

**Submission to the Independent Sentencing Review 2024 to 2025:  
Call for Evidence**

**Key points**

- In explaining the key drivers of changes to sentencing, the Howard League reiterates the position in its 2024 report, *Sentence inflation: a judicial critique*, which focused on legislative interventions and the role of, and links between, public opinion, the media, and political rhetoric.
- The rising prison population cannot be addressed without grasping the nettle of sentence inflation. The principle of ‘resetting the clock’ should be the guiding principle of any legislative reform to reverse this trend. The Howard League would advocate for a reversion to the sentencing benchmarks of the 1990s.
- A sustainable criminal justice system is one in which prison is used as sparingly as possible, for as little time as possible.
  - Custodial sentences should be reconceived in two parts – for example, as ‘Detention and Supervision’ orders.
  - The custodial portion of the sentence should be focused on achieving a successful and safe release in the quickest time possible. There is a need for the government to improve provision and access to rehabilitation, and to facilitate more timely progression through sentences. The government should establish clear and consistent routes out of custody and address inefficient and ineffective recall policies and procedure.
  - The use of custody should be reserved for those who commit serious and violent offences. This would reduce pressure on the prison system and would allow for a focus on in-prison interventions and support for those who pose the most risk to the public.
  - Short sentences of 12 months or less should be abolished, and the power of the lay magistracy to sentence individuals to custody should be removed.
- In terms of non-custodial sentences:
  - A well-resourced and effective probation service is crucial to the delivery of community sentences. Probation should be independent of prisons and structured more locally than at present.
  - The Howard League welcomes the Review’s openness to the possibilities of technological innovation in respect of sentencing, albeit only within the context of this well-resourced, effective probation service.

- The government should reverse provisions made in the Crime and Courts Act 2013, which mandated that every community sentence must contain a punitive element.
- It is clear that increasingly severe criminal justice sanctions do not work: the Review should explore how justice for victims and public protection (particularly from violence against women and girls) might be achieved beyond the failed ‘tough on crime’ approach.
- This submission is informed by feedback from members of the Howard League in prison, and by international comparative research prepared by Akin Group.

**1. What have been the key drivers in changes in sentencing, and how have these changes met the statutory purposes of sentencing?**

Section 57 of the Sentencing Act 2020 sets out five statutory purposes of sentencing. These are: the punishment of offenders; the reduction of crime (including its reduction by deterrence); the reform and rehabilitation of offenders; the protection of the public; and the making of reparation by offenders to persons affected by their offences.<sup>1</sup> Prison is the most severe sanction available. Despite this, the prison population in England and Wales has risen to its highest level ever, following decades of continued growth. Increased use of the most severe sanctions is at odds with the broader context in which crime (and violent crime) is decreasing, a long-term trend observed across the western world. Custody has been used more frequently, and custodial sentences have got longer.

In 2024, the Howard League published *[Sentence inflation: a judicial critique](#)*. This report, co-authored by the most senior former judges in England and Wales, outlined how and why prison sentences have increased in recent decades and the impact this has had. In answering this question, we would urge the Review to refer to this report, which covers the impact of legislative intervention (concerning murder in particular, but also including increased statutory maxima, mandatory minimum sentences and the creation of new offences) and the role of, and links between, public opinion, the media, and political rhetoric. While it is a shame that the Review is not considering changes to sentencing for murder in detail, we welcome the recently announced Law Commission review of homicide law and sentencing.<sup>2</sup>

In addition to those factors raised in the *Sentence inflation: a judicial critique* report, the Review should have regard to other instances of legislative intervention that have increased the amount of time people spend in custody or on licence.

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<sup>1</sup> Sentencing Act 2020, s57 <https://www.legislation.gov.uk/ukpga/2020/17/part/4/chapter/1>

<sup>2</sup> Law Commission (6 December 2024) *Law Commission to review law and sentencing in homicide* <https://lawcom.gov.uk/law-commission-to-review-law-and-sentencing-in-homicide/> accessed 8 January 2025

The most notable example is perhaps the introduction of Extended Determinate Sentences (EDS) in 2012,<sup>3</sup> which extends the amount of time someone serves in custody (to two-thirds) and requires Parole Board approval for release. People on EDS are also subject to an extended licence period, thereby increasing the pool of people eligible for recall to custody. The number of people serving an EDS has ballooned by 326% since 2015.<sup>4</sup> Other, more recent, legislative interventions include the Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020<sup>5</sup> and provisions of the Police, Crime, Sentencing and Courts Act 2022, each of which has served to increase the length of time spent in custody in certain instances.<sup>6</sup>

The impact of the introduction of sentencing guidelines prior to, and following, the Sentencing Council's inception should also be explored.<sup>7</sup> The Sentencing Council's role is to ensure a proportionate structure for sentencing, meaning that the increase in minimum sentences for one crime will necessarily have a knock-on effect on other sentences (one example being the Sentencing Council's now-revised 2012 burglary guidelines).

Sentencing guidelines are not immune to the influence of external factors. First, legislative intervention, such as increases in maximum sentences, results in increases in the sentencing brackets. Second, stakeholders have raised concerns about the effect of guidelines on judicial behaviour. Judges have shown a marked reluctance to step outside the guidelines in appropriate cases, despite being told on numerous occasions by the Court of Appeal that they are guidelines not tramlines.

One concern is the way the process takes account of Court of Appeal authorities. These cases generally involve sentences which have been deemed manifestly excessive. While the Court of Appeal will reduce a manifestly excessive sentence, the eventual sentence tends to be at the top of the proper bracket. Basing guidelines on these cases can therefore distort the normal range.

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<sup>3</sup> Sentencing Academy, *Extended Determinate Sentences: A Review of the Practical Issues* (2024) <https://www.sentencingacademy.org.uk/wp-content/uploads/2024/03/Extended-Determinate-Sentences-A-Review-of-the-Practical-Issues.pdf> accessed 8 January 2025

<sup>4</sup> MoJ (2024) *Offender management statistics quarterly: January to March 2024*, Annual prison population: 2015 to 2024, Table 1A2 (2024) <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-january-to-march-2024> accessed 8 January 2025

<sup>5</sup> The Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020 introduced provision that adults convicted of certain violent and sexual offences of seven years or more must spend two-thirds of their sentence in custody instead of half, with no option of early release by the Parole Board.

<sup>6</sup> Section 132 of the Police, Crime, Sentencing and Courts Act 2022 introduced powers to detain standard determinate sentence prisoners beyond their conditional release date where the Secretary of State for Justice believes on reasonable grounds that the prisoner would, if released, pose a significant risk to members of the public of serious harm occasioned by the commission of specified offences. The 2022 Act also extended the circumstances in which people serving sexual and violent offences are released automatically at the two-thirds point rather than the halfway point.

<sup>7</sup> For further discussion see: *Transform Justice, The Sentencing Council and criminal justice: leading role or bit part player?* (2020) [https://www.transformjustice.org.uk/wp-content/uploads/2023/02/TJ\\_November\\_2020\\_IA\\_3.pdf](https://www.transformjustice.org.uk/wp-content/uploads/2023/02/TJ_November_2020_IA_3.pdf) accessed 8 January 2025; and Jose Pina-Sánchez, John Paul Gosling, Hye-In Chung, Elizabeth Bourgeois, Sara Geneletti and Ian D. Marder, *Have the England and Wales guidelines affected sentencing severity? An empirical analysis using a scale of severity and time-series analyses* (2019) 59 Brit. J. Criminol., 979

Senior judicial stakeholders have also shared concerns that the power of the Court of Appeal to uplift sentences influences judicial behaviour. Sentencing guidelines are rigorously followed by judges to avoid defendants being subject to re-sentencing by the Court of Appeal. In particular, efforts are made to avoid sentences being classed as 'unduly lenient' due to the damaging effect on the defendant whose sentence is increased, but also on the perceived professional standing of the judge. The interplay of media and public opinion is also evidenced here; lists of the most 'lenient' judges have been published by the tabloid press, which most judges would wish to avoid.

