

# Criminal Justice System items to note

## Meeting on 7.2.23

### 1. Statistics

1.1 Quarterly MOJ *Criminal Justice Statistics* show how badly the CJS is struggling:

- Prosecutions and Convictions have increased but are still 16% lower than in 2019. The main area of concern is that Crown Courts are going backwards as they are increasingly listing trials for 2024 onwards, with the current backlog standing at 62,766 cases
- Remands in custody – 4 in 10 by the Crown Court (>3%), with almost 3 in 10 being acquitted or receive a non-custodial sentence
- Longer prison sentences - more are being sent to prison and for longer periods of time. Custody rates for indictable offences increased from 27% to 35%. The average length of custody has again risen and over the last decade, has increased from 17 to 21.7 months. The statistics show a 28% increase in the number of sentences >9 years

1.2 The *Bromley Briefings* (Prison Reform Trust) include the following issues:

- *Parole is a success* Only around 1 in 4 people are released by the Parole Board and less than 1 in 200 go on to be convicted of a serious offence within 3 years of their release
- *Prison population rising again* England & Wales and Scotland have the highest imprisonment rates in western Europe. The prison population has risen by 75% in the last 30 years and is projected to rise by around 16,500 people by 2026
- *The demise of the Pre-Sentence Report* Courts are >10 times more likely to impose a community sentence if a PSR is available. The decline in their usage in recent years is strongly linked to the sharp fall in the number of community sentences
- *IPP latest* 1,437 IPP prisoners have never been released, 97% of whom having served their tariff (more than four-fifths of these have served >10 years beyond their original tariff). A further 1,453 people have been recalled, a rise of 7% on the previous year
- *The state of our prisons* 45% of inspections assessed them as having “not sufficiently good” outcomes for respect. Overcrowding was a problem in most prisons and many were judged to have living conditions requiring significant improvement. Many cells were dirty and in a poor state of repair with vermin a major problem in some. 53% spent at least 22 hours a day in their cells and 69% during the weekend
- *Racial disparity* 27% of the prison population are from a BME group and there is a clear direct association with prison sentencing. Black people are 53%, Asian 55%, and other ethnic minority groups 81% more likely to be sent to prison at the Crown Court. Black men are 26% more likely than white men to be remanded in custody
- *Neurodiversity* Around half of those entering prison are estimated to have some form of neurodivergent condition which impacts their ability to engage with CJS requirements (estimated to be around 15–20% in the community). Inspectors surveying prison and probation staff found consistent low levels of awareness, understanding and confidence relating to neurodiversity.
- *Women in prison* 34% of women remanded by the magistrates’ court did not receive a custodial sentence, and 44% in the Crown Court. 68% had committed a non-violent offence, mainly theft. 50% served very short prison sentences (33% in 1993)
- *Home Detention Curfew (HDC)* These have decreased by 27% since 2019 (the length of time they can be used has been increased by 6 weeks in response to overcrowding)

1.3 *Offender Management Statistics* show the latest prison and probation trends. Headlines are:

- Prison population up 3% on last year
- Prison releases were 1% lower
- Adjudications rose by 8% and additional days given by 13%
- Recalls increased by 9%
- Probation supervised 2% more people (240,674 offenders)

#### 1.4 National Audit Office's 2021/22 MOJ departmental overview. Key points:

- Overall Spending was £12.4 billion. It generated income of £1.6 billion, reducing the overall cost to the taxpayer to £10.8 billion
- The largest area of spend is staff costs (42%), an increase of 16%, partly driven by 7,000 staff joining from CRCs due to probation reforms
- Future spending plans include extra on prisons and probation; investment in externally commissioned services (eg for victims) and other core justice services; investment across courts and tribunals; and additional spending on payments to legal aid providers
- There is growing disparity between the demand for CJ services, primarily driven by the police, and the supply of services
- The projected future demand on the CJS depends on complex and uncertain factors including future trends in reported crime and charging. The MOJ expects a significant increase in the prison population ie a projected 94,400 by March 2025, and an estimate for March 2027 within a huge range of 93,100 to 106,300
- Staffing pressures including a leaving rate of 12.6% in the prison service, and industrial action affecting the CJS

