

Howard League for Penal Reform

The Howard League for Penal Reform's submission to the Special Rapporteur's call for input:

Current issues and good practices in prison management – Thematic report of the Special Rapporteur on Torture

About the Howard League for Penal Reform

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.

The prison system in England and Wales

The criminal justice system in England and Wales is overseen by the Ministry of Justice (MoJ), which has responsibility for courts, probation services, and prisons (for men, women, and children). Prisons in England and Wales are run by His Majesty's Prison and Probation Service (HMPPS) (with prisons in Wales run by an HMPPS directorate). HMPPS also has responsibility for: probation services, rehabilitation services for people leaving prison, providing support to stop people reoffending, and contract managing private sector prisons and services such as the prisoner escort service and electronic tagging. The prison estate in England and Wales consists of 120 prisons.¹ These hold people who have been sentenced and people awaiting trial or sentencing on remand. Fourteen prisons are run by private sector companies (G4S, Serco, and Sodexo). Around one third of prisons in England and Wales were built in the Victorian era, with poor accommodation (Beard, 2023). As of November 2023, there were 87,764 people in prison, comprising 84,168 people in men's prisons and 3,596 in women's prisons (MoJ, 2023). HMPPS is also responsible for incarceration of children, around 600 of whom are held in Young Offender Institutions (YOIs) and one Secure Training Centre (STC) (effectively, children's prisons).

Prisons in England and Wales are subject to several oversight mechanisms. Heading the inspection body His Majesty's Inspectorate of Prisons (HMIP), His Majesty's Chief Inspector of Prisons (currently Charlie Taylor) is appointed by the Secretary of State for Justice. HMIP undertakes inspection visits, produces reports, makes recommendations, and conducts follow-up visits. Urgent Notifications (UNs) can be issued to respond to immediate concerns. There is also a scheme of lay monitoring of custody, through Independent Monitoring Boards (IMBs). IMBs engage volunteers attached to a particular prison, who regularly visit and report on conditions in that institution. The Prisons and Probation Ombudsman (PPO) investigates complaints by prisoners beyond internal complaints procedures/following dissatisfaction with

¹ For a full list see: [Prisons in England and Wales - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/collections/prisons-in-england-and-wales)

internal outcomes; and investigates deaths in prison. Finally, prisons are subject to oversight by the UK National Preventive Mechanism (NPM).

Current challenges

The prison estate in England and Wales is experiencing acute pressure. The population currently stands at its highest ever level and is close to reaching capacity. The jurisdiction has the highest rate of imprisonment per capita in Western Europe, with 146 per 100,000 people in prison (Prison Studies, 2023). 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, 2023a). Prisons are currently around 500 places short of being full (BBC, 2023). 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, 2023b).

Criminal justice stakeholders and oversight bodies across the board are repeatedly raising concerns. The Chief Inspector of Prisons has labelled the situation a crisis (HMIP, 2023). The Independent Monitoring Board described conditions at HMP Wandsworth, a chronically overcrowded prison, as ‘inhumane’, and argued that conditions ‘... *demonstrated the shortcomings of the prison system that the IMB has been highlighting repeatedly for many years. Prisoners are being failed and most have a severely reduced chance of rehabilitation upon release*’ (IMB, 2023a).

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. Such is the level of concern internationally regarding the state of English prisons, that European courts are refusing to extradite people to the England due to concerns about prison conditions (see for example the decision in Germany at the Karlsruhe Higher Regional Court, 10 March 2023 - 301 OAus 1/23. A similar case at a Dutch court was reported in 2019 (The Guardian, 2019)).

The composition of the prison population

Prison is unsuitable environment for many people, and disproportionately affects certain demographics. The non-violent nature of 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, 2023c)

Concerningly, weekly population updates suggest that the female estate is growing faster than the male estate; on Friday 10 November 2023, for example, the number of women in prison was up by 12 per cent on the year before, compared to an increase of 6 per cent in the male population (MoJ, 2023d). 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, 2023e. Table 1.4). In the children and young people's estate, disproportionality is starker – children and young people from Black backgrounds make up 26 per cent of the population, with 50 per cent of the population comprised of children and young people from non-White backgrounds (MoJ, 2023j).

The prison population is diverse and complex, and many experience a range of complex vulnerabilities and needs. A recent report by the Centre for Mental Health found that nine out of ten people in prison have at least one mental health or substance misuse problem (Centre for Mental Health, 2023). Common mental health and neurodiverse conditions included anxiety and depression, psychosis, personality disorder, ADHD, and PTSD. Thirty-nine per cent of participants had a dual diagnosis of substance misuse and mental health or related disorder, 54 per cent had a history of self-harm, and 40 per cent had a history of suicide attempts (Ibid.).