## **2. How might we reform structures and processes to better meet the purposes of sentencing whilst ensuring a sustainable system?**

The impact of the sentencing inflation described above means we are left with a system running on a penal treadmill: the faster ('tougher') the system runs in terms of lengthening sentences to appease public opinion, the faster it must go to keep up with itself. This has been the case for several decades, but it has been brought to a head by the crisis in prison capacity. The Review is correct to recognise that this approach is no longer sustainable; it never really was.

A large and rising population affects the safe, effective and purposeful management of prisons, especially when appropriate resources are not injected into the system. Overcrowding affects the physical and mental health and wellbeing of people living and working in prisons.<sup>8</sup> Safety in prisons, including levels of self-harm, suicide and assaults, continues to worsen.<sup>9</sup> HM Inspectorate of Prisons (HMIP) reports make for alarming reading in this regard, with inspectors consistently highlighting declining levels of safety in prison. Current population and staffing pressures mean that access to daily regime and purposeful activity is severely limited.<sup>10</sup>

The only purpose of sentencing that prison appears to meet is punishment, and public protection through incapacitation, for as long as the person is incarcerated. Prison is not meeting the remaining objectives, which focus more on preparation for safe release and cutting reoffending.

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<sup>8</sup> For further detail, see: Howard League, *Submission to the Justice Committee inquiry into the future prison population and estate capacity* (2023) <https://howardleague.org/submission-to-the-justice-committee-inquiry-on-the-future-prison-population-and-estate-capacity/> accessed 2 September 2024; Howard League, *Submission to the UN Special Rapporteur on Torture's call for input on current issues and good practice in prison management* (2023) <https://howardleague.org/submission-to-the-un-special-rapporteur-on-tortures-call-for-input-on-current-issues-and-good-practice-in-prison-management/> accessed 2 September 2024; and

HMIP, *HM Chief Inspector of Prisons for England and Wales Annual Report 2022–23* (2023) <https://webarchive.nationalarchives.gov.uk/ukgwa/20240417095837/https://www.justiceinspectors.gov.uk/hmiprison/inspections/annual-report-2022-23/> accessed 8 January 2025

<sup>9</sup> MoJ, *Safety in custody: quarterly update to June 2024* (2024) <https://www.gov.uk/government/statistics/safety-in-custody-quarterly-update-to-march-2024> accessed 8 January 2025

<sup>10</sup> HMIP, *HM Chief Inspector of Prisons for England and Wales Annual Report 2023–24* (2024) [https://cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/19/2024/09/25.13\\_HMI-Prisons\\_AR-23-24\\_v6a\\_Final-WEB.pdf](https://cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/19/2024/09/25.13_HMI-Prisons_AR-23-24_v6a_Final-WEB.pdf) accessed 8 January 2025

The reality of what happens in our prisons mirrors an important philosophical point in relation to the five purposes of sentencing. Parliament has not determined a hierarchy of priorities for these purposes, nor has it properly defined what each purpose really means, resulting in punishment being promoted almost by default. In particular, there is little understanding of the tension and conflict that sits between punishment and rehabilitation – that the former actively works to make the latter more difficult. There is no consensus about the proper balance to be struck between these two purposes. The Review provides an opportunity to address this.

### **Grasping the nettle: achieving sentence deflation**

A sustainable criminal justice system is one in which prison is used as sparingly as possible. This requires fundamental rethinking of the nature and purpose of criminal justice sanctions. It may be partly achieved through a rebalancing between the custodial and non-custodial elements of sentences, as described in section five of our response. At the same time, the only way to reverse sentence inflation is to achieve sentence *deflation*.

After the 2024 general election, the Howard League published a policy briefing outlining the seriousness of the prison capacity crisis, titled [Grasping the nettle](#). In that briefing we called for the implementation of SDS40 as an immediate emergency measure and for the creation of a sentencing review to address the longer-term challenges. The prison capacity crisis means that the government now has no choice but to grasp the nettle and not only stop the *trend* of sentence inflation, but to reverse its historic impact. This is the only way the prison system can move away from a permacrisis of overcrowding and everything that entails.

*Sentence inflation: a judicial critique* showed that sentence inflation has developed over decades – since at least the 1990s – with the Criminal Justice Act 2003 recognised as a particularly inflationary piece of legislation. It can be observed by looking at the average custodial sentence length for offences over time, in this case since 2010 in the quarterly Criminal Justice Statistics published by the Ministry of Justice (MoJ):

**Figure 1: Changing Average Custodial Sentence Length (ACSL) over time**

<b>Offence: Production, supply and possession with intent to supply a controlled drug - Class A</b>					
	Year ending June 2010	Year ending June 2015	Year ending June 2020	Year ending June 2024	Percentage change June 2010 to June 2024
<b>ACSL (months)</b>	38.5	45.2	45.5	52.4	<b>36% increase</b>
<b>Offence: Possession of firearms etc., with intent to endanger life (Group I)</b>					
	Year ending June 2010	Year ending June 2015	Year ending June 2020	Year ending June 2024	Percentage change June 2010 to June 2024
<b>ACSL (months)</b>	89.1	133.3	151.5	146.1	<b>64% increase</b>
<b>Offence: Aggravated Burglary in a Dwelling</b>					
	Year ending June 2010	Year ending June 2015	Year ending June 2020	Year ending June 2024	Percentage change June 2010 to June 2024
<b>ACSL (months)</b>	56.4	85.0	88.7	80.1	<b>42% increase</b>
<i>Note: ASCL was as high as 96.7 in 2019</i>					
<b>Offence: Causing Death by Dangerous Driving (MOT)</b>					
	Year ending June 2010	Year ending June 2015	Year ending June 2020	Year ending June 2024	Percentage change June 2010 to June 2024
<b>ACSL (months)</b>	46.8	59.8	64.1	94.2	<b>101% increase</b>
<b>Offence: Animal Cruelty under sections 4-8 under Animal Welfare Act 2006</b>					
	Year ending June 2010	Year ending June 2015	Year ending June 2020	Year ending June 2024	Percentage change June 2010 to June 2024
<b>ACSL (months)</b>	3.3	3.5	3.5	10.1	<b>206% increase</b>

*Source: Criminal justice statistics quarterly: June 2024. Outcomes by offence data tool<sup>11</sup>*

These are just five offences selected to illustrate how custodial sentences have inflated over time, and the quarterly statistics only track back to 2010. The Review’s Chair and Panel will be able to furnish themselves with data that goes back much further than this and over a wider range of offences. This will provide powerful evidence in support of a policy to reset the clock to a time when sentencing was more sustainable.

Resetting the clock would mean examining sentencing across the last three decades. Given the importance of the 2003 Criminal Justice Act, any serious attempt to deflate sentencing would at least take that as a starting point. The Howard League would go further and argue that England and Wales is no more criminal a jurisdiction than it was in the 1990s, a position supported by comparative crime rates. Whatever time period the Review Panel settles on, the principle of resetting the clock should be the guiding principle of any legislative reform to reverse sentencing inflation.

<sup>11</sup> MoJ, *Criminal Justice System statistics quarterly: June 2024*, Outcomes by offence data tool (2024) <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-june-2024> accessed 8 January 2025

Given the judicial concerns described in section one, there should also be a separate review of the working and impact of the Sentencing Council. Similarly, steps should be taken to ensure the unduly lenient sentence scheme is used as a safeguard of last resort and is not exploited for political ends by whoever holds the office of Attorney General.