#### 1.5 Annual Youth Justice Statistics 2021/22 Key points are:

- Positive long-term trends continue ie the number of children entering the justice system for the first time was an all-time low of just over 8000; an average of 450 in custody, the lowest figure on record; and reoffending has decreased to the lowest rate on record, likely to have been impacted by pandemic restrictions
- Racial disparity - work undertaken is starting to have some impact with small, but measurable, progress eg a 2% decrease in black children involved in stop and searches; 2% fewer children entering the CJS from a black background; and the proportion of children in youth custody who are black reduced from 29% to 28%
- The number of offences involving a knife or offensive weapon fell by 2% (97% for possession)
- Court delays continue to affect children, with an average of 217 days from offence to outcome
- Average custodial sentence lengths have increased by 6 months
- An increase to remands for children from 40% to 45%, 58% of whom are BME. 73% of children on remand did not receive a subsequent custodial sentence

## 2. Sentencing

### 2.1 Diversion

A Diversion Summit provided evidence that well implemented arrangements for offering community resolutions, cautions and deferred prosecutions can offer a swifter, more certain and effective response to offending than processing cases in the courts, with better victim satisfaction. But their usage has fallen over the last 10 years, and there is huge variation between Police Force areas due to:

- Politics as they sound like a soft option but the public and victims are not necessarily as punitive as the politicians suppose or perhaps would like them to be
- The Home Office counting rules do not recognise the measure as a positive outcome in terms of clearing up crime
- A police culture with charging as the default option and the effort involved in setting up and monitoring rehabilitation measures puts officers off doing it
- Money as effective diversion may save the system money but there needs to be significant front loading of funds to get it off the ground

The Magistrates Association claimed the “patchwork of implementation and monitoring has led to a troubling overlap between police and sentencing powers” complicated by a wide range of diversion practice in place. A national scheme for community resolutions and cautions is due to be introduced but questions remain about what kinds of offender and offence should be dealt

with out of court particularly whether repeat offenders should qualify for a diversion option. The police gravity matrix needs to be reviewed and minimum standards provided for Scrutiny Panels

## 2.2 Rape and sexual offences (New research published in the Criminal Law Review)

This provides the first detailed analysis of all charges, pleas and outcomes in rape and other sexual offences from 2007 to 2021, a dataset of over 5.6 million charges and all 68,863 jury verdicts. Headline findings are:

- Contrary to popular belief, juries are more likely to convict than acquit defendants on rape charges and the jury conviction rate has steadily increased over 15 years
- The precipitous fall in rape charging from 2018 was part of a systemic fall in all charging; rape offences have the highest not guilty plea rate of any offence; and juries are not always more reluctant to convict young men for rape than older men

These findings have important implications not just for the Government's End to End Rape Review Action Plan and the current Law Commission review of sexual offence prosecutions but also for all rape victims who may be reluctant to pursue their case through to trial because they wrongly believe that juries are unwilling to convict in rape cases. The analysis focused only on the court stage of the process but the majority of allegations of rape never get as far as the Crown Court (just 3% of reported rape offences ended up in a charge or summons).

## 3. CJS agencies

### 3.1 Courts

3.1.1 *Nightingale Courts* are being kept open for another year to reduce waiting times and deliver swift justice for victims. 24 temporary Nightingale courtrooms will continue hearing cases in 2023. The government is investing £477m over the next 3 years to tackle the Crown Court backlog including allowing courts to run at full capacity, doubling Magistrates' sentencing powers, and recruiting even more judges and raising their statutory retirement age.

3.1.2 The NAO's report on the government's *court reform programme* paints a mixed picture. The £1.3bn programme is nearing its end but the Court and Tribunal Service does not expect to be able to deliver the programme to its current timetable and scope. Progress with court reforms continues including rolling out video hearings quickly, more online services and introducing new digital systems to courts. The new digital case management system, "common platform", was delayed due to a number of problems including system performance issues (several major incidents affected the live running and stability of the service). A review of 3,011 cases where problems occurred found that 23% of CJ processes were disrupted. Its unreliability has made it unpopular with staff, causing stress and sometimes interfering with the smooth running of live court cases. The expected savings from the programme continue to fall but are still substantial. The programme's expected lifetime savings are now £2 billion. The NAO is not confident that they have a full understanding of the impact of the court reform programme on savings, saying it lacks some of the routine data needed to undertake a reliable cost benefit analysis

