for “a much more realistic baseline that reflects our genuine populations.”\(^{116}\) As an illustration of the present size of the spending gap, Mr Driver explained that, without securing additional funding from the Treasury, it would be necessary to reduce the prison population by “something like 20,000”, facilitating the closure of prisons and a restructured workforce.\(^{117}\) He added that “The thing is that we are not working in an environment that would necessarily allow those very broad assumptions to be deliverable.”\(^{118}\) We consider below the implications of this for the Ministry’s strategic approach. The Justice Secretary’s recently stated aim of moving away from short sentences is relevant, but cannot alone address this difficulty.

65. To close the large gap between the money allocated to prisons by the Treasury and the current costs of running and maintaining them, the Ministry of Justice has estimated that it would have to reduce the prison population by 20,000 places. By the Ministry’s own admission this is not achievable under existing strategies and funding arrangements.

\(^{112}\) Prison Reform Trust (PPP0023), para 14
\(^{113}\) Q31
\(^{115}\) Q63
\(^{116}\) Q54
\(^{117}\) Q56 [Mike Driver]
\(^{118}\) Q56 [Mike Driver]
3 Explaining the growth in the prison population

66. We set out in this chapter various explanations for the almost doubling of the prison population over the last 25 years. *The Story of the Prison Population 1993–2016*, published by the Ministry of Justice in July 2016, described the key changes:119

- The offence make-up of the population is changing with there being a shift to offences that carry longer sentences. In 1993, violence against the person, sexual offences and drug offences accounted for two in every five sentenced prisoners (excluding recalls); by 2016 this had increased to three in every five.

- The average custodial sentence length (ACSL) for those sentenced to immediate custody for all indictable offences, handed down by judges, has increased from 16.0 months in 1993 to 18.8 months in 2016. Only around 34% of prisoners were serving sentences of less than 4 years in June 2016 compared to 54% in June 1993.

- The indeterminate prison population (including life sentences and IPPs) increased from 3,095 in June 1993 to 10,600 in June 2016. This increase includes the introduction of IPPs in 2005 (previously the only indeterminate sentence was a life sentence) and a 41% increase in the number of offenders in prison serving life sentences since 2002.

- The number of recalled offenders in prison has increased substantially, from roughly 150 in 1995 to 6,000 in June 2016. This is explored further below.

67. The recent fall was attributed by the Minister when he appeared before us in June 2018 to the use of Home Detention Curfew, which he estimated accounted for around half of the reduction, and to a fall in the number of people prosecuted resulting in a fall in the 12- to 24-month prison population.120

120 Q3
Summary of sentencing trends

68. The main trends in the Ministry's annual criminal justice statistics bulletin, published in November 2018 for the year to June 2018, are:\textsuperscript{121}

- The total number of defendants fell from 1.43 million to 1.38 million, whilst the conviction rate rose from 86% to 87%.

- The use of out of court disposals, which includes fines, cautions and community resolutions, has decreased by 35,300 (13%) to 229,000. The number of community resolutions has fallen to 101,000 in June 2018, a decrease of 6%.\textsuperscript{122} The total number of cautions administered was 75,300, a fall of 20% from the prior year.

- The overall custody rate remained at 7%, although the custody rate for indictable offences\textsuperscript{123} rose 1% to 32%. The equivalent figure in 2010 was 24%.

- The average custodial sentence length (ACSL) increased to 20.2 months for indictable offences, compared to 15.4 months in 2008. The equivalent figure for overall sentences was 17.1 months (12.6 months in 2008).

- Offenders with long criminal careers now account for 37% of the offending population, an increase of 7% since 2011.\textsuperscript{124} The number of first-time offenders as a proportion of the overall number of offenders also rose to 13%, an increase of 4% compared to June 2013.

- The overall trends of remand into custody have remained reasonably stable, however, the proportion remanded on bail has continued to fall. Strengthening bail provision has been proposed as a means of reducing unnecessary use of remand.\textsuperscript{125}

\textsuperscript{121} Ministry of Justice, \textit{Criminal Justice Statistics quarterly, England and Wales, July 2017 to June 2018 (provisional)}, November 2018

\textsuperscript{122} Community resolution is an informal non-statutory disposal used for dealing with less serious crime and anti-social behaviour where the offender accepts responsibility. The views of the victim (where there is one) are taken into account in reaching an informal agreement between the parties, which can involve restorative justice techniques.

\textsuperscript{123} Indictable offences include offences which may only be tried in the Crown court and either way offences which may be tried either in the magistrates’ court (summary trial) or in the Crown Court (trial on Indictment).

\textsuperscript{124} Offenders with a long criminal career are those with 15 or more previous cautions or convictions.

\textsuperscript{125} Transform Justice (ppp0027)
Overall, whilst there has been a fall in the number of individuals being dealt with in the criminal justice system, there is an increasing rate of custodial detention relative to other sentences, increasing sentence lengths and increasing proportion of people being sentenced who have long criminal histories. Transform Justice noted that “the only kind of offence where prison sentences have gone down in length is public order. So, while sentence inflation is not “across the board”, it is pretty widespread and even the ACSL for theft (which includes shoplifting) has gone up by two weeks since 2007.”

Our witnesses and the written evidence submitted to us identified a number of reasons, both legislative and non-legislative, for the increase in the prison population. We explore these below.
Legislative factors

Sentence inflation

71. The Secretary of State for Justice recognised in his February 2019 speech that sentence inflation is a significant contributor to the size of the prison population. This was also emphasised by our witnesses, who noted that the greatest growth had occurred for more serious crimes.127 For example, Crest Advisory observed that between 2006 to 2016, for male offenders, the largest increases in the average prison sentence length were for:

- sexual offences, which increased from 42 months to 62 months (+50%);
- robbery, which increased from 33 months to 45 months (+30%); and
- criminal damage and arson, which increased from 12 months to 27 months (+100%).128

Transform Justice noted that sentences for theft (which includes shoplifting) has gone up by two weeks since 2007 and that public order was the only offence for which prison sentences have gone down.

72. The Sentencing Council identified several legislative changes that led to an increase in sentence length, in particular the Criminal Justice Act 2003. The Council identified that “… sentences for the vast majority of murder cases increased substantially. A case that may previously have attracted a life sentence with a tariff of 10 years before the change might attract a tariff of double that afterwards.”129 We heard that this has had a knock-on effect on other sentences, too. The Council suggested that “[w]hen the tariff for the most serious of offences increased so significantly, inevitably over time there has been some recalibration of the sentencing of those offences closest to it in gravity, including manslaughter, for example.”130 Justice Episteme, a company which provides analytical support to the criminal justice sector, has estimated that the combined measures in this Act and the Offender Rehabilitation Act 2014, increased the prison population by 16,000.131 Had this not occurred they estimate potential annual savings of £560 million.

73. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 is another example. The legislation aimed to reform how offenders are punished, sentenced and rehabilitated in a way that delivered value for money. The then Government estimated that there would be a net reduction of 2,600 prison places through a combination of tougher sentencing balanced by reforms to remand, recall and foreign national offenders and other policies to divert from custody offenders with mental health problems and potential for longer-term reductions through the abolition of IPPs.132 This, it was intended, would facilitate cuts to the Ministry of Justice budget which in practice proved challenging to deliver. Rory Stewart referred to this as the ‘Ken Clarke model’, referring to the Secretary of State for

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127 Prison Reform Trust (PPP0023), para 21; Crest Advisory (PPP0039), para 24; Transforming Justice (PPP027), The Sentencing Council of England and Wales (PPP0038)
128 Crest Advisory (PPP0039); See also Transform Justice (PPP0027)
129 Sentencing Council of England and Wales (PPP0038), para 12
130 Sentencing Council of England and Wales (PPP0038), para 13; See also Professor Julian V. Roberts, Lyndon Harris and Dr. Jonathan Bild (PPP0054) and Q164 [Harvey Redgrave]
131 Prison Reform Trust (PPP0023)
Justice at the time. The impact of the sentencing provisions of the Act have not been included in the current post-legislative review so it is not possible to determine the impact they have had on the prison population or wider sentencing trends. Lord McNally, also a Justice Minister at the time the legislation was introduced, recently said that the Bill had been conceived as rehabilitative but had become more punitive as it progressed through Parliament. For example, it introduced a presumption that all community sentences must have an element of punishment. In addition, a key clause related to the release threshold for IPP sentences was never brought into effect. The sentences which replaced IPPs, extended determinate sentences, require prisoners to serve at least two thirds of the term before they can be released.

74. In exploring the question of why the legislative trend was for longer sentences, there was a consensus amongst our witnesses including the Prisons Minister, and Chair of the Sentencing Council, that there is constant pressure from the public, victims, and parliamentarians to increase sentences resulting in an upward drift in sentencing, including for example, introducing minimum sentences, increasing maximum sentences and creating new crimes. Professor Julian V. Roberts, Lyndon Harris and Dr. Jonathan Bild and the Sentencing Council highlighted the large volume of sentencing legislation enacted by Parliament over the past 30 years. The Prisons Minister told us that ‘Members of Parliament are coming forward with more pressure for new laws and sentences for that, and for things such as attacks on service dogs and attacks on police officers. The pressure for sentences is rising.” On the other hand, the Centre for Crime and Justice Studies listed a number of senior Parliamentarians who had advocated for a reduction in the prison population. The Justice Secretary stressed that he did not wish to reverse tougher legislation for serious crimes, but urged caution in continuing to increase sentence length as a response to concerns over crime. He also believed that there was support in Parliament for a change of approach.

Role of the Sentencing Council and sentencing guidelines

75. The Sentencing Council for England and Wales “is an independent non-departmental public body of the Ministry of Justice and was set up under the Coroners and Justice Act 2009 to promote greater transparency and consistency in sentencing, whilst maintaining the independence of the judiciary. The primary role of the Council is to issue guidelines on sentencing, which courts must follow unless it is in the interests of justice not to do so.”

76. We heard that the guidelines issued by the Council may have contributed to sentence inflation. The Council’s evaluations on its earliest guidelines, including assault, burglary and environmental offences, concluded that “… in some areas the guidelines appear to have had an impact on sentencing both in terms of increasing some sentence lengths

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133 Q56 [R Stewart]
134 Lord McNally: ‘We had to cut legal aid. It’s not a bottomless pit’, The Guardian, 30 January 2019
135 Q128
136 Q128, Q20
137 Professor Julian V. Roberts, Lyndon Harris and Dr. Jonathan Bild (PPP0054), The Sentencing Council of England and Wales (PPP0038) catalogued legislative changes that are likely to have had an inflationary effect.
138 Q19
139 Centre for Crime and Justice Studies (PPP0016)
140 Ministry of Justice, Beyond prison, redefining punishment; David Gauke speech, 18 February 2019
141 Sentencing Council of England and Wales (PPP0038), para 1
and decreasing others.”142 In some cases the guideline had increased sentences more than expected. The former Chair of the Council said “[a]t the top end of our assault guideline, for section 18 offences, sentences have been heavier than we expected. There have been more domestic burglaries falling into the top category than we expected. Those are two examples, but generally sentence outcomes have been within the ranges we expected they would be after our guidelines.”143 Rob Allen, Independent Researcher and former Director of the International Centre for Prison Studies at King’s College London, did not consider that the Council had done enough to “challenge increasing sentence lengths, nor to give more explicit assistance to courts in determining when offences are so serious that only a prison sentence will do.”144

77. The Council gave examples of when it had ensured that the imposition of sentences was in line with statutory requirements. For example, in relation to the custody thresholds in the ‘Imposition’ guideline and the Sentencing Children and Young People guideline. The former states that passing the custody threshold, which the Council notes is not defined, does not mean that a custodial sentence is inevitable. Some witnesses were also of the view that the Council could play a greater role in educating the public on sentencing.145 It has recently commissioned research on public attitudes to sentencing.146 We consider further in the final chapter the question of public and political pressure on sentencing.

78. Another element of the Council’s role is to have regard, among other things, to the need to promote public confidence in the criminal justice system and the cost of different sentences and their relative effectiveness in preventing reoffending.147 A recent independent review of the Council concluded that financial constraints mean that the Council does not have the means to fulfil adequately all its statutory duties and tends to focus on backwards-looking aspects of sentencing i.e. harm and culpability, rather than rehabilitative aspects, for example. Rob Allen recalled that when the Council was conceived one rationale, which was not reflected in legislation, was the potential for sentencing levels to be recalibrated based on effectiveness and cost.148 He proposed that this be revisited in the light of the prison population crisis, noting that it was explored by a previous Justice Committee.149 The Council does take note of the scarcity of resources in its guidance to sentencers on access to mental health assessments, for example, but has not adopted a broader approach to considering the availability of drug, alcohol and mental health treatment or prison spaces, for example.150

142 Sentencing Council of England and Wales (PPP0038), para 44. The Council stated that ‘It is important to be clear that this analysis is still not able fully to isolate the effect of other, non-guideline, related factors on the prison population’.
143 Q126. Section 18 offences are otherwise known as Grievous Bodily Harm (GBH). Under UK law, section 18 assault is the most serious form of assault that can be committed.
144 Rob Allen (PPP0015), para 10
145 Rob Allen (PPP0015)
146 Q669
147 Coroners and Justice Act 2009, Section 120(11)
148 Rob Allen (PPP0015).
150 Q136; Q151; See also Letter from the Minister of State for Justice, regarding Prison Population 2022, dated 18 January 2019
Recall

79. Most prisoners will be released on licence before their sentence ends, either automatically or when they receive parole. Prisoners released on licence have to comply with certain conditions and if they break these conditions they can be taken back to prison.151 The number of recalled offenders in prison has increased substantially, from roughly 150 in 1995 to 6,000 in June 2016.152 The Ministry attributed this rise to “legislative changes which increased or created licence periods including the Crime and Disorder Act 1998, Criminal Justice Act 2003 and the Offender Rehabilitation Act 2014. Under the latter, for the first time, offenders sentenced to less than 12 months receive statutory supervision in the community and are liable to be recalled.”153

80. Recall rates have been affected by the Offender Rehabilitation Act 2014.154 As of 30 September 2017, 1,088 prisoners were recorded as being in custody following a recall under the Act, representing 18 per cent of the total recall population.155,156 Women have been particularly affected by this legislation; their recall rate rose 20% between 2016 and 2017. Sonia Crozer, Executive Director of Probation and Women in HMPPS, attributed this to the fact that women typically receive short custodial sentences.157 There is also concern around high recall rates for those serving indeterminate sentences of imprisonment for public protection. The number of IPP prisoners who had been recalled has reached nearly 1,000.158 As of 30 September 2018, there were 2,598 IPP prisoners in total.159 HM Inspectorate of Prisons examined this issue in 2015 and found that most recalls were not related to reoffending per se, but rather to ‘risky’ behaviour such as the use of alcohol and drugs.160 HM Chief Inspector of Probation reviewed recall more broadly and found that 90% of decisions were justified.161

81. We heard that there is a balance to be struck in making recall decisions between having levers to ensure that people adhere to the conditions of their release, protecting the public from serious harm, and pressure on the prison population. The Minister explained that recall rates are driven by a strong sense that people should comply with their terms of release. He stated that there had been a time when very little happened when there was non-compliance, which was not desirable. On the other hand, he said that putting someone back in prison for a short period for breaching the terms of their release does not have much impact on their behaviour, but puts a “huge amount of stress on the system”.162

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151 If an offender is sentenced to a community order or suspended sentence and breach the conditions of those orders they may also be subject to a custodial sentence.
152 Ministry of Justice (PPP008), para 13
153 Ministry of Justice (PPP008), para 13
154 The Howard League for Penal Reform (ppp0025)
155 See also Criminal Justice Alliance (PPP0018)
156 Howard League for Penal Reform (PPP0025), para 5.5
157 Q338
158 Dr Harry Annison (PPP0073), para 12
161 Q9 [Rory Stewart MP]
162 Q9
82. The Parole Board considered that the volume of recalls being referred to the Board for re-release decisions was worthy of focus, whilst acknowledging that there are situations where recall may be absolutely essential to protect the public from serious harm.\footnote{The Parole Board (PPP0060)} They noted that the decision to recall is ultimately a judgement call made by the National Probation Service on behalf of the Secretary of State and no independent body assesses the circumstances leading to this action being taken prior to a prisoner being returned to custody.\footnote{The Parole Board (PPP0060)}

83. The Ministry has an action plan to ensure that recall is used only where necessary to protect the public and reinforce the integrity of post-release supervision and that alternatives to recall are pursued wherever possible.\footnote{Letter from Sam Gyimah, Former Parliamentary Under-Secretary of State for Justice to Chair, Justice Committee, Indeterminate Sentences of Imprisonment for Public Protection, 20 November 2017} In relation to the progress made on this, Ms Crozier explained that there had been a marginal drop in the recall population in the context of an increase in the number of people subject to post-release licences. She saw this as an indication that some of the actions put in place under the plan were working in providing senior probation managers other options to consider such as alternatives or warnings.\footnote{Q337}

Non-legislative factors

Mix of offences

84. As set out above, whilst the absolute number of offenders convicted has fallen, sentence lengths have continued to rise and there has been an increase in the proportion of offenders convicted for more serious offences, attracting longer sentences. The Ministry attributes this in part to a more serious mix of offences coming before the courts. While overall crime is falling, Crest Advisory observed that recorded crime statistics show rises in reported violent offences and sexual offences, some of which reflects better recording and reporting, but some of which (e.g. knife crime) reflect an underlying change in crime.\footnote{Crest Advisory (PPP0039)} Lord Justice Treacy agreed, surmising that “The number of cases being dealt with in the Crown court has fallen since 2010, but there has not been a corresponding fall in the level of the prison population. It has remained broadly stable. That is a very good reflection of the fact that the case mix before the Crown court in particular, which passes the longer sentences, is becoming more serious. Fewer people are being sentenced, but those who are spend more time in custody, so the level of the prison population remains relatively high.”\footnote{Q134. See also the Minister’s comments in Q5} For example, drug offences of supply and importation, which are at the very top end of the range of offences, involve larger quantities and a higher purity of drugs, which lead to higher levels of sentencing.\footnote{Q134 [Lord Justice Treacy]}

85. Nevertheless, Transform Justice does not consider that there is firm evidence that the offences which are currently given sentences of imprisonment are in nature more serious than previously.\footnote{Transform Justice (PPP0027)} The Crime Survey for England and Wales shows no change in the level of violence although the Office for National Statistics, which publishes the Survey, states...
that police recorded crime is a better indication of higher-harm but less common types of violence. ONS state that the increase in some types of violent offences recorded by the police is unlikely to indicate real increases in crime, particularly for sexual offences and for violent crime without injury. They note that while weapons offences and homicides are rising, these occur in low volume. The rise in people being sentenced for sexual offences is attributed largely to a rise in reporting of, and prosecutions for, offences, stemming from greater publicity about such offences, including the #MeToo movement.

**Appeals**

86. There has been a decline in the number of appeals being made, the reasons for which are unclear. In 2017, 5,411 applications were made to the criminal division of the Court of Appeal, a 6% decrease on the prior year of 5,726. By comparison, in 1995 the number of applications made was 8,187. The rate at which such appeals have been successful has remained broadly consistent. This means that in absolute terms the number of sentences being overturned has fallen. The Centre for Criminal Appeals expressed concern about the referral rate of the Criminal Cases Review Commission (CCRC) to the Court of Appeal, which they cited as having fallen below the historic average. The CCRC’s referral rate for 2017–18 was 1.24% below its long-term referral rate of 2.9%. Transforming Justice raised the broader effect of a decline in appeals, explaining that “[t]he effect of individual successful sentence appeals on the size of the prison population is negligible, but appeals should have an effect of modulating the tariff for all sentences.”

87. The Sentencing Council noted the expansion of the offences eligible for the Unduly Lenient Sentence (ULS) scheme, which allows the Attorney General to refer to the Court of Appeal to reconsider sentences handed down which he or she considers to be unduly lenient. The Sentencing Council said that “… [t]here is a clear impact on those individual sentences that may be uplifted (press reports cited ‘record numbers’ of sentences increased via the ULS in the last reporting year) but the effect is likely broader than this given that, in appropriate cases, the Court of Appeal may well use a case brought to them under the ULS scheme to set a precedent for future cases.”

**Community sentences**

88. We raised the issue of the decline in the use of community sentences in our report *Transforming Rehabilitation*, concluding that sentencer confidence in such disposals was a significant issue. As set out above, the decline of community sentences has continued, with the number falling 6% in the year to June 2018, potentially increasing pressure on the prison population. The nature of the link between the decline in community sentences and the prison population is not clear. Clinks noted that there has been a decline in the use of short prison sentences alongside the decline in the use of community sentences, although at a slower rate, and that the use of suspended sentences, which can result in

171 [Q121](#)
172 Ministry of Justice, *Civil Justice statistics quarterly: January to March 2018: Royal Courts of Justice Tables*, June 2018
173 [Q122](#)
174 Centre for Criminal Appeals (ppp0021), para 15
176 Transforming Justice (PPP0027), para 4
177 Sentencing Council (PPP0038), para 26
178 Justice Committee, *Transforming Rehabilitation*, HC482, June 2018, page 50
imprisonment if their conditions are not met, has increased.\(^{179}\) This may therefore reflect less serious offences being diverted from courts. We consider this further in the following chapter.

**Reducing reoffending and the provision of services in the community on release**

89. The latest statistics published on proven reoffending indicate that reoffending rates have remained stable between April 2005 and March 2016, ranging between 29% and 32%.\(^{180}\) The Ministry of Justice has acknowledged that reoffending is a large source of demand on the criminal justice system, including on the prison population.\(^{181}\) The Government’s White Paper on Prison Safety and Reform estimated the cost of reoffending by former prisoners to be up to £15 billion a year.\(^{182}\)

90. As we noted above, several witnesses believed wider social policies could be partially responsible for the fact that prisons are now, as described in the previous chapter, holding people with more complex needs.\(^{183}\) NHS Treatment Providers Alliance felt that any attempt to address the rising prison population should recognise that “until the social determinates are addressed, it will merely act as a sticking plaster on complex (yet preventable) social problems.”\(^{184}\) A Clinks survey of voluntary sector organisations working in the criminal justice system found that many organisations think the needs of their service users are becoming “more complex and more immediate”. They explained that changes in other public services “combined with a greater tendency to send people to prison may mean that many people are ending up in prison as a result of the failure of other public services to meet their needs.”\(^{185}\)

91. The rise in the prison population has resulted from a greater proportion of those convicted being given a custodial sentence and from custodial sentences becoming longer. This has been driven by a complex set of factors, including more minor offending being diverted from the courts. The most significant contributor has been legislative factors created by a series of political and policy choices by successive Governments and parliaments. The fact that a greater proportion of those who are being sentenced by the courts are convicted of violent and sexual offences, who will tend to get longer sentences, contributes to the increase in the size of the prison population. However, this can only partially be attributed to changes in underlying crime patterns and leads us to look at the impact of legislation, the Sentencing Council and the question of how we should be using imprisonment.

92. The extent to which sentencing guidelines have collectively influenced sentencing practice is not clear. We welcome the Sentencing Council’s efforts to predict the impact of changes to the guidelines on Ministry of Justice resources and we consistently note the limitations of these (owing to a lack of data and resources and through no fault of the Council) in the responses we make to the guidelines in our role as a statutory consultee. *In making such assessments, the Council needs to have better quality data,*

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179 Clinks (PPP005), para 21.
180 Ministry of Justice, *Proven reoffending tables (annual average), October 2016 to December 2016*, October 2018
181 Ministry of Justice (ppp0008)
183 Q360; Centre for Social Justice (ppp0029); INQUEST (ppp0033)
184 NHS Substance Misuse Providers Alliance (ppp0065)
185 Clinks (PPP0005)
which in turn Ministry of Justice needs to resolve as part of its drive for better data. There will be opportunity for the Ministry to collect better data through its court reform programme. The Ministry must also increase the resources it provides to the Sentencing Council to conduct explanatory research on sentencing practice and trends.

93. We welcome the Government’s acknowledgement that there are choices to be made over the future sustainability of the prison population, and to ask questions about how as a society we should use imprisonment. We support the Secretary of State’s commitment to look at the sentencing of both short- and longer-term prisoners. As changes to the prison population have largely stemmed from legislative change, it stands to reason that legislative change should be a primary consideration when examining these choices. In the short-term, we recommend that when changes to sentencing legislation are being debated in Parliament, the Ministry considers what more it might do to make Parliamentarians aware of the likely impact on exceedingly constrained resources. Any strategy for improving the sustainability of the prison population will require a review of sentencing legislation which should include the role of the Sentencing Council. We may return to the question of the role of the Sentencing Council, which is coming up to its 10th anniversary, in a future inquiry.
4 Getting the basics right and providing strong incentives for prisoners to reform

94. The Ministry has recognised that safety and decency are necessary preconditions for turning prisons into places of genuine reform and rehabilitation. These are therefore the most immediate priorities in terms of prisons policy and we consider in this chapter the progress made by the Ministry and HMPPS on this objective. The Ministry of Justice’s approach to improving safety has been to increase prison officer numbers, seek to improve prisoner-staff relationships through a new model of support and challenge, crack down on organised crime and drugs, and target efforts to improve decency and culture in selected establishments. The Justice Secretary has recently posed the question of whether prisons currently maximise the chances of rehabilitation which we examine in relation to three factors: the availability of staff to effectively deliver and supervise an appropriate regime; the capacity of the staff and leadership to respond to the challenges they face; and the physical capacity of the estate.

Safe prisons

95. In the 15 months since we began our inquiry, the crisis in prison standards and safety has deepened. All indicators of safety continue to illustrate an ongoing decline in safety resulting in deaths and serious violence. The number of assaults and serious assaults have reached record highs. In 2017 there was a fall in self-inflicted deaths, which it was hoped was indicative of improvements, but this has been reversed. In the 12 months to June 2018, there were 2,366 incidents of self-harm per thousand in female establishments, an increase of 24% on the previous year. Women account for around 5% of the prison population but around 18% of all self-harm incidents.