### **3. How can we use technology to be innovative in our sentencing options, including considering how we administer sentences and manage offenders in the community?**

The Howard League welcomes the Review's openness to the possibilities of technological innovation in respect of sentencing. While proposing radical technological innovation is beyond our expertise, we have seen technology used to successfully support desistance in our young clients in the community. Greater use of remote contact (via phone, video or text) could be made to enhance engagement and facilitation. For example, electronic check-in with services such as Approved Premises (APs) could facilitate monitoring without disruption to rehabilitative activities – regular in-person check-ins are often onerous and make attending appointments or employment difficult.

We would support thorough research and evaluation of existing technology – primarily Electronic Monitoring (EM) – to facilitate better understanding of its utility and impact, including on wearer experience; the viability of current devices; and efficacy in relation to the purposes of sentencing. This would improve outcomes and increase sentencers' confidence.

We would also emphasise that, where technology is used successfully, it is just one part of a bigger programme. In a West Midlands deferred sentencing scheme (the C3 scheme), for example, EM is combined with high-intensity interpersonal engagement/supervision.<sup>12</sup> Community supervision – whether facilitated via new technology or otherwise – will only succeed with a well-resourced, effective probation service.

We would encourage the Review to be alive to the risk that the introduction of innovative technology could be 'net-widening', i.e. it risks bringing more people into the control and supervision of the criminal justice system. This would be the case particularly if technology was used for people who have committed low-level offences, who might otherwise see suspended or community sentences, rather than to help people in prison to secure an early release.

It is important that the criminal justice system should use technology intelligently and proportionately – which has not always been the case. EM, for example, brings its own challenges and 'pains'. The previous government's EM strategy describes the

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<sup>12</sup> Centre for Justice Innovation, *Crime Free Community Desistance Programme (C3)* (2020) <https://www.justiceinnovation.org/project/crime-free-community-desistance-programme-c3> accessed 8 January 2025

“weight of scrutiny”.<sup>13</sup> An individual’s circumstances or needs may cause EM to be even more punitive than intended. Curfew or location monitoring may be imposed on people living in precarious housing, in unsafe areas, or with abusive partners or family members. Wearers report tightness, skin irritation, and problems with battery life and faulty technology.<sup>14</sup>

The recent case of Gaie Delap, a 77-year-old woman recalled to prison as she could not be fitted with a tag due to health conditions and physicality, illustrates the importance of getting the legislation behind the deployment of technology correct.<sup>15</sup> EM may have an important role to play in monitoring curfew compliance with home detention curfew (HDC), but EM itself is not the *purpose* of HDC: it is a mechanism to help with compliance. There should always be space for common sense and discretion in its use if the technology is not, for whatever reason, suitable for an individual’s circumstances.

#### **4. How should we reform the use of community sentences and other alternatives to custody to deliver justice and improve outcomes for offenders, victims and communities?**

Community sentences are an effective and underused resource, designed to tackle the underlying causes of crime. Of all the sentencing disposals before the court, they are the best placed to serve all five purposes of sentencing and help people address the reasons behind their offending.

In order to instil greater confidence in community sentences and alternatives to custody (among sentencers, politicians and the public), the Review should synthesise and promote the wealth of evidence available that illustrates their positive utility and impact.

The Review’s terms of reference rightly acknowledge the central role of probation in delivering community sentences. The reasons for a decline in the use of community sentences are complex but are in part related to sentencers’ lack of confidence in probation’s ability to deliver them.<sup>16</sup> Previous decades of misguided reform to the probation service have hampered the effective delivery of community sentences,

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<sup>13</sup> MoJ, *Electronic Monitoring in the Criminal Justice System* (2022) <https://assets.publishing.service.gov.uk/media/62bc19d38fa8f535ae14983d/em-strategy.pdf> accessed 8 January 2025

<sup>14</sup> Laura Janes, *What is life on tag really like?* (2024) [https://www.linkedin.com/posts/activity-7268577943541452801-Q47?utm\\_source=share&utm\\_medium=member\\_desktop](https://www.linkedin.com/posts/activity-7268577943541452801-Q47?utm_source=share&utm_medium=member_desktop) accessed 8 January 2025; and HMIP, *Effective practice guide: Electronic monitoring delivered well* (2022) <https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2022/01/Electronic-monitoring-EP-Guide-v1.1.pdf> accessed 8 January 2025

<sup>15</sup> Paul Barltrop and Sarah Tunridge, *Ankle tag problem could see protester, 77, back in jail* (10 December 2024, BBC) <https://www.bbc.co.uk/news/articles/ckgnx43909yo> accessed 8 January 2025; and Jonathan Holmes, *Just Stop Oil activist jailed over ankle tag issue* (21 December 2024, BBC) <https://www.bbc.co.uk/news/articles/c1e132g75p8o> accessed 8 January 2025

<sup>16</sup> Justice and Home Affairs Committee, *Cutting crime: better community sentences* (House of Lords, 2023) <https://committees.parliament.uk/publications/42651/documents/212004/default/> accessed 8 January 2025 and Sentencing Academy, *Community orders: A review of the sanction, its use and operation and research evidence* (2021) <https://www.sentencingacademy.org.uk/wp-content/uploads/2023/08/Community-Orders-3.pdf> accessed 8 January 2025



with the failed part-privatisation of the service a nadir in probation's history.<sup>17</sup> The policy details of wholesale reform and investment required in the probation service are likely beyond the scope of the Review and should be undertaken separately by the MoJ. Overarching recommendations required for effective delivery of community sentences include renewed independence from the prison service and a more localised structure than the current National Probation Service allows.<sup>18</sup>

Sentencers should be reminded of the punitive nature of community sentences; they impose restrictions on liberty, the central punitive element of criminal justice sanctions available to the courts.<sup>19</sup> Requirements can be intrusive, challenging and rigorous. Elements of an order can require unpaid work or reparations; a recent evaluation of unpaid work illustrated how such orders fulfilled the punitive element of sentences.<sup>20</sup> The 'pains' of a community order can extend beyond the requirements themselves to the wider impact of restrictions on travel and the impact of a criminal record.

The government should reverse provisions made in the Crime and Courts Act 2013, which mandated that every community sentence contain a punitive element.<sup>21</sup> The very nature of the imposition on liberty is punitive and, in practice, the Crime and Courts Act provisions have forced sentencers to include punitive elements, such as unpaid work or a curfew, even where the order would be more effectively delivered without such requirements. Reversing the 2013 changes would enhance confidence in the efficacy of community orders and return discretion to sentencers and probation officers making recommendations to the court.

More generally, sentencing guidelines should provide greater clarity to avoid overloading community orders, which increase the likelihood of breach and resentencing to custody. Amendments to guidelines should avoid misleading statements about 'punitive requirements' which may risk a 'doubling up' of requirements and, instead, recognise the already punitive nature of community orders. The doubling up of requirements risks unfair overload for people who need

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<sup>17</sup> The Howard League for Penal Reform, *The Howard League for Penal Reform — Written evidence (JCS0012)* (2023) <https://committees.parliament.uk/writtenevidence/121882/pdf/> accessed 8 January 2025

<sup>18</sup> Howard League, *Written evidence* (n17); The Howard League for Penal Reform, *Grasping the nettle: Options for a lasting solution to the prison capacity crisis* (2024) <https://howardleague.org/wp-content/uploads/2024/07/Grasping-the-nettle-Options-for-a-lasting-solution-to-the-prison-capacity-crisis-.pdf> accessed 8 January 2025; and The Howard League for Penal Reform, *Community Justice and the future of probation* (2018) <https://howardleague.org/blog/community-justice-and-the-future-of-probation/> accessed 8 January 2025

<sup>19</sup> Sentencing Council, *Reconceptualising the effectiveness of sentencing: four perspectives* (2024) <https://www.sentencingcouncil.org.uk/html-publication/item/reconceptualising-the-effectiveness-of-sentencing-four-perspectives/#6.%C2%A0%20Victim%20perspectives%20on%20the%20effectiveness%20of%20sentencing> accessed 8 January 2025