### 3.2 Parole Board

#### 3.2.1 Parole Blog

An FOI response to a request for more detail about MOJ decisions to turn down Parole Board recommendations for open conditions reveals an interesting issue for people who received a recommendation from the Parole Board before the introduction of the new guidance on 6 June 2022 but an MOJ decision after the new guidance. MOJ officials were explicitly required to apply the same criteria as the Parole Board in considering the recommendation for a move to open conditions ie they should have been applying a test which historically has led to 95% of Parole Board recommendations being accepted. But the data shows that the acceptance rate changes completely after 6 June, with 109 recommendations rejected and just 14 accepted. There has been no personal involvement by a minister in any of these refusal decisions which suggests a change in policy. A further question has been asked as to why officials started to reject the overwhelming majority of Parole Board recommendations before the new criteria came into force.

### **3.2.2 Recruitment drive to toughen parole scrutiny**

A campaign to at least double Parole Board members with policing experience will bring first-hand experience of risk of dangerous offenders and focus hearings on public protection. New laws will mean former police officers must sit on 'top tier' cases and 25 more will be recruited.

Since the root and branch reforms of the parole process were announced last year, the government has already introduced a raft of changes to toughen up the parole system and restore public confidence including the tightening of the rules around open prison moves. Further reforms, including a tougher release test for parole prisoners and new powers for the Justice Secretary to block the release of dangerous offenders, are also set to be introduced as soon as parliamentary time allows.

## **3.3 Prisons**

### **3.3.1 Women prisoners**

Inspectors gave Eastwood Park prison the lowest rating for safety which is very unusual for a women's establishment, saying that "Some of the most vulnerable women across the prison estate were held in an environment wholly unsuitable for their therapeutic needs. The levels of distress we observed were appalling. No prisoner should be held in such terrible conditions."

Whilst the rating for Respect and Rehabilitation and release planning were "reasonably good" And for Purposeful activity "not sufficiently good", Inspectors concluded that the jail was failing in its most basic duty, to keep the women safe, and called for "immediate and meaningful change".

### **3.3.2 Drug free wings**

New Incentivised Substance Free Living Units are now up and running in 45 prisons, getting addicts off illicit drugs and reducing their reliance on synthetic opiates like methadone. Figures show around half of prisoners are addicted to drugs, while crack and heroin addicts account for two-thirds of shoplifting offences and half of burglaries. Those supported to get off drugs for good are 19% less likely to slip back into a life of crime. Alongside tough new security including X-ray body scanners, this forms a cornerstone of the government's strategy to break the cycle of addiction and re-offending which costs the tax-payer £19 billion a year. The government is also investing in up to 18 drug recovery wings where prisoners can go through 6 months of intensive abstinence-based treatment to break their reliance on methadone as well as dangerous substances. Prisoners making progress on the incentivised units receive extra time out of cell for education and work opportunities and drug free can be transferred to a drug recovery wing for 6 months of intensive, fully abstinence-based treatment

### **3.3.3 Food expenditure**

The amount spent on prisoners' meals has been slashed by 14% with prisons spending £56.3m, which worked out at £2.54 per prisoner per day (£2.96 last year). Prison rules say that prisoners must receive three meals a day – usually a breakfast pack, a cold lunch and a hot dinner. Menus must offer a minimum of five lunch and dinner options to meet different requirements including vegetarian, vegan and halal. They must also meet requirements set by the Food Standards Agency, which says men need 2,500 calories a day, and women 2,000. Before Covid, kitchens had an average daily budget of around £2.30 per prisoner but during lockdown they were given extra 'comfort packs' of snacks and drinks, which added to the cost. These stopped in autumn 2021, which has brought spending back down despite the rising cost of living and prisoners have found canteen prices going up steadily. Governors can vary the amount they spend on food – but if they increase it above the benchmark, they must find savings in other areas such as spending on clothes, cleaning products or prisoners' wages. The IMB has expressed concern about this

### **3.3.4 IPPs**

The Justice Committee published the government's disappointing response to the Committee's report on IPPs having urged it to re-sentence everyone on the discredited and abandoned IPP sentence and to reduce the minimum licence term from 10 to 5 years. The government has rejected both recommendations. In his response the Justice Secretary gives brief reasons, the rejection of the proposed re-sentencing exercise being on the grounds that this could

