

## The Howard League for Penal Reform's submission to the Justice Committee inquiry on the future prison population and estate capacity

26 October 2023

### Key points

- The prison population in England and Wales currently stands at its highest ever level and is close to reaching capacity. This is not a short-term problem – projections suggest that the population will continue to increase.
- Prison is the most serious criminal justice sanction and as such should be reserved for the most serious of offences. However, evidence suggests that sections of the prison population are inappropriately or disproportionately incarcerated.
- A large and rising prison population has well-documented and serious implications for the safe, effective and purposeful management of prisons. It causes overcrowding and renders accommodation indecent. Compounded by staff shortages, regimes are curtailed, therefore impacting rehabilitative work. Overcrowding fosters an increase in the pressures and strains of the prison environment, impacting on the physical and mental health and wellbeing of prisoners and staff.
- The government's current expansionary approach requires massive resourcing and expenditure into what are often temporary measures (e.g., rapid deployment cells, renting cells abroad). Disproportionate expenditure on prisons detracts resources from other key aspects of the criminal justice system which help to manage supply and demand.
- Recent policy updates are welcome, but must go further in tackling supply, demand, and capacity. Current pressures require long-term and objective consideration, not just emergency solutions.

### 1. About the Howard League for Penal Reform

1.1 Founded in 1866, the Howard League is the oldest penal reform charity in the world. The Howard League has around 7,500 members and 14,500 supporters, including prisoners and their families, lawyers, criminal justice professionals and academics. The Howard League has consultative status with both the United Nations and the Council of Europe. It is an independent charity and accepts no grant funding from government.

1.2. The Howard League would welcome the opportunity to provide further information about any of the points below.

### 2. The prison population – current figures and projections

2.1 Recent figures show that the prison population in England and Wales reached its highest ever level on 13 October 2023, standing at 88,225 (Ministry of Justice, 2023). Prisons are currently around 500 places short of being full (BBC, 2023).

These latest figures come amid heightened media attention and a recent succession of policy announcements designed to tackle what has variously been termed a crisis (see, for example: HMIP, 2023; Financial Times, 2023).

2.2 Prison is the most severe criminal justice sanction and should therefore be reserved for the most serious offences and people who present most risk to the public. The composition of the prison population, however, suggests that sections of the population are disproportionately impacted by a punitive and risk-averse system, or simply do not need to be there. As of 30 September 2023, 36 per cent of people in prison under immediate custodial sentence have committed non-violent offences (MoJ, 2023d. Table 1.2b). For women, this figure rises to 47 per cent (Ibid.). The non-violent nature of the offences committed by women, and the well-documented disproportionately negative impact of prison on their lives, makes prison particularly unsuitable for women. As noted by the Ministry of Justice's own Female Offender Strategy Delivery Plan:

*Many of the women who come into contact with the criminal justice system have experienced domestic abuse, mental health problems or have a history of alcohol and drug misuse. They often commit non-violent, low-level offences, for which many receive short custodial sentences. They are also over-represented in prosecutions for specific offences, particularly non-police prosecutions. (MoJ, 2023h)*

Concerningly, weekly population updates suggest that the female estate is growing faster than the male estate; on Friday 20 October 2023, for example, the number of women in prison was up by 11.7 per cent on the year before, compared to an increase of 7.5 per cent in the male population (MoJ, 2023). Consideration should also be given to the overrepresentation of people from ethnic minority communities and the impact of racial disproportionality in the criminal justice system. People from Black backgrounds, for example, comprise 12 per cent of the prison population, whilst comprising just four per cent of the general population (MoJ, 2023d. Table 1.4).

2.3 Regarding sentencing practices, 16,196 people are on remand, a 50-year high accounting for 18 per cent of the total prison population (MoJ, 2023d). The remand population continues to increase, up 12 per cent on the previous 12 months (Ibid.). However, a significant proportion will go on to be acquitted or will receive a non-custodial sentence or other outcome. Among people remanded at magistrates' courts in 2022, the proportions were 10 and 11 percent respectively. At the Crown Court, proportions were 14 and 16 per cent respectively (MoJ, 2023g. Table Q4-4). Of the 2,921 people still in prison on Imprisonment for Public Protection (IPP) sentences, 43 per cent have never been released, and 55 per cent have been held for at least 10 years beyond the end of their tariff (MoJ, 2023d. Tables 1.9a and 1.9b).

2.4 The inefficacy of both short and long sentences has been highlighted by a range of stakeholders. Many people convicted of low-level and non-violent offences are given short prison sentences. For example, in 2022, 3,372 people convicted of shoplifting received custodial sentences of 12 months or less (MoJ, 2023g). Conversely, the frequency and length of long sentences has increased. In 2010, 36

per cent of sentences were for four years or more, compared with 55 per cent in 2022 (House of Commons, 2023d), and the average custodial sentence length has consistently risen over the last 10 years from 14.5 months in 2012 to 22.6 months in 2022 (MoJ, 2023a). As found by the Sentencing Council, '*The current evidence does not suggest that increasing the length of immediate prison sentences is an effective way to reduce reoffending. Some research suggests that what happens during a custodial sentence (e.g., rehabilitative interventions) may matter more than sentence length*' (Sentencing Council, 2022). The Justice Committee's newly published report on *Public opinion and understanding of sentencing* explains that increased sentence lengths are a result of government-led inflation in response to a hardening of public opinion towards serious crime (Justice Committee, 2023). The report highlights this as an accountability gap given that there is limited public understanding about the responsibility for sentencing decision making; only 22 per cent of respondents identified that Parliament is responsible for setting maximum sentences (ibid.).