<sup>20</sup> Centre for Justice Innovation, *Smarter community sentences* (2020) [https://www.justiceinnovation.org/sites/default/files/media/documents/2020-09/smarter\\_community\\_sentences.pdf](https://www.justiceinnovation.org/sites/default/files/media/documents/2020-09/smarter_community_sentences.pdf) accessed 8 January 2025; and MoJ, *Unpaid Work Process Evaluation: Evaluating the delivery of unpaid work in a unified probation service* (2024) [https://assets.publishing.service.gov.uk/media/675984154cbda57cacd34690/Final\\_PDF\\_Unpaid\\_Work\\_Process\\_Evaluation.pdf](https://assets.publishing.service.gov.uk/media/675984154cbda57cacd34690/Final_PDF_Unpaid_Work_Process_Evaluation.pdf) accessed 8 January 2025

<sup>21</sup> The Howard League for Penal Reform, *Crime and Courts Bill Report Stage and Third Reading in the House of Commons March 2013* (2013)

rehabilitative and treatment-based activities. We refer to the consultation submission of Howard League member and retired magistrate Janet Carter for further exploration of the legislative framework.

In the coming week, we will provide the Review with additional material detailing a range of non-custodial alternatives used in other jurisdictions. Alternatives of note include electronic monitoring in Norway, 'conditional sentences' in Finland, day rate fines in Switzerland, and diversion programmes and problem-solving courts in the Netherlands.

## **5. How should custodial sentences be reformed to deliver justice and improve outcomes for offenders, victims and communities?**

A custodial sentence is the most severe sanction available to the courts and should be reserved for the most serious offences and those people who pose the greatest risk to the public. Despite this, current use suggests an over-reliance on prison.

Safeguards should be developed to ensure that the use of custodial sentences is limited. Custody should be reserved for those who commit serious and violent crimes, and it should be used only where it is necessary to protect public safety in response to such offences. As 34% of people in prison are serving sentences for non-violent offences, this would reduce the prison population greatly.<sup>22</sup> It would also mean that those who present the gravest risk to the public would be more likely to access the interventions and support that they need to address the causes of their offending.

### **A new framing of custodial sentences**

One way in which the government could safeguard against the overuse of custody and promote rehabilitation is to rebrand the custodial sentence.

Sentences imposed by courts generally comprise a period spent in prison and a period spent in the community on licence. The exact parameters vary depending on sentence length and type (whether determinate or indeterminate), but a large majority of people who receive a custodial sentence (save those serving whole life orders) will serve part of this on licence in the community.

The custodial element of the sentence should be reserved for addressing the causes of offending and providing people with the support they need to rehabilitate in a safe way to protect the public. Time spent on licence in the community should function as a stepping stone, supporting people to achieve rehabilitation in the 'real world' while supervised.

The evidence from research, and from our members who have served time and have experience of release on licence, is that the community-based part of these sentences is also a punishing and demanding experience, even where it may also be directed at supporting reintegration. If a custodial sentence was reconceived of in

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<sup>22</sup>MoJ (2024) *Offender management statistics quarterly: April to June 2024* (2024) <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-april-to-june-2024> accessed 8 January 2025

two parts – for example, as a ‘Detention and Supervision order’ – the custodial portion could be focused on achieving a successful and safe release in the quickest time possible.

Within current sentencing frameworks, and with the language used to describe sentences, it is not sufficiently clear to the public what sentences mean. There is a perception that, once someone is released from prison, their punishment has ended and they ‘walk free’. This has implications for public attitudes and understanding of policy initiatives from SDS40 to the use of life sentences, as well as broader policy problems such as sentence inflation and prison overcrowding. A rebranding of custodial sentences as ‘detention and supervision’ orders could be politically helpful as it may improve limited public understanding about prisons, sentencing, and the nature and purpose of punishment more broadly.<sup>23</sup>

Within this rebranding, the government should explore ways of humanising the prison experience to provide autonomy, promote rehabilitation and prepare people for release and reintegration. This would entail a shift in cultural norms and attitudes. The guiding principle should be that deprivation of liberty is the punishment, not poor conditions, and that a custodial sentence should facilitate rehabilitation.

Successful examples of this include accommodation provisions in the Netherlands (where people are provided with wardrobes with clothes, television, personal bathroom, freedom of movement in regulated areas, and a key to their individual cell), and Norway’s ‘normalisation’ principle.<sup>24</sup>

## Short sentences

The use of short custodial sentences should be abolished. There is a wealth of evidence, including the MoJ’s own research, which suggests that short sentences of 12 months or less are ineffective and harmful. Adults released from custodial sentences of less than 12 months have a proven reoffending rate of 56.6%. This rises to 59.6% for people released from sentences of six months or less.<sup>25</sup> The evidence promotes community sentences as a more effective alternative.

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<sup>23</sup> Sentencing Academy, *Who’s in Prison and What’s the Purpose of Imprisonment? A Survey of Public Knowledge and Attitudes* (2024) <https://www.sentencingacademy.org.uk/wp-content/uploads/2024/11/Who-is-in-Prison-and-What-is-the-Purpose-of-Imprisonment.pdf> accessed 8 January 2025; Sentencing Council, *Reconceptualising the effectiveness of sentencing* (n18); Ipsos Mori, *Half of Britons oppose Labour’s Plan to Tackle Prison overcrowding but blame the Conservative government for prison overcrowding* (2024) <https://www.ipsos.com/en-uk/half-britons-oppose-labours-plan-tackle-prison-overcrowding-blame-conservative-government-prison> accessed 8 January 2025; and Justice Committee, *Public opinion and understanding of sentencing. Tenth Report of Session 2022–23* (2022–23, HC 305) <https://committees.parliament.uk/publications/41844/documents/207521/default/> accessed 8 January 2025

<sup>24</sup> Justice Trends, *Full rights citizens: the principle of normality in Norwegian prisons* (2018) <https://justice-trends.press/full-rights-citizens-the-principle-of-normality-in-norwegian-prisons/> accessed 8 January 2025

<sup>25</sup> MoJ, *Proven reoffending statistics: October to December 2022* (2024) [https://www.gov.uk/government/statistics/proven-reoffending-statistics-october-to-december-2022?utm\\_medium=email&utm\\_campaign=govuk-notifications-topic&utm\\_source=3737713a-b91c-43ff-8418-4d802f2b3f2e&utm\\_content=immediately](https://www.gov.uk/government/statistics/proven-reoffending-statistics-october-to-december-2022?utm_medium=email&utm_campaign=govuk-notifications-topic&utm_source=3737713a-b91c-43ff-8418-4d802f2b3f2e&utm_content=immediately) accessed 8 January 2025

A short custodial sentence is unlikely to tackle effectively an individual's criminogenic needs and may even exacerbate them. One study found that service users saw short sentences as a "waste of time", with a lack of rehabilitative purpose and little time or resource to address their issues.<sup>26</sup> One participant was quoted: "It's so understaffed in here, the routine is so bad and there's so many drugs coming in, that if you come here for two weeks, you're just smoking weed all the time, watching TV, and you just think, what's the point." The study also found that both staff and residents "simultaneously experience the short sentence as unproductive 'wasted' time, insufficient to make positive changes."<sup>27</sup> Short sentences result in a breakdown of the structures and support around people in the community.

The Howard League recommends that short sentences of 12 months or less are abolished and that the power of the lay magistracy to sentence individuals to custody is removed. The magistrates' courts should instead be furnished with effective options for community orders.