“lead to the immediate release of many offenders who have been assessed as unsafe for release by the Parole Board, many with no period of supervision in the community”. No clear reason was given for rejecting the recommendation to reduce the licence period from 10 years to 5 which is one of the main reasons that so many IPPs are recalled to prison because even a minor offence or an unproven allegation typically results in recall for anyone with the IPP label. He does however promise to “review the policy and practice for suspending the supervision requirements with a view to ensuring that in appropriate cases IPP offenders are considered for referral to the Parole Board”. He has also asked the probation inspectorate to undertake an independent thematic inspection on the proportionality of recall. At the same time, he has rejected the Committee’s recommendation that the Parole Board should have a greater role in decision-making around recalls. Families and politicians have vowed to continue demanding justice after this latest setback. The family campaign group UNGRIPP said: “The report is not going away, we are not going away, and we are already pursuing other opportunities for legislative change ... Resentencing is no longer a fringe option: it is a serious and sensible policy that the Government has failed to deliver.” The Prison Reform Trust said the government “should be thoroughly ashamed of this wholly inadequate response to a serious cross-party attempt to right a terrible historic wrong”. An application to free 3 IPP prisoners under the little-used Royal Prerogative of Mercy is still ongoing and there is a planned protest at Downing Street, and lobby of Parliament, on March 15.

### 3.3.5 **Prison education** (Chief Inspector's blog: what's going wrong with education in prisons?)

Purposeful activity has consistently been the worst performing area in prison inspections but scores have dropped even lower since pandemic restrictions were lifted - so far more than a third have been assessed as poor. Education is a fundamental part of successful rehabilitation and yet it continues to be nowhere near good enough. The previous education experience of many prisoners has been decidedly patchy, a large proportion also have specific learning difficulties, and a report by the PRT suggested that 25% of prisoners have an IQ of below 80 and a further 7% below 70. These issues are compounded by other factors such as mental and physical health difficulties. For most prisoners there are large gaps in their learning, and therefore they lack the skills and knowledge to be able to find and hold down jobs when they are released. Why, then, is prison education so poor? There are four main closely related reasons:

- Education is not a priority in prisons, the focus being on safety or respect
- Prisoners do not attend the classes that are on offer as restrictions on numbers brought in during the pandemic have often continued and getting prisoners to essential work such as kitchens, waste management or the staff canteen have been prioritised. Classes are often cancelled and attendance rates in education are not collected
- The curriculum is not suitable which Ofsted has repeatedly highlighted. In a recent inspection of a reception prison, where prisoners rarely spent more than 6 months, they found that many of the courses on offer took a year to complete. Education providers do not see it as their responsibility to teach prisoners to read, despite the staggeringly high levels of illiteracy in prisons which means that those in most need are passed onto a third sector organisation that uses prisoners to teach reading which is entirely dependent on the willingness of wing staff to unlock prisoners and find them space
- There is no clear accountability for the quality of education. Prison education is contracted centrally by the MOJ, with four main providers who cover almost every prison, so contract compliance is dealt with centrally and is not seen as a priority. Education providers are deeply frustrated by the inability of jails to get prisoners to workshops or classrooms consistently

Poor standards in prison education have worsened since the pandemic. If prisoners’ time has not prepared them for employment, what do we really expect to happen on their release?

### 3.3.6 **Prison numbers**

Last November, when the Prisons Minister told the House of Commons that up to 400 police cells would be used to hold prisoners because of a lack of capacity in jails he did not reveal the whole picture. He said that the emergency police cell plan was being activated because of an "acute and sudden increase in the prison population", partly due to strike action by criminal barristers which

had led to "significantly higher numbers of offenders on remand." The rise was however, entirely foreseeable and had been forecast by officials 12 months earlier, not because of the barristers' strike, but due to courts opening up again after the pandemic, an anticipated increase in police officer numbers leading to more arrests and prosecutions and various sentencing changes. The lack of planning has appalled CJ experts. The statement also left out other crucial facts such as the 20 prisons closed since 2010 to save money without replacing the cell spaces; and the ambitious prison building programme is already bogged down in planning disputes. If the prison population carries on rising at anything approaching the rates forecast (98,000 within three years) more extreme emergency measures will be required. The last thing ministers would want to do is to release some prisoners early, to free up space, but unless they grip the capacity issue that will be the only feasible alternative. This has been exacerbated by Government policy including a new approach towards 'open' prisons - on 2 December 2022, there were 642 empty bed spaces in men's open prisons. If this approach continues, more cells will sit empty while precious space elsewhere, particularly in categories B and C jails, will be squeezed.