2.5 This is not a short-term problem. Prison population projections suggest that the population will continue to rise across all demographics to a central estimate of 94,400 by March 2025 and between 93,100 to 106,300 by March 2027 (MoJ, 2023a). This is attributed to increased police and prosecutorial demand, although the projection methodology acknowledges uncertainty. The publication of new prison population projections has been delayed until February 2024 in order to establish how to account for recent policy announcements. Consideration as to how projections can account for practice as well as policy would be welcomed (for example, judicial sentencing practices, the overuse of remand etc). While there is some fluctuation between projections and current population between different cohorts, the remand population is rising more rapidly than projected – 2021 projections estimated that the remand population would be expected to peak at 13,800 in July 2023, with more recent projections suggesting that it would decline (MoJ, 2021 and 2023a). Rather, it has continued to increase and stood well above projections at 16,196 on 30 September 2023 (MoJ, 2023d). Projections of a larger population than stands at present should raise concern; the current figures are unsustainable. If the population grows as expected, so too will the disproportionate impact of prison on people with protected characteristics.

### **3. The implications of a rising prison population**

3.1 A large and rising prison population has well-documented and serious implications for the safe, effective, and purposeful management of establishments and those living in them. Resources cannot meet demand – two thirds of prisons are housing more people than their certified normal accommodation (CNA) which represents a good and decent standard of accommodation (MoJ, 2023f). One third of prisons were built in the Victorian era, characterised by smaller buildings and cell sizes unsuitable for doubling up. As a result, overcrowding and poor conditions are more keenly felt. Structural problems impact on temperature, lighting and plumbing, and the need for continual repair often renders space out of commission (Beard, 2023). The research project *The persistence of the Victorian prison*, in partnership with the Howard League, is currently exploring people's experiences of living and working in these institutions (for more information see: [The Howard League | The persistence of the Victorian prison](#)). Recent inspections of two Victorian prisons highlighted these concerns. At Bristol, HMIP found that almost half of the residents

shared cells designed for one person or resided in single cells with no internal sanitation (HMIP, 2023a). At Pentonville, the IMB found that men shared cells measuring 12 by eight feet with internal sanitation which was often unscreened. They concluded that ‘the lack of privacy alone could not be described as decent or humane’ (IMB, 2023).

3.2 The consequences of overcrowding are compounded by (and arguably contribute to) staff shortages – both go hand in hand and have a detrimental impact on officers and prisoners. The pressures and lack of safety faced by staff was highlighted in a recent Prison Officers’ Association (POA) blog post: *‘Staffing shortages, lack of cell space, severe overcrowding and excessive hours working coupled with traumatic incidents all lead to an impact on frontline staff’* (POA, 2023). Indeed, the service is currently experiencing the highest staff attrition rate ever seen (House of Commons, 2023b) and there are ten per cent fewer staff than in 2010, despite a £100 million recruitment campaign (Ministry of Justice, 2023b). At the time of Daniel Khalife’s escape from HMP Wandsworth, nearly 40 per cent of expected staff were absent (BBC, 2023a). These pressures impact those living in prison through heavily curtailed regimes. HMIP found that 42 per cent of those surveyed spend up to 22 hours a day in their cell, and that access to purposeful activity in the library, gym, employment and education were limited (HMIP, 2023b). Key aspects of prison life that assist with rehabilitation and support wellbeing are not being provided. These pressures also affect people’s health and wellbeing through restricting access to holistic, psychological, and medical services. In their annual report, HMIP noted that *‘the reduced number of health appointments created by high staff vacancy rates was exacerbated by a dearth of prison officers and continued restrictions to time out of cell, which reduced prisoner access to appointments both within and outside the prison’* (HMIP, 2023b). New data recently brought to light details the number of occasions and frequency with which prisons have imposed a ‘red’ regime in response to staffing pressures (i.e., a severely curtailed regime offering only the basics) (The Guardian, 2023).