### **Suspended sentences**

Suspended sentences are one way to limit the use of prison. Policymakers should nevertheless be mindful that a suspended sentence is still a form of custody, and that, as per s.230(2) of the Sentencing Act, courts must first consider whether a fine or community order can be sufficient. Consideration should also be given to the fact that suspended sentences provide little discretion or flexibility in the event of a breach and a robust community sentence may provide greater options.

That said, if the government is minded to keep suspended sentences, there is scope to expand the range of people who can potentially receive them. The eligibility threshold for a suspended sentence to be imposed is currently set at two years, but it could be increased to three years.

### **The increase of sentence lengths due to the use of 'additional days' following independent adjudication**

In considering the administration of sentencing, the Review should consider the role of additional days received as punishment in prison at independent adjudications.

Sentences can be extended by 42 days for each single incident of prison indiscipline. These incidents are not usually criminal offences (which would be referred to the police and dealt with in the usual course) but are for breaches of the prison rules, such as refusing an order from an officer. Moreover, additional days do not follow as usual sentences; people serve the entire period in custody. The Howard League has long campaigned for their abolition.<sup>28</sup> This is all the more important in the current capacity crisis, given their significant inflationary impact on the prison population.

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<sup>26</sup> Matthew Cracknell, "Trying to make it matter": *The challenges of assimilating a resettlement culture into a 'local' prison* (2021) 23(2), *Criminology & Criminal Justice*, 165

<sup>27</sup> Matthew Cracknell, "Trying to make it matter" (n28)

<sup>28</sup> See The Howard League for Penal Reform, *A Million Days* (2016) <https://howardleague.org/wp-content/uploads/2016/11/A-Million-Days.pdf> accessed 8 January 2024; the Howard League for Penal Reform, *The rising tide: Additional days for rule breaking in prison* (2018) <https://howardleague.org/wp-content/uploads/2018/08/The-rising-tide-Additional-days-for-rule->

Prior to 2020, the use of additional days was high and rising – in 2018, for example, more than 1,000 years of additional days were awarded. This trend was stopped primarily by the Covid-19 pandemic.<sup>29</sup> But additional days are rising again, with 29,223 awarded in the most recent reporting quarter alone – an 89% increase, equating to 80 years of imprisonment.<sup>30</sup> Given the pressures on the prison system, a return to the pre-pandemic use of additional days is unsustainable.

Additional days are not necessary to enforce good order and discipline. They are not used in Scotland and were not awarded during the pandemic – infractions were still heard and punishment awarded without need to resort to further sentence time. Poor behaviour is adequately managed among people who cannot receive additional days, for example those on remand or serving life sentences.

## **6. How should we reform the way offenders progress through their custodial sentences to ensure we are delivering justice and improving outcomes for offenders, victims, and communities?**

Custodial sentences should be designed to facilitate progress and rehabilitation in the most expedient time frame. Yet currently people serving custodial sentences are blocked from such progression by an overloaded system and outdated policy.

In his annual report HM Chief Inspector of Prisons summarised their current failings:

Prisons must be equipped to deliver the work for which they were designed: to reduce the risk of further offences being committed and more victims of crime created. In their present state, the brutalising conditions faced by all those living and working within their walls fundamentally undermines any effort to achieve this. If we use them simply to warehouse people in squalor, surrounded by drugs and violence and failing to address their unmet mental health needs, what can we really expect when they are released?<sup>31</sup>

### **Long sentences**

The use of long sentences should be curtailed, or where unavoidable, geared towards progression. While a custodial sentence effects punishment and may successfully protect the public through incapacitation for a period, there is insufficient evidence that lengthy custodial sentences are effective at meeting other aims of sentencing (namely, the reduction of crime, rehabilitation, and reparation). The

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[breaking-in-prison.pdf](#) accessed 8 January 2025; and The Howard League for Penal Reform, *Out of control* (2017) <https://howardleague.org/wp-content/uploads/2017/08/Out-of-control.pdf> accessed 8 January 2025

<sup>29</sup> The Howard League for Penal Reform, *Justice does not stop at the prison gate: Justice and fairness in prisons. Briefing Two* (2020) <https://howardleague.org/wp-content/uploads/2020/11/Justice-Fairness-briefing-2-FINAL-2.pdf> accessed 8 January 2025

<sup>30</sup> MoJ, *Offender Management statistics: April to June 2024* (n22)

<sup>31</sup> HMIP, *Desperate times for prisons: Chief Inspector of prisons calls for sustained action to tackle the crisis* (2024) <https://hmiiprisoninspectorates.gov.uk/news/desperate-times-for-prisons-chief-inspector-of-prisons-calls-for-sustained-action-to-tackle-the-crisis/> accessed 8 January 2025

Sentencing Council has found that there is “little evidence to justify increasing a sentence for the purposes of deterrence”.<sup>32</sup>

Rather, evidence suggests that what happens during a sentence – rehabilitative interventions, for example – may matter more than sentence length.<sup>33</sup> This is supported by evidence, referred to below, relating to challenges with sentence progression and access to education, psychological and behavioural interventions. Activity and support which facilitate successful rehabilitation and reintegration must go beyond a temporary or short-term pause in offending, to encouraging significant and lasting changes in an individual.<sup>34</sup>

The existing system is not designed for such lengthy sentences – it is not possible to engage someone in their own rehabilitation for decades. Our members who are serving sentences of more than 20 years report the pointlessness of their time in prison. In the words of one member who was sentenced to life aged 18, “...what am I meant to do Miss? I’ve done all the courses. I’ve been to Grendon; I have been broken down, and built up again, I have been fixed. What am I meant to do in prison for the next 18 years?”.

Another member is currently halfway through a 35-year sentence, having successfully completed his sentence plan within the first three years. He told us: “Expecting anyone to maintain the high level of discipline and compliance that I have is extremely unrealistic for someone with a long sentence without additional mechanisms in place to support progression.”

This is compounded by a dearth of rehabilitative activity. As highlighted by Clinks, “sentence inflation fundamentally affects the needs of prisoners and the types of services required to address those needs. Providing enough meaningful activity and motivating individuals who are facing incredibly long and indeterminate sentences to engage with services is its own growing challenge”.<sup>35</sup>

### **Sentence progression**

Though sentence lengths have grown substantially over the last 20 years, there has been no proportionate adjustment to the timing of interventions, such as access to offending behaviour work or higher education, transfers to open prison, or release by the Parole Board. These significant junctures in sentence progression continue to be marked by years from expiry of sentence tariff.

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<sup>32</sup> Jay Gormley, Melissa Hamilton and Ian Belton, *The Effectiveness of Sentencing Options on Reoffending*, (Sentencing Council, 2022) <https://www.sentencingcouncil.org.uk/wp-content/uploads/Effectiveness-of-Sentencing-Options-Review-PUBLISHED-FINAL.pdf> accessed 8 January 2025. The deterrent effect of a lengthy sentence is negated by several factors, including: a perceived low chance of detection; the absence of rational decision making; impulsivity; emotional arousal; or the influence of alcohol and drugs.

<sup>33</sup> Jay Gormley et al, *The Effectiveness of Sentencing Options on Reoffending* (n31)

<sup>34</sup> Jay Gormley et al, *The Effectiveness of Sentencing Options on Reoffending* (n31)

<sup>35</sup> Clinks, *The sentencing white paper: exacerbating the issues created by sentence inflation?* (2020) <https://www.clinks.org/community/blog-posts/sentencing-white-paper-exacerbating-issues-created-sentence-inflation> accessed 8 January 2025

The categorisation system is more than 50 years old and should be reviewed. It is notable, for example, that as the system has become more overcrowded, the distinction between what makes for a Category B local and Category C training prison has increasingly become eroded. Are the current prison categories fit for purpose?

Even if the system remains unchanged, more can be done to facilitate movement between the existing categories and to progress individuals through their sentences. For example, the movement of individuals from Category A status could be delegated to the discretion of prison governors or the Parole Board and moved from the High Security Directorate. This would facilitate greater transparency and would mean that decisions were based on detailed knowledge of the person in prison.