Figure 8: Number of self-harm incidents for male and female establishments 2008-2018

Source: Ministry of Justice, Safety in Custody quarterly: update to September 2018, January 2019

186 Ministry of Justice (ppp0008); Q667-668
187 Professor Nicholas Hardwick (ppp0056)
188 Q352
189 Ministry of Justice, Safety in Custody Statistics - Summary tables, January 2019
Several of our witnesses highlighted to us the scale of the challenge of improving safety. Juliet Lyon, Chair of the Independent Panel on Deaths in Custody, cited the vulnerability of many prisoners documented earlier in our report, including histories of self-harm and suicide attempts. Limitations to prison regimes and poor day-to-day living conditions, including crowding, can both negatively impact on safety, by causing stress, frustration and boredom. Until recently Ministers and officials have largely attributed the rise in violence to the influx of Novel Psychoactive Substances (NPS) and staffing reductions, but an assessment of research evidence on prison violence published in September 2018 shows that prison conditions are a considerable factor, as well as the individual characteristics of prisoners. Professor James McGuire of Liverpool University found that physically poor conditions, highly controlling regimes, or circumstances in which rules are unevenly applied or not adhered to or where prisoners do not experience staff decisions as fair or legitimate, can each heighten tensions and induce stresses potentially giving rise to conflict and assault. Perhaps surprisingly, evidence that crowding in and of itself was a direct cause of violence was fairly weak; the effects are thought to be mediated through staff-prisoner interactions, meaning that the crucial factor in maintaining order is the availability and skills of staff.

**The impact of initiatives to improve safety**

Targeted initiatives to improve safety have largely not resulted in demonstrable improvements. The Inspectorate found that safety had improved in nine of the men’s prisons inspected in the year to March 2018 but had declined in 14. HMPs Liverpool, Nottingham, Exeter and Bedford—which in their latest inspections received the very

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190 Q354
191 Q189–190 [Mark Fairhurst]; Q192 [Julia Rogers]; HM Inspectorate of Prisons (ppp0036); Prison Officers Association (ppp0032); An individual prison officer (ppp0026)
192 McGuire, J, Understanding prison violence, 2018. These include youth, history of earlier violence in prison or with violent convictions, membership of gangs, low self-control, anger.
193 HM Inspectorate of Prisons, Annual Report 2017–18, HC1245, page 8
poorest inspection ratings and notices for immediate improvement—were among the prisons deemed most challenging by the Inspectorate and have been subject to extra investment since the summer of 2016.\textsuperscript{194}

98. The Ministry’s own prison performance rating system—which considers a wider range of measures than the Inspectorate—rated 13\% of prisons, all Category A or B, as being of ‘serious concern’, the highest proportion recorded in the available data series.\textsuperscript{195} All of the bodies which monitor and scrutinise prisons—HM Inspectorate of Prisons, the Prison and Probation Ombudsman, Independent Monitoring Boards, and the Independent Advisory Panel on Deaths in Custody—and Inquest (which seeks to ensure that coroners’ recommendations are implemented following prisoners’ deaths to prevent future deaths), have expressed to us their serious concerns at the seeming inability of prisons to take action as a result of their reports, in terms of learning lessons, implementing changes, and sustaining resulting improvements.\textsuperscript{196} Inquest stated:

Coroner after coroner has highlighted systemic failures and the inappropriate use of prison for a range of groups who simply should not be there. Meanwhile a stream of post-death investigations, inspectorate and monitoring reports and official inquiries into prisons have produced evidence-based recommendations into what needs to change. Too many of these have been systematically ignored.\textsuperscript{197}

99. When we discussed with Rory Stewart the Ministry’s approach to challenging prisons and the seeming difficulty of improving them, he agreed that there were long term problems with some establishments. His explanation was that they are busy local prisons with a highly mobile population which disproportionately contributes to violence and drugs.\textsuperscript{198} Nick Pascoe of the Prison Governors Association explained that in establishments with longer-term populations and long periods out of cell, prisoners buy into the regime because they have something to do purposefully in the period when they are unlocked.\textsuperscript{199}

100. When he appeared before us in December 2018, Rory Stewart referred to ‘green shoots’ of improvement, and said that more positive inspection reports were now starting to be received.\textsuperscript{200} Nevertheless, Peter Clarke’s synopsis of the situation a few weeks previously with regards to safety was “pretty gloomy”. He said:

I am afraid that I have not seen anything … to give me optimism that any significant corner has been turned. At the moment, the violence figures are going in the wrong direction, as we know. We still see far too many drugs destabilising prisons.\textsuperscript{201}

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\textsuperscript{194} INQUEST (ppp0033) \hfill \textsuperscript{195} Professor Nicholas Hardwick (ppp0056) \hfill \textsuperscript{196} Prisons and Probation Ombudsman (ppp0031); Q536 [Peter Clarke]; INQUEST (ppp0033) (regarding coroners’ findings); Independent Monitoring Boards (ppp0059); Independent Advisory Panel on Deaths in Custody (ppp0063) \hfill \textsuperscript{197} INQUEST (ppp0033) \hfill \textsuperscript{198} Q75 \hfill \textsuperscript{199} Q194; See also HM Inspectorate of Prisons (ppp0036). \hfill \textsuperscript{200} Q658; Q663 \hfill \textsuperscript{201} Q508
\end{flushleft}
Urgent notifications

101. In lieu of legislation to strengthen the role of the Inspectorate of Prisons—which had been included in the Prison and Court Bill that fell at the end of the last Parliament—the Ministry has introduced a new operational process where, in urgent and severe situations the Chief Inspector can alert the Minister directly about poorly performing prisons. The Ministry must respond within 28 days. At the time of writing, this ‘Urgent Notification’ (UN) process has been triggered four times. The Ministry simultaneously created a new unit within HMPPS to respond to recommendations made by the Inspectorate, Independent Monitoring Boards and the Prisons and Probation Ombudsman, in respect to the concerns outlined above that these recommendations were frequently not acted upon. Peter Clarke explained to us the extent of the problem in those prisons that had received a UN:

At Nottingham, which was the first one, they achieved 12 recommendations of the 48 we had made on the previous inspection. At Exeter, they achieved 19 of the 56 we had made on the previous inspection. At Birmingham, they achieved 12 of the 70 we made. At Bedford, it was 19 of 68. Those figures suggest to me that there had been a lack of focus on the inspectorate reports. When you look at the figures on the safety inspection, it is even worse. Nottingham achieved two out of 13 in safety. Exeter achieved three out of 14. Birmingham achieved three out of 15, and so on. That suggests to me a lack of seriousness and a lack of focus. To put it crudely, they are not taking us seriously.

102. The introduction of urgent notifications was welcomed by our witnesses although it was not seen as a panacea. Professor Hardwick and Mark Day of the Prison Reform Trust believed that the Inspectorate had struck the right balance in avoiding the risk of “becoming a substitute for the management of the Prison Service” or “a tool of management and resource allocation”. Professor Hardwick believed that the existence of the process raised “questions about why… management is not identifying and dealing with those problems itself”. We are very pleased that, following our report on HMP Liverpool, the Inspectorate has been given additional resources to instigate follow-up inspections. Peter Clarke told us these will seek to answer the question “Is this establishment taking us seriously or not?”. This should enable the Inspectorate also to examine progress in those institutions just below the urgent notification threshold or which had not been recently re-inspected, which Professor Hardwick suspected also warranted attention.

103. The urgent notification process has helped HMPPS to target resources at prisons that need additional support. One measure taken by Ministry to improve performance in each prison has been to reduce the number of prisoners. However, Mark Day noted that this creates pressures on other prisons nearby: “[y]ou will get staff taken from the prisons and drafted in. Courts will be ordered not to send people to that prison but to prisons in the

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202 Ministry of Justice, Urgent Notification [accessed 7 March 2019]
203 Q513
204 See for example Professor Nicholas Hardwick (opp0056)
205 Qq273–275
206 Q273
207 Q513 See also Q273 [Professor Hardwick]
208 Q273 [Professor Hardwick]
surrounding area”. In addition, the investment targeted in those prisons has largely come from elsewhere in the HMPPS budget. For example, we were told that the costs of additional staff and £2.5 million additional maintenance at HMP Liverpool would be reallocated from the current and following year’s budgets. The Chief Inspector of Prisons was of the view that such an approach was necessary:

I understand that it takes a lot of resource to drive significant, meaningful improvement in some of those very difficult prisons, but it surely has to be done. It has been put to me that the urgent notification process will lead to an element of robbing Peter to pay Paul. Well, yes, I understand that, but at the same time what is the alternative? If we had not gone there and raised our concerns in what I hope was a strong but evidence-based way, what would have happened?

104. There is a grave and worsening situation in the safety of prisons in England and Wales despite significant recent, welcome advances in effort and resources. Over the last five years, the Ministry and Treasury have essentially adopted a crisis management approach, despite repeated warnings from us and other key stakeholders of the consequences. The Urgent Notification process would not be necessary if the Ministry’s own oversight arrangements were working effectively. Nevertheless, its introduction undoubtedly has had a positive impact on the targeting of resources. We are cautiously encouraged by signs of a more proactive approach with significant investment in 10 challenging prisons. The ‘green shoots’ we are promised by the Prisons Minister are not borne out in the safety statistics, but we eagerly await them. They are urgently necessary for those working in prisons, prisoners and their families, increasing numbers of whom are bearing the scars of years of underinvestment. We have very real concerns that support given to the ten prisons could be at the expense of others in serious need and we are concerned about the diversion of resources. All prisons should have the resources that they need to foster a safe and decent environment. The Prisons Minister has set clear aspirational targets to improve safety and we will judge him by the extent to which these are achieved.

**Tackling organised crime and drugs**

105. Cracking down on organised crime and the use of drugs has been the primary emphasis of the Secretary of State for Justice, Rt Hon David Gauke MP. Professor Hardwick described the severe impact of organised crime on prison regimes:

I am quite sure that in some prisons the absence of experienced staff has left a vacuum that organised crime has filled. If you want a profitable trade in drugs, you need some rules and structures by which that trade operates. There is a lot of money at stake. People need to pay you; you cannot go to the small claims court if they do not. What has happened in some prisons is that an alternative structure has developed, where prisoners are running too much of what is happening. Once established, it becomes very difficult to break down. That is much more difficult than to stop it arising in the first place.
106. The Ministry has allocated resources to support HMPPS to reduce the supply of drugs in prison, which can lead to violence and instability. Steps taken to do this includes surveillance, drug detection dogs, body scanners and intelligence-led searches. 212 £6m has been spent on creating a national intelligence unit and a national serious organised crime unit, with regional teams. £8.2 million has been invested in prison analysis and search capability at a local level. This includes working with other Government departments and agencies to identify, investigate and convict suppliers of drugs and those involved with organised crime gangs. The Ministry takes a “zero-tolerance approach”, meaning that anyone found with contraband will be subject to disciplinary action and police investigation. They have also introduced new drug tests to identify users of psychoactive substances. However, the charity Inquest believed that the effect of Novel Psychoactive Substances on record death rates has been broadly overstated, with Government focus placed on staffing, drugs, drones and mobile phones. They suggest that this has obscured other issues including high rates of legally prescribed medication, the plight of mentally ill people in prison and the disturbing number of self-inflicted deaths. 213

107. We have seen less evidence of how HMPPS is seeking to support those using drugs or with mental health problems which may co-exist or lead to drug use. Michael Spurr acknowledged that HMPPS had been slow to respond to trends in mental health and drug misuse and wished to see funding for treatment coming into prisons:

“... we have significant issues with people who end up in prison, and then go back into the community with significant risk to the community. There must be investment in the prevention of drugs coming into prison and investment in treatment.” 214

108. Just under one third of prisoners claimed it is ‘easy’ to get drugs in prison and 13% of men and 8% of women report developing a problem with illicit drugs while in prison. The rates of positive drug tests are rising and there was a 23% increase in drug finds in the last year, which may be the result of greater vigilance. 215 Nevertheless, the number of adults receiving treatment for drug and alcohol problems within secure settings (most of which were in prisons) has been falling in the last few years. 216 More positively, dropout rates for people in treatment in secure settings were low, at 5% or less, and the effectiveness of treatment for those who complete it is increasing: the proportion leaving treatment free of dependence has risen from 24% in 2015–16 to 31% in 2017–18. On the other hand, any progress in prison may be undermined by the lack of support on release.

109. The Health and Social Care Committee (HASCC), in their January 2019 report Prison Healthcare, regarded the Government’s commitment to “continue work at all levels to reduce the impact of substance misuse (including from the use of psychoactive substances), to address the risks of misuse and resultant harms, and to ensure the right help is available at the right time” as very vague. 217 They recommended a commitment to reducing substance misuse in prison, as well as its impact, and set clear and ambitious

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212 Ministry of Justice (ppp0008)
213 INQUEST (ppp0033)
214 Q664
215 Ministry of Justice, HMPPS Annual Digest, July 2018
217 Health and Social Care Committee, Twelfth Report of Session 2017–19, Prison Health, HC963, November 2018
targets for: a) reducing the supply of, and demand for, illicit drugs in prisons; and b) improving the recovery, and associated health outcomes, of people in prison with a substance misuse problem. To ensure that sufficient resource is provided for substance misuse treatment within the secure estate, the BMA recommended to us that substance misuse data is incorporated into prison population data sets and that projections should include trends in the specific health needs of prison populations, including indicators on mental health, self-harm and substance misuse.\textsuperscript{218}

**HMPPS capacity to improve safety and create rehabilitative cultures**

**The respective roles of the Ministry and HMPPS**

110. In April 2018, the Ministry restructured its management of prisons and their performance, moving to a model where Ministers set high-level strategic priorities, performance expectations and budgets for HMPPS with the performance levels of individual prisons and probation services to be agreed and monitored by HMPPS rather than through a commissioning function within the Ministry.\textsuperscript{219} This reversed changes made following the 2016 Prison Safety and Reform White Paper.\textsuperscript{220}

111. We raised concerns about the previous arrangements in our report on HMP Liverpool as we felt it created a situation whereby HMPPS were effectively “marking their own homework”. We also wished to see Ministers taking personal responsibility for ensuring that Inspectorate of Prisons recommendations were implemented and being held accountable to Parliament for doing so, which we are pleased to note has been the case.\textsuperscript{221} HMPPS itself has been restructured to create 17 prison group directors who oversee a much smaller group of prison governors and to create several teams centrally which support prisons facing particular challenges. For example a Director of Prison Improvement leads a new drug strategy; a Drugs Taskforce; and a Security, Order and Counter Terrorism Directorate is seeking to “tackle the modern face of criminal behaviour”, including drones, serious organised crime and mobile phones.

**Governor empowerment**

112. A key initiative stemming from the White Paper was the devolution of budgets to prison governors, due to commence in April 2017. While our predecessor Committee was generally supportive of plans to improve governor empowerment, and devolve budgets, they had not seen evidence that it would lead to improved outcomes for prisoners. They identified issues with the support and development provided to governors to fulfil this function and the need to coordinate the contributions made by various agencies in providing rehabilitative services at a local level, and to apportion accountability for post-release outcomes between prison governors and probation services.\textsuperscript{222}

\textsuperscript{218} British Medical Association (BMA) (ppp0024)
\textsuperscript{219} Letter from Rory Stewart, Minister of State for Justice, to Chair, Justice Committee, 25 June 2018
\textsuperscript{221} Justice Committee, Fifth report of Session 2017–2019, HM Inspectorate of Prisons report on HMP Liverpool, HC 751, 16 February 2018
\textsuperscript{222} Justice Committee, Twelfth Report of Session 2016–17, Prison reform: governor empowerment and prison performance, HC 1123, 7 April 2017
113. As we noted above, the implementation of these plans has slipped somewhat. We considered the extent to which governors are genuinely empowered to distribute funds to meet the needs of the population they hold and our evidence from Ministers and prison governors indicates that in practice budgetary freedom is limited.\textsuperscript{223} For example, Rory Stewart acknowledged that the basic operating budgets in public sector prisons are determined from the centre and the governor has discretion over relatively small sums of money.\textsuperscript{224} Governors have discretion in their budgets for wages and prison food and prioritise security, safety and maintenance, the costs of which are fairly fixed, unless there is under-staffing.\textsuperscript{225} If underspends are not pulled back to the centre, there are strict rules on how much can be spent and what it can be spent on.\textsuperscript{226} Private sector prison leaders do not have these restrictions and therefore have greater capacity to innovate. For example, Serco has provided telephones in all their cells since 2010; these promote contact with family and can act as a means of improving safety, reducing self-harm, and self-inflicted deaths.\textsuperscript{227} In the public sector, although in-cell technology was trialled in 2015, it is only now being rolled out gradually. 50 prisons will have in-cell telephones by March 2020, subject to affordability.\textsuperscript{228}

Skills and leadership

114. The Ministry’s education and employment strategy puts public sector prison governors in England fully in charge of their education provision from April 2019 and explained that governors will “set the strategy, commission the providers and manage its delivery”.\textsuperscript{229} The effectiveness of this strategy, and the similar approaches to strengthening family ties and the co-commissioning of healthcare, for example, will be dependent on governors having the capacity, in terms of time and expertise, and the financial resources and staff to implement them. The Health and Social Care Committee (HASCC) concluded that with respect to the co-commissioning of healthcare, prison governors currently lack the financial and other levers to drive improvement.\textsuperscript{230} Francesca Cooney of the Prisoners Learning Alliance highlighted that some innovative practice might stem from governors who are able to commission, co-ordinate and integrate services appropriate to the population’s needs.\textsuperscript{231} On the other hand, for already pressured governors in prisons that are already struggling, the expectations of new strategies would, in her view, create added “upheaval” and “change”.\textsuperscript{232} Peter Clarke similarly observed that governors’ capacity “varies from place to place”, even in comparable establishments, but highlighted that they are all severely constrained by staffing and resource issues, stating that “… They really do not have the space, time, energy or resource to start developing all sorts of things at the local [level].”\textsuperscript{233}

\begin{thebibliography}{99}
\item Q71 [Mike Driver]
\item Q38 [Rory Stewart]; Letter from Rory Stewart, Minister of State for Justice to the Chair, Justice Committee, 21 August 2018; Oral evidence taken on 25 October 2017, HC418, Q59.
\item Q198; Qq203–204 [Nick Pascoe]; Q218.
\item Q198 [Julia Rogers]; Q354 [Juliet Lyon]
\item Ministry of Justice, In-cell phones for more prisons in drive to cut crime, 28 December 2018; Q464 [Tom Read].
\item Ministry of Justice, Education and Employment Strategy, Cm9621, May 2018, page 13
\item Health and Social Care Committee, Twelfth Report of Session 2017–19, Prison Health, HC963, November 2018
\item Q389
\item Q389
\item Q502, Q507
\end{thebibliography}
115. He further explained the complexity of running prisons:

There is a lot happening in them and there is a lot to manage. The degree of control that governors have over all of the things being delivered there, whether it be healthcare, education and so on, is variable. Those things are really very difficult. You can almost draw a comparison and say, “Is the governor actually a general in charge of an army, or is he or she a conductor in charge of trying to bring all the component parts together to deliver a finished product?” That is a skill. Whichever way it is, it is a specific skill”.234

116. When our predecessor Committee examined the potential benefits of governor empowerment, they concluded that for it to work effectively, governors would require opportunities to develop their leadership capacity and skills.235 They recommended that the Ministry should ‘clarify what support will be available to governors from April in carrying out their new functions and how they will address potential skills gaps in the short term’.236 In their written evidence, HM Inspectorate of Prisons partially attributed the poor outcomes it had found in some of its inspections to failures in leadership and staff training and experience, which they believed could be improved through basic changes.237 Peter Clarke explained:

“… I am concerned that there appears to be a lack of higher leadership and management training in the Prison Service at the moment. I know that the Minister has focused on that and is very keen to try to do something about it. In simple terms, to an extent, it is unfair to put people in those very highly pressured jobs without adequate preparation.”

117. The Prison Governors Association and Prison Officers Association were strongly of the view that HMPPS does not invest enough in developing managers.239 The Ministry explained that financial pressure meant it was a challenge to put in place a fully-funded leadership strategy, but it continues to seek improvement. Work underway includes a leadership review, leadership being a focus of the 10 Prisons Project, and consultation on a refreshed HMPPS Strategic Leaders Programme, which should be available in May 2019.240

118. Prison governors are expected to implement several rehabilitative strategies at a time when they are beginning to benefit from a higher complement of staff and are seeking to focus on reversing the deep decline in safety. While we agree that it is right to focus on both decency and rehabilitation, governors have limited capacity, with prison population at current levels, to deal with the range of competing and challenging demands on their time. They also continue to lack meaningful control over their budgets to enable them to implement these strategies effectively. We welcome the fact that there appears to have been a shift by Ministers from seeing the problems facing prisons primarily as a leadership problem to primarily a resources problem, over the last two years. Nevertheless, owing to a lack of resources, the limitations with

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234 Q509
237 HM Inspectorate of Prisons (ppp0036)
238 Q509
239 Q224[Nick Pascoe; Mark Fairhurst]
240 Letter from Rory Stewart, Minister of State for Justice, to Chair, Justice Committee, 18 January 2019
leadership training, which our predecessor Committee commented on in 2017, appear unresolved despite a welcome aspiration to improve it. This is a matter we may return to in a future inquiry.

Managing safely and effectively the prison population

119. The Ministry has focused on increasing prison officer numbers and implementing a new Offender Management in Custody (OMiC) model as a key element of their strategy for improving safety in the day-to-day management of prisoners.\(^{241}\) It is also taking steps to foster a rehabilitative culture in all prisons by creating local strategies aligned to the model with the support of a central Board.\(^{242}\)

120. Since June 2017, HMPPS has been gradually implementing the OMIC model, designed to give more time for interaction between staff and prisoners, including through one-to-one support for approximately 45 minutes per week.\(^{243}\) This is due to be completed in 2019/20.\(^{244}\) Under the model each key worker will be responsible for supporting six prisoners, with some prisoners being given a more enhanced level of support.\(^{245}\) Another element of the approach is to increase the number of probation officers and senior probation officers based in prisons, with their focus particularly to engage long-term prisoners.\(^{246}\) The model also applies in the private sector, where the ratio of officers to prisoners is 1:10 according to the trade union Community.\(^{247}\) The Ministry has committed to drawing up plans to evaluate OMIC following a recommendation in our follow-up report on young adults in the criminal justice system.\(^{248}\)

121. Mark Fairhurst and Nick Pascoe both saw signs that OMiC was beginning to have an impact, including at HMP Liverpool where it was fully implemented, for example.\(^{249}\) Nevertheless, we heard that there were some challenges to implementation. In Mr Fairhurst’s view, making it work effectively would require a return to prison officers being located regularly on the same wing so that they can get to know the prisoners.\(^{250}\) Julia Rogers noted the risk that the “burden of contact” could relate to prisoners asking officers for assistance with day-to-day administration about visits, gym time, and canteen orders, which could be ameliorated by the use of self-service technology on the wings. This technology is available in many private sector prisons.\(^{251}\)

122. Other witnesses welcomed the implementation of OMIC, which the Prisons Minister told us recognises the importance of the quality of relationships, the need for coordination of interventions, and the environment in which rehabilitative work is undertaken.\(^{252}\) We consider these in more detail below.

\(^{241}\) Ministry of Justice, Annual Report and Accounts 2017–18, HC1285, July 2018, page 18
\(^{242}\) Letter from Rory Stewart, Minister of State for Justice, to Chair, Justice Committee, 18 January 2019
\(^{243}\) Ministry of Justice (ppp0008)
\(^{245}\) Ministry of Justice (ppp0008)
\(^{246}\) Q308 [Sonia Crozier]; Q566 [Rory Stewart]
\(^{247}\) Q214 [Julia Rogers]; Community (ppp0069)
\(^{249}\) Q207–209
\(^{250}\) Q209
\(^{251}\) Q214
\(^{252}\) Qq208–209; Q205 [Mr Pascoe]; Q403–405 [Francesca Cooney; Helen Berresford; Anne Fox]
The quality of relationships

123. The implementation of OMIC is dependent on the recruitment of sufficient staff, the numbers of whom had been falling prior to the model’s conception. The Ministry met its target of net recruitment of 2,500 prison officers to support the model by December 2018, “nine months ahead of schedule”, with an average of 22,319 officers in the year to 30 September 2018, 2,500 short of the number in 2009–10. Nevertheless, officers are continuing to leave the service in increasing numbers, with the resignation rate having risen from 3.4% in 2009–10 to 10.3% in 2017–18. Turnover rates are as much as 35% per year in some jails. The Ministry has sought to address challenges in retaining prison officers, including through a 1.7% pay rise, by adopting a targeted approach to areas with recruitment difficulties, and by strengthening training and support for new recruits. Nevertheless, the pay rise was not wholly funded by the Treasury, with £11 million coming from existing budgets, and we heard some concerns about the nature of support provided to trainees.

124. To further improve retention, the trade unions representing public and private sector prison officers advocated for higher starting salaries, further salary and career progression opportunities, and lowering the retirement age to 60 in recognition of the role’s demands, to provide greater incentives for people to stay in the job. Mark Fairhurst called on the Government to “pay us what we are worth”, noting the increased challenges of the job, low starting pay in comparison with other public sector workers in the NHS, police and Border Agency, for example, and the fact that pay rises have not kept pace with the cost of living. Nick Pascoe and Julia Rogers agreed that pay was an issue, and also emphasised the importance of staff feeling safe and valued. Julia Rogers said:

> As far as I am concerned, prison officers are as vocational as police officers or nurses. Most people have no idea of the complexity of the job they do and how compassionate they are. It is very important that our role is to keep them safe, to put care around them and to keep them engaged. […] It is about the contract you have with your staff. It is about engaging with them, listening to what they say will make a difference to them and acting on it. Pay is one thing, but I do not think it is everything.

She gave the recent example of Serco providing patrol dogs to help officers feel safe. Other examples are the introduction of body-worn cameras, and an incapacitant spray (PAVA) for use by prison officers, recently sanctioned by the Ministry of Justice at the request of the Prison Officers Association. There has been some controversy over this after an
evaluation found that, during piloting, PAVA had a limited effect on reducing violence. The Ministry explained that staff felt better able to deal with violence and better equipped to arrest escalation and prevent harm with the spray.

125. Rory Stewart recognised that inexperienced staff destabilise prisons and, when we saw him in June 2018, he anticipated that new officers would “take another year or two” to bed in and “provide a consistent, fair regime to the prisoners”. Some prisons have as many as 40% staff who have started in the previous 12 months, which governors find “quite challenging”. Mark Fairhurst of the POA said its members who are new recruits get “virtually zero” support after their basic training:

“… They go away for 10 weeks, when they are trained. In their opinion, that training does not adequately prepare them for the reality of life on the landings, particularly dealing with prisoners with mental health issues and dealing with violence. They come back to their prison, where they are supposed to have an induction week when they are shadowed permanently by experienced staff. Quite often, they are shoved straight on to a landing, with no supervision. They are left in the wilderness and do not know what to do. […] In some prisons, an experienced prison officer with nine months in the job is trying to run a wing with three other staff who have all just come out of college.”