3.3 While cause and effect cannot yet be established, safety in prisons continues to worsen. The Ministry of Justice’s latest safety in custody statistics show increases across the board: suicides increased by 24 per cent; self-harm incidents increased by 21 per cent across the estate, with a stark rise of 65 per cent in women’s establishments; and assaults increased by 15 per cent (MoJ, 2023c). Overcrowding impacts safety in a number of ways, including by reducing well-being and access to support, and increasing the pressures and strains of the prison environment. A recent HMIP inspection of HMP Bristol highlighted the links between safety and overcrowding/limited resources. There were eight self-inflicted deaths since the last HMIP inspection in 2019, and assaults on prisoners and staff were higher than in other establishments, and rising (HMIP, 2023c). Staffing challenges and lack of regime meant *‘... a culture of indolence and hopelessness that undoubtedly also contributed to a significant amount of drug misuse (see paragraph 3.33), as well as violence (see paragraph 3.10) and self-harm (see paragraph 3.36)’* (ibid.). Prison and Probation Ombudsman (PPO) reports into self-inflicted deaths indicate the ways in which population and staffing pressures can reduce the efficacy of care and prevention processes, and capacity for the building of holistic relationships (see for example: PPO, 2021a, 2021b, 2022a, 2022b). The implications of overcrowding on safety and violence disproportionately affect protected characteristics groups. In the

women's estate, incidents of self-harm reached their highest level since current recording practises began in 2004 (MoJ, 2023c). In the men's estate, data has shown that black prisoners are seven times more likely to be pepper sprayed (Inside Time, 2022).

#### **4. Resourcing and management of capacity pressures**

4.1 Rather than working to reduce the prison population to a size that operates effectively within its means, the government has taken an expansionary approach requiring even greater resourcing. HMPPS currently receives 53 per cent of the MoJ's budget, of which three fifths are spent on prisons alone (House of Commons, 2023a). By contrast, just 17 per cent of the MoJ's expenditure is on court services (Ibid.). The size and demands of the prison system are somewhat of a self-fulfilling prophecy – the greater the expenditure, the larger it becomes. The disproportionate expenditure on prisons results in less investment in downstream activities (e.g., tackling the court backlog, for example), alternatives to custody (e.g., diversion, out of court disposals), and probation supervision. Disproportionate expenditure also impacts victims' pursuit and receipt of justice in an under-resourced court system beset by delays. The Justice Committee identified a need for greater public knowledge and understanding about, among other things, the resource implications of sentences (Justice Committee, 2023).

4.2 Existing efforts to reduce these pressures are proving ineffective. Moreover, spending on temporary measures does not equate to long term investment. The government's building programme cannot keep pace - the concurrent closure of prison places and creation of new ones since 2010 has resulted in a net increase of just 300 places (House of Commons, 2023c). The £4 billion investment to create 20,000 new prison places includes the construction of 'rapid deployment cells' - temporary structures with a lifespan of just 15 years (MoJ, 2023d). Another temporary measure requiring further expenditure includes the renting of prison cells overseas (Howard League, 2023). An additional £400 million investment to create 800 new cells was recently announced (BBC, 2023). While on paper these measures may seem to increase capacity, there appears to be little consideration of other factors that would ease pressures and improve safety (for example, improved staff ratios).

#### **5. Recent policy updates**

5.1 At time of writing, we have now seen a dramatic slew of policy announcements indicating that the government has finally accepted that the supply of prison capacity cannot meet demand. This is an important moment, as successive governments of differing political stripes have spent decades insisting that their concern is primarily managing the supply of prison places to the criminal courts – effectively ignoring the demand dimension to the issue of capacity. Acting to facilitate targeted early release and limiting the use of short prison sentences is welcome, although questions as to how the latter will be delivered require further detail. In particular, the question of how the beleaguered probation service – itself weakened by staff shortages and botched structural reforms – can be properly resourced to take up additional supervision, remains unanswered.

5.2 Reforms should also take a longer-term focus, with existing trends and wider implications in mind. Emergency measures can only go so far. Limiting the use of short sentences may reduce the disruptive ‘churn’ in the prison system but will not make much difference to the overall population (on June 30 2023, for example, people serving sentences of less than 12 months made up just five per cent of the overall prison population (MoJ, 2023d. Table 1.1)). Increased penalties such as the removal of mid-way release for people convicted of rape do not necessarily improve safety; rather, release without supervision and support in the community may increase risk. The knock-on pressures of demand and capacity within the criminal justice system as a whole leave little space for practitioners and decision makers to explore different options, resulting in risk averse remand, parole and recall practises which swell the prison population. Suggested reforms to early guilty pleas will not be enough to tackle the growing remand backlog and presuppose that a large proportion of those on remand are guilty.

5.3 The pressure of party politics continues to hamper policymakers from a proper consideration of what a safe, effective, and humane criminal justice system should look like. Reformist policies are still being packaged with other, tougher measures – such as more draconian prison terms for rape, and increased use of whole life orders. As identified in their recent report, the Justice Committee found that ‘... *public debate on sentencing is stuck in a dysfunctional and reactive cycle*’ (Justice Committee, 2023). It is therefore vital that the MoJ announcements of October are not simply a package of emergency measures, but part of a sustainable change of direction, with a long-term vision for the future. There was some element of this in the Secretary of State’s statement to Parliament, as he concluded, couched in the language of priorities, ‘*to govern is to choose*’ (House of Commons, 2023f).

## References

A full reference list is available [here](#).