Category D open prison places should be expanded significantly, and eligibility criteria should be brought forward. For example, the eligibility for lifers should be moved from three years prior to their parole eligibility date to a date three-quarters of the way through their tariff; this would restore proportionality to pre-Schedule 21 levels, when a life sentence was generally 12 years, and a person in prison could apply to open three years from release. Responses from our members highlight how the existing rigid progression structures damage rehabilitative progress; they strongly support earlier eligibility for transfer to open conditions.

Open prisons provide a crucial stepping stone for people who have been in prison for a long time, supporting family reconnection and allowing access to mainstream education and more meaningful work. They are valued by people in prison and their families as a transition to normal life in the community. And by providing people with the tools and networks needed for desistance, open prisons also support public protection.<sup>36</sup>

Release and reintegration planning should be prioritised, improved and incorporated from a much earlier point in a custodial sentence, as is the case in Scandinavian countries, which are more successful at preventing reoffending. Problems around the sequencing; timing of, and access, to education; and intervention programmes should be remedied.<sup>37</sup> Examples include Norway's holistic 'reintegration guarantee', introduced in 2005, and Finland's multi-agency reintegration teams, which work with individuals from their first days in custody through to post-release.<sup>38</sup> This would require greater collaboration between criminal justice and social and welfare agencies.

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<sup>36</sup> See for example: S. Armstrong, M. Malloch, M. Nellis, and P. Norris, Evaluation of the Use of Home Detention Curfew and the Open Prison Estate in Scotland (Scottish Government, 2011) <https://www.pure.ed.ac.uk/ws/portalfiles/portal/4062943/0119214.pdf> accessed 9 January 2025; R. Moore, 'Beyond the prison walls: Some thoughts on prisoner 'resettlement' in England and Wales' (2012) *Criminology & Criminal Justice*, 12(2), 129; and M. Cracknell Effective practice in resettlement (HMIP, 2023) <https://www.justiceinspectors.gov.uk/hmiprobation/wp-content/uploads/sites/5/2023/01/DESIGNED-Academic-Insights-Cracknell-Jan-23.pdf> accessed 9 January 2025

<sup>37</sup> Stephenson, Z., Woodhams, J., and Harkins, L. 'The sequencing of interventions with offenders: views of offender managers and supervisors', *Journal of Forensic Practice*

<sup>38</sup> United Nations Office on Drugs and Crime, *Introductory Handbook on The Prevention of Recidivism and the Social Reintegration of Offenders* (2018) [https://www.unodc.org/documents/justice-and-prison-reform/18-02303\\_ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/18-02303_ebook.pdf) accessed 8 January 2025

## Routes out of custody

Practice and policy around release points are complex and lack consistency; in most prisons, calculations for release dates are still done by hand by prison officers. The Review should ensure that consistent release provisions are developed for all.

Automatic early release should either return to the halfway point or continue at 40% of sentence served, as is currently the case.

Changes brought in via the Police, Crime, Sentencing and Courts Act (2022), which increased the requisite custodial portion of a sentence for certain offences to two-thirds, should be reversed.

The Review should explore accelerated routes out of custody for those already serving long sentences. Those serving indeterminate sentences should undergo review at the halfway stage and then at regular intervals, resulting in earlier release on licence or sentence reduction.

Those serving whole life orders should be given a date when their tariff is reviewed to reconsider the appropriateness of the sentence. The Review should consider how the use of whole life orders in England and Wales might be reformed in line with other similar jurisdictions which make provision for sentence review and release.<sup>39</sup> The Review should also consider the lawfulness of whole life orders, which are currently only deemed compatible with the European Convention of Human Rights due to a tenuous prospect of release in very limited circumstances on compassionate grounds.<sup>40</sup>

As a minimum there should be a review by the High Court of 'minimum terms' for adults serving mandatory life sentences, as there is for HMP sentence prisoners who received a sentence for murder as a child. The right to further review of tariffs for HMPs should be reinstated and extended to adults.<sup>41</sup>

Age and maturity should be considered. Upon reaching a certain age, older prisoners could undergo a review of their needs and risk level, followed by a managed move to a more appropriate secure location if required. People who committed their index offence prior to the age of 25 should receive a regular review of the appropriateness of their sentence to be considered for earlier release (or expedited parole eligibility).

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<sup>39</sup> The Howard League for Penal Reform, *Faint hope: what to do about long sentences* (2016) <https://howardleague.org/wp-content/uploads/2016/03/Faint-Hope-What-to-do-about-long-sentences.pdf> accessed 8 January 2025

<sup>40</sup> *Hutchinson v UK* (2017) 57592/08, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-170347%22%5D%7D> accessed 8 January 2025

<sup>41</sup> In section 128 of the Police, Crime, Sentencing and Courts Act 2022, Parliament legislated in relation to sentences of DHMP. Section 128 inserted section 27A into the Crime (Sentences) Act 1997. Section 27A makes provision for a minimum term review whereby an offender could apply for a reduction in the minimum term imposed at the date of sentence. The statutory right to apply for a review is restricted to those who were under the age of 18 when sentenced. Section 27A came into force on 28 June 2022. Prior to the introduction of section 27A reviews of minimum terms imposed in relation to sentences of DHMP were conducted on a non-statutory basis by reference to departmental policy. Prior to February 2021 this policy permitted a review in relation to any person serving a sentence of DHMP.



## **Incentivising sentence progression**

Custodial sentences in their current iteration are lackadaisical in their approach to preparing people for release. The rebranding of the prison sentence as proposed at the start of this section suggests that prison sentences should be designed to allow someone to earn a safe release in the shortest time possible, making incentives to progress an inherent part of the sentence.

Expanding the prospect of earning an early release should be a powerful impetus for rehabilitation and change, although it is important that people's rights are safeguarded and that a system geared towards incentives does not erode this.

As expressed by one of our members, "Good work in prison doesn't get you home any quicker. Demonstrating consistent good work should reduce sentences for those who really want it." The Review should evaluate the use of incentives in prison in other jurisdictions, for example as introduced via the federal United States First Step Act (2018) or the state of Rhode Island (these are described in the accompanying material).

## **Licence periods, post-sentence supervision, probation**

The Review should consider changes to release and supervision policy that currently contributes to a bloated prison population.

A common concern among our members in prison is recall. Recalls often stemmed from foreseeable problems such as (lack of) housing or communication with probation, which ought to have been properly resolved prior to release. Members shared many instances of recall for administrative breach, sometimes even stemming from bureaucratic mistakes made by authorities themselves (for example, attending the wrong address or failing to recognise that someone's curfew address and exclusion zone were one and the same). They highlight the staffing pressures faced by probation as a possible factor in 'trigger happy' recalls. There was a strong sentiment that recall should only be used in instances of serious further offending or serious breach, and that these should first be properly investigated.

If short sentences of 12 months or less are not abolished (as recommended above), the use of recall for such sentences should be stopped. Recall is disruptive to rehabilitation, and time constraints mean that there often is no meaningful opportunity for re-release before the sentence end date.

Post Sentence Supervision (PSS), the mandatory period of 12 months' supervision in the community post-release for such sentences of up to 12 months, should also be abolished in the event that such short sentences continue to be available. PSS was introduced via the Offender Rehabilitation Act 2015, as part of the part-privatisation of the probation service, and it is a needless hangover of this period, and of legislation which has since been reversed. This move would lessen pressure on the probation service, enabling it to focus on supervising those who pose most risk.

There should be a rapid review of administrative recalls and guidance. The best outcome would be to abolish recall for administrative breaches entirely. Alternatively, any recall for administrative breach should be fixed-term and set at 14 days, as

opposed to the option of a standard recall which requires review by the Parole Board prior to re-release. The threshold test could also be tightened for all types of recall.