126. Better training is another means of improving officer confidence. Basic public sector prison officer training has recently been extended by two weeks, to ten weeks, and HMPPS is piloting a new 20-week prison officer training scheme, under which recruits will have a longer training period, spending more time in an establishment to seek to better prepare them for prison work. This builds on the learning from the two-year graduate training programme, Unlocked Graduates, introduced in 2016. HMPPS has also introduced mentors for new recruits. Private sector prisons are responsible for training their own officers, based around a core syllabus. For example, Serco delivers eight to ten weeks of training, which includes learning and time on the job.

127. Several of our witnesses were of the view that the demands created by the changing nature and complexity of the prison population would necessitate a greater number of prison officers to provide the time, capacity and appropriate skills to develop meaningful relationships with prisoners. Mark Fairhurst did not consider the reintroduction of manager posts to be sufficient to improve the experience on the wings, because the administrative burdens placed on managers take up too great a proportion of their time. Staffing levels on wings are also affected by sickness, training and deployment to other

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262 Prison Reform Trust, PAVA spray a Prison Reform Trust position paper, December 2018
263 Letter from Rory Stewart, Minister of State for Justice, to Chair, Justice Committee, 18 January 2019
264 Q75
265 Q216 [Nick Pascoe]
266 Q215
267 Letter from Rory Stewart, Minister of State for Justice, to Chair, Justice Committee, 18 January 2019; HMPPS, Annual report and accounts 2017–18, HC 1175, June 2018; Q216–217 [Nick Pascoe; Mark Fairhurst]
268 Letter from Rory Stewart, Minister of State for Justice, to Chair, Justice Committee, 18 January 2019
269 Q216; Letter from Rory Stewart, Minister of State for Justice, to Chair, Justice Committee, 18 January 2019.
270 Q221 [Julia Rogers]
271 Clinks (ppp0005); Professor Nicholas Hardwick (ppp0056)
272 Q217
establishments. For example, Serco works on the assumption of a 20% reduction in staff as a result of these matters. We asked the Ministry for an estimate of how much the availability of public sector prison staff is reduced by these factors but they did not wish to disclose this. We also asked the Ministry what assessment it had made of the likely costs of prison staff up to 2022, which it told us it saw no benefit in calculating.

128. Good relationships foster more settled and safer prisons. Our evidence demonstrates a need for greater emphasis on sentence planning, including preparation for release and resettlement which should stem from the Offender Management in Custody model when fully implemented. While it is a matter for offender managers to plan individual sentences, it is not yet clear how this will work for those representing a low and medium risk, who Community Rehabilitation Companies (CRCs) are responsible for managing. Another matter to be clarified is how sentence planning will feed into planning at establishment level or nationally. The Ministry should provide details of sentence planning arrangements, including those handled by CRCs, and on its planned evaluation of the Offender Management in Custody model in its response to this report.

Managing complex and challenging needs

129. A key question which concerned us during our inquiry was the demands placed by complex and challenging prisoners on prison officers and other professionals. Juliet Lyon recounted something that a prison officer had recently said to her “We are running a nursing home, a psychiatric ward and a homeless shelter. Why can’t they sort it out from the start, rather than dumping women in prison?”. She went on to say that staff often feel that they are exactly that. They are having to receive and help women who are in a very bad way indeed.” She did not see prison facilities or those working in them as equipped to deal with these complexities:

“It is unreasonable to expect prison staff and mental health teams in prisons to work with the severity and seriousness of women’s conditions in a situation that is so far from what you would see in a psychiatric hospital or any health setting, where a multi-disciplinary team of people would be available across the clock.”

130. We heard other evidence agreeing that prison staff and others working in prison do not feel equipped to deal with these complexities, partly as a result of limitations in their training. Mark Fairhurst of the Prison Officers Association said:

They give a prison officer three hours of mental health awareness training, which is just not enough. We are not trained to deal with people with mental health issues. We have an increasing elderly population. I am not trained to deal with someone with dementia.
Substance misuse treatment providers in the NHS reported that the time for training their workforce had become strained as demands had increased as well as the complexity of service users.  

131. Our witnesses made suggestions for a range of action that could be taken better to manage these complexities in prison. These included, for example, better screening and assessment; increasing eligibility for, and the capacity of, prison mental health services, including community mental health in-reach teams; increasing access to psychological therapies, including counselling, therapeutic group work and trauma-informed practices; better integration of forensic psychologists, clinical psychologists and healthcare with each other and with the wider prison; greater segregation of the prison population; providing accessible communication tools and other support to people with learning disabilities and neuro-disabilities; redesigning commissioning practices to be less siloed and more personalised; staff awareness training, and providing domestic abuse support services in prisons. NHS England plans routinely to collect a wider range of data about prisoners’ mental ill health.

132. Our witnesses outlined a range of ways in which the higher proportion of sexual and violent offenders had impacted on the effective management of prisoners. There are obvious implications for levels of security and categorisation, for example. Martin Jones of the Parole Board found that the growth in sexual offenders and a large proportion of the prison population that have personality disorders placed pressures on psychology resources owing to the volume of assessments and on the Parole Board which now holds lengthier hearings to deal with the complexities involved. Dr Jo Bailey said that prison psychologists both assess and report on a higher volume of cases and see a significantly more complex presentation in the prisoners, with “significant impact on resourcing”. This includes the need for more specialism, some of which requires external expertise. We heard that steps were being taken to increase prisoners’ access to prison psychologists and probation officers and address deficits in skills and expertise.

133. Some witnesses were of the view that some strategies for dealing with the most disruptive and challenging individuals do little to tackle the problematic behaviour that warranted that action. This included, for example, transferring prisoners to another establishment and adding days to a sentence following adjudications. Several witnesses called for more action to deal with disruptive and challenging individuals, including developing more effective interventions for extremists; removing opportunities for financial exploitation by leaders who continue their criminality in prison; and protecting vulnerable people who are targeted by those distributing new psychoactive substances. Another element of the effective management of prisoners is ensuring that there is an appropriate balance between managing risk and supporting change. In Dee Anand of

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281 NHS Substance Misuse Providers Alliance (ppp0065)
282 Women in Prison (ppp0022); Q414 [Anne Fox; Helen Berresford]; Centre for Social Justice (ppp0029); Q427 [Danny Hames]; Waymarks (ppp0037); Headway (ppp0020); Q310 [Dr Jo Bailey]; Dee Anand (ppp0061); NHS Substance Misuse Providers Alliance (ppp0065)
283 NHS England (ppp0050). See also Q372–3 [Juliet Lyon]
284 Q302 [Professor Hardwick]
285 Q309
286 Q308
287 Qq308–309 [Dr Bailey; Sonia Crozier]
288 Centre for Social Justice (ppp0029)
289 Q427 [Danny Hames]; The Henry Jackson Society (ppp0072); Q302 [Professor Hardwick]
the British Psychological Society’s view this balance is not always achieved by prison psychologists or others working in prisons.\cite{DeeAnand} HMPPS has developed a Challenge, Support and Intervention Plan to improve the case management of violent prisoners.\cite{LetterFromRoryStewart}

134. Prison is often the endpoint for people with complex histories who can present challenging behaviours in different ways, including through violence, self-harm, and suicide attempts as well as their offending behaviour. The experience of imprisonment can make these problems worse or provide an opportunity for them to be addressed. The approach taken by professionals who deal with them, including probation officers, forensic and clinical psychologists and other health professionals, and prison officers can be invaluable in addressing offending behaviour and supporting change.

135. A key priority for improving the evidence base should be to understand better the implications of having a more ‘challenging mix of prisoners’, including the prevalence of more complex needs and vulnerabilities, and how best to address them. Adopting a more balanced approach to violence reduction in prisons would not mean that violent incidents should not be addressed, but rather that effort is also made to understand the reasons behind that behaviour as well as challenge it. Our evidence suggests that existing responses are largely punitive, although there are some promising attempts to adopt alternative approaches.

136. We have not yet seen evidence that improvements in safety can be achieved with the prison population at current levels. For example, we are not satisfied that staffing levels are sufficient to stabilise prisons and facilitate meaningful relationships and to deal with the growing complexity and challenge of prisoners. We are also concerned about the loss of experienced staff and the high turnover of prison officers. As well as monitoring staffing levels, the diversity of prison officers should be monitored to ensure that they can relate to an increasingly diverse prison population. Where there are signs of improvement in prisons that have received urgent notifications, these have been achieved at reduced prison population levels. The Ministry has recognised in its recruitment practices that the skills required of prison officers have changed but it is not clear to us how the Ministry and HMPPS plan to ensure that prisons are equipped with the staffing expertise to handle the challenges and complexities. Overcrowded and under-resourced prisons will not rehabilitate those suffering from mental ill health, addiction and illiteracy.

137. Managing a more complex and challenging population safely and effectively will undoubtedly require greater resource in terms of staffing and training. While there is some recognition of the importance of this including in developing a longer basic training course there is not yet a credible plan for dealing with staffing up to 2022 and beyond. The Ministry of Justice should set out such a plan in its response to this report.

\cite{DeeAnand} Dee Anand (ppp0061). See also Qq317–319 [Sonia Crozier; Dr Jo Bailey]
\cite{LetterFromRoryStewart} Letter from Rory Stewart, Minister of State for Justice, to Chair, Justice Committee, 18 January 2019
The coordination of interventions

138. The Ministry of Justice defined effective rehabilitation as comprising “activity to assess and manage individuals’ criminogenic and resettlement needs, risks and responsivity to particular types of intervention and support”. Nacro described what constituted effective resettlement in practice, which it believed would, in turn, reduce the numbers of people who are released from prison and come back:

We know that it requires co-ordinated planning from the outset; that the period in prison should be geared to and focus upon a safe release; the resettlement plan should include community services and comprehensive through the gate support; and should have an element of contingency or ‘what if’ planning. Ultimately, effective resettlement/risk management plans should help minimise the motivation to reoffend, identify and minimise circumstances that might be ‘risky’ for the individual, minimise the likelihood of a further offence occurring, and minimise the impact of any harm that might be caused. Effective resettlement means breaking the cycle of crime, addressing vulnerabilities, and providing support and stability for a positive future through access to appropriate housing, education, employment and health services.

139. Francesca Cooney of the Prisoner Learning Alliance wished to see clarity about who is responsible for each intervention in respect of individual prisoners to avoid “different departments in the prison [ … ] trying to find the same prisoners for different activities on the same days” and promote the coordination and integration of services. She also cautioned that the effectiveness of OMIC would be reliant both on knowledge of what resources are available in prisons and in the community and on social engagement and motivational skills, which new officers may lack. As Anne Fox observed, it also requires the resources to be available:

In other key working and intensive models, like children’s social work, someone is the lead to access a range of services for the individual whose care they manage. If you look at that, there needs to be a whole raft of resource that that person is able to tap into.

140. Rory Stewart interpreted the term ‘complex needs’ as describing broader societal issues. We asked him for his assessment about developments in integrating services in prisons for people with complex needs:

We are doing a lot of work around it, but they are very complex social things. By the time you are talking about somebody’s education, their housing, their family and their employment, these things stretch into so many facets of their life. They are quite tailored to the individual, so I do not think we are ever going to get to a stage where we can say that we are absolutely certain we have been fully holistic and have joined up everything. There has

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292 Letter from Rory Stewart, Minister of State for Justice, to Chair, Justice Committee, 18 January 2019
293 Nacro (pp0014)
294 Q403
295 Q404
296 Q405
297 Q682
been a lot of drive towards it. A lot of our governors are passionate about changing lives and about rehabilitation. There has been a long-standing commitment, from NOMS through to HMPPS, to bring probation and the Prison Service together, thinking about the offender’s journey, as you say, in a holistic way.\footnote{Q683}

He sees the offender manager, i.e. probation officer, playing the coordinating role.\footnote{Letter from Rory Stewart, Minister of State for Justice, to Chair, Justice Committee, 18 January 2019} Nevertheless, we were told by Sonia Crozier of the National Probation Service that the increase in probation officers was primarily intended to deal with long-term prisoners.\footnote{Q308}

The role of the voluntary sector

141. Clinks felt that there should be a greater level of transparency and inclusivity to enable the voluntary sector to offer their expertise in the development of strategic and operational approaches to prison reform.\footnote{Clinks (pp0005); Q405 [Anne Fox]} For example, Anne Fox advocated for voluntary sector co-ordination and for prisons to have individual strategies for bringing together VCS organisations that could offer services in prisons and outside the gate. She explained that engagement with prisons required such brokerage as “[r]elationships are harder [to build] because you cannot just pick up a phone and always have the access you might have if you worked in the community or in local authority and other kinds of environments.”\footnote{Q405} The Minister seemed encouraged by a year-long pilot of a voluntary sector coordinator post at HMP Wandsworth which he said had increased both the number and quality of relationships between the voluntary sector and prisons and had encouraged the prison to take a strategic approach to more efficient engagement and filling gaps in provision. Nevertheless, while the findings have been shared across HMPPS, there was no suggestion of funding being found to replicate the post in other prisons, beyond an existing grant given to Clinks, largely to fund support to voluntary and community sector organisations working in the criminal justice system.\footnote{Letter from Rory Stewart, Minister of State for Justice, to Chair, Justice Committee, 18 January 2019}

The environment in which rehabilitative work is undertaken

142. We heard that the rehabilitative capacity of prisons can be undermined by the volume of prisoners held in them, by a lack of resources to provide interventions and by the siloed nature of provision. Over the last five years, we heard that governors have been unable to deliver full and purposeful regimes to prisoners, which Nick Pascoe described as “at the heart of some of the instability”.\footnote{Q195} The nature of existing regimes affects detrimentally the quality of interaction between prisoners and prison officers and others seeking to provide rehabilitative services in prisons.\footnote{Q402 [Helen Berresford; Danny Hames]} The Prison Officers’ Association told us that officers on wings struggle daily to maintain law and order, and have difficulty carrying out simple tasks and delivering consistent regimes.\footnote{Prison Officers Association (ppp0032)} This was very evident from the conversations we had with officers at HMP Birmingham. Some witnesses believed that prisons could not
perform their rehabilitative function unless prisoner numbers were reduced or staffing levels were further increased.\footnote{307 See for example \texttt{Q360 [Dr Paradine]}} Juliet Lyon considered staffing levels to be insufficient and environments too bleak to deal effectively with prisoners’ vulnerabilities.\footnote{308}

143. We heard frequently during our inquiry and our visits that where rehabilitative activities and interventions were provided, prison conditions had hindered prisoners’ access to them. Those delivering education, training, substance misuse treatment, mental health treatment, and resettlement services in prisons reported that when regimes are on lockdown owing to staff shortages, family visits may be shortened, there is limited ability to move prisoners around to attend appointments or programmes, and it may not be possible to access suitable space in which to work, for example.\footnote{309 NHS England told us that between April 2017 and December 2017 over 3,000 healthcare clinics were cancelled or re-arranged owing to prison regime pressures, 780 of which were mental health clinics, and 645 were substance misuse clinics.} One voluntary sector provider of resettlement services had anecdotal evidence that around one-fifth of appointments were missed.\footnote{311 Dr Jo Bailey told us that prisons work hard to avoid disruption and that while this does affect the delivery of psychological interventions, they later seek to catch up.} NHS England told us that between April 2017 and December 2017 over 3,000 healthcare clinics were cancelled or re-arranged owing to prison regime pressures, 780 of which were mental health clinics, and 645 were substance misuse clinics.\footnote{310 One voluntary sector provider of resettlement services had anecdotal evidence that around one-fifth of appointments were missed.} One voluntary sector provider of resettlement services had anecdotal evidence that around one-fifth of appointments were missed.\footnote{312 Dr Jo Bailey told us that prisons work hard to avoid disruption and that while this does affect the delivery of psychological interventions, they later seek to catch up.}

144. Another of Professor McGuire’s findings is that violence is more likely to occur in places that offer less purpose, have fewer formal ground-rules, and lower staff oversight, such as cells. Activity is also a factor in self-harm. Some of our witnesses felt that lack of resources, including staffing and activities, inevitably result in a more punitive regime in prison, with more time spent in cells, greater disruption, and increased use of adjudications and segregation. Clinks argued that a lack of access to rehabilitative services and purposeful activity may have a cyclical impact, leading to increased boredom and frustration which can lead to violence, self-harm and drug use, which in turn leads to further lockdown and an exacerbation of the current difficulties.\footnote{313 On the other hand, we also heard that until violence, drugs and living conditions were addressed, it would be challenging to meet ambitions around rehabilitation, training, education and meaningful resettlement.} On the other hand, we also heard that until violence, drugs and living conditions were addressed, it would be challenging to meet ambitions around rehabilitation, training, education and meaningful resettlement.\footnote{314}

145. We have a long-standing concern about prison regimes and how they are monitored, particularly in relation to the time prisoners spend out of their cells and engaged in purposeful activity.\footnote{315 HMIP expects prisoners to spend at least 10 hours out of their cells on weekdays, yet regularly finds examples of between a quarter and half of prisoners being locked in their cells during the day.} We often hear from prisoners about this during our prison visits. Private sector prisons are obliged to tell the Ministry daily how many purposeful activity places they have, how many people have attended education, how many people have been unlocked, how many cells are available and what condition they are in.\footnote{317 Two years after a meaningful measure for time out of cell in purposeful activity for public
sector prisons was promised in the White Paper, it has not proven possible to deliver one. The Prisons Minister has assured us that officials are still working on this, but there were likely to be limitations. One issue raised by the Prison Governors’ Association is the validity of existing monitoring practices:

“… hypothetical activity profiles are at best optimistic, and in many cases, Enron accounts are more honest. Prisons have struggled to implement a part-time - uptime/downtime regime, and no longer measure time out of cell or ‘purposeful activity’ - an exercise to do so would flush [out] the reality of barren regimes.”

**Purposeful activity, education and training**

146. Lack of access to purposeful activity is a factor in violence and self-harm. The Prisoner Learning Alliance highlighted that Ofsted, HMI Probation and HMI Prison reports all pointed to serious concerns about the ability to manage prisoners’ access to education, training and employment (ETE) support. In 2016–17, 89,000 adult prisoners participated in learning, a 6% decline from the previous year, although the education budget has been static. While governors seek to optimise regimes, including access to purposeful activity, Nick Pascoe of the Prison Governors Association told us that most prisons do not have the activity levels to support the number of prisoners they hold. HM Inspectorate of Prisons cited the examples of HMP Swansea which had 163 full time places for 458 prisoners, and HMP Dovegate which had a population of 858 and 160 full-time and 133 part-time places.

147. The Prisoner Learning Alliance feared that failure to support education even at current levels risked increasing reoffending and further driving up the prison population. They expressed concern that a rise in the prison population without additional resources for education and training was likely to make supporting prisoners who have barriers to learning—such as specific learning difficulties, learning disabilities and other complex needs—even more challenging. The Treasury has asked the Ministry to review spending on education services at the end of 2019–20, to form a clear picture of what is being delivered under the new purchasing arrangements, which they plan to evaluate.

148. The Minister, Rory Stewart, has rightly focussed on safety and decency in prisons, but this has come at the expense of rehabilitation and purposeful activity. The Ministry needs to refocus its efforts to enable a dual approach to maintain both safety and decency, as well as improve rehabilitation. The Ministry should review its regime measurement statistics to properly monitor the amount of time prisoners spend outside of their cells, as well as access to purposeful activity, such as education.

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318 [Letter from Rory Stewart](https://example.com), Minister of State for Justice, to Chair, Justice Committee, 18 January 2019
319 [PGA](https://example.com)
320 [Prisoner Learning Alliance](https://example.com)
321 [Prisoner Learning Alliance](https://example.com), [Letter from Rory Stewart](https://example.com), Minister of State for Justice, to Chair, Justice Committee, 18 January 2019
322 [Q192](https://example.com) [Julia Rogers]; [Q194](https://example.com) [Nick Pascoe]. See also [Prisoner Learning Alliance](https://example.com)
323 [HM Inspectorate of Prisons](https://example.com)
324 [Prisoner Learning Alliance](https://example.com)
325 [Letter from Rory Stewart](https://example.com), Minister of State for Justice, to Chair, Justice Committee, 18 January 2019
Supporting family ties

149. Only three in ten prisoners said that it was easy or very easy for their family to visit in their current prison; 16% said that they did not receive family visits.326 Rory Stewart placed great importance on this element of rehabilitation:

In fact, one of the only things that really seems to shift the behaviour, particularly of adult male prisoners, is the fact that in many cases they desperately want to retain their family contacts. They want open visits. Being able to redevelop a relationship with a child and commit to a child is a really important way of changing behaviour.327

150. Accordingly, he said that the Ministry has continued to work very closely with Lord Farmer and that there is much more to be done. Prisons are devising family strategies, examples of which can be found through Barnardo’s national information centre on the children of offenders. As we noted above, in-cell telephony is being introduced in public sector prisons to give prisoners a chance to speak for “serious long periods” every day to their families, which Rory Stewart believed ultimately, “will make sure that they return to their families when they leave”.328 We have been impressed with both the improved facilities for family visits and examples of programmes to promote family ties that we have seen during our prison visits.

Offending behaviour programmes

151. The completion of accredited programmes which are designed and approved to address offending behaviour in custody fell by 21% in the twelve months to March 2018. The Ministry attributed this to an increase in the use of non-accredited programmes for substance misuse treatment by the NHS and a shift towards longer, more intensive programmes.329 We consider the question of sex offender treatment later in our report.

The wider impact of poor prison conditions

152. Running effective regimes is dependent on there being enough staff with sufficient expertise in all parts of a prison. Professor Hardwick told us that, based on his experience when he was Chief Inspector of Prisons, shortages in other prison-based roles besides prison officers were often a major problem for prisons. He highlighted that it is unclear from the available data what has happened to the number of governors and specialist non-uniformed staff working in prisons such as nurses, instructors, workshop supervisors, teachers, and psychologists, some of which are not directly employed by the prison service.330 We heard that challenges in recruitment were related to some extent to working conditions. Danny Hames of the NHS Substance Misuse Treatment Alliance said prisons had become less attractive environments in which to work, hindering the recruitment of people with the skills required.331

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326 Prison Reform Trust, Bromley Briefings Prison Factfile, 2018, page 22
327 Q673
328 Q673
329 Ministry of Justice, HMPPS Annual Digest, July 2018, page 20
330 Professor Nicholas Hardwick (ppp0056); Dee Anand (ppp0061); Prisoner Learning Alliance (ppp0051). See also An individual prison officer (ppp0026).
331 Q394
153. To get a clearer picture of the impact of shortage of non-uniformed staff, we discussed the example of forensic psychologists with some of our witnesses. Martin Jones of the Parole Board explained that the increased complexity of the prison population, including a greater proportion of people with personality disorders, for example, has led to increased demand for assessments resulting in pressures on psychology resources which has impacted on the timeliness of Parole Board hearings. It can take three months for a psychological assessment, which is delayed by a lack of qualified psychologists in the Prison Service. HMPPS acknowledged the gap, which it is seeking to address, with some signs of improvement in retention. Dr Jo Bailey, Head of Psychology at HMPPS, explained that while there were net vacancies of just over 100 posts, they use the resulting underspent budget to commission expertise—such as risk assessments for the Parole Board—both when they do not have sufficient supply in-house and when there is a particular skills gap. HMPPS recruits unqualified staff to fill those vacancies, training them in post. Dee Anand of the British Psychological Society described the challenging work of forensic psychologists and called for more effective recruitment, remuneration, support and strategies for retention. This included subsidising tuition and placement fees for those in training, in the same way as the NHS do for clinical psychologists.

154. The limited access to prisoners as a result of regime problems and lack of appropriate spaces for providing support can also put the funding of those providing services at risk which may in turn limit the diversity of the market, with only those providers who can buffer the financial risks bidding for contracts. We heard that education providers, NHS substance misuse treatment providers and voluntary organisations experience uncertainty in their caseloads and this impacts their funding, whether they are paid on a case-by-case basis or on meeting quotas for qualifications or courses, for example. This worsens existing issues with shrinking budgets and puts funding at risk. Clinks explained that voluntary sector organisations are often funded to deliver their services by funders outside of the criminal justice system and raised the possibility that some charitable funders may choose to disinvest in prison-based work if funded activities cannot be delivered because of the current challenges and pressures. We asked the Ministry of Justice for its assessment of the financial impact of regime restrictions on wider services provided in prisons. It sought to assure us that regimes will improve as recruitment continues, but confirmed that there has been no specific, estate-wide costing exercise to examine the broader impact of loss of regimes on prisoners.

155. Some service providers have sought to mitigate the limitations in access to prisoners in various ways. During our visit to HMP Oakwood we met a prisoner who escorted other prisoners to healthcare appointments to improve attendance. Clinks told us that voluntary sector organisations have adapted their interventions and activities so that individuals can undertake them in cell. Nacro told us they often engage with prisoners “through the cell door” rather than in dedicated meeting spaces in prison, which are 

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332 See for example Q278; Q308; Q310.  
333 Q309 [Mr Jones]; Q268 [Ms Anand]  
334 Q309  
335 Q310; Q268  
336 Q310; Letter from Sam Gyimah, Former Parliamentary Under-Secretary of State for Justice to Chair, Justice Committee, Indeterminate Sentences of Imprisonment for Public Protection, 20 November 2017.  
337 Q310  
338 Clinks (ppp0061)  
339 Clincs (ppp0005); NHS Substance Misuse Providers Alliance (ppp0065); Prisoner Learning Alliance (ppp0051)  
340 Letter from Rory Stewart, Minister of State for Justice, to Chair, Justice Committee, 18 January 2019
limited. Danny Hames of the NHS Substance Misuse Providers Alliance had found that in some prisons budget reductions had resulted in greater integration between mental health and substance misuse services to streamline referrals, assessments and casework and place more emphasis on evidence-based practice.

156. Our evidence strongly demonstrates that prisons are not currently maximising opportunities for rehabilitation. Regime restrictions related to staffing shortages and other disruptions severely undermine the delivery of rehabilitative services including education, mental health treatment, substance misuse treatment and offending behaviour programmes. Not only does this result in immeasurable wasted costs, it can put those providers delivering services at risk by undermining the viability of their funding. The nature of regimes and restricted access to rehabilitative activities has a cyclical impact on the degradation of regimes and safety, owing to the boredom and frustration of prisoners enduring impoverished regimes, which can in turn lead to violence and self-harm. Regimes need to be reported upon in a meaningful way to enable monitoring of their operation, especially since they are key to rehabilitation. Staffing levels mean many prisons are not delivering their intended regimes. The Government must inform the Committee of the extent to which prisons are able to operate their stated regimes through regular updates and the first such should be produced within six months from the publication of this report.