### **3.3.7 Remand crisis**

The Justice Committee has warned that the CJS is ill-equipped to deal with ever-rising numbers of remand prisoners as it is unable to support them in mental health, addiction and maintaining contact with family needs. It calls for greater use of community alternatives particularly for non-violent offences, and improved support for those on remand. In September 2022, the daily remand population stood at 14,507 (44% increase in 2 years). The remand prison population is currently the highest it has been for at least 50 years, and remands are for longer periods of time, often beyond the statutory six-month limit. Ongoing court backlogs have been a primary driver to this growth but another is the absence of community provision to support vulnerabilities such as drug abuse, homelessness and mental illness.

### **3.3.8 Prison letters**

HMP Elmley introduced a policy called "Postless for Prisoners" on January 1. Families wanting to contact their loved ones were told to use the Email-a-Prisoner service instead. The policy appears at odds with national rules which state "Prison Rules require prisons to actively encourage prisoners to maintain outside contacts and meaningful family ties. Prisoners have a statutory entitlement to send and receive letters. Letters and phone calls assist in sustaining supportive relationships with family and friends." However, the rules also say that "there may be circumstances where it is necessary and proportionate to place restrictions or conditions on communications". The MOJ said this was a 2-week trial to address the influx of drugs but a prisoner's relative was told by the prison that it was now a permanent measure. The Howard League has said: "Thousands of people in prison rely on support from family and friends to get through their darkest days and help them turn their back on crime. Any 'security' policy that denies them the chance to receive letters and cards from loved ones is cruel, unnecessary and ultimately self-defeating."

## **3.4 Probation**

### **3.4.1 Serious Further Offence Reviews**

Two Inspectorate reviews have been published following investigations into offenders being supervised by the probation service. The reports were:

*Damien Bendall* murdered 4 people and raped another and received a whole-life sentence. The findings from the review were that "The Probation Service's assessment and management of Mr Bendall at each stage of the process from initial court report to his supervision in the community were of an unacceptable standard and fell far below what was required. "Serious mistakes were made at every point in the process including the PSR not providing the court with vital risk information (domestic abuse and being a risk of sexual harm to girls; taking what was told at face value without checking it out including his assertion that he played an important part in taking care of two of the children he later murdered. This resulted in an entirely inappropriate curfew condition to reside with his partner and her children and he was assessed as a medium risk and allocated a probation service officer rather than a trained probation officer. Opportunities were missed to rectify the mistake as the initial court risk assessment was accepted without further investigation. The

review highlights the serious under-staffing of the probation service as one of the key reasons for the service failing to supervise him with the required level of professionalism.

*Jordan McSweeney* sexually assaulted and murdered a young woman whilst subject to probation supervision. He had been released from prison and was subject to licence conditions. A litany of failings were found including Inaccurate assessments and under-estimation of risk; the case allocation process was “confusing and cumbersome; failure to recall to prison for not attending his probation appointments; little analysis of how medication for his ADHD, personality disorder and depression affected his day-to-day cognitive functioning and learning styles, and if there were links with his serious offending behaviour. The Chief Inspector drew attention to the consequences of the London Probation Service being “under the mounting pressure of heavy workloads and high vacancy rates”. The victim’s family are considering whether to sue

### **3.4.2 London Probation Service**

The London Assembly’s Police and Crime Committee published a report on the London Probation Service to see how it was performing one year after its creation in June 2021. A number of concerns were raised, in particular the impact of chronic and worsening under-staffing.

The Committee was impressed by the ability of HMPPS to implement the major reform which involved the undoing of the Transforming Rehabilitation privatisation project and the return to a unified probation service integrated within the Civil Service. The short-time frame and the fact that the re-nationalisation of the service took place in the middle of the pandemic made that achievement particularly impressive. The very serious problems identified included staffing (755 vacancies and the high cost of agency staff) which was seen as threatening the future viability of the reunified service; whether the Service was doing enough to ensure equitable treatment and outcomes for BME offenders; resettlement as people are still leaving prison without access to basic amenities and services; barriers to accessing safe and stable accommodation; the commissioning model is too complex and bureaucratic, which has excluded smaller and more specialist organisations from delivering services; and a lack of knowledge of community services by the committee, LPS leadership and front-line probation staff.