Recall practice and process could also be reformed in other ways to limit the number of people returned to custody and the amount of time spent there.

While the use of PSS for those on short sentences is unsuitable for the reasons noted above, the process which requires a judicial check on breaches of supervision conditions to determine if it is necessary for the individual to return to custody, could be replicated for licence breaches, to reduce the use of recall. This is supported by members who argue that recall to custody should be decided on by a judge and supported by evidence. This could be limited to administrative breaches (alleged further offending could still result in swift and safe return to custody if demonstrative of an increased risk of serious harm). For certain sentence types – IPP, for example – recall could be limited to a short, fixed term period (eg seven days) to enable agencies to implement enhanced restrictions and support in the community.

Recalls for alleged further offending should also be reformed. Currently, if an individual is recalled under suspicion of further offending, there is a long delay (spent in custody) from initial recall through police investigation to charging or the dropping of charges. If charged, time spent in custody during investigation is not counted towards sentencing while on recall. If found not guilty or the charges are dropped, Parole Board direction is still required for re-release. Often, the further offences involved would not even meet the remand threshold. Steps to minimise this could include a commitment to the prioritisation of investigation processes for suspected further offences for those recalled; limiting recall to custody only to offences which would meet the remand threshold; and removing the requirement for Parole Board approval for re-release if found not guilty or charges are dropped.

We welcome the expansion of the use of HDC for sentences of more than four years, as provided for by the Victims and Prisoners Act. To ensure this is a meaningful change, the resourcing and administration of HDC should be improved. This would involve input from other agencies (eg the police when conducting checks), as well as greater provision of accommodation and bail hostels. The use of EM for people under HDC should be limited to those who pose the most risk. Currently, people are designated suitable, presumed unsuitable (save for ‘exceptional reasons’), or ineligible for HDC. In order to facilitate greater use, the threshold of eligibility should be lowered or the ‘presumed unsuitable’ bracket should be removed and those presumed unsuitable be absorbed into the suitable cohort (so that people are either eligible or ineligible). The ‘presumed unsuitable’ group is a broad bracket and the test for ‘exceptional reasons’ to counter the presumed unsuitability very high with no direction as to what ‘exceptional’ requires. Moreover, it is very difficult to meet this criteria when there is no provision or regime to demonstrate ‘exceptional’ behaviour.

Executive release by the Secretary of State for Justice under the Release following Risk Assessed Recall (RARR) review process is a more time- and cost-effective method of release than parole. Yet figures suggest that use of RARR has declined

significantly, from more than 1,500 releases in 2017, when the scheme was introduced, to just 20 in 2023.<sup>42</sup> This trend should be reversed.

The scope of RARR should also be broadened to a wider range of eligible sentences – historically, it was only available to people on standard determinate sentences; it has now been expanded to people on IPP sentences. Its use should be extended to people serving EDS and life sentences.

## **7. What, if any, changes are needed in sentencing to meet the individual needs of different victims and offenders and to drive better outcomes?**

Good sentencing should recognise the particularity and facts of each case, meeting the needs of the individuals involved (the victim and the person being sentenced) and being cognisant of the impact of protected characteristics.

### **Victims**

The attitudes and needs of victims are diverse. Recurring themes across the spectrum of offence types and victim experiences include a need for greater understanding of sentencing, for just and fair outcomes, and a recognition of the harm caused.<sup>43</sup> One study found that 94% of victims surveyed said that the most important thing to them was that the person did not commit the crime again.<sup>44</sup> To ensure that the diversity of victims' needs are met, the Review should be a starting point for broader conversations about what people want and what keeps people safe, leading difficult conversations around the balancing act between individual retributive and wider societal need. It is salient here to note the unintended consequences of single-issue campaigning on sentence inflation, as referred to in section one of this response. It should recognise the common goal of desistance and work to promote this. The Review should also seek to improve transparency and knowledge of sentencing.

### **Violence against women and girls**

Preventing violence against women and girls should be a priority. However, we question whether the solutions lie in punishment, or rather prevention. Concurrent increases in violence against women and girls, reoffending rates *and* sentence lengths suggest increasing the severity of sentences is ineffective.<sup>45</sup> Resourcing

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<sup>42</sup> UK Parliament, 'Prisoners' Release. Question for the Ministry of Justice' *Written questions, answers and statements* (UIN 23202, 23 April 2024) <https://questions-statements.parliament.uk/written-questions/detail/2024-04-23/23202> accessed 8 January 2025

<sup>43</sup> Sentencing Council, *Reconceptualising the effectiveness of sentencing* (n18) and Victim Support, *Victims' justice? What victims and witnesses really want from sentencing* (2010) <https://www.victimsupport.org.uk/wp-content/uploads/documents/files/Victims%27%20justice%20-%20What%20victims%20and%20witnesses%20really%20want%20from%20sentencing.pdf> accessed 8 January 2025

<sup>44</sup> MoJ, 'Victims of crime want punishment - but not always prison' (16 November 2007). Referenced in Victim Support, *Victims' Justice?* (n41)

<sup>45</sup> College of Policing, *Offender management for domestic abuse* (2024) <https://www.college.police.uk/support-forces/practices/offender-management-domestic-abuse#:~:text=Currently%2C%20across%20the%20entire%20population,a%2098%25%20DA%20reoffending%20rate> accessed 8 January 2025; and ONS, *Domestic abuse and the criminal justice system, England and Wales: November 2023* (2023)

would be better allocated to early intervention and prevention, including improving family and community services; mental health services; alcohol/drugs services; police resources (responding to and monitoring domestic and public space incidents); and promoting societal and cultural change. Criminal justice sanctions are not sufficient to tackle ingrained systemic inequality.

## Tailored sentencing

### *People from ethnic minority backgrounds*

The facts and impact of ethnic disproportionality in the criminal justice system are well-known.<sup>46</sup> To date, however, there is limited specific sentencing guidance aimed at addressing this. Research has tried to ascertain and understand the roots of disproportionality, including but not limited to bias in the court room; unequal access or response to court processes (for example, the role of remorse and guilty pleas); and the role of systemic inequality and disadvantage in the commission and investigation of offences.<sup>47</sup> Concerns include the use of pre-sentence reports (PSRs), judicial diversity and training, and the ways in which existing court processes might disadvantage people.

The Sentencing Council has begun to address some of these concerns, removing lack of remorse as an aggravating factor, changing wording around good character, and providing expanding explanations with regard to difficult and/or deprived background or personal circumstances.<sup>48</sup> The Review should promote further research on this subject and explore ways in which sentencing guidance, practice and personnel can address ethnic disproportionality.