157. We note that there have also been problems recruiting for other staff, including forensic psychologists and teachers which must also be addressed. Creating a rehabilitative culture will entail greater integration between the various professionals working in prisons, which should be part of the role of prison leadership. Greater integration between rehabilitative services provided in prisons should be reflected in strategies on rehabilitative culture. We recommend that prisons are monitored on their capacity to meet the identified needs of prisoners, which would also inform the Ministry’s evidence about resources. These data should be used to review the adequacy of existing recruitment targets to foster the relationships required to support the high volume of prisoners who have complex needs.

Incentives for reform

158. The Secretary of State, David Gauke, said in March 2018 that one of his aims was to provide prisoners with positive incentives to reform, including through temporary release and expanding contact with family members "for those who have complied with the rules." Dee Anand explained the importance of the balance between reward and punishment in fostering rehabilitation:

For a prison environment to be conducive to change, we need to create an environment where prisoners feel self-worth and feel that authority is used fairly and proportionately. Where prisoners do not feel that, or have mistrust in the system, as they would view it, whether that system is just

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341 Clinks (ppp0005); Q399 [Helen Berresford]
342 Q406; NHS Substance Misuse Providers Alliance (ppp0065)
343 Justice Committee, Oral evidence: The Work of the Ministry of Justice, HC 418, 7 March 2018, Q85
Psychologists or everybody in the prison state, and they feel it is an unfair place to be, it creates a significant problem in creating a culture of safety and change.\textsuperscript{344}

159. Since May 2018 governors have been permitted to devise their own incentives and earned privileges (IEP) policy.\textsuperscript{345} The Ministry of Justice later consulted governors on a new Framework which aims to give them greater freedom to offer the incentives which work best for their particular cohort of prisoners.\textsuperscript{346} Under the draft framework, those who do not follow the rules would have privileges removed and face swifter punishment through a new adjudications process. This is intended to “help break the cycle of reoffending and put prisoners on the right path”. This contrasts with evidence cited in the Model of Operational Delivery for reception prisons which notes that deterrence and punishment are not effective means of reducing violence.

160. Some of our witnesses commented on how proportionate the existing systems of enforcement and rewards are, including how fairly they were applied.\textsuperscript{347} The impression they had was that there was greater emphasis in prison culture on punishment than on positive reinforcement.\textsuperscript{348} We heard concerns about access to family visits and letters being removed as a form of punishment, as it punishes family members and children, not just those in prison.\textsuperscript{349} Women in Prison has found that women do not understand how and why the scheme works as it does.\textsuperscript{350} There are also issues around how fairly the system is applied, or seen to be applied.\textsuperscript{351} There are some positive examples, for example, at Werrington young offenders institution and HMP Parc prison.\textsuperscript{352}

161. Professor McGuire recommended that violence reduction policies could be oriented towards situational control of staff-prisoner interaction, requiring, for example, staff training in the use of styles and patterns of behaviour that wield authority alongside instilling respect.\textsuperscript{353} The Inspectorate found recently at HMP Bedford, which has been subject to an Urgent Notification, that the prisoner violence reduction scheme was largely ineffective: there were few challenges or sanctions faced by perpetrators of violence beyond the use of the IEP and formal adjudications processes, which in themselves were not effective, and use of force was very high.\textsuperscript{354}

162. The extent to which prisoners feel that they are treated fairly, known as procedural justice, is an important factor in violence reduction. HMPPS acknowledges this in its model of operational delivery for reception prisons, noting that the IEP scheme tends to be used when negative attitudes are present, but not when prisoners are displaying consistently compliant and helpful behaviour, and that changing this will require a change in culture.\textsuperscript{355}

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\bibitem{345} Letter from Rory Stewart, Minister of State for Prisons, to Chair, Justice Committee, Statutory instrument to amend the Prison Rules 1999, 27 April 2018
\bibitem{346} Ministry of Justice, New incentives framework to help prisoners turn their lives around, 3 September 2018
\bibitem{347} Q356; Q358
\bibitem{348} Q282; Q301; Prison Reform Trust (ppp0023); Q281 [Mark Day].
\bibitem{349} Q356 [Dr Paradine]
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\bibitem{351} Q359 [Dr Paradine]
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\bibitem{353} McGuire, J, Understanding prison violence, 2018.
\bibitem{354} HM Chief Inspector of Prisons, HMP Bedford, January 2019
\bibitem{355} Letter from Rory Stewart, Minister of State for Justice, to Chair, Justice Committee, 18 January 2019
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163. David Lammy found that BAME prisoners tend to have more negative perceptions than white prisoners about their treatment. The Inspectorate of Prison’s prisoner surveys echo this. Understanding these perceptions is important as they can undermine prisoners’ feelings about the legitimacy of prison authority and hence compliance with the regime. The Inspectorate has repeatedly encouraged and recommended that prisons should try to understand this but finds that more often than not, they do not. Specialist voluntary sector provision to support BAME people in the criminal justice system has suffered particularly acutely from funding cuts. Recognising why people from particular racial and ethnic groups might experience the system differently requires culturally informed staff.

164. HMPPS has stated its commitment to addressing the issues highlighted in the Lammy Review, including by adopting the principle of ‘explain or reform’ where disproportionality is identified. To equip prisons to do this, it is seeking to improve the equalities monitoring data available to governors, including to allow for comparisons with similar prisons and introduce new performance measures. There is no mention of a commitment to additional resources to facilitate the implementation of this or accompanying action plans. The Chief Inspector of Prisons believed that prisons had “a long way to go” to implement these recommendations. The Inspectorate had seen only one specific example of good practice in this area so far, at Wetherby young offender institution, where the YOI had undertaken a self-assessment to try to understand the disproportionate negative perceptions of the regime on the part of BAME young men held there. Clinks suggested that a specific strategy is required in both the adult and children’s systems to address disproportionate numbers and unequal outcomes for BAME people.

165. There is some sign of a shift in the use of punishment for all prisoners. The use of adjudications (hearings for disciplinary matters) is high (46,952 outcomes, 64% of which were proven) and had been increasing but, as at March 2018, there was a 2% fall on the previous year. There has also been a 12% decrease in proven adjudications for disobedience and disrespect over the last year, although one in three (31%) of proven adjudications were for such offences. Additional days can be added to sentences as punishments following adjudications. This can add to pressure on the population. For example, punishments given to prisoners in Wales amounted to an extra 70 years of sentence in the past two years. David Lammy found in his review of ethnic disproportionality that mixed ethnic men and women were more likely than white men and women to have adjudications for breaching prison discipline brought against them, but less likely to have those adjudications proven when reviewed.

166. Considerable change is required to foster rehabilitative cultures. The incentives and earned privileges scheme and the use of incapacitant spray for managing behaviour highlight the potential tensions between the various purposes of imprisonment in prison operations. We note the potential benefits of incapacitant spray in helping prison staff to feel safe. While there is of course a balance to be struck, there is an overemphasis on punitive approaches, including the use of IEP to remove privileges.

356 Q3 77 [Dr Kate Paradine]
357 Q 377; Maslaha (ppp0066)
358 Letter from Rory Stewart, Minister of State for Justice, to Chair, Justice Committee, 18 January 2019
359 Q 541
360 Clinks (ppp0005)
362 BBC News, Rule-breaking prisoners get 70 extra years as punishment, 13 August 2018
363 David Lammy, The Lammy Review, September 2017, page 52
and the overuse of disciplinary processes. We welcome the greater discretion afforded to governors and recognition in guidance that punishment and deterrence are not always effective in reducing violence. **HMPPS should encourage governors to review the balance between punishment and rewards as part of their strategy for implementing a rehabilitative culture.**

167. The clear documentation by David Lammy of the strikingly disproportionate impact of imprisonment on BAME prisoners appears to have had little impact on prison practice to date. It is disappointing that the Chief Inspector of Prisons was unable to provide more than one example of a prison having embraced the principle of ‘explain or reform’. We welcome the Ministry’s new approach but note the expectation that this must be achieved within existing resources and amongst other priorities.

168. **We expect to see clear evidence of progress in monitoring and explaining BAME disproportionality in prisons by the next annual update, following the expectation laid down by Mr Lammy that the system must “explain or reform”. Again, significant cultural change will be required to change outcomes and we expect this to be addressed in the Ministry’s Justice 2030 strategy. In the short-term, the Ministry should focus on seeking to reduce disproportionality in outcomes in the youth custodial estate. We expect to be kept updated directly on this matter.**

**Meeting the needs of particular cohorts of prisoner**

169. We heard that better management of certain specific sections of the prison population could reduce pressure and maximise the chances of rehabilitation. HMPPS has adopted a new approach, known as Models of Operational Delivery (MODs), to support the reconfiguration of the estate described elsewhere in this report and to enable governors and commissioners to tailor services according to the prison’s function and the people it will hold. They have identified ‘specialist’ cohorts—older prisoners, foreign nationals, young adults and men convicted of sexual offences—for whom particular consideration is required on how to best meet their needs and manage them effectively. Professor Julian Roberts et al proposed approaching the management of the population by examining who constitute penal “bed blockers” in the same way that the NHS examines and deals with demand.\(^{364}\) We consider in this section, provision for some cohorts of prisoner for whom there might be an opportunity to progress sentences more efficiently: IPP prisoners, older prisoners and prisoners maintaining their innocence.

**Older prisoners**

170. People in prison aged 50 and over represent 16% of the total adult prison population (those aged over 18) and the numbers are projected to increase. Some prisons hold between 40 and 50% prisoners aged over 50.\(^{365}\) Six in ten prisoners over the age of 50 report having a long-standing illness or disability. Several witnesses, including the current and former Chief Inspectors of Prison, Prison and Probation Ombudsman, representatives

\[^{364}\] Professor Julian V. Roberts, Lyndon Harris and Dr. Jonathan Bild (ppp0054)

\[^{365}\] AMIMB (ppp0040)
of Independent Monitoring Boards, and the Prison Officers’ Association, expressed concerns about provision for older prisoners both currently, in terms of the suitability of the existing estate and parole decisions, and in relation to future planning.366

171. Several witnesses expressed concerns about the impact of the growing elderly population on prison capacity.367 For example, Julia Rogers explained:

… there is almost a version of what the NHS used to call bed blocking, where people who are very ill are still incarcerated. [ … ] Having something purpose-built or some way of having care facilities for older prisoners that still keeps them secure, but that is perhaps not as strict or not under the same strictures as full prison conditions, would be a sensible move, I think.368

172. Although there is good provision in some prisons, physical constraints in the prison estate mean that older and infirm prisoners are not always well accommodated, with cell showers and walkways largely inaccessible. Places in palliative care units and dedicated units for older prisoners are insufficient for the size of the population and in some cases, they are held in healthcare beds as the only suitable accommodation.369 Our witnesses noted the burden placed on prison staff from the increasing number of hospital appointments and bed watches required to care for people suffering a range of age-related ill-health conditions.370 This also has implications for release planning. As Martin Jones observed, this also has implications for timely releases, as the Parole Board was “[q]uite often … getting involved in how to release an 80-year-old man into a care home—how to get social services to pick up the pass, essentially. It makes it very difficult for us.”371

173. Both the Inspectorate of Prisons and the former Prison and Probation Ombudsman, Elizabeth Moody, commented on the reactive approach taken by the Ministry and HMPPS to managing the needs of this population. The latter said:

Prisons designed for fit young men have become care homes and hospices in a largely piecemeal fashion, with individual prisons and their healthcare partners—coping with limited resources and no training—almost always reacting to challenges “on the ground”. This “adhoc-racy” from HMPPS and the MoJ has been difficult to defend. Sick people have died before they should because crucial appointments were missed, records were lost, warning signs were ignored.372

174. Both they and others, including representatives of Independent Monitoring Boards, called for a more strategic approach, as had been recommended by our predecessor Committee in 2013.373 This might include for example, forecasting future needs of the ageing population in terms of the rates of certain illnesses and disabilities and the

366 Prisons and Probation Ombudsman (ppp0031); Prison Officers Association (ppp0032); HM Inspectorate of Prisons (ppp0036); Professor Nicholas Hardwick (ppp0056); AMIMB (ppp0040); Independent Monitoring Boards (ppp0059); Independent Advisory Panel on Deaths in Custody (ppp0063); Q309 [Mr Jones, Parole Board]. Health and Social Care Committee, Twelfth Report of Session 2017–19, Prison Health, HC963, November 2018, page 10
367 INQUEST (ppp0033); Older People’s Commissioner for Wales (ppp0043); Independent Monitoring Boards (ppp0059).
368 Q253
369 Q252; Prisons and Probation Ombudsman (ppp0031); AMIMB (ppp0040).
370 Association of Members of Independent Monitoring Boards (ppp0040); INQUEST (ppp0033).
371 Q309
372 Prisons and Probation Ombudsman (ppp0031)
373 Justice Committee, Fifth Report of Session 2013–14, Older Prisoners, HC89, September 2013
implications for the estate; having a dedicated lead to ensuring their particular needs were met; identifying different ways of providing appropriate care; and addressing issues with security categorisation, particularly frail and very ill men—who would physically struggle to escape—being treated as highly dangerous.374

175. It had been anticipated that an Older Prisoners strategy was being produced. Peter Clarke said he had been “heartened” when he’d been invited to join a steering group to develop a strategy about 18 months ago, but it had only met once and he had “heard nothing since”.375 There is now a Model for Operational Delivery, devised by HMPPS, for older prisoners which, Peter Clarke noted, explicitly says that it is not a strategy but provides an operational framework which he characterised as “a menu of tactical options that local establishments could use”. HMPPS specifically stated in the Model that it will not be proposing special or separate accommodation for cohorts of older prisoners—for example for those requiring palliative care—as suggested by some of our witnesses. Although when we discussed HMPPS’ plans with Phil Copple, Director, Public Sector Prisons, he recognised that managing this cohort was a long-term challenge and mentioned a need to “systematise” and “make it more of a strategic plan”, Rory Stewart confirmed to us that there is no intention to produce a dedicated strategy.376

Sentence progression and parole

176. The changing nature of offending and sentencing has led to a significant increase in prisoners whose length of sentence is determined by the Parole Board. In such cases, the prisoner may not be released until the Board is satisfied that it is no longer necessary for the protection of the public that they remain confined. A significant proportion of people in prison therefore do not know if, or when, they might be released. Over a quarter of the prison population is now entitled to a parole review at some point, impacting on the workload of the Parole Board.377 As an indication of the volume of work, in 2017–18, the Parole Board made just over 25,000 decisions, over 8,000 of which were at oral hearings which must be held for life sentenced prisoners, prisoners serving an indeterminate sentence of imprisonment for public protection (IPP), those serving extended determinate sentence (EDS); and serious sex offenders and terrorists as well as some offenders recalled to prison. We focus our attention on the particular case of IPP prisoners.

People serving indeterminate sentences of imprisonment for public protection (IPP)

177. Indeterminate sentences of imprisonment for public protection (IPPs) were introduced in 2005, having been created under the Criminal Justice Act 2003, and were abolished in 2012. The IPP prison population has fallen by 55%, from a peak of 6,080 in 2012 down to 2,745 by 30 June 2018 and is expected to continue to fall. Nevertheless, many of our witnesses drew attention to the knock-on effect of the sentence on the prison population, particularly on those people still subject to IPPs and how they are currently managed.378

374 Prisons and Probation Ombudsman (ppp0031); AMIMB (ppp0040); Serco plc (ppp0019).
375 Q500. See also Prisons and Probation Ombudsman (ppp0031).
376 Qq491–492 [Phil Copple]; Letter from Rory Stewart, Minister of State for Justice, to Chair, Justice Committee, 18 January 2019.
377 O309
378 Women in Prison (ppp0022); David Breakspear (ppp0042); O182 [Richard Garside]
178. The sentence has created its own complexities.\(^{379}\) The test for release of an IPP prisoner is set at a high threshold.\(^{380}\) Dr Harry Annison, of Southampton Law School described the sentence as falling “little short of life imprisonment”.\(^{381}\) The uncertainty about whether or when they might be released can make people serving such sentences vulnerable and may foster a sense of despair, which has been found to contribute tragically to self-inflicted deaths.\(^{382}\) The Justice Secretary recognised in his speech the importance of “a positive outlook for the future and a sense that there is light at the end of the tunnel” to reduce the chances of reoffending on release. IPP-sentenced prisoners suffer from disproportionately high rates of self-harm, with a rate of self-harm of 550 per 1000 prisoners, compared to 324 per 1000 determinate-sentenced prisoners and approximately 250 per 1000 life-sentenced prisoners.\(^{383}\) As we noted in chapter 3, once IPP prisoners are released, there are high rates of recall, including for technical and administrative breaches.\(^{384}\) The sentence also has other, broader effects on society, particularly on family members and other individuals providing ongoing support to IPP prisoners.\(^{385}\)

179. Since 2017, there has been concentrated effort by the Prison Service, National Probation Service and the Parole Board to progress cases, and significant progress has been made.\(^{386,387}\) The Parole Board ordered the release of over 900 IPP prisoners in 2017–18, including re-releases of some recalled. Nevertheless, there remain some concerns about the progression of such prisoners towards release. Our evidence suggests that it can be difficult for prisoners to demonstrate that the risk they pose to the public has reduced to a level that can be safely managed in the community. For example, we have heard mixed reports about the availability of offending behaviour programmes for prisoners which can provide a means of indicating behaviour change.\(^{388,389}\) We received evidence from families of IPP prisoners on these challenges. This is illustrative:

[My brother, who died in prison after a self-harm incident] often found himself in prisons that did not offer the specific type of rehabilitation he needed with no support or guidance on how to move to a prison that offered them. If there ever was a ray of hope with regards to this it was often lost owing to the lack of feedback on progress, the resource being changed or even closed down. On a number of occasions [he] was advised to join a therapeutic community, he repeatedly applied to these and waited many months for a response, often trying to chase it up himself to no avail. When he did finally hear back from them he had been rejected but he was then later informed by the Parole Board that he needed to join a therapeutic community in order to show he was safe for release. This type of ‘back and forth’ was seen regularly throughout my brother’s sentence.\(^{390}\)

379 The Howard League for Penal Reform (ppp0025)
380 The Sentencing Council of England and Wales (ppp0038)
381 Dr Harry Annison (ppp0073)
382 Donna Mooney (ppp0017); Prisons and Probation Ombudsman (ppp0031)
383 Dr Harry Annison (ppp0073)
384 The Howard League for Penal Reform (ppp0025); Women in Prison (ppp0022)
385 Dr Harry Annison (ppp0073)
386 Letter from Sam Gyimah, Former Parliamentary Under-Secretary of State for Justice to Chair, Justice Committee, Indeterminate Sentences of Imprisonment for Public Protection, 20 November 2017; Qq333–334.
387 The Parole Board for England and Wales (ppp0060)
388 O288
389 O288
390 Donna Mooney (ppp0017)
180. Mark Day noted a “very common view” among prisoners and staff, that prisoners need to take part in treatment programmes to progress and that there is a shortage of places on such programmes. Nevertheless, we were assured by the Parole Board and psychologists that there are other ways in which prisoners can demonstrate that their risk has reduced. The Parole Board noted that some indeterminate prisoners held within the closed estate and referred to it are excluded from possible progression to an open prison. The Parole Board, being unable to consider such a move, is left with only two options, either to release the offender into the community or direct that they remain in closed conditions. In the Board’s view, reviewing these exclusions may result in more prisoners progressing more swiftly, with the added benefit of being tested in open conditions first, before eventual release into the community.

181. The Parole Board also stated that although there had been progress in reducing the numbers of IPP prisoners detained, the legacy of IPP prisoners would remain for many years to come without legislative change, not least because the number of IPP prisoners recalled to custody continues to rise and it can be expected that the rate of progression will slow down as the number of IPP prisoners in the system falls. Some witnesses, including the Howard League for Penal Reform, proposed to us legislative solutions, which we have looked into previously. For example, the release test could be changed, prisoners could be re-sentenced to determinate terms, lifetime post-release supervision of IPPs could be replaced with a shorter, fixed term period of support, thus lessening the chance of IPP prisoners being recalled for technical or administrative breaches. The Parole Board itself suggested two options which are already open to the probation service: the suspension of supervision after four years of good behaviour on licence, and the cancellation of the licence after ten years’ good behaviour, upon application. Making more use of these, where appropriate, could remove some IPP offenders from the system entirely. Sonia Crozier of the National Probation Service agreed that better use could be made of such mechanisms. While the Prisons Minister recognises the importance of hope for people on IPP sentences, there is no sign of an intention to legislate as a means of improving progression.

182. Whilst it is almost certain that there will remain a hard core of IPP prisoners who present a significant risk and may not be safe to release, the aim of the system should be to ensure that most IPP prisoners are safely managed back into communities at the earliest opportunity. We welcome improvements in rates of release stemming from the concerted effort to ensure that IPP prisoners are managed more effectively towards release. This is important to reduce the disproportionate rates of self-harm which may be indicative of loss of hope which in turn can undermine rehabilitation. The high rates of recall are troubling. As part of its review of sentencing the Ministry should consult on legislative solutions to both release and recall of indeterminate sentenced prisoners to bring about sentencing certainty.

391 Q287–288
392 Q289 [Professor Hardwick]; Q291 [Dee Anand].
393 The Parole Board for England and Wales (ppp0060)
394 The Howard League for Penal Reform (ppp0025)
395 The Parole Board for England and Wales (PPP0060)
396 Q340–341
Sexual offenders

183. As we noted above, the proportion of the prison population who have committed sexual offences is growing, although there is no evidence that more sexual offences are being committed.\(^{397}\) The profile of sexual offenders is wide-ranging and different types of offences will require different approaches to rehabilitation and risk management. A joint inspection report by HM Inspectorate of Probation and HM Inspectorate of Prisons found that HMPPS had an incomplete picture of sexual offenders and had not analysed their collective risks and needs.\(^{398}\)

184. One means of managing risk is through the provision in prison to sex offenders considered eligible of treatment programmes which seek to change their behaviour on release by working on their empathy, attitudes and risk awareness. Nevertheless, the College of Policing does not believe that there is sufficient research evidence to draw strong conclusions about the effectiveness of such treatment, although it has been found to be effective in community settings and in secure mental health facilities.\(^{399}\) A widely used course, the Sex Offender Treatment Programme (SOTP), was discredited in 2017 after an evaluation found that those who had taken part were 25% more likely to reoffend.\(^{400}\) The joint inspectorate report found that work in prison with men convicted of sexual offending was “poor” and that staff were not trained and supported sufficiently well to protect the public and that accredited programmes were under-used.

185. More recent research has looked at possible factors affecting the efficacy of sex offender treatment programmes internationally and found that that the type of sex offender treatment on which the SOTP programme was based (i.e. Cognitive Behaviour Treatment) does reduce reoffending—in prison and in the community—by around one-third.\(^{401}\) Professor Theresa Gannon also found that treatment is more effective if there is consistent input from an independent registered psychologist and if it is delivered solely in groups, rather than also being combined with individual treatment.\(^{402}\) This has important implications, as it suggests that the SOTP programme may not have been properly resourced with sufficiently qualified staff to enable it to work effectively. Dee Anand of the British Psychological Society agreed that constraints on forensic psychology funding had contributed to the limited effectiveness of treatment. In his view, other problems with the delivery of SOTP included the theory underpinning it, the operational practice, the method of referral, who it was delivered to, and the ‘post-delivery environment’.\(^{403}\) In relation to the latter he said “[w]e were returning those individuals to an environment that felt unsafe and was not conducive to change.”\(^{404}\) While it is not clear whether he was referring to prisons or to the community, the joint inspectorate report identified several failings in the post-release supervision of sex offenders—who represent 1 in 5 of probation cases—including the quality of supervision provided, access to community-based treatment and a lack of suitable accommodation, including in probation hostels.\(^{405}\)

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\(^{397}\) HC Hansard, Joint HMI Prison and Probation Report, volume 653, col.369–373, 24 January 2019
\(^{398}\) HM Inspectorate of Probation and HM Inspectorate of Prisons, Management and supervision of men convicted of sexual offences, 24 January 2019
\(^{399}\) College of Policing (What works centre) (ppp0034)
\(^{400}\) Dee Anand (ppp0061)
\(^{401}\) When comparing treated versus untreated groups reoffending over 6 years was reduced to 9.5% from 14.1%.
\(^{402}\) Q294; Q313
\(^{403}\) Q294
\(^{404}\) Q294
186. Rory Stewart made an oral statement in the House on the day that the joint Inspectorate’s report was published.\(^{406}\) He did not describe how the Government would respond to concerns about access to accredited programmes. The newly developed programmes that are currently being delivered in prisons, which take a different approach to SOTP—Horizon and Kaizen—have not yet been rigorously evaluated, although the results of a process study on the Horizon programme were published in January 2019.\(^{407}\) The Inspectorates found that where treatment was available, waiting lists were not excessive. Nevertheless, in other prisons which held a high proportion of sex offenders such treatment was not available or was not delivered in a form appropriate to the needs of the population, for example, those with learning disabilities.\(^{408}\) The Minister believed that there was sufficient availability of programmes.\(^{409}\)

187. The results of the study on the Horizon programme found that 83% of those who started the programme completed it. Participants provided feedback that they had ‘increased confidence, greater assertiveness, increased problem-solving skills and improved relationships following completion of the programme’. However, concerns remained around the perception of the programme by outside teams, such as parole boards and offender supervisors.\(^{410}\) The programme is delivered to men assessed as medium, high or very high risk of re-conviction and targets issues such as self-regulation, relationships, sexual attitudes and behaviours.

188. We also heard that prisoners maintaining their innocence may remain in the prison system longer than those who admit their guilt.\(^{411}\) The Centre for Criminal Appeals noted that offending behaviour programmes often require a prisoner to admit guilt, which of course an innocent person cannot do, and this can slow down or even stall a prisoner’s progression through their sentence plan.

189. Many prisons are operating well over their operational capacity. Our evidence points strongly to need to provide high quality care to an increasingly complex, challenging and vulnerable prison population. Prisons are not equipped to deal with this range of issues and their inability to do so limits opportunities for rehabilitation, even for those who represent a serious risk to the public. We agree that all prisoners should be given hope. When prisons are unable to provide access to effective treatment and interventions to prisoners eligible for parole this extends unnecessarily the sentences of those who may be safe to release, with robust supervision in the community, but are unable to demonstrate it. As part of its strategy for a sustainable prison population, the Ministry should explain how it intends to ensure that opportunities for long-term prisoners to progress their sentences will be optimised. This should include consideration of the potential benefits of legislative and other options for managing prisoners serving IPP sentences, particularly those over-tariff and on recall.

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\(^{406}\) HC Deb, 24 January 2019, col 369 [Commons Chamber]

\(^{407}\) Q313 [Dr Bailey]; PQ 127045 [on offender rehabilitation], 14 February 2018; Wilkinson, K and Powis, B, A Process Study of the Horizon Programme, 10 January 2019.