### **3.4.3 Effective resettlement practice (HMIP Academic Insight)**

This focused on how best to support people as they leave prison and transition back into the community. 6 key principles were highlighted:

- To ensure early identification of individual needs - threatened by staff shortages
- Co-produced plans, not solely focused on risk ie risk management has started to dominate probation practice to the detriment of work facilitating desistance
- Continuity of support and relational supervision, challenging current probation practice by emphasising the development of a trusting relationship without frequent supervisor changes
- Supporting people to access appropriate welfare, treatment and community resources
- Responsive to the needs of different groups eg the different resettlement needs of women and the impact of racism and discrimination on BME people
- Strengths-based and restorative approaches ie not just monitoring but treating the person as an individual with talents and abilities who can make a positive contribution to society.

In conclusion it was stated that these principles can only be implemented by practitioners who fulfil three key attributes: demonstration of commitment and genuine care; knowledge of and access to a network of community resources ; and the skills and confidence to balance monitoring and risk management with genuine rehabilitative and reintegrative support.

### **3.4.4 Post release deaths (Prisons and Probation Ombudsman reports)**

This summarises the learning from PPO investigations into the deaths of those who died within 14 days of release from prison. The overall conclusion is the acute vulnerability of people leaving prison and the learning includes findings about homelessness, accommodation, substance misuse and mental health. Recommendations included:

- Drug-related deaths through lack of availability at the point of release of a medicine that rapidly reverses an opioid overdose and the lack of ‘through the gate’ support for individuals at risk of substance misuse more generally
- Self-inflicted deaths needed better information sharing between prison and probation
- Accommodation and homelessness was a concern in post-release death investigations
- The potential impact of being released on a Friday which was perceived to be a risk factor
- All probation staff should receive support following the death of a supervisee.

### 3.4.5 **Workforce strategy** (updated workforce strategy)

Covering the next 3 years this has an ambition for a “more positive, inclusive, and diverse” probation workforce and the steps to be taken to achieve this. The reunification of the probation service was thought to herald the end to under-staffing but the problems have only got worse over the last 18 mths. Whilst >2,500 new trainee probation officers were recruited, it has been haemorrhaging experienced staff with 2,171 staff leaving in the last year alone (43% had been in post for >5 years). The strategy has five key objectives:

- Promoting wellbeing for everyone and improving staff mental health and resilience
- Attracting and retaining talented people
- Supporting and developing our people
- Creating a more diverse workforce where everyone feels included
- Fostering confident leaders who inspire and empower others

Workloads have been exacerbated by the reported increase in bureaucracy and clunky IT infrastructure which characterises day-to-day work within the civil service

### 3.4.6 **Poverty & crime** (Revolving Doors data)

This shows that 76% of UK adults think that rising levels of poverty will lead to an increase in crime. 68% think that rather than sending those who commit poverty-related crimes to prison, it would be better to address this financial hardship. 65% think that the reason why most people commit non-violent, low-level crimes is due to poverty, mental health issues, and problems with drugs and alcohol. 58% also believe that alternatives to prison should be found in these cases. One offender stated: “I’ve been through poverty-related theft. I stole a £1.50 bottle of alcohol; I went to jail for 3 weeks. As soon as I came back out, it made me rebel even more, I wasn’t in the right place. I was sent to prison three times for stealing booze when I was drunk, and my mental health was low. Did it help? Did it solve anything? No. What helped me was being diverted out of the CJS and into mental health services. It was only then I found out that I had a mental health condition. My offending wasn’t driven by me being mischievous, but by my unmet mental health needs. I was self-medicating because I wasn’t aware of these needs, I didn’t understand what was going on. Prison makes it ten times worse because you go back to even more problems. Now, with the cost-of-living crisis, it’s going to be so much harder for people in that situation than it was for me back then. It will just create a vicious circle where you might end up losing your accommodation just for a £1.50 bottle of alcohol. Is it really worth it? And how much will it cost the public?”. The findings coincide with predictions that living standards will drop by 7% as the cost-of-living crisis bites. Even though there is clear public opposition to criminalising people committing low-level, non-violent crimes because they have multiple unmet needs, and despite a tightening of the public purse strings in the Autumn Budget, the government are still pushing ahead with a multi-billion pound plan to build 20,000 new prison places. Cheaper, more effective alternatives to prison exist, particularly for those serving short sentences. Community sentences cost about 10% of what it costs to imprison someone for a year and reoffending rates are significantly lower.