The prison population is also comprised of people yet to be sentenced or convicted or serving abolished sentence types. The remand population currently stands at 16,196, a 50-year high accounting for 18 per cent of the total prison population (MoJ, 2023e). The remand population continues to increase and is currently up 12 per cent on the previous 12 months (Ibid.). However, a significant proportion of people on remand 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 per cent respectively. At the Crown Court, proportions were 14 and 16 per cent respectively (MoJ, 2023f. Table Q4-4). One of the Howard League's members in prison wrote to us explaining that he had been on remand for more than four years, for a non-violent offence for which he handed himself in.

HM Chief Inspector of Prisons has highlighted the negative impact of the swelling remand population in establishments, and the length of time that some are held on remand (HMIP, 2023). 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.

Imprisonment for Public Protection (IPP) sentences are indeterminate sentences designed to indefinitely detain those posing the most risk of serious harm. People on IPP sentences can only be released if the Parole Board is satisfied that they are no longer dangerous and can be recalled to prison for breaking licence conditions. The sentence was heavily criticised and abolished in 2012, but not retrospectively. Of the 2,921 people still in prison on 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, 2023e. Tables 1.9a and 1.9b). Another member wrote to tell us that whilst he was originally sentenced to a one-year tariff on an IPP sentence, he has now been in prison for 19 years.

The impact of IPP sentences on people's psychological health and wellbeing is well-documented. The Justice Committee found that "*suicidal thinking and suicide attempts featured frequently in the testimonies of those serving the IPP sentence in prison, with many citing the sentence itself as a major contributory factor*" (Justice Committee, 2022). In their report into the ongoing ramifications of the sentence, the Justice Committee recommended that government introduce legislation reducing the qualifying period for terminating a licence from 10 years to five and resentence all people subject to IPP (Ibid.). This recommendation was, however, rejected by the government who received strong criticism from parliamentarians and sector organisations (Justice Committee, 2023).

The inefficacy and politicised nature of long sentences has been highlighted by a range of stakeholders. The frequency and length of long sentences has increased, driven by a 'tough on crime' political discourse around law and order, in which Parliament mandate ever-increasing sentence lengths (Justice Committee, 2023a). The Justice Committee's newly published report on public opinion and understanding of sentencing 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.). 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, 2023b). 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).

Measures to reduce overcrowding

Efforts to reduce the pressures of overcrowding are centred around the creation of new prison places. These are, however, temporary measures without long-term investment, which are proving to be ineffective. The government's building programme cannot keep pace with demand - 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, 2023a). The places created by new prisons currently under construction or nearing completion will not be enough to meet the needs of even the lowest population projections (HMIP, 2023). 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, 2023g). Another temporary measure requiring further expenditure includes the renting of prison cells overseas (Howard League, 2023). This was accounted for in draft legislation in the Criminal Justice Bill, announced in the King's oral statement to Parliament, establishing powers to transfer prisoners to serve their sentence abroad (Prime Minister's Office, 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). HMIP reported that temporary emergency measures such as Operation Safeguard

(the housing of prisoners in police custody cells) have now become routine in certain areas (HMIP, 2023).

In October 2023, further policies were announced in an attempt to tackle the overcrowding crisis, including targeted early release and limiting the use of short prison sentences. Whilst these developments are welcome, questions arise as to how the beleaguered probation service – itself weakened by staff shortages and botched structural reforms – can be properly resourced to take up additional supervision. 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, 2023e. Table 1.1)).

Daily life in prisons

A large and rising prison population has well-documented and serious implications for daily life in prisons. 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, 2023h). 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).

Recent inspections of two Victorian prisons highlighted these concerns. At Bristol prison, 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 prison, 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). Members in prison write to us about shortages of daily essentials such as food and prison-issue clothing.

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). A member in prison wrote ‘*...the staff are too busy to help me with my issues. The overcrowding affects staff mood and attitude as they are overworked.*’ At the time of Daniel Khalife’s high profile escape from HMP Wandsworth in September 2023, 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). 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, 2023a). Lack of purposeful activity has been repeatedly highlighted as the biggest area of concern by HM Chief Inspector of Prisons since 2020 (HMIP, 2023). Letters from our members in prison show that people want the opportunity to address their offending, to address mental health or addiction issues and to work towards a life beyond crime. They write of a lack of suitable education and employment, feeling as if they have atrophied whilst in prison.

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). A letter received from a Howard League member who was in remission from leukaemia, only to be diagnosed with lung cancer, illustrated the challenges around and impact of missed health appointments. HM Chief Inspector of Prisons commented that '*... Prisoners who have spent their sentences locked in their cells or languishing on their wing are going to leave prison without having been given anything like the support that they need to successfully resettle back into the community when they are released*' (HMIP, 2023).