\(^{409}\) Letter from Rory Stewart, Minister of State for Justice, to Chair, Justice Committee, 18 January 2019

\(^{410}\) Wilkinson, K and Powis, B, A Process Study of the Horizon Programme, 10 January 2019

\(^{411}\) SAFARI (ppp0001); False Allegations Support Organisation (UK) (ppp0009); FACT (ppp0010); Dr Dennis Eady (ppp0007); Centre for Criminal Appeals (ppp0021)
190. The issue of the efficacy of sex offender treatment needs urgent resolution. We expect the Ministry to clarify how it is evaluating the Kaizen programme and when it intends to publish the research. The evaluation should include consideration of the impact on outcomes of the level of qualification of those delivering it and should also address whether the Ministry intends to review its policy of recruiting trainee psychologists to fill vacancies, or whether it might be necessary to take steps to attract qualified psychologists to the role.

Release on Temporary Licence (ROTL)

191. The Ministry of Justice is reviewing the operational policy on Release on Temporary Licence (ROTL) with the aim of streamlining it. Of every 1000 such releases, 999 are completed without incident. The Justice Secretary cited research evidence that the more ROTL a prisoner gets, the less chance there is of them reoffending. Successful ROTL can enhance eligible prisoners’ chances of parole by enabling them to demonstrate that they can adhere to the conditions on which they are released and by enabling them to undertake resettlement activities outside the prison, for example, links with their families, training and employment. Between 2013 and 2017, use of ROTL fell by 40% and is largely confined to the open prison estate, however, during the quarter ending March 2018, there was a 5% increase on the year previously. There is potential to expand the use of ROTL using GPS tagging.

192. We heard that there are some limitations to the existing policy. The Prison Reform Trust highlighted that prisoners who have been recalled to prison or failed to return from previous temporary release restrictions are restricted in their eligibility for ROTL, as well as their ability to transfer to open conditions. Serco told us that directors of private sector prisons are unable to sanction the use of ROTL directly and must refer the decision to HMPPS. The Ministry is currently reviewing the latter requirement and seeking to remove other restrictions within the wider policy as part of the ROTL review. Release on temporary licence provides opportunities for prisoners to demonstrate that they are prepared for a law-abiding life in the community. The arrangement whereby private prison directors must seek permission from HMPPS to release prisoners on temporary licence strikes us as unnecessarily bureaucratic and we hope that the Ministry’s commitment to review this process results in its cessation by a fixed date determined in the response to this report.

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412 Letter from Rory Stewart, Minister of State for Justice, to Chair, Justice Committee, 18 January 2019
413 David Gauke, Lord Chancellor and Secretary of State for Justice, Beyond prison, redefining punishment, 18 February 2019
414 Apex Trust (ppp0030)
416 Serco plc (ppp0019)
417 Prison Reform Trust (ppp0023)
418 Serco plc (ppp0019); Qq249–251
419 Letter from Rory Stewart, Minister of State for Justice, to Chair, Justice Committee, 18 January 2019; David Gauke, Lord Chancellor and Secretary of State for Justice, Beyond prison, redefining punishment, 18 February 2019
Decent and modern prisons

193. Another of the four overarching expectations of the Inspectorate of Prisons is respect, for example that prisoners are treated with respect for their human dignity. The Chief Inspector of Prisons told us in December that the Inspectorate had not seen significant improvements in living conditions.420 Of the 14 local prisons inspected in the last year, only five reached the standard of reasonably good or good.421

The Prison Estate Transformation Programme

194. The Prison Estate Transformation Programme which commenced in November 2016 is intended to create an estate that is less crowded, better organised, more effective and comprises modern, fit-for-purpose accommodation. The programme’s stated objectives were to:

- simplify the organisation of the estate, placing prisoners at the right level of security in prisons; with appropriately tailored regimes;
- invest £1.3 billion to build up to 10,000 new adult prison places;
- build and open five new community prisons for women; and
- close prisons that are in poor condition and those that do not have a long-term future in the estate.422

Progress on reforming the prison estate

195. HMPPS set out progress on the Programme in its 2017–18 annual report:423

- HMP Durham has become a reception prison and HMP Holme House has become a training prison as part of simplifying the estate in line with the vision
- Outline planning permission was received at the former HMP&YOI Glen Parva, HMP Wellingborough and land next to HMP Full Sutton. Project partner agreements have been awarded for the detailed design work at Glen Parva and Wellingborough
- Work has begun on a new houseblock at HMP Stocken, which will create 206 decent prison places
- The sale of the former HMP Holloway site has now been agreed.424
- Work has begun on the reconfiguration of The Verne (IRC) into a male prison, which is expected to open later this year.

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420 Q508
421 Q531
424 BBC News, Holloway Prison: Up to 1,000 homes to be built in £82m deal, 8 March 2019
• HMP Berwyn, a new rehabilitative male prison in North Wales, was opened at the end of February 2017. We visited in January 2018. As at December 2018, HMP Berwyn housed 1,282 prisoners, although intended capacity is 2,106.\textsuperscript{425}

• The Ministry has also launched the Secure Schools Programme for the youth estate, with the first secure school to be opened at Medway.\textsuperscript{426}

196. A key pillar of the Ministry’s Prison Estates Transformation Programme is closing old prisons in a poor condition by building new ones to replace them. None of the five new prisons planned has yet been built. The Ministry has been seeking suitable sites for new prisons. On 22 March 2017, it announced plans—subject to planning approvals, value for money and affordability— to build one at Port Talbot in south Wales, and two by redeveloping HM Prison and Young Offender Institutions Rochester and Hindley.\textsuperscript{427} The Ministry later announced that the latter two would remain open until 2019 owing to unforeseen prison population pressures.\textsuperscript{428} A decision is now likely to be taken in 2020.\textsuperscript{429} The Ministry has dropped its plans for building new women’s community prisons.\textsuperscript{430}

197. As of August 2018, only £0.2 billion of the £1.3bn had been spent, including the cost of constructing HMP Berwyn.\textsuperscript{431} The Ministry announced on 29 November 2018 that prisons built at Glen Parva and Wellingborough would be built using public financing and operated by private companies under the Prison Operator Services Framework.\textsuperscript{432} When we questioned why the decision was taken not to run the prisons in the public sector as had been previously intended, the Minister explained that public sector costs would be used as a benchmark against which the bids would be tested.\textsuperscript{433} Some of the prisons that were opened using private finance initiatives will see their contracts coming to an end in the next few years, commencing with HMP Altcourse in 2020. The Prison Operator Services Framework will also cover contracts coming up for retender.

198. The Prison Reform Trust commissioned Julian Le Vay, a former finance director of the prisons service, to analyse the Ministry’s reform programme. His analysis questioned whether the Ministry’s plans are sufficient to keep pace with the prison population: “[o]n current population projections, there is no prospect of any impact on overcrowding before 2022—indeed, unless the Government abandons plans to close old prisons and instead keeps them all open as well as building new ones, emergency measures to create space are likely to be necessary as early as next year and throughout the period up to 2022.”\textsuperscript{434} He concluded that a further prison building programme was likely to be required by 2026.

199. One element of the Programme was to use money from the sales of closed prisons to regenerate the estate. It is now apparent that the potential yields from such an approach are likely to be lower than anticipated. A key example is HMP Holloway which was closed

\textsuperscript{426} Ministry of Justice, \textit{Justice Minister outlines vision for secure schools}, 1 June 2018
\textsuperscript{427} HC Deb, 22 March 2017, \textit{HCWS550} [Commons written ministerial statement]
\textsuperscript{428} HM Prisons and Probations Service, \textit{Her Majesty’s Prison and Probation Service Annual Report and Accounts 2017–18}, HC1375, 28 June 2018
\textsuperscript{429} Letter from Rory Stewart, Minister of State for Justice, to Chair, Justice Committee, 18 January 2019
\textsuperscript{430} Ministry of Justice, \textit{Female Offender Strategy}, Cm9642, June 2018, page 7
\textsuperscript{431} Letter from Rory Stewart, Minister of State for Justice to the Chair, Justice Committee, 21 August 2018
\textsuperscript{432} Rory Stewart, \textit{Prisons Update: Written statement - HCWS1123}, 29 November 2018
\textsuperscript{433} Q670. See also Q495 [Simon Boddiss]
\textsuperscript{434} Prison Reform Trust (PPP0023)
in July 2016 and has not yet been sold. The Minister explained that, even in seemingly valuable sites such as prisons in London, sales can be complicated by listed buildings which would have to be converted as part of any development. He said “in the best-case scenario you might get, let’s say, £75 million from selling one of those sites. A new prison would cost you north of £200 million.”

200. The Ministry of Defence is an example of a Government department which has developed a long-term estate strategy in recognition of the fact that over 40% of buildings are over 50 years old. The Ministry of Defence’s plan, A Better Defence Estate, published in December 2016, included investment of £4bn in the estate over the subsequent decade and the earmarking of 56 sites for disposal by 2040, focusing on the most expensive sites. The estate will reduce in size by 30 per cent by 2040 which is forecast to save nearly £3bn in running costs over that period.

201. Whilst progress made on the Prison Estates Transformation Programme is welcome, the new-for-old strategy is not working as intended. Sites for new prisons have proven difficult to obtain, older and decrepit prisons have been forced to remain open owing to population pressures and receipts from the sale of existing sites do not cover the cost of building new prisons. In the short-term this is being recognised by the Treasury which is funding new prison building. Refurbishing older prisons like HMP Birmingham, where accommodation is substandard, is unlikely to represent value for money. We recommend that as part of its Justice 2030 project the Ministry develops a realistic, properly costed, long-term estate strategy, that enables it to meet the needs of an ever-changing prison population.

Prison estate maintenance

202. The Ministry aspires to provide “good, decent, humane standards.” The Prisons Minister saw cleanliness, safety and decency as “the foundation of the relationship between the prison officer and the prisoner. That is the contract between the state and public.” Many prisons were built in the Victorian era and the size and age of the estate mean its maintenance is a significant challenge. There are two types of maintenance that are required to maintain the estate:

- Facilities maintenance, which is usually minor works like repairing windows or doors, some of which is ‘reactive’ as it stems from prison disorder; and
- Major maintenance, which is where something needs to be rebuilt or where significant work is required, for example where a wall collapses.

203. The Ministry’s expenditure for facilities maintenance in 2018–19 is expected to be around £122 million. In 2015, facilities maintenance was contracted out to two private sector companies, Carillion and Amey, who began to deliver contracts to provide ongoing and reactive maintenance of prisons as well as some other “works” functions. The Ministry expected that these contracts would save £115 million over 5 years. Carillion—
who were spending roughly £50 million on facilities management in the prisons they were responsible for—folded in January 2018, after months of profit warnings.\textsuperscript{441} The Ministry was forced to step in and established a Government company to take over the contract.\textsuperscript{442} The National Audit Office estimated that Carillion made a loss of £12 million on the contract in 2017.\textsuperscript{443} The Ministry now expects to spend £65 million a year providing facilities management services to prisons in the south of England, i.e. £15 million more than Carillion.\textsuperscript{444}

204. The challenge of renovating the prison estate is significant, with a large backlog of major maintenance that requires attention. The Minister told us in August 2018 that the current pipeline of major maintenance work was then estimated to amount to £716 million.\textsuperscript{445} Yet, for the year 2018–19, £90 million was allocated towards it. Mike Driver acknowledged to us the scale of the problem:

“we have recognised the size of the backlog, and we are trying to prioritise how we spend our money so that we deal with the most significant elements of it. As we go forward, we cannot allow prisons to deteriorate in terms of their condition, so the focus has been on facilities management, capital maintenance and, ultimately, for some of our prisons, swapping them out with new prisons as we build new estate.”\textsuperscript{446}

The Prison Governors Association estimated that the average cost of refurbishing one prison wing holding 200 prisoners was £500,000.\textsuperscript{447}

205. We have heard a range of explanations for the situation. One area of concern has been the effective operation of the contracts. Peter Clarke, HM Chief Inspector of Prisons, said to us “I have to say that I do not recognise “robustly managing the FM contracts” as something I see around the country. What I see are FM contracts that very often fail to deliver basic standards, with huge backlogs of maintenance tasks, often into thousands of items.”\textsuperscript{448} The Minister reported to the House in February 2018 that hundreds of warning notices had been issued to the contractors.\textsuperscript{449} Richard Heaton, Permanent Secretary of the Ministry of Justice explained that “They were big, difficult contracts, with lots of hidden things that you only find when you let contracts on maintenance for the first time”.\textsuperscript{450} Nevertheless, it is also apparent that the Ministry did not carry out a review of the standards of repair of the prison estate when it let the contracts. Peter Clarke expressed disappointment that HMPPS had largely rejected HMIP’s recommendations on prison living conditions, including one which proposed that an assessment of cell standards was conducted.\textsuperscript{451} The Ministry is now undertaking two audits of the condition of the prison estate and estimated that around 40% of establishments require major work.\textsuperscript{452} In
addition, there does not appear to have been clarity about the expectations of standards for the contractor. We found that there are not currently minimum standards around what clean and decent accommodation should look like across the prison estate. The Ministry is now undertaking a project to establish these.453

206. The acceleration of the growth of maintenance backlogs was also attributed by our witnesses to a lack of investment in the estate, prior to the contracts being let, and a rise in vandalism. The Prison Governors Association explained “‘there has been a marked rise in vandalism in many prisons … with high numbers of broken cell windows and “smash ups”. This has taken resources away from basic maintenance, and in truth there is no systematic plan for prison refurbishment. Vandalism appears to be a direct response to an impoverished regime, and one way in which prisoners can demonstrate their frustration.”454 The lack of investment in the prison estate was acknowledged by both Michael Spurr Chief, Executive of HMPPS, and the Prisons Minister.455

207. A major issue is the priority afforded to maintenance when the estate is under pressure for places.456 Our examination of the events leading to the poor inspection at HMP Liverpool highlighted that some poorly maintained cells were brought back into use prematurely. Mr Stewart told us that critical maintenance work and planned prison closures had been postponed in the summer of 2017 owing to short-term capacity pressures.457 The Chief Inspector for Prisons’ description of what he found at HMP Birmingham when he triggered the urgent notification process highlights the extent of dilapidation:

> Many cells were cramped, poorly equipped and had damaged flooring or plasterwork. Most toilets were poorly screened, many were leaking, and we saw cells with exposed electrics … . In the older part of the prison (primarily A, B, C wings), virtually every window was damaged, and many were missing. We met several vulnerable or newly-arrived prisoners who were placed in accommodation that was squalid and unfit to be used.458

Replacing these windows will cost approximately £6.1 million.

208. We welcome the Prison Minister’s drive to improve the decency of prisons and his recognition that this is essential both for ensuring that our society treats prisoners humanely and with dignity and for providing the foundations for prison reform. While the deterioration in prison standards can be attributed partially to the failure of one of the providers contracted to maintain prisons and the complexity of the service, when the Ministry outsourced prison maintenance it did so in an uninformed, under-resourced, and unsustainable manner. The Ministry is now prioritising bringing down maintenance backlogs, auditing the true state of the prison estate, and developing long-overdue minimum standards for good quality prison accommodation. We welcome the Ministry’s commitment to build new prisons that are uncrowded and to reduce incrementally overcrowding across the estate. Nevertheless, the backlog continues to grow, and many prisoners continue to live in cells designed for fewer people. On

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453 Q432
454 Prison Governors Association (PPP0035)
455 Q605 [Michael Spurr]; Q88 [Rory Stewart]
456 Justice Committee, Oral Evidence: HM Inspectorate of Prisons report on HMP Liverpool, HC 751, Q3; Q614
457 Letter from Rory Stewart, Minister of State for Justice, to Chair, Justice Committee, February 2018
458 Letter from Peter Clarke, Chief Inspector of Prisons to Secretary of State for Justice, on HMP Birmingham, August 2018
the Ministry’s current spending trajectory, it will take many years before these major issues are resolved. We recommend that the Ministry publishes the results of HMPPS’s audits of the prison estate along with an action plan setting out how it will achieve the minimum standards it is setting and how it will manage the maintenance backlog. Transparency about the costs of the estate is essential to support public understanding of the costs of imprisonment. This should include a realistic assessment of the viability of refurbishing existing accommodation over the medium and long-term.

Eliminating overcrowding

209. We noted in chapter two that prisons are overcrowded. Phil Copple, then Chief Operating Officer of HMPPS, explained that it was looking to build new prisons with uncrowded accommodation, and that across the prison estate they would incrementally seek to reduce the level of crowding as older prisons are closed.459 HMIP found that during 2017, cells designed to hold one prisoner were often being used to hold two (for example, HMP Pentonville; HMP Garth; HMP Lincoln; and HMP Swansea).460 The Ministry also intends to reduce the use of shared cells, with the aim that, in new prisons, 90% of accommodation will be built as single cells and 10% as doubles.461 HMIP identified that current HMPPS guidelines do not include a minimum cell size in line with recognised standards for living space published by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in December 2015.462 In an October 2017 thematic review, Life in prison: Living Conditions, HMIP examined whether cells in five establishments met these requirements and found that although the majority of single cells did, the majority of double cells did not.463 The Prisons Minister saw the CPT as a potential ally in building the case for additional resources for decent prison accommodation.464

Modernisation and reconfiguration of the estate

210. The Ministry intends to create 10,000 new prison places, most of which will be created in five new prisons. The Prison Reform Trust expressed concern that the underlying principles which should drive the creation of a prison estate that appears designed rather than accidental had “not been publicly articulated or subject to consultation with the people most affected.”465 The Prison Governors Association expressed concerns about the location of new prisons which it believed was based on availability of sites rather than geographical need. They explained that HMPPS had found it very difficult to obtain new sites for prisons, hence the decision to re-build at Rochester, Glen Parva, Wellingborough and next to HMP Full Sutton. They were particularly concerned that new prisons built close to existing prisons, such as the cluster of prisons (HMP Belmarsh, HMP Thameside and HMP Isis) in South East London, could exhaust the local labour market of potential staff.466 The most recently built prison, HMP Berwyn, was created to hold 2,100 prisoners. Peter Clarke, Chief Inspector of Prisons, had only visited HMP Berwyn informally and

459 Q459 [P Copple]; Q667
460 HM Inspectorate of Prisons (PPP0036)
461 Q459
462 HM Inspectorate of Prisons (PPP0036)
463 HM Inspectorate of Prisons, Life in prison: Living conditions, October 2017, page 13
464 Q667
465 Prison Reform Trust (PPP0023)
466 Prison Governors Association (PPP0035)
did not wish to speculate on whether or not it would deliver improved outcomes, but believed that it demonstrated the potential to both break down a large establishment into smaller communities and provide a greater breadth of provision.467

211. Simon Boddis, executive director in HMPPS, set out the general principles on which new prisons would be designed, saying that “The prisons themselves will ... hold 1,680 men. The other principles are use of greenery and making them look not too institutionalised, without compromising security. It is having proper activity, healthcare and other facilities. It is having more facilities on housing units than is common. We will have group rooms. All those things are based on wings. We will have classrooms where activities can take place. There are better designed and properly designed education centres. A lot of our education centres in older prisons were not purpose-built; they just happened to be an area that was converted into an education centre.”468

Specialist provision

212. We asked HMPPS about their plans for greater differentiation in provision in the prison estate to reflect the more complex and challenging population. The intention is to break down prison wings of 60 into units holding 20 people, within a prison accommodating 1,680 people overall. We heard that this could facilitate more specialised approaches, including the use of enabling environments, which focus on the promotion of well-being.469 Nevertheless, we did not get a clear picture of how these plans would reflect the changing demands of the prison population and the future use of the estate. We did learn that HMPPS is piloting a rehabilitative unit, to address challenging behaviour as an alternative to segregation or transfer but have not assessed the need for provision of drug recovery wings, for example.470

213. Our witnesses drew particular attention to the implications for the prison estate of an ageing prisoner population, including the need for alternative means of accommodating them and a more strategic approach to be taken to planning for this. This could include, for example, building palliative care facilities. We have been frustrated in our efforts to engage the Ministry of Justice and HMPPS in testing appropriate models for accommodating young adults which we continue to believe is necessary as they typically have the poorest outcomes in relation to safety, access to purposeful activity, and reoffending.471 Our witnesses also raised the question of whether there was sufficient provision of separation centres for extremists. We heard that thought needed to be given for how the prison estate could cater for people with severe mental health needs. We also received written evidence on the need to manage safely and with dignity the very small number of transgender prisoners who have committed offences which may mean they pose a risk to those they are held with.472 The potential impact on prison capacity of expanding the supply of secure mental health treatment places as recommended by HASCC should also be considered.473

467 Q551
468 Q472
469 Q461 [Simon Boddis]
470 Letter from Rory Stewart, Minister of State for Justice, to Chair, Justice Committee, 18 January 2019.
472 The Henry Jackson Society (pp0072); Fair Play For Women (pp0011); Qq373–376 [Dr Kate Paradine]
473 Health and Social Care Committee, Twelfth Report of Session 2017–19, Prison Health, HC963, November 2018
Alternative future accommodation options

214. The Ministry plans under its Female Offender Strategy to spend £1.5m to test new residential options for diverting women who receive short custodial sentences which could in future reduce the size of the women’s prison estate. Dr Paradine of Women in Prison and Jessica Southgate of Agenda told us they remained to be convinced about this approach. Dr Paradine believed that the resources would be better spent on community provision which would meet the needs of a higher volume of women.474

215. We heard several suggestions which the Ministry could explore. Juliet Lyon proposed that planning any such provision should start with analysing the population and the needs of the population, working across Departments. She supposed that this might, for example, result in the creation of a health setting with closed elements, appropriate for those who needed to be held securely.475 Women in Prison highlighted a lack of bail hostel places for women and follow-on accommodation post-release, as well as Baroness Corston’s recommendation for small community units, for the small number of women on long sentences and that represent a serious risk to the public.476 Dr Paradine believed that there could also be learning from the model for refuges.477 The Howard League for Penal Reform recommended that women’s prisons are closed and that a limited number of secure places are created instead, noting that Scotland was already moving towards a model of small regional, secure units.478 We welcome the Ministry’s commitment to creating smaller, more normalised prison environments with improved rehabilitative facilities. The Ministry must consider how best to develop the estate more creatively to diversify provision and cater for the future needs of key cohorts of the prison population. A long-term prison estate strategy should be created as part of the Justice 2030 project. This should include provision for trials of alternative approaches for accommodating and caring for elderly and otherwise infirm prisoners, for women who do not represent a high risk to the public, and for the treatment of young adults to resolve the long-standing anomaly of the sentence to detention in a young offender institution no longer meaning that they are accommodated in suitably specialist provision.

Improvements in technology

216. Rory Stewart cited the use of technology as one of the key opportunities for developments in prisons policy under the Justice 2030 project.479 Tom Read, Ministry of Justice Director of Digital Transformation, identified three tracks of digital transformation in prisons: building services for offenders themselves, building services for prison officers and building digital services for families and friends. This includes the roll-out of in-cell telephony mentioned earlier in the chapter. Our evidence suggests that there is scope for significant improvement in the use of technology, particularly for education and managing the day-to-day requirements of prisoners, including booking healthcare appointments and meal preferences, for example.480 In two prisons—Wayland and Berwyn—they are piloting in-cell computers, laptops or tablets. Tom Read noted that this is quite a restricted

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474 Q344; Q349; Q368
475 Q382
476 Women in Prison (ppp0022); Q381 [Dr Paradine]
477 Q384
478 The Howard League for Penal Reform (ppp0025). See also Q382 [Juliet Lyon].
479 Q19
480 Prisoner Learning Alliance (ppp0051); Community Justice Coalition (ppp0053)
trial, allowing prisoners to do basic self-service (for example, booking appointments for healthcare and the gym, ordering everyday necessities, and making food preferences) which we saw in operation on wings in HMPs Oakwood and Berwyn. **We welcome the roll-out of in-cell telephony which will enable prisoners to build and maintain stronger family relationships.** A modernised prison estate could benefit significantly from greater use of technology to support purposeful activity, including education and training, and to free prison staff from tasks which could be automated enabling them to spend more time engaging meaningfully with prisoners. **We welcome the Ministry’s commitment to examine how best to utilise technology as part of the Justice 2030 project and encourage them to consider the cost-benefits of a major expansion in its use.**
5 Tackling reoffending through a cross-departmental approach

217. There are significant challenges in reducing reoffending rates which are a driver of imprisonment. The proven reoffending rate for adult offenders released from custody is 48.3% for the period October to December 2016.\footnote{Ministry of Justice, Proven Reoffending Statistics Quarterly Bulletin, October 2016 to December 2016, October 2018} As set out in chapter 3, the reoffending rate has remained broadly flat between 2005 and 2016, according to the latest statistics available. Half of those sentenced to prison in 2016 had more than 15 previous convictions; a tenth had more than 45 previous convictions.\footnote{Centre for Social Justice (ppp0029)} Revolving Doors Agency calculated that last year 60,000 cautions or convictions for minor offences were given to people with 11 or more previous offences, amounting to a total of over 1.8 million previous sentencing occasions.\footnote{Revolving Doors Agency, 1,800,000 opportunities, October 2018} The Centre for Social Justice and Crest Advisory both regarded repeat convictions as representing a failed opportunity for effective intervention to tackle the root causes of offending.\footnote{Centre for Social Justice (ppp0029); Crest Advisory (ppp0039)} This can be said to be the case for both community and custodial sentences. For example, there is an argument that prison is ineffective at reducing reoffending and can increase the risk of further imprisonment. Women in Prison has found that “the more prison sentences a woman serves, the harder it is for her to desist.”\footnote{Women in Prison (ppp0022)} Crest Advisory attributed the high levels of persistent offenders “being recycled through custody” to a lack of effective alternatives to incarceration for those committing low-harm but high-volume offences.\footnote{Crest Advisory (ppp0039)} Their director, Harvey Redgrave, recommended that to make a dent in the overall numbers going to prison, effort should be concentrated on repeat offenders committing theft and shoplifting, for example, which he told us judges often do not know what else to do with.\footnote{Q181 [Harvey Redgrave]}

The impact of reoffending on demand on prisons

218. On the potential to bring reoffending rates down as a means of reducing the prison population. Rory Stewart said:

There is absolutely no doubt that a significant reduction in reoffending rates—something in the region of 7%—would save many billions of pounds a year in economic costs. Therefore, any investment that we are putting into our prisons that has a proven impact on reoffending will be of huge benefit to the economy and society.\footnote{Q103}

Richard Garside was sceptical about this. He said:

Successive Governments have put quite a lot of weight on reducing reoffending as a means of reducing the prison population. My view is that, even if the programmes that Governments have sought to introduce work as well as they possibly can, the benefits will be relatively marginal. There

\footnote{481 Ministry of Justice, Proven Reoffending Statistics Quarterly Bulletin, October 2016 to December 2016, October 2018} \footnote{482 Centre for Social Justice (ppp0029)} \footnote{483 Revolving Doors Agency, 1,800,000 opportunities, October 2018} \footnote{484 Centre for Social Justice (ppp0029); Crest Advisory (ppp0039)} \footnote{485 Women in Prison (ppp0022)} \footnote{486 Crest Advisory (ppp0039)} \footnote{487 Q181 [Harvey Redgrave]} \footnote{488 Q103}
seems to be a fairly stubborn reconviction rate for people who have been in prison, although it obviously depends partly on the sentence length and the nature of the presenting offence. There is a relatively stubborn level and it has not changed for many years. It is not obvious to me that it is likely to change in the future. 489

The cross-departmental Reducing Reoffending Group

219. The creation of a cross-departmental group, known initially as the Reducing Reoffending Taskforce, now Group, comprising senior Ministers and backed by the Prime Minister, was announced by the Secretary of State for Justice in March 2018. In his announcement, he said “reoffending is not solely a justice problem for my department, but it is a wider issue about social justice and ensuring that offenders, many of whom have complex backgrounds, are not dismissed as part of society.” He later explained to us that “only by constructive cross-Government working” will Government “be able to help ex-offenders secure employment, appropriate accommodation, access to treatment for drug addictions and support for their mental health issues.” 490 The Group, chaired by Rt Hon David Lidington MP, first met on 26 June 2018. 491

220. We commenced our inquiry prior to the establishment of the Group and several of our witnesses had called for such an approach in their evidence, making suggestions for cross-Government activity that they wished to see. Nacro emphasised that many elements of resettlement and rehabilitation sit outside of the criminal justice system, including housing, employment and health, and proposed that a cross-departmental group should be responsible for the coordination and oversight of reducing reoffending and identifying where budgets can be pooled together to reduce costs to the public purse and improve outcomes. 492 In Nacro’s view, reducing reoffending effectively requires a “relentless focus” on rehabilitation and seamless support post-release. 493 Harvey Redgrave noted that prolific offenders with very chaotic lives and multiple, complex needs would benefit particularly from integrated and personalised services to “wrap around” them and address their distinct challenges, but such services are often delivered in silos i.e. by different statutory agencies, funded by different Government departments. 494

221. Several Select Committee reports have illustrated the scale of cross-departmental activity required to reduce reoffending and address large, structural issues. In the previous Parliament, the Communities and Local Government Committee and the Work and Pensions Committee raised issues about such support and about the work that was being undertaken between Departments. 495 In this Parliament, the Health and Social Care Committee examined prison healthcare and the is Welsh Affairs Committee conducting an inquiry on prisons. 496 Our predecessor Justice Committees published several reports

489 Q187
490 Letter from the Lord Chancellor and Secretary of State for Justice, to Chair, Justice Committee, Evidence session follow-up, March 2018
491 Letter from David Lidington, Minster for the Cabinet Office, to Chair, Justice Committee, August 2018.
492 Nacro (ppp0014). See also Q183.
493 Nacro (ppp0014)
494 Q183 [H Redgrave]; See also Maslaha (ppp0066).
496 Health and Social Care Committee, Twelfth Report of Session 2017–19, Prison Health, HC963, November 2018; The inquiry into prison provision in Wales by the Welsh Affairs Committee is ongoing.
emphasising the need for well-funded, ambitious cross-departmental approaches for women, young adults and crime reduction more broadly. The funding of community-based provision for women is a good illustration of the challenges and potential benefits of adopting a more systematic cross-departmental approach, should Government provide the necessary resources.