### *Young adults*

The Howard League supports the introduction of tailored sentencing for young adults. As part of our work with the Transition to Adulthood Alliance, we have explored the issue of sentencing young adults in depth. In 2019, we published a report on sentencing principles for young adults.<sup>49</sup>

The report, which draws on our participation work with young adults, sets out how

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<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/domesticabuseandthecriminaljusticesystemenglandandwales/november2023> accessed 8 January 2025

<sup>46</sup> The Howard League for Penal Reform, *Making Black lives matter in the criminal justice system: A guide for antiracist lawyers* (2021) <https://howardleague.org/wp-content/uploads/2021/09/A-guide-for-antiracist-lawyers-1.pdf> accessed 8 January 2025

<sup>47</sup> Sentencing Academy, *Sentencing Guidance, the Sentencing Council, and Black & Ethnic Minority Offenders* (2022) <https://www.sentencingacademy.org.uk/wp-content/uploads/2023/08/Sentencing-Guidance-the-Sentencing-Council-and-Black-Ethnic-Minority-Offenders-1.pdf> accessed 8 January 2025; Kitty Lymperopoulou, 'Ethnic Inequalities in Sentencing: Evidence from the Crown Court in England and Wales' (2024) *British Journal of Criminology*, 64(5), 1189; Eoin Guilfoyle and Jose Pina-Sánchez, 'Racially Determined Case Characteristics: Exploring Disparities in the Use of Sentencing Factors in England and Wales' (2024) *CrimRxiv*. <https://doi.org/10.21428/cb6ab371.23474cbf>; and Howard League, *A guide for antiracist lawyers* (n44)

<sup>48</sup> Sentencing Council, *Miscellaneous amendments to sentencing guidelines. Response to consultation* (2024) <https://www.sentencingcouncil.org.uk/wp-content/uploads/Miscellaneous-amendments-2023-24-Consultation-Response-website.pdf> accessed 8 January 2025

<sup>49</sup> The Howard League for Penal Reform, *Sentencing Principles for Young Adults* (2019) <https://howardleague.org/publications/sentencing-principles-for-young-adults/> accessed 8 January 2025

formal sentencing principles for young adults aged 18 to 25, similar to the Sentencing Council guidelines that are in place for children, would assist the courts and improve sentencing outcomes. The sentencing principles were developed in consultation with an expert advisory board.

## Women

Prison is particularly inappropriate for women. The previous government's Female Offender Strategy Delivery Plan acknowledged that many women in the criminal justice system pose a low or medium risk of serious harm to the public, and women often receive a custodial sentence for low-level non-violent offences.<sup>50</sup>

Women in custody often have multiple and complex needs and vulnerabilities which may be exacerbated in a custodial environment.<sup>51</sup> A custodial sentence results in the dismantling of support systems in the community, including relationships, family links, housing, medical and social care, and employment. The abolition of short sentences as proposed would have a positive effect for women in particular. At the other end of the spectrum, research highlights the particular challenges that women serving long prison sentences face in progressing through their time in custody.<sup>52</sup> These difficulties exist despite evidence from our members who note that "... life-sentenced women [...] are among the lowest risk of reoffending and exhibit the highest degrees of compliance and engagement with regimes".

The recommendations of the 2007 Corston Review remain as relevant as ever and the government should revisit these, in particular the recommendations on women's centres in the community and for a clear strategy to replace existing women's prisons with suitable, geographically dispersed, small, multi-functional, custodial centres for the small minority of women who require custody.<sup>53</sup> Lessons could be drawn from recent changes to women's imprisonment introduced in Scotland.

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<sup>50</sup> MoJ, *Female Offender Strategy Delivery Plan* (2023)

<https://assets.publishing.service.gov.uk/media/63d78f63e90e0773e01f8960/female-offender-strategy-delivery-plan-2022-25.pdf> accessed 8 January 2025

<sup>51</sup> Sentencing Council, *Miscellaneous amendments to sentencing guidelines: consultation 2023* (2023) <https://www.sentencingcouncil.org.uk/wp-content/uploads/Miscellaneous-amendments-2023-24-consultation-FINAL.pdf> accessed 8 January 2025; Sentencing Council, *Equality and diversity in the work of the Sentencing Council* (2023)

<https://www.sentencingcouncil.org.uk/publications/item/equality-and-diversity-in-the-work-of-the-sentencing-council/> accessed 8 January 2025; NHS, *National service specification for the care of women who are pregnant or postnatal in detained settings* (2022)

<https://www.england.nhs.uk/publication/care-of-women-who-are-pregnant-and-post-natal-in-detained-settings-service-specification/> accessed 8 January 2025; Nuffield Trust, *Ill-equipped prisons and lack of health care access leave pregnant prisoners and their children at significant risk* (2022)

<https://www.nuffieldtrust.org.uk/news-item/ill-equipped-prisons-and-lack-of-health-care-access-leave-pregnant-prisoners-and-their-children-at-significant-risk#:~:text=Findings%20from%20the%20Nuffield%20Trust,accessing%20hospital%20and%20care%20services> accessed 8 January 2025; and MoJ, *Female Offender Strategy Delivery Plan* (n47)

<sup>52</sup> Prison Reform Trust, *Invisible Women: Understanding women's experiences of long-term imprisonment. Briefing 3: Progression* (2024) <https://prisonreformtrust.org.uk/growing-numbers-of-long-sentenced-women-struggling-to-progress-through-their-sentence/> accessed 8 January 2025

<sup>53</sup> Home Office, *A report by Baroness Jean Corston of a review of women with particular vulnerabilities in the criminal justice system* (2007) <https://webarchive.nationalarchives.gov.uk/ukgwa/20130128112038/http://www.justice.gov.uk/publications/docs/corston-report-march-2007.pdf> accessed 8 January 2025

## *Pregnancy*

A presumption against custodial sentences for pregnant people should be imposed. A wealth of evidence highlights the risk and harm posed by imprisonment to pregnant people and babies. As recognised by the Sentencing Council:

The impact of custody on pregnant women can be harmful for both the mother and the unborn child. Pregnant women in custody are more likely to have high risk pregnancies with reduced access to specialised maternity services. There may also be difficulties accessing medical assistance and with being transported to hospital when in labour and giving birth.<sup>54</sup>

A summary of the evidence can be found [here](#). The risks posed by custody to a pregnant individual and baby are the same regardless of sentence length. A presumption against custody is required as reform to sentencing guidelines has not been heeded and recent case law suggests some sentencers still do not understand and account for the risks.<sup>55</sup>

We endorse the evidence and recommendations submitted to the Review on this issue by Level Up.<sup>56</sup>

## *Older adults*

We are concerned about the advancing age of people in prison as it relates to their higher level of need and vulnerability, comparatively lower level of risk, and the practicality of housing ever more elderly people. People aged 60 and over are the fastest growing age cohort in the prison system. More than 6,000 people in prison are now over 60, with more than 2,000 aged 70 and over.<sup>57</sup> Recent research suggests that this trend is being driven by “increased longevity amongst the general population as well as specific patterns of crime and sentencing”.<sup>58</sup> Our members highlight how prison can be an unsuitable place for older adults, saying “Their physical or mental health is poor, degraded or diminished and the risk of committing an offence in this state is so slight as to be negligible.”

The Justice Committee’s 2020 inquiry into the needs of older prisoners highlighted the challenges posed and faced by this cohort. The committee recommended that these needs and challenges warranted a specific policy for the cohort, an overarching strategic approach beyond operational guidance (a repeated call

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<sup>54</sup> Sentencing Council, Miscellaneous amendments (n48)

<sup>55</sup> Diane Taylor, *Pregnant woman’s jail sentence quashed in ‘landmark’ UK ruling* (The Guardian, 19 January 2024) <https://www.theguardian.com/society/2024/jan/19/pregnant-woman-jail-sentence-quashed-in-landmark-uk-ruling> accessed 8 January 2025

<sup>56</sup> Level Up, *Response to independent sentencing review 2024 to 2025: call for evidence — December 2024* (2024) <https://welevelup.org/wp-content/uploads/2024/12/Level-Up-Sentencing-Review-submission-2024-1.pdf> accessed 8 January 2025

<sup>57</sup> MoJ, *Offender management statistics: April to June 2024* (n22)

<sup>58</sup> Prison Reform Trust, *Growing old and dying inside: improving the experiences of older people serving long prison sentences* (2024) <https://prisonreformtrust.org.uk/wp-content/uploads/2024/08/Growing-old-and-dying-inside.pdf> accessed 8 January 2025

following investigation in 2013).<sup>59</sup> The Review should recommend that the MoJ commissions a further review of this group and takes steps to reverse its growth in number.

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<sup>59</sup> Justice Committee, *Ageing prison population. Fifth Report of Session 2019–21* (House of Commons, 2020) <https://committees.parliament.uk/publications/2149/documents/19996/default/> accessed 8 January 2025