## 3.5 **Youth Justice**

### 3.5.1 **Transfer to adult prison**

The age at which prisoners transfer from youth custody to an adult prison is being raised from 18 to 19 as a response to the population pressures in the men’s estate. There is capacity in the youth custody estate and a case-by-case approach will be taken



### 3.5.2 *Young prisoners bereavement*

Attending funerals is an important way of connecting with families and there are prison rules that allow applications for prisoners to be able to attend, either through release on temporary licence for compassionate reasons or by way of secure escort. One young prisoner applied for the latter to attend his great aunt's funeral (she had cared for him as a child) but this was turned down on the basis that the deceased was neither a direct family member or 'loco parentis'. The prison did not exercise any discretion to accommodate for the close relationship the young person had with her and prison policies do not take into account the non-nuclear family set-up common to children and young people in prison. Research highlights the damaging effect of bereavement on young people in custody who experience bereavement, and often traumatic deaths, more than the general population. Rather than forcing unnecessarily stringent rules on vulnerable young people, prison policies must adapt and develop to the nuances of the people they apply to and proper support provided

## 4. Other issues

### 4.1 *Ethnic inequality in the CJS*

A briefing summarises research findings from a project and recommends policy and practice changes to address ethnic disparities in remand and sentencing. The research was developed in response to the call for evidence by the Lammy Review to explain ethnic disparities in the CJS, and 5 years on from this, the findings offer compelling evidence that race and ethnicity play an important role in remand and sentencing decisions and that BME defendants are treated more harshly than white British defendants in the court system. The key findings were:

- They are more likely to be sent to Crown Court for trial, to plead not guilty, and to be remanded in custody when they appear in the Crown Court
- While they have lower/similar conviction rates than White British, if convicted they are more likely to receive a custodial sentence and a longer sentence length
- The extent of disproportionality varies considerably between ethnic subgroups (Black Caribbean young males are far more likely to receive a custodial sentence)
- Custodial sentences for drugs offences are more disproportionate than for other offences particularly for the Chinese and the Other White group
- Those pleading Not Guilty are 3x more likely to be imprisoned and receive 95% longer sentences
- Defendants remanded in custody are 7.5 times more likely to receive a custodial sentence
- Those imprisoned for >3 years receive 260% longer sentences than those convicted of less serious offences
- Combining these factors means some have a 'cumulative disadvantage'
- Disparate impacts of CJ policies and practices on ethnic minorities and the existence of systemic and individual bias by CJ officials are likely causes of outcome disparities
- The unequal treatment in the CJS cannot be attributed solely to individual CJ actors who make (conscious and unconscious) decisions based on stereotypes which cause certain groups to be viewed as more dangerous and blameworthy for their offences. Individual decisions are embedded within systemic, institutional, political, and cultural processes which interact to produce racism and ethnic inequalities in the CJS

### 4.2 *Prolific Offenders* (MOJ update on the characteristics of prolific offenders)

The headline points for 2021/22 are:

- Prolific offenders make up roughly 10% of the overall offender cohort
- Despite making up a minority of all offenders, prolific offenders are responsible for nearly half of all sentencing occasions
- Prolific offenders received twice as many custodial sentences than the remaining offending population (increased from 4.6 custodial sentences per offender in 2016 to 4.9)
- Theft offences are the most common types of offences

- For similar offences (eg shoplifting) they are more likely to receive custody than their non-prolific counterparts
- Of all prolific offenders, 3% were aged 10-17, 6% 18-20 and 91% >21. The age profile of the prolific cohort has increased, with fewer juvenile prolific offenders
- They continue to commit 8x as many offences per offender compared to non-prolific offenders, and a higher proportion of theft, robberies, criminal damage and breach offences throughout their entire criminal career. 33% of all offences committed by prolific offenders were for theft (cf18%), and shoplifting alone made up 14% of all sentencing occasions, likely to be linked to drug dependence