**Box 2: Case study: Community-based provision for women**

Those witnesses we spoke to about the long-awaited Female Offender Strategy welcomed its “words” and “general thrust and ambition”. The Ministry dropped its plans for building new women’s prisons, which had concerned Clinks and the then acting Prison and Probation Ombudsman, for example. Nevertheless, we heard a strong case that the Government needed go further to overcome long-standing cross-departmental issues with funding for women’s centres and other community based initiatives if they were to improve outcomes for women.

There had been speculation that the £50 million saved by not building new women’s prisons would be redirected to establishing a sustainable network of women’s day centres independent of probation, which women serving community sentences and after release from prison could access for as long as necessary. Existing centres, though proven to reduce reoffending and save costs to the public purse, are “struggling to survive”. We heard that the Transforming Rehabilitation reforms were “absolutely devastating” for funding of voluntary sector women’s services. The decision not to reinvest the money allocated to women’s prisons is despite analysis which we understand was conducted by HM Treasury demonstrating that moving from prison to community support would yield significant savings across a range of budgets. For example, investing £18m per year in women’s centres could save almost £1 billion over 5 years. We heard that the average cost of one prison place, approximately £42,765, would support about 15 women on community orders or on diversion programmes.

Although we heard about pockets of very good practice, notably in Greater Manchester—which has reduced women’s immediate imprisonment during the past four or five years by about 35%—Northamptonshire and Gloucester, these are funded from a range of different, largely local, sources and frequently experience a shortfall in funding as budgets shrink and priorities change. For example, women also need access to substance misuse support, mental health support and solutions to homelessness. Dr Paradine did not believe that local funding was feasible owing to the small volumes of

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498 Qq343–344 [Dr Kate Paradine; Jessica Southgate; Juliet Lyon]; Q391 [Anne Fox]; See also The Howard League for Penal Reform (*ppp0025*).

499 Clinks (*ppp0005*); Prisons and Probation Ombudsman (*ppp0031*).

500 Q364.

501 Women in Prison (*ppp0022*); Q366 [Dr Kate Paradine]. See also The Guardian, UK plan for female prisoners underfunded by £15 million, 27 June 2018.

502 Q367 [Anne Fox and Jessica Southgate].

503 Agenda (*ppp0006*).

504 Agenda (*ppp0006*).

505 Q362–363.

506 Q361 [Jessica Southgate].

507 Qq343–344; Q349; Women in Prison (*ppp0022*); Agenda (*ppp0006*); Agenda (*ppp0064*); Q364. A cost-benefit analysis of the programme in Greater Manchester found that £4.68 was saved from public spending for every pound spent.
women going through the system. She and Juliet Lyon proposed that Government should consider centrally how many women’s centres there are, when their funding ends, where it comes from, and how many people they can serve or could serve if they were funded properly, and the potential costs benefits. This is not solely a matter for the Ministry of Justice and is linked to cross-departmental priorities particularly for Department of Health and Social Care (DoHSC) in relation to suicide, self-harm, mental health and domestic abuse.\textsuperscript{508} This is recognised by the DoHSC which recently set out several joint approaches which they are testing and seeking to replicate, including liaison and diversion services, integrated healthcare in prisons and the development of gender and trauma-informed mental health services.\textsuperscript{509} Juliet Lyon pointed to the impact of multi-disciplinary work to reduce the number of children in the youth justice system which has fallen by 75% as a model to emulate.\textsuperscript{510}

There was a consensus that a much stronger approach was required. Dr Paradine attributed the Ministry’s lack of ambition and drive on this agenda to “learned helplessness”.\textsuperscript{511} “The funding allocated to the Female Offender Strategy was described to us as “peanuts” and we heard it was being distributed in “quite a random way”.\textsuperscript{512} Funding community-based programmes sustainably is likely to have a longer-term impact on reducing inter-generational consequences. Parental imprisonment and other adverse childhood experiences can affect the brain patterns of young children, the way they respond to different kinds of difficult experiences and have a detrimental impact on health and involvement in the criminal justice system later in life.\textsuperscript{513} The Centre for Social Justice calculated that, within five years, the adult female prison population could be reduced by between 25% and 50% if new approaches were adopted, equating to between 945 and 1890 prisoners.\textsuperscript{514}

\textbf{Community based treatment for mental health and substance misuse}

222. Reoffending by those who have been supervised by probation services on community orders and breach of such orders also contributes to the prison population.\textsuperscript{515} Central to reducing this therefore is a properly organised and adequately resourced probation service, with the correct sorts of interventions available to both them and the courts to reduce offending.\textsuperscript{516} This is not solely a matter of better resourcing for probation itself. For example, the Prisoners Learning Alliance said that evidence indicates that support for prisoners post-release for education, training and employment is largely ineffective.\textsuperscript{517} Substance misuse and mental health treatment services are also under pressure. The Royal College of Psychiatrists said with regard to the latter:

\textsuperscript{508} Q344; Q350; Q353; Q386 [Juliet Lyon].
\textsuperscript{509} The Women’s Mental Health Taskforce was formed to set out priorities for improving women’s mental health and their experiences of services. Department of Health and Social Care and Agenda, \textit{Women’s Mental Health Taskforce final report}, 19 December 2018
\textsuperscript{510} Q345
\textsuperscript{511} Q385
\textsuperscript{512} Q363
\textsuperscript{513} Q181 [Rachel Tuffin]
\textsuperscript{514} Centre for Social Justice (ppp0029)
\textsuperscript{515} See for example Ministry of Justice (ppp0008)
\textsuperscript{516} Q180 [Richard Garside]
\textsuperscript{517} Prisoner Learning Alliance (ppp0051)
Continuing reductions in acute psychiatric beds, increasing occupancy levels in secure psychiatric services, reductions in community mental health services, and patchy provision of services for neurodevelopmental disorders have led to an almost impossible environment in which to treat patients.\(^{518}\)

Dr Anand identified a need to address what he described as “a continual battle between statutory services as to who should take responsibility for those who have a complex presentation and a forensic history”.\(^{519}\) NHS England has partially recognised this and has introduced the concept of a “no wrong door” policy for substance misuse and mental health services.\(^{520}\)

223. The use of illegal drugs is estimated to cost society £10.7bn a year of which drug-related crime constitutes £6bn. Drug treatment is one means to reduce drug-related crime.\(^{521}\) Nevertheless, Collective Voice, which represents seven voluntary sector substance misuse treatment charities, documented what they describe as the dismantling over the last few years of a “world class” and “comprehensive” system of treatment and which was estimated to have reduced acquisitive crime by 30%.\(^{522}\) The NHS Substance Misuse Treatment Alliance observed that access to treatment been “greatly affected” by a reduction in community substance misuse treatment budgets.\(^{523}\) Real terms budgeted spending on treatment has fallen by 18% (£162m) since 2013–14 when local authorities became responsible for providing such services, despite only a 7% fall in the number of people accessing treatment.\(^{524}\) Under the 2017 Drug Strategy, the funding arrangements for drug treatment are due to change from April 2019, with local authorities being expected to provide services from the business rates following the end of grants from Public Health England.\(^{525}\)

224. The British Medical Association and NHS Substance Misuse Treatment Providers Alliance emphasised the importance of continuity of care and managing the transfer between treatment services in prisons and the community, and vice versa. In 2017–18, less than one third (32.1%) of adult prisoners who needed ongoing treatment successfully engaged with community-based treatment within 21 days of release.\(^{526}\) There is also evidence that the effectiveness of drug treatment provided in prisons may be reversed on release. An evaluation of 10 drug recovery wing pilots designed to support drug users in prison to become abstinent found that prisoners experienced a ‘cliff-face’ on release from prison, receiving little or no professional support. They were commonly released to a hostel or B&B which the researchers described as “criminogenic”, because of the proximity to people still offending which was likely to impair the chances of those treated staying out of prison and/or drug free.\(^{527}\)

\(^{518}\) Royal College of Psychiatrists (ppp0013)
\(^{519}\) Q298
\(^{520}\) NHS England (ppp0050)
\(^{521}\) College of Policing (What works centre) (ppp0034); Collective Voice (ppp0049)
\(^{522}\) Collective Voice (ppp0049)
\(^{523}\) NHS Substance Misuse Providers Alliance (ppp0065). See also Collective Voice (ppp0049)
\(^{524}\) BBC News, Drug and alcohol services cut by £162m as deaths increase, 11 May 2018
\(^{525}\) BBC News, Drug and alcohol services cut by £162m as deaths increase, 11 May 2018; British Medical Journal, Drug strategy will fail without new money, say critics, 17 July 2017
\(^{527}\) University of York, The Evaluation of the Drug Recovery Wing Pilots, May 2017
225. Our critical examination of the Transforming Rehabilitation reforms illustrated that the introduction of post-release supervision for prisoners who have served short prison sentences has failed to impact on reoffending rates and has diminished the level of service provided to those who were already eligible. These concerns were repeated by several witnesses during this inquiry. The use of substance misuse and mental health treatment requirements for offenders, which can be attached to community orders, has fallen by 50%. A joint draft Community Sentence Treatment Requirement Protocol has been developed with NHS England and Public Health England outlining expectations of relevant agencies to improve access to mental health and substance misuse treatment for offenders. This is being piloted in five areas, through multi-disciplinary partnerships which provide appropriate clinical interventions and support. The Minister does not refer to additional funding having been made available to support this. The Secretary of State inferred during this February speech that the results of the pilots were imminent.

226. Our witnesses also raised practical barriers to prisoners accessing the services they require once they are released. This included having access to ID that can be used across the piece, which Helen Berresford said is a “massive barrier” to accessing basic services to employment, benefits and healthcare, including getting the right prescriptions, for example. Ms Berresford also raised the practice of Friday releases from prison, setting out that prisoners are often left with no support over the weekend which poses particular challenges in finding accommodation and risks reoffending within a short period of release. We consider later in our report the impact of post-release experiences on the effectiveness of drug treatment and sexual offender treatment provided in custody.

227. We asked Rory Stewart about whether we could expect to see a cross-departmental strategy arising from the Reducing Reoffending Group. He explained that David Lidington had committed to developing “deliverable and measurable proposals that will result in public announcements.” He did not wish to speak for Mr Lidington, but his expectation was that “at least in the short term it is largely about knocking heads together and overcoming gaps between the partners rather than producing some grand strategy.”

228. The ability of former prisoners and those on community sentences to be able to access appropriate support in the community is vital to supporting their rehabilitation and reducing reoffending in the future, potentially reducing the repeated use of imprisonment. We welcome the Government’s recognition of the need for the new iteration of the Transforming Rehabilitation programme to address the shortcomings of the previous one in terms of funding for probation services. The challenges facing the Government in ensuring a sustainable prison population are not related solely to the balance between funding for prisons and probation. It is as important to ensure that other agencies are playing their part in providing services which are a necessary pre-cursor to reducing the use of short prison sentences. While the Justice Secretary has

528 Justice Committee, Ninth Report of Session 2017–19, Transforming Rehabilitation, June 2018, para 140. See also Q367 [Jessica Southgate; Dr Kate Paradine]
529 Q370 [Dr Kate Paradine], Q181 [H Redgrave]
530 Centre for Justice Innovation, Renewing trust: How we can improve the relationship between probation and the courts, December 2018, page iii
531 Letter from Rory Stewart, Minister of State for Justice to the Chair, Justice Committee, 21 August 2018
532 Q421
533 Q422
534 Q682
535 Q685
signalled his intention to move resources within the justice system, such an approach will not be possible unless other Ministers take responsibility for funding crime reduction measures. Action must be taken in the 2019 Spending Review to address cuts in funding for substance misuse and mental health treatment which places unnecessary demands on prisons and can reverse some of the positive work that prisons can do. The adequacy of funding for such provision is a matter for central Government despite the responsibility for provision being devolved to local Government.

229. The commitment in the Female Offender Strategy to reduce the use of short sentences for women by taking a more preventive, community-based approach represents an opportunity to do something radical in seeking to shrink the prison population. While imprisonment is necessary for some women, this would provide a model for adopting similar initiatives in future for others who do not represent a high risk of harm to the public. Nevertheless, the existing funding is unlikely to have sufficient impact. The Government should be more bold in investing in community alternatives for women cross-departmentally, not only via the justice system. Reallocating the £50m from building women’s community prisons had the potential to generate a step-change in the sustainability of community-based provision that is proven to reduce crime. While it is undoubtedly necessary for money to be found to stabilise the safety of prisons, this is a clear example of the exorbitant costs of imprisonment sucking up resources that would have a more beneficial impact on our society in the long-term if used in other ways. That the issue of mainstream cross-Government funding for women’s centres remains unresolved by consecutive Governments over the last 10 years is a grossly wasted opportunity to reduce the costly intergenerational impact of crime. This must be addressed in the 2019 Spending Review.

Accommodation

230. Housing is crucial for resettlement and a major issue to resolve.536 Those who are homeless or in temporary accommodation are significantly more likely to commit crime within a year of release from prison than those with somewhere stable to live. People often lose their accommodation when they go into prison, if they were stably housed beforehand.537

231. As an indication of the scale of the problem, the Ministry of Justice has calculated that around one in six former prisoners were classified as unsettled, likely to mean sleeping rough or another form of homelessness over the three years to March 2018. HM Inspectorate of Probation found in a recent review of probation cases that interventions to address accommodation were not available in around a quarter of them.538 Being homeless and living on the street can lead to drug and alcohol problems which, in turn, can contribute to large volumes of acquisitive crime.539 Lacking certainty about living arrangements on release can elevate the risk of self-harm and suicide when people are

536 Q391; Nacro (ppp0014)
537 Agenda (ppp0006)
538 HM Inspectorate of Probation, Probation Hostels’ (Approved Premises) Contribution to Public Protection, Rehabilitation and Resettlement, July 2017
539 Centre for Social Justice (ppp0029)
very close to release.\textsuperscript{540} Juliet Lyon said people released from prison can ”experience, ironically, more support and more warmth in a prison than they would outside. That is a real indictment.”\textsuperscript{541}

232. The Ministry recognises the barriers people in the criminal justice system face when looking to secure accommodation and refer in the Single Departmental Plan to an accommodation strategy in the Single Departmental Plan. While no specific such strategy has been published, the \textit{Rough Sleepers Strategy}, published in August 2018, refers extensively to prisoners.\textsuperscript{542} A 2-year £6 million pilot scheme was launched by the Prison Minister under which people on very short sentences receive support to ensure that they are signed up to benefits, given employment support and have bank accounts before they leave prison. Pilots have commenced in HMPs Leeds, Pentonville and Bristol with the aim of finding those eligible suitable housing and helping them sustain their new accommodation.\textsuperscript{543} The Ministry also intends to introduce shared performance measures for accommodation outcomes (for prison governors and probation providers) and will work with the Department for Communities and Local Government to ensure that the Homelessness Reduction Act 2017 supports offenders. Under this legislation, youth offending teams, prisons and probation providers will be subject to a new duty to refer to the local housing authority someone who they support who might be at risk of becoming homeless.\textsuperscript{544} The Ministry is also building 200 additional places in approved premises.\textsuperscript{545}

233. Helen Berresford of Nacro highlighted that, while the pilots are a positive move, they are “one part of the jigsaw” and does not constitute the anticipated “national offender housing strategy”.\textsuperscript{546} She, and others including Agenda, an alliance for women and girls at risk, identified other issues that should be addressed and joined up, including local authority decision-making, access to the private rental sector, access to deposits, a lack of gender-specific provision, and the broader funding of the supported housing sector.\textsuperscript{547}

234. The Ministry has identified and accepted that reducing homelessness and providing sufficient suitable accommodation are crucial to halt the unnecessary revolving door of prisons. This is welcome but a credible means of addressing this major structural problem is missing from the current approach. \textit{For genuine cross-departmental progress to be made in ensuring access to housing for those leaving prison, a basic requirement to generating stable and crime-free lives, Government must urgently publish an accommodation strategy and action plan.}

235. We welcome the pilots of drug and alcohol treatment requirements attached to community orders and for supporting those likely to be facing homelessness on release. Nevertheless, these fundamental issues require a large-scale, nationwide, adequately funded response. Further cuts to local authorities are likely to further undermine this. \textit{Should the accommodation and treatment pilots be successful, the Ministry should consider as part of their case to the Treasury the implications of these...}
pilots for resources to replicate them, which are likely to be significant. The pressures on the prison population are too great not to act soon. A key issue for the Government which must be addressed in the 2019 Spending Review and the Justice 2030 strategy must be funding drug and alcohol support services, mental health services, housing and community-based therapeutic centres to the extent which will have a medium- and longer-term impact on the size of the prison population.

Exploring options for, and building confidence in, non-custodial sentences

Reducing the use of short prison sentences

236. A key contributing factor to the size and composition of the prison population is the relative use of community sentences and custodial sentences. The Prisons Minister Rory Stewart told us that he wished to see a reduction in the use of short prison sentences i.e. of 12 months or less in recognition of research evidence that they make people more likely to commit crime.548 He said he saw “a very strong argument both on public protection and on the economic benefits … “549 Community sentences are both more effective and cheaper. Many of our witnesses were supportive of such an approach, pointing to there being insufficient time to rehabilitate people on short-sentences.550 We heard that the average sentence length at one women’s prison was seven weeks and at one men’s prison was ten days.551 Nacro explained that family relationships, employment and accommodation may be put in jeopardy or lost, and the sentence is too short for the delivery of meaningful work to address the triggers to reoffending.552 The Secretary of State signalled that he wishes to go further and to consider abolishing sentences of less than six months, except in exceptional circumstances, through legislative means, if necessary.

237. The detrimental effect of short prison sentences is reflected in the particularly striking high rates of reoffending. When comparing similar offenders matched across multiple characteristics, immediate custodial sentences of under 12 months duration without supervision on release are associated with higher proven reoffending than court orders: 3 percentage points higher than for community orders and 7 percentage points higher than for suspended sentence orders. Several witnesses called for greater consideration to be given to the risk potential offenders may present to public safety when contemplating the use of imprisonment.553 For example, we heard that there are still examples of imprisonment for non-payment of council tax, fines, and children not attending school.554

238. Several of our witnesses were supportive of the introduction of a presumption against short custodial sentences akin to the approach in Scotland.555 In 2011, the Scottish Government legislated for there to be a presumption against jail terms of three months or

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548 Q103; Ministry of Justice (ppp0008) stated that when comparing similar people who have committed crime matched across multiple characteristics, immediate custodial sentences of under 12 months duration without supervision on release are associated with higher proven reoffending than court orders (3 percentage points higher than community orders and 7 percentage points higher than suspended sentence orders).

549 Q103

550 Q360 [Dr Kate Paradine; Ms Jessica Southgate]; Nacro (ppp0014); Mr David Breakspear (ppp0042)

551 Q360 [Mrs Juliet Lyon]

552 Nacro (ppp0014)

553 Dr Michael Teague (ppp0012); Centre for Crime and Justice Studies (ppp0016); Nacro (ppp0014)

554 Mr David Breakspear (ppp0042)

555 Agenda (ppp0006); Q166 [Harvey Redgrave]
less, and it now has plans to extend this period to 12 months. Harvey Redgrave supported a similar move but cautioned “the quid pro quo is that you have to invest properly in community sentences, and that will require them to be more intensive.”\textsuperscript{556} We met informally with Karyn McCluskey of Community Justice Scotland who agreed that investment in community provision would be necessary. She also indicated that there had been some up-tariffing effect of the presumption against three-month sentences. The Justice Secretary said in his recent speech he saw a strong case for switching resource away from ineffective prison sentences and into probation.\textsuperscript{557}

239. Richard Garside of the Centre for Crime and Justice Studies charity observed that shifting short sentenced prisoners to community sentences would only “slightly mitigate” the prison population problem, noting that this group represent a relatively small proportion of the prison population at any one time.\textsuperscript{558} Prisoners on sentences of less than 12 months made up 6.5% of the population as at 31 March 2018 but accounted for 35% of prison receptions in the three months to 31 March 2018.\textsuperscript{559} Justice Episteme has estimated that selectively diverting people identified as a low-risk of harm to the public from short custodial sentences to suspended custodial sentences could reduce the prison population by up to 3,000 places and receptions to prison following sentence by around 20,000.\textsuperscript{560}

\textbf{Confidence in community sentences}

240. The shrinking use of community sentences noted in the chapter 3 may be driven, in part, by a lack of confidence in them on the part of sentencers.\textsuperscript{561} The credibility of community sentences relate to both perceptions of the toughness of community sentences relative to custody and the reality of the extent of community-based provision that could constitute effective alternatives to prison.\textsuperscript{562} Another issue is that, according to Inquest, Juliet Lyon and Dr Kate Paradine, some sentencers view prison as a “place of safety” for vulnerable people i.e. they opt for a custodial sentence because they believe vulnerable people will not be able to access the support they require in the community.\textsuperscript{563} Women in Prison called for “a clear message” that prison should not be used in this way.\textsuperscript{564}

241. The Justice Secretary said in his recent speech that he wishes to create a sentencing regime that can impose greater restrictions on people’s movements and lifestyle and stricter requirements in terms of accessing treatment and support, which must be enforced. He indicated that there was a false choice implied in the narrow and often polarising discussion about ‘soft’ justice versus ‘hard’ justice, instead he saw the choice as between effective justice or ineffective justice. Prison was too often ineffective, especially for those prisoners on short sentences. We heard that there is good evidence that community sentences can be a robust alternative to custody. We were given the examples of the Intensive Community

\textsuperscript{556} Q166 [Harvey Redgrave]
\textsuperscript{557} David Gauke, Lord Chancellor and Secretary of State for Justice, Beyond prison, redefining punishment, 18 February 2019
\textsuperscript{558} Q166 [Richard Garside]
\textsuperscript{559} Ministry of Justice, Offender Management Statistics April to June 2018, table 1.1, October 2018
\textsuperscript{560} Centre for Crime and Justice Studies and Justice Episteme (ppp0016). People who represent a low risk of harm are defined as those serving less than 12 months. Suspended custodial sentences are those carried out in the community, with conditions attached. If those conditions are broken the offender may have to go to prison.
\textsuperscript{561} Q420; Crest Advisory (ppp0039);
\textsuperscript{562} Mr David Breakspear (ppp0042); Q166.
\textsuperscript{563} Qq367–368
\textsuperscript{564} Women in Prison (ppp0022)
Order in Greater Manchester and deferred prosecution pilots.\textsuperscript{565} On the other hand, the choices may not be a clear as the Justice Secretary proposed. Richard Garside suggested that credibility would improve if courts imposed sentences that had a realistic prospect of being delivered and completed successfully.\textsuperscript{566} One aspect of this, he suggested, was to be mindful that there are not “so many hurdles and obstacles” placed on those serving community sentences that they are “destined to fail.”\textsuperscript{567} He further explained:

The tougher you make the community sentences, the more breaches you are going to have, all other things being equal. The tougher they are, the more likely it is that people are going to breach them. Then people will end up going back to prison.\textsuperscript{568}

242. We had an interesting discussion with Rachel Tuffin, Richard Garside and Harvey Redgrave which reflects the range of public sentiment about the balances to be struck between various purposes of sentencing when considering the relative use of custodial and community sentences. Richard Garside felt that it is difficult to persuade the public of the effectiveness of community sentences, particularly when emphasis is placed on punishment. He proposed that to change sentencing trends, the Government should focus on effectiveness and impact rather than toughness.\textsuperscript{569} In his opinion, changing sentencing trends would require getting away from “tough-talking language and [towards asking] who should be on community sentences, what kind of risk they might pose and what kind of arrangements can be put in place in the community to ensure that those sentences are discharged effectively.”\textsuperscript{570}

Harvey Redgrave felt that it was important for sentences to be seen as both tough and effective:

There is a social value to punishment and a social value to rehabilitation, and you need both combined. There is a political argument, which I would say is about democratic legitimacy and consent. People have to have confidence that wrongdoing has consequences. There is also an evidential argument, which is that swiftness and certainty act as a greater deterrent. Community sentences are not swift and they are not certain. Often, they do not even begin for months after the sentence is handed down.\textsuperscript{571}

243. Rachel Tuffin of the College of Policy What Works Centre for Crime Reduction cited evidence that the public could be persuaded about the effectiveness of community sentences by presenting a “strong story” about them:

When individual members of the public are asked about specific case study examples, they are often more lenient in their decision making than a jury might necessarily be, or a judge. […] I am not sure that message gets out strongly at all.\textsuperscript{572}

\textsuperscript{565} Q167
\textsuperscript{566} Q172
\textsuperscript{567} Q166; Q172
\textsuperscript{568} Q168
\textsuperscript{569} Qq170–171
\textsuperscript{570} Q166; Q172
\textsuperscript{571} Q178
\textsuperscript{572} Q166
244. Using less prison may be “a very hard sell”, as the former Chair of the Sentencing Council put it to us.\textsuperscript{573} He observed “[t]he very difficult part of that is the attitude of large sections of the media, which are very critical of sentencing and see most of it as over-lenient.”\textsuperscript{574} For example, an article in the Daily Mail following our discussion with the Prisons Minister about his proposals for reducing the use of short-prison sentences, carried the headline ‘A green light for criminals’: Anger as justice minister calls for most sentences of less than a year to be axed to cut jail population, despite the content of the article being more balanced.\textsuperscript{575} Rory Stewart agreed that the Ministry had a role in leading, shaping and making powerful arguments for why an ever-growing prison population is not in the interests of the public, including victims and wider society. Nevertheless, he believed that the public were likely to become more punitive over the next 15 years, making that argument more difficult.\textsuperscript{576} We discuss this further elsewhere in the report.