Safety, violence, and use of force

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, 2023i). Overcrowding impacts safety in a number of ways, including by affecting 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 resulted in:

... 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 practices began in 2004 (MoJ, 2023i). Systemic issues in the prevention of self-harm and suicide, compounded by the pressures of overcrowding, are detailed in the Howard League's submission to the Independent Advisory Panel on Deaths in Custody, available [here](#) (Howard League, 2022).

Overcrowding and staffing pressures further impact on disciplinary practices. In the adult estate, time in cell is the default, and in the youth estate, the practise of separation or 'keep-aparts' are used to manage behaviour. Young Offender Institutions (YOIs) have reverted to extensive and complicated 'keep-apart' lists to prevent children in conflict with each other from mixing. While these seem expedient in the short-term, prisons that adopt this policy usually remain the most violent, and regimes are inevitably reduced because different groups have to be locked away before others can be let out. The boredom leads to children calling out to each other through windows or cell doors and creating further hostility. As found in an inspection of HMYOI Cookham Wood *'In the absence of an effective behaviour management plan, separation had become almost the only method of managing the most challenging boys ...'* (HMIP, 2023k). They concluded that *'Solitary confinement of children had become normalised at the establishment. Over a quarter of the population was completely separated from the main population. Most were locked in their cells for 23.5 hours a day with no meaningful human interaction'* (Ibid.).

PAVA, a synthetic form of pepper spray, has been in use in men's prisons since 2018 despite concerns regarding its usage. A pilot evaluation report published by the Ministry of Justice was unable to conclusively demonstrate that PAVA had any direct impact on levels of prison violence (Prison Reform Trust, 2022. See also: Howard League, 2019). The limited evidence that exists paints a concerning picture. In the men's estate, data has shown that Black prisoners are seven times more likely to be pepper sprayed (Inside Time, 2022). Inspection reports detail disproportionate and inappropriate use:

- At HMP Wealstun, body-worn cameras were not being switched on early enough and officers had not received refresher training in the use of PAVA (HMIP, 2023d)
- At HMP Bullingdon, there had been one use of PAVA in the past year, which had inappropriately targeted several prisoners and affected members of staff (HMIP, 2023e)
- At HMP Long Lartin, there was no routine enquiry into the use of PAVA to make sure it was justified or to ensure that any lessons could be learned (HMIP, 2023f)
- At HMP Holme House, insufficient body-worn video camera footage was made available to inspectors to assess whether the use of PAVA was justified and proportionate (HMIP, 2023g)
- At HMP Risle and Preston, PAVA was used against prisoners who were at risk of or threatening to self-harm (HMIP, 2023h and 2023i)
- At HMP Brinsford, PAVA was described as being used 'recklessly and freely', and without scrutiny by prison leaders. (HMIP, 2023j)

It should be noted that use of PAVA that is not strictly necessary will constitute a breach of Article 3 European Convention on Human Rights.

At the time of writing, it is not possible to understand and scrutinise the extent to which PAVA is being used and against whom. In 2020, the government committed to introducing a number of measures to help monitor and scrutinise PAVA use in prisons following litigation. However, almost three years later, national data on use of force and reports on PAVA use disaggregated by protected characteristics are still not being published.

Conclusions

As noted by the Special Rapporteur in her terms of reference, the prison system in England and Wales is under growing pressure. The prison estate maintains a peculiar position of being both overcrowded and dysfunctional, yet disproportionately over resourced (HMPPS currently receives 53 per cent of the MoJ's £14.8 billion budget, of which three fifths are spent on prisons alone (House of Commons, 2023c)). The MoJ's own data, the reports of oversight bodies, and the experiences of people living and working in prisons paint a grim picture, in which establishments are struggling to manage facilities safely, humanely and in accordance with international human rights standards. As noted by the Special Rapporteur, this elevates the risks of cruel, inhumane or degrading treatment or punishment, and opportunities for meaningful rehabilitation are limited. The prison estate in England and Wales is not fit for purpose – the proven reoffending rate for adults released from custody currently stands at 37 per cent, rising to 55 per cent for those on sentences of 12 months or less (MoJ, 2023k). The government's expansionary and knee-jerk responses do little to resolve the situation. Rather, 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. We must ensure that prison, as the most severe criminal justice sanction available, is reserved for the most serious offences, and that such sentences are used sparingly and effectively to rehabilitate and integrate people back into the community.

The Howard League for Penal Reform can support the Special Rapporteur with any further information as necessary. We hope that the Special Rapporteur will consider visiting the UK to investigate these issues, and we stand ready to support such a visit.

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