#### 4.3 **Victims** (Observer article)

Rape crisis centres that provide support and counselling to victims are being forced to shut their waiting lists across the country because a lack of funding means they can no longer meet the demand. Waiting lists are as long as 18 months for access to counselling, therapy and advocacy services, with some deciding to close lists altogether. About 14,000 people are waiting for a service at an accredited rape crisis centre, which are generally funded through a mixture of national and local government money alongside grant and trust funding. 1 in 4 women in the UK have been raped or sexually assaulted as an adult, according to Rape Crisis but conviction rates remain low, with just 1 in every 100 cases recorded in 2021 ending in a conviction. West Mercia Rape and Sexual Abuse Support Centre temporarily closed its waiting lists in 2021 when wait times exceeded two years. Now there are fears it may need to do so again. The CEO stated: “All caseloads are over capacity and we’ve already cut the therapy service to the bone. We’re starting the new financial year with a significant shortfall; if we cannot raise additional funding, we will lose staff, close the list again and clients will suffer.” The Rape Crisis CEO said long-term, sustainable funding for specialist support and advocacy services was “more urgently needed than ever. For many victims and survivors, reaching out for help is a huge step, one taken with extreme trepidation and difficulty – to make that step and then be told you are unable to access support is devastating. It leaves survivors feeling as if they have nowhere to turn.”

#### 4.4 **Voluntary sector** (Clinks’ State of the Voluntary Sector report 2021/22)

The key findings were:

- The cost-of-living crisis is driving up organisations’ operating costs
- The number of people CJ voluntary organisations support is increasing, and the level, complexity, and urgency of their needs continues to grow
- Organisations are working flexibly and in partnership to respond to changes, but larger caseloads are becoming a concerning feature
- While many organisations have returned to face-to-face delivery, elements of remote working, where it best meets people’s needs, remain
- Organisations reported an increase in funding but rising caseloads and running costs meant these are insufficient
- Actions for ensuring long-term sustainability included developing new services, working in partnership, flexible multi-year grant funding, and a strong and connected sector
- Staff levels remain stable but recruiting skilled and experienced staff is increasingly challenging
- Achieving full cost recovery on contracts is an ongoing and increasing challenge
- Confidence about financial sustainability directly correlated with organisational size ie the smaller the organisation the more likely it was to feel doubts about their sustainability

#### 4.5 **Women Offenders** (MOJ Female Offender Strategy Delivery Plan 2022-25)

This was published 4½ years after the strategy itself. The plan sets out how they will deliver 4 key priorities to reduce women’s offending over the 2022–25 Spending Review period:

- Fewer women entering the CJS and reoffending through early intervention and prevention eg multi-agency approach, voluntary sector involvement, new guidance and training for

police, better liaison and diversion services, and explore options to address the high number of women prosecuted for offences such as TV licence evasion

- Fewer women serving short custodial sentences with a greater proportion managed successfully in the community eg encourage more community sentencing options and reduce the number of women remanded in custody
- Better outcomes for women in custody eg reducing the severity and instances of self-harm through the expansion of therapeutic services, reducing prison moves, training prison staff in trauma-informed practice, improving the quality of healthcare, & decent accommodation
- Protecting the public through better outcomes for women on release eg address known drivers of repeat offending including accommodation, and continuity of care for mental health and/or drug and alcohol problems

CJ commentators agree that while the delivery plan focuses on the right issues, the proof of whether the MoJ is really committed to improve how the CJS deals with women will be in whether, how quickly and fully the commitments are delivered

#### 4.6 **Data First Project** (Office for National Statistics)

This research used MOJ and DfE data to analyse the factors linked with offending. The main findings were:

- going to a lower-quality school, as rated by Ofsted, is one of the many factors linked with a higher likelihood of someone being imprisoned.
- pupils may be more likely to be imprisoned based on differences in income background, gender, ethnicity, and the location of the school & deprivation in the surrounding local area
- people with SEN or children in care during secondary school are also more likely to receive an immediate custodial sentence by the time they were 24 years old.
- the majority of people given an immediate prison sentence before the age of 24 had been convicted or cautioned for an offence before the age of 16
- children who were in care or “in need” during their secondary school years, and pupils who were eligible for free school meals in primary school were all less likely than others to attend a “good” or “outstanding” secondary school. Students with recorded behavioural, emotional and social difficulties or other SEN were also less likely to have gone to a higher-rated school
- rates of imprisonment for children in need and children in care during secondary school are markedly higher than for other students
- link with poverty - poorer students also have higher rates of imprisonment