245. Rory Stewart saw the first step in achieving the Ministry’s aim to reduce short prison sentences as to “win over judges and magistrates” to understand the rationale, in order to minimise the risk that sentencers oppose changes. The former Chair of the Sentencing Council, Lord Justice Treacy, told us that he would have confidence in “something that shows me that the supervision and management of the community sentence is rigorous and that excuses will not be tolerated; and that there will be frequent contact between the offender and the supervising officer, not merely a phone call every few weeks.”\textsuperscript{577}

246. Our evidence indicated the significant concerns to be overcome regarding the performance of probation. Lord Justice Treacy identified “real concern” in the judiciary about the way the current probation arrangements are working. He said there was a “strong feeling” that the enforcement and the rigour of supervisory arrangements have been “allowed to slip.”\textsuperscript{578} This meant that in his view “[t]here is a lot of work to be done on regaining confidence, not only on the part of the public but on the part of the judiciary, in the working of community orders, and the enforcement of them. The Sentencing Council itself took steps to encourage best practice in this area with the publication of its Imposition of Community and Custodial Sentences Definitive Guideline and on its forthcoming Breach Offences Guideline.\textsuperscript{579}

247. Several other witnesses similarly believed that the decline in the use of community sentences may reflect well-founded concerns about the probation system’s performance.\textsuperscript{580} We document these in detail in our report Transforming Rehabilitation and the Ministry of Justice is in the process of reviewing the contracts used to deliver probation.

248. Another factor for the Government to consider is funding for the magistracy, following cutbacks to magistrates’ training and policy changes introduced under the programme on the depth of advice given to magistrates by probation services.\textsuperscript{581} Together these mean that sentencers may not have sufficient information about: the background circumstances of

\begin{footnotes}
\item[573] Q128
\item[574] Q128
\item[575] Daily Mail, A green light for criminals, 27 June 2018
\item[576] Q12; Letter from Rory Stewart, Minister of State for Justice, to Chair, Justice Committee, 18 January 2019.
\item[577] Q145
\item[578] Q131; See also Q168 [Harvey Redgrave]
\item[579] The Sentencing Council of England and Wales (ppp0038)
\item[580] Dr Michael Teague (ppp0012); Transform Justice (ppp0027); False Allegations Support Organisation (UK) (ppp0009); Q266 [Mr Fairhurst]; Q169 [Richard Garside]
\item[581] The use by probation of the most comprehensive written reports to court (Standard Delivery Reports) has fallen by 89% in six years and now stands at only 3% of all reports, less than a third of the national target.
\end{footnotes}
the individuals they sentence; what community sentences are and their potential benefits; and, options available locally to the courts, through probation services or other providers, including the voluntary sector.\textsuperscript{582} Harvey Redgrave saw presentations to magistrates from probation services—outlining what a community sentence involves, how it works, the requirements that can be attached, and what is available in the local area—as a ‘low-cost option’ that could rectify this.\textsuperscript{583} Richard Garside proposed that, nationally, consideration should be given to the organisation of the probation service, the kinds of programmes that should be available, and how to ensure that sentencers get the right kind of reports with the right form of detail to enable them make informed decisions.\textsuperscript{584}

249. We also discussed this with representatives of the Magistrates’ Association as part of our ongoing work on the role of the magistracy. We heard that magistrates would like to ensure that, under the revised contracts for Transforming Rehabilitation, probation services report back on how an individual is performing on their community order.\textsuperscript{585} In our report on Transforming Rehabilitation we recommended that arrangements were put in place to ensure that sentencers are well informed about services offered by CRCs. We understand that action has been taken to facilitate this. For example, sentencers have recently been permitted to communicate directly with Community Rehabilitation Companies so that they can better understand the services they provide, although it is not clear whether there would be feedback at an individual level.\textsuperscript{586}

\textbf{Sentencer feedback and judicial monitoring}

250. Another option for the Ministry to consider in strengthening confidence is for sentencers to receive feedback directly on individuals serving community sentences.\textsuperscript{587} John Bache, Chair of the Magistrates’ Association, explained the potential impact of such an approach on magistrates’ confidence:

If magistrates could monitor people post sentence, that would be incredibly beneficial because it would give us more confidence in community sentences; it would give the person being sentenced the idea that the magistrates were still keeping an eye on them; and it would be to everybody’s benefit. It is on the statute book, but it has not been enacted.\textsuperscript{588}

Rory Stewart expressed to us an interest in exploring the role judges could play in monitoring people on community sentences.\textsuperscript{589} He was clear that the Ministry has not committed to it and had been cautious about it in the past, but in his view it has been an effective model in the United States and has previously been tested in England and Wales.\textsuperscript{590}

251. \textit{We support the Government’s approach to the abolition of short, ineffective prison sentences. The scale of the prison population crisis is such that it requires a fresh and decisive response. We note with interest the move in Scotland towards}

\begin{itemize}
\item \textsuperscript{582} Q180 [Harvey Redgrave]
\item \textsuperscript{583} Q180
\item \textsuperscript{584} Q180
\item \textsuperscript{585} Justice Committee, Oral evidence: The role of the magistracy – follow up, HC1654, 27 November 2018, Q47
\item \textsuperscript{586} Justice Committee, Oral evidence: The role of the magistracy – follow up, HC1654, 27 November 2018, Q45
\item \textsuperscript{587} Q183 [Rachel Tuffin]
\item \textsuperscript{588} Justice Committee, Oral evidence: The role of the magistracy – follow up, HC1654, 27 November 2018, Q44. Section 178 of the Criminal Justice Act 2003 provides a power for court review of community orders.
\item \textsuperscript{589} Q104
\item \textsuperscript{590} Q104
\end{itemize}
a statutory presumption against custodial sentences of under 12 months. We repeat the recommendation we made in our report on Transforming Rehabilitation that the Government should introduce a presumption against short custodial sentences and believe, in addition to their welcome move towards avoiding the use of sentences under 6 months, they should model the effects of abolishing sentences of fewer than 12 months. We welcome clarification by the Secretary of State as to what he means by a robust community sentence. We heard that it is possible to create sentences which provide a balance between robustness and effectiveness, but note that tough sentences are not the same as effective ones in terms of reducing reoffending. We wish to hear in response to this report how specifically he intends to improve sentencer confidence in community penalties, which is a significant issue and challenging to remedy. This should include an assessment of the adequacy of existing advice provided to courts by the National Probation Service about a defendant’s history to enable sentencers to base their decisions on a fuller understanding of offending behaviour and personal circumstances.

252. We praise the efforts of the Judiciary and the Ministry to ensure that sentencers have the information required about the interventions provided by CRCs. The Judiciary is entitled to expect that, in addition to being punished, those who are subject to probation supervision have good quality support, good quality interventions and an opportunity to move on with their lives. This should be more explicitly addressed in sentencing guidelines. We expect the Ministry to explain in its response to our report how it intends to deliver this under its revised Transforming Rehabilitation programme. The Government should as a medium-term priority consider the value of judicial monitoring in its effort to improve sentencer confidence, and as part of a wider strategy for reducing reoffending which integrates the role of the courts.

Electronic monitoring and Home Detention Curfew

253. The Prisons Minister and Justice Secretary emphasised the potential of electronic monitoring to make community sentences and post-release arrangements more stringent.\(^{591}\) For example, they plan to use sophisticated GPS technology—to identify where an individual is at any given time and strengthen arrangements around curfews and restrictions on location—as part of a community sentence or after people are released from prison under Home Detention Curfew or other forms of supervision by probation services.\(^{592}\) Serco plc suggested it could also be used as an alternative to recall.\(^{593}\) Alcohol monitoring technology is also being tested.

254. GPS technology will be widely available from April 2019 following major problems with the Ministry’s commissioning of such services, which the NAO concluded had failed to achieve value for money.\(^{594}\) The Ministry’s handling of the £130 million development of the programme resulted in five years of delays and losses of £60 million which cannot be recovered. The running of the service itself is expected to cost £470 million up to 2025.\(^{595}\) Nevertheless, relative to the costs of imprisonment electronic monitoring appears to be cheaper, costing £12 a day rather than £55.\(^{596}\)

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\(^{591}\) Q677

\(^{592}\) Q19, Q104 [Rt Hon Mr Stewart MP]; Q319 [Ms Crozier]

\(^{593}\) Serco plc (ppp0019)

\(^{594}\) Comptroller and Auditor General, The new generation electronic monitoring programme, HC242, July 2017

\(^{595}\) Mr David Breakspear (ppp0042)

\(^{596}\) Q19
255. Empirical research relating to electronic monitoring is limited and the evidence of its impact on reducing crime is mixed. The College of Policing summarised the evidence as follows:

Electronic Monitoring (EM) has not been found to have a statistically significant effect on reducing crime, however when EM was used as an alternative to prison, instead of used after prison, there was a statistically significant lower rate of reoffending. In addition, studies focused on sex offenders also showed that EM significantly decreased reoffending for this group. EM can also be useful if trying to address issues such as overcrowding in prisons and reducing costs.\textsuperscript{597}

In relation to prison population pressures, Justice Episteme calculated that reducing the time spent in custody of lower risk offenders, supported by electronically monitored community supervision, could reduce demand for prison places by up to 2,500 places.\textsuperscript{598} The Ministry has been piloting the use of GPS monitoring and in February 2019 announced that new GPS tags would be rolled out across the country.\textsuperscript{599}

256. One example of the potentially greater application of electronic monitoring is Home Detention Curfew (HDC). The percentage of prisoners eligible for HDC who were granted such a release fell between 2002 and 2015.\textsuperscript{600} Recent simplification of the HDC application process has already had an impact on increasing releases under HDC which has in turn reduced the prison population—3,723 offenders were released on HDC during the latest quarter, an increase of 61\% compared with the same quarter in 2017\textsuperscript{601}—but the Minister acknowledged that this will tail off as only certain offenders can be monitored using HDCs under current legislation.\textsuperscript{602}

257. The recent reduction in the prison population through administrative steps taken to increase the use of Home Detention Curfew is encouraging and has created necessary headroom. We agree that there is potential for further reductions using GPS electronic monitoring and welcome the evaluation published by the Government in February 2019. Nevertheless, these measures and reducing short prison sentences cannot alone solve the prisons crisis.

\textsuperscript{597} College of Policing (What works centre) (\textsuperscript{ppp0034})
\textsuperscript{598} Centre for Crime and Justice Studies and Justice Episteme (\textsuperscript{ppp0016}). Applied to those sentenced to between 1 to 10 years using risk-based selection criteria.
\textsuperscript{599} Ministry of Justice, Justice Secretary unveils GPS tag rollout to better protect victims, 16 February 2019
\textsuperscript{600} Women in Prison (\textsuperscript{ppp0022})
\textsuperscript{601} Ministry of Justice, Offender Management Statistics Bulletin, England and Wales, July 2018, page 7
\textsuperscript{602} Q17
6 Conclusion

258. We have set out in our report strong evidence that the sustainability of the prison population is linked to many factors including perceptions about and provision of effective alternatives to prison, the scale of prison building and maintenance programmes to improve decency, reduce crowding and facilitate access to purposeful activity and rehabilitation, and the effective use of existing prison facilities. Some are within the control of the Ministry of Justice, and others are not. There is clear evidence that political decisions to reduce spending on prisons have had a major destabilising effect and that tightly gripping finances by reducing staff and outsourcing facilities management services does not result in a well-maintained or well-functioning prison estate. Relying on emergency transfers of resources from the capital budget is not a sustainable means of running prisons.

259. While it was not the intention of our inquiry, many of our witnesses considered that the question for the Government should not be how to cope with a continued rise in the prison population but what approach they should take to reduce it. Over the course of our inquiry, the Government’s strategic approach has moved towards the latter approach and some ‘quick wins’ have already been achieved in increasing the use of Home Detention Curfew, for example. The Secretary of State has now set out a longer-term aspiration to find alternative solutions to crime than imprisonment for some offences.

260. The Ministry’s strategy for prisons has historically not taken enough account of the impact of population pressures on the challenges that prisons are dealing with in terms of regime and hence on addressing the drivers of the population. This would require a broader reform strategy that recognises the opportunity to link prison reform with a wholesale review of the sentencing framework which is the major driver of predicted growth. Alongside this, cross-Governmental strategies must be developed to strengthen community services and support the increased use and effectiveness of non-custodial sentences, with emphasis on ensuring that these are not funded on a shoe-string. Our predecessor Committees, when chaired by Sir Alan, now Lord, Beith, twice warned previous Governments of the risk of a crisis in the sustainability of funding for prisons by focusing policy on expanding prison places and of not considering the root causes and surrounding social circumstances that lead to offending.

261. We are now in the depths of an enduring crisis in prison safety and decency that has lasted five years and is taking significant additional investment to rectify, further diverting funds from essential initiatives that could stem or reverse the predicted growth. There is a grave risk that we become locked in a vicious cycle of prisons perpetually absorbing huge amounts of criminal-justice related spending, creating a perverse situation in which there is likely to be more “demand” for prison by sentencers in areas where they have less access to effective community alternatives.

262. Given the complexities of the prison population and the social determinants of many of them ending up in prison, several witnesses raised more fundamental questions about the justice system, and prison in particular, as a response to criminality and wider social problems. They advocated the introduction of a public health model for crime capable of

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603 Q390
604 Q305 [Professor Hardwick; Mark Day; Dee Anand]
more therapeutic responses which has been adopted in Scotland.\textsuperscript{606} Despite recognition of the potential benefits of such an approach to reducing violence, the Government continues to look primarily to legislation to control crime. An example of this is the proposal for civil Knife Crime Prevention Orders, the breach of which would be imprisonable, in the Offensive Weapons Bill. We heard during our inquiry that the Ministry has devised a Justice Impact Test for other Government departments in recognition that:

“New policies, especially those which involve a change in the law, can have a very significant impact on the justice system. These impacts need to be considered, anticipated, and planned for at an early stage to make best use of public funds, and to make sure that service provision within the justice system is not jeopardised.”\textsuperscript{607}

The Secretary of State for Justice reportedly asked the Home Secretary to demonstrate the evidence base that strengthening sentencing powers for possession of a knife would cut crime.\textsuperscript{608} As an illustration of the potential impact of this, under the Sentencing Council’s guideline on bladed articles and offensive weapons, more offenders convicted for possession of a bladed article are anticipated to receive a custodial sentence compared to prior sentencing practice. This was estimated to result in a need for around 80 additional prison places per year at a cost of around £1.9 million.\textsuperscript{609}

263. Prior to the Justice Secretary’s February 2019 speech, our evidence pointed strongly to the absence of a strategic and long-term approach towards the sustainability of the prison population. Professor Hardwick told us that changes to the prison estate and to the prison population are long-term processes that need sustained political commitment.\textsuperscript{610} Professor Hardwick saw the prison system as “bedevilled by changes in policy” and advocated for consensus around a long-term plan that people potentially of different political persuasions can sign up to.\textsuperscript{611} Clinks wished to see an overarching vision for how the whole criminal justice system can support individuals to change their lives.\textsuperscript{612} In his speech, the Justice Secretary articulated a need for a fresh conversation and national debate about society’s approach to the use of imprisonment, and said he believed that there was a sufficient degree of political consensus in Parliament to achieve this.

264. In recognition of public sentiment and the concerns outlined by the Justice Minister, addressing the crisis in the sustainability of our prisons calls for a serious open public debate about the criminal justice system, the role that prison can and cannot play, and its affordability. We are pleased that the Prisons Minister and Justice Secretary have acknowledged this, but, regardless of the political climate, this cannot be just a long-term aspiration. Greater transparency is necessary to enable the public and others to understand the true costs and the challenging and testing nature of decisions which need to be made about public spending on prisons and other aspects of criminal justice. This should form the first step of the Justice Secretary’s ‘national conversation’ about these matters, which cannot continue to be hidden behind either prison gates or within the Ministry of Justice at Queen Anne’s Gate.

\textsuperscript{606} Dr Dennis Eady (ppp0007); Dr Michael Teague (ppp0012); INQUEST (ppp0033)
\textsuperscript{607} Ministry of Justice, Justice Impact Test guidance, July 2018
\textsuperscript{608} PoliticsHome, Sajid Javid and David Gauke clash over knife crime crackdown, 28 November 2018
\textsuperscript{609} Letter from Rory Stewart, Minister of State for Justice, to Chair, Justice Committee, 18 January 2019
\textsuperscript{610} Q305
\textsuperscript{611} Q305
\textsuperscript{612} Clinks (ppp0005)
Conclusions and recommendations

The Ministry’s current approach to managing the prison population and its financial sustainability

1. The Government must legislate in the next Queen’s Speech on the purpose of prisons and to strengthen the statutory foundations of the Prison and Probation Ombudsman and National Preventive Mechanism, as our predecessor Committee recommended in 2017. (Paragraph 29)

2. The frequent changes in Ministers at the MOJ and the inevitable changes in priorities that follow have hindered the sustained implementation of an overarching strategic approach to prisons policy. A clear dedicated effort will be needed to ensure that the ever-worsening decline in safety, which has now been going on for five-years, is reversed. Reversals in cuts in spending on prisons and investment into staffing, training, infrastructure and guidance will be needed and the Secretary of State for Justice and the Prisons Minister must demonstrate decisive action to achieve this. (Paragraph 34)

3. We also welcome the Ministry of Justice’s efforts to devise strategies that seek to address some of the factors that contribute to reoffending. The philosophy behind each of the individual strategies is welcome, but the current overall approach is largely a collection of operational policies and lacks a coherent means of driving reform, including processes that link plans, data on outcomes, and the evaluation and dissemination of good practice. They are also woefully under-resourced and it is unclear what resources, if any, have been allocated to future planning. There should be an overarching strategy for reoffending and a clear vision for what prisons will look like in the future. The Ministry’s rehabilitative strategies should each be underpinned by clear governance arrangements, action plans, timetables and resources. (Paragraph 35)

4. The Ministry of Justice and HMPPS are increasingly making more transparent and positive use of the evidence base in articulating the rationale for strategic approaches. This is essential if the public are to better understand who is in prison and how best to stop them from committing further crime. The creation of a small number of pilots which will be properly evaluated is welcome. Nevertheless, piloting is only helpful if expansion in programmes which prove successful are followed through and funded. The Ministry should set out in its response to this report how it intends to replicate those pilots which prove effective to the extent necessary to achieve substantial reductions in reoffending. (Paragraph 36)

5. It cannot be efficient to continue to spend money maintaining often dilapidated buildings, many of which were built in Victorian times. It is ineffective and inefficient in economic terms and does not represent smart justice. (Paragraph 42)

6. Maintaining a tight grip on finances is a laudable aim, but it is not sustainable if it results in driving down standards of decency and fails to capitalise on opportunities to reduce reoffending. We do not consider that the Government’s existing approach to prison reform is sufficient to resolve major structural deficits to provision to
reduce crime. Modernising the prison estate is imperative but ploughing funding into building prisons to accommodate prison projections is not a sustainable approach in the medium or long-term. Our evidence demonstrates an urgent need for significant additional resources for cross-departmental provision to reduce reoffending. This would save the Ministry money in the long-term and would reduce the cost to society of reoffending in the long-term. We are open-minded about the solutions and encourage the Government and wider public to be so, too. We agree with the Justice Secretary that there is a need for a refreshed narrative around the use of imprisonment and how as a society we wish to deal with crime. We are encouraged by his direction of travel in examining the role that prisons should play in modern society. This should include an explicit recognition that social problems cannot be meaningfully addressed through the criminal justice system. This is not only a moral imperative but also now a financial necessity. (Paragraph 43)

7. The Government must recognise the extent of the impact of reductions in funding during the current Spending Review period for prisons and probation services on the quality of these essential public services, relative to the size of the overall resource commitment. We welcome the Ministry’s proposed approach to amassing evidence about the funding required to deliver decent and well-performing prisons for the next Spending Review. Nevertheless, resources to close the hole in the Ministry’s finances, address major maintenance problems and run decent and rehabilitative prisons up to 2022 are unlikely to be found. We note the additional £18 million resource DEL and £13 million capital DEL announced as part of the 2018 Budget for measures in support of prison decency, but this is not sufficient. There appears to be some way to go to ensure that there is evidence of sufficient strength to convince the Treasury to change direction. Once the Ministry has a clear picture of the current and projected costs of running prisons over the next Spending Review period, we recommend that they are published. (Paragraph 44)

8. The Treasury must now be able to recognise the wider implications of the decision not to invest in the prison and probation systems in recent years. It should take this into account for the future. The Spending Review exercise for 2020 to 2025 should be broadened to encompass a more systemic approach to managing the £15bn a year costs of reoffending. This should include downstream measures, which are out of the control of the Ministry of Justice. To inform such an approach, the Reducing Reoffending Group should commission urgently a systemic review of cross-departmental activity to reduce crime, including mapping demand and identifying trends in the funding and outcomes achieved by a range of public agencies over the current Spending Review period. Such analyses have been conducted to positive effect in other jurisdictions, notably the US, enabling a shift in resources from prisons to community measures. In the medium-term, the Ministry must conduct a wide-ranging and transparent consultation on its Justice 2030 project, which should be broadened out to consider the cross-departmental impact on demand for criminal justice services. Should the Government choose not to undertake such work itself, we propose that an independent commission should be established to consult on and create a sustainable strategic approach to prison and crime reduction policy up to 2030. A similar commission was set up in Scotland, reporting in 2008 and the Commission on Justice in Wales, chaired by Lord Thomas of Cwmgiedd is currently underway. (Paragraph 45)
The prison population current and projected

9. The prison population has become increasingly challenging in nature, with prisoners often having complex health and social needs. Many have learning disabilities or mental health conditions, such as psychosis, that make it difficult to cope with the criminal justice system and places an additional burden on the prison service to manage their needs. The Ministry needs to acknowledge the challenge it faces and demonstrate that it has a long-term strategy to deal with these. (Paragraph 52)

10. The prison population is projected to grow for the foreseeable future. Prison population projections are limited in their focus on criminal justice system specific factors and the likely age and gender of prisoners. We consider that the projections should not be produced solely for the purposes of understanding the absolute numbers of prison places required, and of what nature, but also to ensure that governors and other commissioners are able to provide facilities and interventions that enable them to manage the prison population safety and effectively, with the ultimate outcome of preventing further crime when those imprisoned re-enter society. The existing approach limits the scope for thinking more laterally about how best to accommodate the challenging and complex needs of those remanded in custody and sentenced to imprisonment as part of a longer-term strategy. The more challenging mix of those sentenced to custody is likely to be partly attributable to the impact of wider social policies which do not currently factor into the Ministry’s planning. (Paragraph 60)

11. Trends in ethnicity and the social drivers of complex and challenging behaviour should be more explicitly identified in modelling of the future prison population to inform a more comprehensive planning strategy which is properly resourced to manage effectively people in custody. Understanding the reasons for ethnic and racial disproportionality and seeking to reduce it must form part of a longer-term strategy for ensuring the sustainability of the prison population. The Ministry must monitor and take seriously the trend of racial and ethnic disparity in the prison population. We intend to carry out further work in this area. (Paragraph 61)

12. To close the large gap between the money allocated to prisons by the Treasury and the current costs of running and maintaining them, the Ministry of Justice has estimated that it would have to reduce the prison population by 20,000 places. By the Ministry’s own admission this is not achievable under existing strategies and funding arrangements. (Paragraph 65)

Explaining the growth in the prison population

13. The rise in the prison population has resulted from a greater proportion of those convicted being given a custodial sentence and from custodial sentences becoming longer. This has been driven by a complex set of factors, including more minor offending being diverted from the courts. The most significant contributor has been legislative factors created by a series of political and policy choices by successive Governments and parliaments. The fact that a greater proportion of those who are being sentenced by the courts are convicted of violent and sexual offences, who will tend to get longer sentences, contributes to the increase in the size of the prison
Prison population 2022: planning for the future

However, this can only partially be attributed to changes in underlying crime patterns and leads us to look at the impact of legislation, the Sentencing Council and the question of how we should be using imprisonment. (Paragraph 91)

14. The extent to which sentencing guidelines have collectively influenced sentencing practice is not clear. We welcome the Sentencing Council’s efforts to predict the impact of changes to the guidelines on Ministry of Justice resources and we consistently note the limitations of these (owing to a lack of data and resources and through no fault of the Council) in the responses we make to the guidelines in our role as a statutory consultee. In making such assessments, the Council needs to have better quality data, which in turn Ministry of Justice needs to resolve as part of its drive for better data. There will be opportunity for the Ministry to collect better data through its court reform programme. The Ministry must also increase the resources it provides to the Sentencing Council to conduct explanatory research on sentencing practice and trends. (Paragraph 92)

15. We welcome the Government’s acknowledgement that there are choices to be made over the future sustainability of the prison population, and to ask questions about how as a society we should use imprisonment. We support the Secretary of State’s commitment to look at the sentencing of both short- and longer-term prisoners. As changes to the prison population have largely stemmed from legislative change, it stands to reason that legislative change should be a primary consideration when examining these choices. In the short-term, we recommend that when changes to sentencing legislation are being debated in Parliament, the Ministry considers what more it might do to make Parliamentarians aware of the likely impact on exceedingly constrained resources. Any strategy for improving the sustainability of the prison population will require a review of sentencing legislation which should include the role of the Sentencing Council. We may return to the question of the role of the Sentencing Council, which is coming up to its 10th anniversary, in a future inquiry. (Paragraph 93)

Getting the basics right and providing strong incentives for prisoners to reform

16. There is a grave and worsening situation in the safety of prisons in England and Wales despite significant recent, welcome advances in effort and resources. Over the last five years, the Ministry and Treasury have essentially adopted a crisis management approach, despite repeated warnings from us and other key stakeholders of the consequences. The Urgent Notification process would not be necessary if the Ministry’s own oversight arrangements were working effectively. Nevertheless, its introduction undoubtedly has had a positive impact on the targeting of resources. We are cautiously encouraged by signs of a more proactive approach with significant investment in ten challenging prisons. The ‘green shoots’ we are promised by the Prisons Minister are not borne out in the safety statistics, but we eagerly await them. They are urgently necessary for those working in prisons, prisoners and their families, increasing numbers of whom are bearing the scars of years of underinvestment. We have very real concerns that support given to the ten prisons could be at the expense of others in serious need and we are concerned about the diversion of resources. All prisons should have the resources that they
need to foster a safe and decent environment. The Prisons Minister has set clear aspirational targets to improve safety and we will judge him by the extent to which these are achieved. (Paragraph 104)

17. Prison governors are expected to implement several rehabilitative strategies at a time when they are beginning to benefit from a higher complement of staff and are seeking to focus on reversing the deep decline in safety. While we agree that it is right to focus on both decency and rehabilitation, governors have limited capacity, with prison population at current levels, to deal with the range of competing and challenging demands on their time. They also continue to lack meaningful control over their budgets to enable them to implement these strategies effectively. We welcome the fact that there appears to have been a shift by Ministers from seeing the problems facing prisons primarily as a leadership problem to primarily a resources problem, over the last two years. Nevertheless, owing to a lack of resources, the limitations with leadership training, which our predecessor Committee commented on in 2017, appear unresolved despite a welcome aspiration to improve it. This is a matter we may return to in a future inquiry. (Paragraph 118)

18. Good relationships foster more settled and safer prisons. Our evidence demonstrates a need for greater emphasis on sentence planning, including preparation for release and resettlement which should stem from the Offender Management in Custody model when fully implemented. While it is a matter for offender managers to plan individual sentences, it is not yet clear how this will work for those representing a low and medium risk, who Community Rehabilitation Companies (CRCs) are responsible for managing. Another matter to be clarified is how sentence planning will feed into planning at establishment level or nationally. The Ministry should provide details of sentence planning arrangements, including those handled by CRCs, and on its planned evaluation of the Offender Management in Custody model in its response to this report. (Paragraph 128)

19. Prison is often the endpoint for people with complex histories who can present challenging behaviours in different ways, including through violence, self-harm, and suicide attempts as well as their offending behaviour. The experience of imprisonment can make these problems worse or provide an opportunity for them to be addressed. The approach taken by professionals who deal with them, including probation officers, forensic and clinical psychologists and other health professionals, and prison officers can be invaluable in addressing offending behaviour and supporting change. (Paragraph 134)

20. A key priority for improving the evidence base should be to understand better the implications of having a more ‘challenging mix of prisoners’, including the prevalence of more complex needs and vulnerabilities, and how best to address them. Adopting a more balanced approach to violence reduction in prisons would not mean that violent incidents should not be addressed, but rather that effort is also made to understand the reasons behind that behaviour as well as challenge it. Our evidence suggests that existing responses are largely punitive, although there are some promising attempts to adopt alternative approaches. (Paragraph 135)

21. We have not yet seen evidence that improvements in safety can be achieved with the prison population at current levels. For example, we are not satisfied that staffing
levels are sufficient to stabilise prisons and facilitate meaningful relationships and to deal with the growing complexity and challenge of prisoners. We are also concerned about the loss of experienced staff and the high turnover of prison officers. As well as monitoring staffing levels, the diversity of prison officers should be monitored to ensure that they can relate to an increasingly diverse prison population. Where there are signs of improvement in prisons that have received urgent notifications, these have been achieved at reduced prison population levels. The Ministry has recognised in its recruitment practices that the skills required of prison officers have changed but it is not clear to us how the Ministry and HMPPS plan to ensure that prisons are equipped with the staffing expertise to handle the challenges and complexities. Overcrowded and under-resourced prisons will not rehabilitate those suffering from mental ill health, addiction and illiteracy. (Paragraph 136)

22. Managing a more complex and challenging population safely and effectively will undoubtedly require greater resource in terms of staffing and training. While there is some recognition of the importance of this including in developing a longer basic training course there is not yet a credible plan for dealing with staffing up to 2022 and beyond. The Ministry of Justice should set out such a plan in its response to this report. (Paragraph 137)

23. The Minister, Rory Stewart, has rightly focussed on safety and decency in prisons, however this has come at the expense of rehabilitation and purposeful activity. The Ministry needs to refocus its efforts to enable a dual approach to maintain both safety and decency, as well as improve rehabilitation. The Ministry should review its regime measurement statistics to properly monitor the amount of time prisoners spend outside of their cells, as well as access to purposeful activity, such as education. (Paragraph 148)

24. Our evidence strongly demonstrates that prisons are not currently maximising opportunities for rehabilitation. Regime restrictions related to staffing shortages and other disruptions severely undermine the delivery of rehabilitative services including education, mental health treatment, substance misuse treatment and offending behaviour programmes. Not only does this result in immeasurable wasted costs, it can put those providers delivering services at risk by undermining the viability of their funding. The nature of regimes and restricted access to rehabilitative activities has a cyclical impact on the degradation of regimes and safety, owing to the boredom and frustration of prisoners enduring impoverished regimes, which can in turn lead to violence and self-harm. Regimes need to be reported upon in a meaningful way to enable monitoring of their operation, especially since they are key to rehabilitation. Staffing levels mean many prisons are not delivering their intended regimes. The Government must inform the Committee of the extent to which prisons are able to operate their stated regimes through regular updates and the first such should be produced within six months from the publication of this report. (Paragraph 156)

25. We note that there have also been problems recruiting for other staff, including forensic psychologists and teachers which must also be addressed. Creating a rehabilitative culture will entail greater integration between the various professionals working in prisons, which should be part of the role of prison leadership. Greater integration between rehabilitative services provided in prisons should be reflected in strategies on rehabilitative culture. Greater integration between rehabilitative services
provided in prisons should be reflected in strategies on rehabilitative culture. We recommend that prisons are monitored on their capacity to meet the identified needs of prisoners, which would also inform the Ministry’s evidence about resources. These data should be used to review the adequacy of existing recruitment targets to foster the relationships required to support the high volume of prisoners who have complex needs. (Paragraph 157)

26. Considerable change is required to foster rehabilitative cultures. The incentives and earned privileges scheme and the use of incapacitant spray for managing behaviour highlight the potential tensions between the various purposes of imprisonment in prison operations. We note the potential benefits of incapacitant spray in helping prison staff to feel safe. While there is of course a balance to be struck, there is an overemphasis on punitive approaches, including the use of IEP to remove privileges and the overuse of disciplinary processes. We welcome the greater discretion afforded to governors and recognition in guidance that punishment and deterrence are not always effective in reducing violence. HMPPS should encourage governors to review the balance between punishment and rewards as part of their strategy for implementing a rehabilitative culture. (Paragraph 166)

27. The clear documentation by David Lammy of the strikingly disproportionate impact of imprisonment on BAME prisoners appears to have had little impact on prison practice to date. It is disappointing that the Chief Inspector of Prisons was unable to provide more than one example of a prison having embraced the principle of ‘explain or reform’. We welcome the Ministry’s new approach but note the expectation that this must be achieved within existing resources and amongst other priorities. (Paragraph 167)

28. We expect to see clear evidence of progress in monitoring and explaining BAME disproportionalty in prisons by the next annual update, following the expectation laid down by Lammy that the system must “explain or reform”. Again, significant cultural change will be required to change outcomes and we expect this to be addressed in the Ministry’s Justice 2030 strategy. In the short-term, the Ministry should focus on seeking to reduce disproportionality in outcomes in the youth custodial estate. We expect to be kept updated directly on this matter. (Paragraph 168)

29. Whilst it is almost certain that there will remain a hard core of IPP prisoners who present a significant risk and may not be safe to release, the aim of the system should be to ensure that most IPP prisoners are safely managed back into communities at the earliest opportunity. We welcome improvements in rates of release stemming from the concerted effort to ensure that IPP prisoners are managed more effectively towards release. This is important to reduce the disproportionate rates of self-harm which may be indicative of loss of hope which in turn can undermine rehabilitation. The high rates of recall are troubling. As part of its review of sentencing the Ministry should consult on legislative solutions to both release and recall of indeterminate sentenced prisoners to bring about sentencing certainty. (Paragraph 182)

30. Many prisons are operating well over their operational capacity. Our evidence points strongly to need to provide high quality care to an increasingly complex, challenging and vulnerable prison population. Prisons are not equipped to deal with this range of issues and their inability to do so limits opportunities for rehabilitation, even for
those who represent a serious risk to the public. We agree that all prisoners should be given hope. When prisons are unable to provide access to effective treatment and interventions to prisoners eligible for parole this extends unnecessarily the sentences of those who may be safe to release, with robust supervision in the community, but are unable to demonstrate it. As part of its strategy for a sustainable prison population, the Ministry should explain how it intends to ensure that opportunities for long-term prisoners to progress their sentences will be optimised. This should include consideration of the potential benefits of legislative and other options for managing prisoners serving IPP sentences, particularly those over-tariff and on recall. (Paragraph 189)

31. The issue of the efficacy of sex offender treatment needs urgent resolution. We expect the Ministry to clarify how it is evaluating the Kaizen programme and when it intends to publish the research. The evaluation should include consideration of the impact on outcomes of the level of qualification of those delivering it and should also address whether the Ministry intends to review its policy of recruiting trainee psychologists to fill vacancies, or whether it might be necessary to take steps to attract qualified psychologists to the role. (Paragraph 190)

32. Release on temporary licence provides opportunities for prisoners to demonstrate that they are prepared for a law-abiding life in the community. The arrangement whereby private prison directors must seek permission from HMPPS to release prisoners on temporary licence strikes us as unnecessarily bureaucratic and we hope that the Ministry’s commitment to review this process results in its cessation by a fixed date determined in the response to this report. (Paragraph 192)

33. Whilst progress made on the Prison Estates Transformation Programme is welcome, the new-for-old strategy is not working as intended. Sites for new prisons have proven difficult to obtain, older and decrepit prisons have been forced to remain open owing to population pressures and receipts from the sale of existing sites do not cover the cost of building new prisons. In the short-term this is being recognised by the Treasury which is funding new prison building. Refurbishing older prisons like HMP Birmingham, where accommodation is substandard, is unlikely to represent value for money. We recommend that as part of its Justice 2030 project the Ministry develops a realistic, properly costed, long-term estate strategy, that enables it to meet the needs of an ever-changing prison population. (Paragraph 201)

34. We welcome the Prison Minister’s drive to improve the decency of prisons and his recognition that this is essential both for ensuring that our society treats prisoners humanely and with dignity and for providing the foundations for prison reform. While the deterioration in prison standards can be attributed partially to the failure of one of the providers contracted to maintain prisons and the complexity of the service, when the Ministry outsourced prison maintenance it did so in an uninformed, under-resourced, and unsustainable manner. The Ministry is now prioritising bringing down maintenance backlogs, auditing the true state of the prison estate, and developing long-overdue minimum standards for good quality prison accommodation. We welcome the Ministry’s commitment to build new prisons that are uncrowded and to reduce incrementally overcrowding across the estate. Nevertheless, the backlog continues to grow, and many prisoners continue to live in cells designed for fewer people. On the Ministry’s current spending trajectory,
it will take many years before these major issues are resolved. We recommend that the Ministry publishes the results of HMPPS’s audits of the prison estate along with an action plan setting out how it will achieve the minimum standards it is setting and how it will manage the maintenance backlog. Transparency about the costs of the estate is essential to support public understanding of the costs of imprisonment. This should include a realistic assessment of the viability of refurbishing existing accommodation over the medium and long-term. (Paragraph 208)

35. We welcome the Ministry’s commitment to creating smaller, more normalised prison environments with improved rehabilitative facilities. The Ministry must consider how best to develop the estate more creatively to diversify provision and cater for the future needs of key cohorts of the prison population. A long-term prison estate strategy should be created as part of the Justice 2030 project. This should include provision for trials of alternative approaches for accommodating and caring for elderly and otherwise infirm prisoners, for women who do not represent a high risk to the public, and for the treatment of young adults to resolve the long-standing anomaly of the sentence to detention in a young offender institution no longer meaning that they are accommodated in suitably specialist provision. (Paragraph 215)

36. We welcome the roll-out of in-cell telephony which will enable prisoners to build and maintain stronger family relationships. A modernised prison estate could benefit significantly from greater use of technology to support purposeful activity, including education and training, and to free prison staff from tasks which could be automated enabling them to spend more time engaging meaningfully with prisoners. We welcome the Ministry’s commitment to examine how best to utilise technology as part of the Justice 2030 project and encourage them to consider the cost-benefits of a major expansion in its use. (Paragraph 216)

Tackling reoffending through a cross-departmental approach

37. The ability of former prisoners and those on community sentences to be able to access appropriate support in the community is vital to supporting their rehabilitation and reducing reoffending in the future, potentially reducing the repeated use of imprisonment. We welcome the Government’s recognition of the need for the new iteration of the Transforming Rehabilitation programme to address the shortcomings of the previous one in terms of funding for probation services. The challenges facing the Government in ensuring a sustainable prison population are not related solely to the balance between funding for prisons and probation. It is as important to ensure that other agencies are playing their part in providing services which are a necessary pre-cursor to reducing the use of short prison sentences. While the Justice Secretary has signalled his intention to move resources within the justice system, such an approach will not be possible unless other Ministers take responsibility for funding crime reduction measures. Action must be taken in the 2019 Spending Review to address cuts in funding for substance misuse and mental health treatment which places unnecessary demands on prisons and can reverse some of the positive work that prisons can do. The adequacy of funding for such provision is a matter for central Government despite the responsibility for provision being devolved to local Government. (Paragraph 228)
38. The commitment in the Female Offender Strategy to reduce the use of short sentences for women by taking a more preventive, community-based approach represents an opportunity to do something radical in seeking to shrink the prison population. While imprisonment is necessary for some women, this would provide a model for adopting similar initiatives in future for others who do not represent a high risk of harm to the public. Nevertheless, the existing funding is unlikely to have sufficient impact. The Government should be more bold in investing in community alternatives for women cross-departmentally, not only via the justice system. Reallocation of the £50m from building women’s community prisons had the potential to generate a step-change in the sustainability of community-based provision that is proven to reduce crime. While it is undoubtedly necessary for money to be found to stabilise the safety of prisons, this is a clear example of the exorbitant costs of imprisonment sucking up resources that would have a more beneficial impact on our society in the long-term if used in other ways. That the issue of mainstream cross-Government funding for women’s centres remains unresolved by consecutive Governments over the last 10 years is a grossly wasted opportunity to reduce the costly intergenerational impact of crime. This must be addressed in the 2019 Spending Review. (Paragraph 229)

39. The Ministry has identified and accepted that reducing homelessness and providing sufficient suitable accommodation are crucial to halt the unnecessary revolving door of prisons. This is welcome but a credible means of addressing this major structural problem is missing from the current approach. For genuine cross-departmental progress to be made in ensuring access to housing for those leaving prison, a basic requirement to generating stable and crime-free lives, Government must urgently publish an accommodation strategy and action plan. (Paragraph 234)

40. We welcome the pilots of drug and alcohol treatment requirements attached to community orders and for supporting those likely to be facing homelessness on release. Nevertheless, these fundamental issues require a large-scale, nationwide, adequately funded response. Further cuts to local authorities are likely to further undermine this. Should the accommodation and treatment pilots be successful, the Ministry should consider as part of their case to the Treasury the implications of these pilots for resources to replicate them, which are likely to be significant. The pressures on the prison population are too great not to act soon. A key issue for the Government which must be addressed in the 2019 Spending Review and the Justice 2030 strategy must be funding drug and alcohol support services, mental health services, housing and community-based therapeutic centres to the extent which will have a medium- and longer-term impact on the size of the prison population. (Paragraph 235)

41. We support the Government’s approach to the abolition of short, ineffective prison sentences. The scale of the prison population crisis is such that it requires a fresh and decisive response. We note with interest the move in Scotland towards a statutory presumption against custodial sentences of under 12 months. We repeat the recommendation we made in our report on Transforming Rehabilitation that the Government should introduce a presumption against short custodial sentences and believe, in addition to their welcome move towards avoiding the use of sentences under 6 months, they should model the effects of abolishing sentences of fewer than 12 months. We welcome clarification by the Secretary of State as to what he means by a robust community sentence. We heard that it is possible to create sentences which
provide a balance between robustness and effectiveness, but note that tough sentences are not the same as effective ones in terms of reducing reoffending. We wish to hear in response to this report how specifically he intends to improve sentencer confidence in community penalties, which is a significant issue and challenging to remedy. This should include an assessment of the adequacy of existing advice provided to courts by the National Probation Service about a defendant’s history to enable sentencers to base their decisions on a fuller understanding of offending behaviour and personal circumstances. (Paragraph 251)

42. We praise the efforts of the Judiciary and the Ministry to ensure that sentencers have the information required about the interventions provided by CRCs. The Judiciary is entitled to expect that, in addition to being punished, those who are subject to probation supervision have good quality support, good quality interventions and an opportunity to move on with their lives. This should be more explicitly addressed in sentencing guidelines. We expect the Ministry to explain in its response to our report how it intends to deliver this under its revised Transforming Rehabilitation programme. The Government should as a medium-term priority consider the value of judicial monitoring in its effort to improve sentencer confidence, and as part of a wider strategy for reducing reoffending which integrates the role of the courts. (Paragraph 252)

43. The recent reduction in the prison population through administrative steps taken to increase the use of Home Detention Curfew is encouraging and has created necessary headroom. We agree that there is potential for further reductions using GPS electronic monitoring and welcome the evaluation published by the Government in February 2019. Nevertheless, these measures and reducing short prison sentences cannot alone solve the prisons crisis. (Paragraph 257)

Conclusion

44. We are now in the depths of an enduring crisis in prison safety and decency that has lasted five years and is taking significant additional investment to rectify, further diverting funds from essential initiatives that could stem or reverse the predicted growth. There is a grave risk that we become locked in a vicious cycle of prisons perpetually absorbing huge amounts of criminal-justice related spending, creating a perverse situation in which there is likely to be more “demand” for prison by sentencers in areas where they have less access to effective community alternatives. (Paragraph 261)

45. In recognition of public sentiment and the concerns outlined by the Justice Minister, addressing the crisis in the sustainability of our prisons calls for a serious open public debate about the criminal justice system, the role that prison can and cannot play, and its affordability. We are pleased that the Prisons Minister and Justice Secretary have acknowledged this, but, regardless of the political climate, this cannot be just a long-term aspiration. Greater transparency is necessary to enable the public and others to understand the true costs and the challenging and testing nature of decisions which need to be made about public spending on prisons and other aspects of criminal
justice. This should form the first step of the Justice Secretary’s ‘national conversation’ about these matters, which cannot continue to be hidden behind either prison gates or within the Ministry of Justice at Queen Anne’s Gate. (Paragraph 264)
Formal minutes

Tuesday 19 March 2019

Members present:

Robert Neill, in the Chair
Bambos Charalambous Victoria Prentis
Janet Daby Ellie Reeves
Mr David Hanson Marie Rimmer
Gavin Newlands

Victoria Prentis declared an interest as a Trustee of NACRO.

Draft Report (*Prison population 2022: planning for the future*), proposed by the Chair, brought up and read.

*Ordered*, That the Draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 264 read and agreed to.

Summary read and agreed to.

*Resolved*, That the Report be the Sixteenth Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till 26 March 2019 at 9.30am]
Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the inquiry publications page of the Committee’s website.

Tuesday 26 June 2018

Rory Stewart MP, Minister of State, Mike Driver, Chief Financial Officer, and Justin Russell, Director General, Offender Reform and Commissioning Group, Ministry of Justice

Wednesday 11 July 2018

Lord Justice Treacy, Chair, Sentencing Council for England and Wales, and Steve Wade, Head, Office of the Sentencing Council

Richard Garside, Centre for Crime and Justice Studies, Harvey Redgrave, Crest Advisory, and Rachel Tuffin OBE, Director of Knowledge, Research and Education, What Works Centre for Crime Reduction, College of Policing

Tuesday 11 September 2018

Mark Fairhurst, National Chair, Prison Officers Association, Nick Pascoe, Vice-Chair, Prison Governors Association, and Julia Rogers, Managing Director Justice and Immigration, Serco

Wednesday 10 October 2018

Professor Nick Hardwick, academic and former Chair of the Parole Board and Chief Inspector of Prisons, Dee Anand, British Psychological Society, and Mark Day, Prison Reform Trust

Sonia Crozier, Director of Probation, Martin Jones, Chief Executive, Parole Board; and Dr Jo Bailey, Head of Psychology, HM Prisons and Probation Service

Tuesday 30 October 2018

Juliet Lyon, Chair, Independent Panel on Deaths in Custody, Dr Kate Paradine, Chief Executive, Women in Prison, Jessica Southgate, Policy Manager, Agenda

Tuesday 13 November 2018

Helen Berresford, Nacro, Francesca Cooney, Prisoner Learning Alliance, Anne Fox, Clinks, and Danny Hames, NHS Substance Misuse Providers Alliance
Simon Boddis, Executive Director, Prison Estate Transformation Programme, Phil Copple, Executive Director Prisons, HM Prison and Probation Service, and Tom Read, Director of Digital Transformation, Ministry of Justice

**Wednesday 21 November 2018**

Peter Clarke, HM Chief Inspector of Prisons, HM Inspectorate of Prisons

**Tuesday 11 December 2018**

Michael Spurr, Chief Executive Officer, Neil Richards, Head of Custodial Contracts, Paul Newton, Governor, HMP Birmingham, HM Prison and Probation Service, and Jerry Petherick, G4S

Rory Stewart MP, Minister of State for Justice, Ministry of Justice, and Michael Spurr, Chief Executive Officer, HM Prison and Probation Service
Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee’s website.

ppp numbers are generated by the evidence processing system and so may not be complete.

1. Agenda ([ppp0006](#))
2. Agenda ([ppp0064](#))
3. Allen, Rob ([ppp0015](#))
4. AMIMB ([ppp0040](#))
5. An individual prison officer ([ppp0026](#))
6. Anand, Dee ([ppp0061](#))
7. Annison, Dr Harry ([ppp0073](#))
8. Apex Trust ([ppp0030](#))
9. Breakspear, Mr David ([ppp0042](#))
10. British Medical Association (BMA) ([ppp0024](#))
11. Catholic Bishops’ Conference of England and Wales ([ppp0004](#))
12. Centre for Crime and Justice Studies ([ppp0016](#))
13. Centre for Criminal Appeals ([ppp0021](#))
14. Centre for Social Justice ([ppp0029](#))
15. Clinks ([ppp0005](#))
16. Collective Voice ([ppp0049](#))
17. College of Policing (What works centre) ([ppp0034](#))
18. Community ([ppp0069](#))
19. Community Justice Coalition ([ppp0053](#))
20. Crest Advisory ([ppp0039](#))
21. Criminal Justice Alliance ([ppp0018](#))
22. Diocese of Worcester Criminal Justice Affairs Group ([ppp0067](#))
23. Eady, Dr Dennis ([ppp0007](#))
24. FACT ([ppp0010](#))
25. Fair Play For Women ([ppp0011](#))
26. False Allegations Support Organisation (UK) ([ppp0009](#))
27. Hardwick, Professor Nicholas ([ppp0056](#))
28. Headway - the brain injury association ([ppp0020](#))
29. Henham, Professor Ralph ([ppp0044](#))
30. The Henry Jackson Society ([ppp0072](#))
31. Hepatitis C Coalition ([ppp0041](#))
32. The Hepatitis C Trust ([ppp0043](#))
33. HM Inspectorate of Prisons ([ppp0036](#))
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Nacro (ppp0014)
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Older People's Commissioner for Wales (ppp0045)
The Open University (ppp0028)
The Parole Board for England and Wales (ppp0060)
Patton, Mr Shane (ppp0048)
PayPlan, Institute of Money Advisers & StepChange Debt Charity (ppp0062)
PGA (ppp0035)
Prison Officers Association (ppp0032)
Prison Reform Trust (ppp0023)
Prisoner Learning Alliance (ppp0051)
Prisoner, A serving (ppp0057)
Prisons and Probation Ombudsman (ppp0031)
Professor Julian V. Roberts, Lyndon Harris and Dr. Jonathan Bild (ppp0054)
Royal College of Psychiatrists (ppp0013)
SAFARI (ppp0001)
The Sentencing Council of England and Wales (ppp0038)
Serco plc (ppp0019)
Smith, University of the West of England Tom (ppp0070)
Teague, Dr Michael (ppp0012)
Transform Drug Policy Foundation (ppp0055)
Transform Justice (ppp0027)
Transition to Adulthood (T2A) Alliance (ppp0003)
Waymarks (ppp0037)
Women in Prison (ppp0022)
List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee’s website. The reference number of the Government’s response to each Report is printed in brackets after the HC printing number.

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