The Howard League for Penal Reform
Submission to the Independent Review of the Criminal Courts

Introduction

The criminal justice system in England and Wales is currently experiencing a well-documented crisis with court delays and backlogs, a prison population at maximum capacity, and under-resourced services in the community (most particularly, probation). These separate elements of the system should work together, as part of a whole. Instead, they are currently working within what the Institute for Government has termed a 'harmful feedback loop.'[1] Changes to practice in the criminal courts cannot be explored without consideration of their impact elsewhere, and vice versa.

Reform in the criminal courts may facilitate a more virtuous, rather than vicious, cyclical relationship whereby solutions ease systemic issues, reducing demand on the limited resources available to the criminal justice system.

Point A: Longer-term options for criminal court reform, with the aim of reducing demand on the Crown Court by retaining more cases in the lower courts

Key points:

- We question whether increasing magistrates' sentencing powers will reduce demand downstream
- The Review should carefully evaluate the impact of previous changes to magistrates' sentencing powers
- When considering sentencing powers, the Review should refer to the efficacy and requirement for short sentences – abolition of custodial sentences of up to 12 months may render this a moot point
- The Review should seek longer-term and joined-up solutions

The government has recently announced that magistrates' sentencing powers will be increased to address the backlog in the Crown Court and by extension the remand population.[2] This would allow magistrates to sentence people to custody for up to 12 months for a single offence. This move was billed as a way to 'address the prisons crisis'.[3] Concerns have been raised by both the Criminal Bar Association and the

[1]Cassia Rowland, 'Overflowing prisons are just one aspect of deep dysfunction across our failing criminal justice system' (*Institute for Government*, 2024) https://www.instituteforgovernment.org.uk/comment/overflowing-prisons-failing-justice-system accessed 31 January 2025
[2] MoJ, *Increased sentencing powers for magistrates to address prisons crisis* (2024) https://www.gov.uk/government/news/increased-sentencing-powers-for-magistrates-to-address-prisons-crisis accessed 31 January 2025
[3] *Ibid*.

Law Society.[4] The Howard League questions how widening the opportunities to pass custodial sentences is an effective way to reduce the prison population.

The Review should carefully assess the impact of previous changes to magistrates' sentencing powers. Magistrates' sentencing powers were extended by the Sentencing Act 2020, doubling the maximum custodial sentence available from six to 12 months. The impact assessment highlighted a downstream effect on prisons, stating 'Any potential increase in sentencing would lead to an increase in demand for prison places.'[5] An amendment was then made in 2023, reversing the extension in magistrates' sentencing powers, with the reason given that increased sentencing powers had led to an increase in the prison population.[6] A thorough exploration should include detailed analysis of court committals and outcomes and reoffending rates, particularly among those who commit prolific offences.

The problem of short sentences is inextricably linked to magistrates' sentencing powers. There is a wealth of evidence, including the Ministry of Justice (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 56.9%. This rises to 59.5% for people released from sentences of six months or less.[7] The evidence promotes community sentences as a more effective alternative.[8]

As recommended in our submission to the Independent Sentencing Review, short sentences of 12 months or less should be abolished and the power of the lay

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[4] Charlie Moloney 'Government announces increase in magistrates' sentencing powers – again' (*The Law Gazette*, 17 October 2024) https://www.lawgazette.co.uk/news/magistrates-sentencing-powers-to-be-doubled-again/5121222.article accessed 31 January 2025; and Jennifer Scott, 'Prisons crisis: Lawyers warn against 'knee-jerk' move to increase sentencing powers for magistrates' (*Sky News*, 16 September 2024) https://news.sky.com/story/prisons-crisis-lawyers-warn-against-knee-jerk-move-to-increase-sentencing-powers-for-magistrates-13216069 accessed 31 January 2025

[5] MoJ, *Impact Assessment: Extending Magistrates' Court Sentencing Powers* (2022) https://www.legislation.gov.uk/ukia/2022/39/pdfs/ukia_20220039_en.pdf accessed 31 January 2025

[6] Sentencing Act 2020 (Magistrates' Court Sentencing Powers) (Amendment) Regulations 2023, Deb 16 May 2023, vol 830 https://hansard.parliament.uk/lords/2023-05-16/debates/A7694043-1B1D-47A6-BC15-9BD92B07174F/SentencingAct2020(Magistrates%E2%80%99CourtSentencingPowers)(Amendment)Regulations2023 accessed 31 January 2025; and Oliver Hirsch, '12-month sentencing powers for magistrates reversed – but why?' (*3PB Barristers*, 2023) https://www.3pb.co.uk/content/uploads/OH-12-month-sentencing-powers-for-magistrates-reversed-but-why-by-3PB-Barristers.pdf accessed 31 January 2025

[7] MoJ, *Proven reoffending statistics: January to March 2023* (2025) https://www.gov.uk/government/statistics/proven-reoffending-statistics-january-to-march-2023/proven-reoffending-statistics-january-to-march-2023 accessed 31 January 2025

[8] *Ibid.* See also 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 31 January 2025; Justice and Home Affairs Committee, 'Cutting crime: better community sentences' (*House of Lords*, 2023) https://committees.parliament.uk/publications/42651/documents/212004/default/ accessed 31 January 2025; and Georgina Eaton and Aidan Mews, 'The impact of short custodial sentences, community orders and suspended sentence orders on reoffending' (*MoJ*, 2019) https://assets.publishing.service.gov.uk/media/5d1c732ee5274a08cdbe45c4/impact-short-custodial-sentences.pdf accessed 31 January 2025

magistracy to sentence individuals to custody should be removed. The magistrates' courts should instead be furnished with effective options for community orders.

The Review should seek long-term and holistic solutions to systemic issues. It is a sign of a desperate situation that polices that were reversed are now being reconsidered. Increasing sentencing power compounds rather than reduces pressure on the criminal justice system. Long-term solutions will lie in an approach to criminal justice which does not rely on imprisonment and punishment, but rather effective diversion and rehabilitation.

Point B: The efficiency and timeliness of processes through charge to conviction/acquittal

Key points:

- The Review should explore practice and processes around remand (the remand population is a key inflationary factor in the prison capacity crisis)
- The Review should explore ways to address data gaps in our understanding and scrutiny of remand
- The Review should seek to identify and address disproportionality in decision making
- The Review should look into custody time limit (CTL) recording practices
- The Review should ask the government to evaluate the experience, role and impact of video technology in court proceedings
- When considering video technology, the Review should be alive to the potential of inequitable access and disadvantage in remote proceedings

Remand

The population of people in custody on remand is clear evidence of an unacceptably sluggish system. Across the prison estate, people on remand account for a fifth of the total prison population.[9] This is a record high and part of a rising trend. Within the context of the current prison capacity crisis, this places pressure on an already stretched system. Indeed, continued growth of the remand population is highlighted as a key factor contributing to prison population growth.[10]

The MoJ's prison population projections further describe this systems failure, attributing continued growth in the remand population to '…increases in upstream demand from police and prosecutorial activity, and court activity that is not able to keep pace with incoming and existing demand'. Additional factors include the Covid-19 pandemic and industrial action, resulting in court backlogs.[11] The impact of changes to increase the capacity and resourcing of Bail Information Services

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[9] MoJ, *Offender management statistics quarterly: July to September 2024* (2025) https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-july-to-september-2024 accessed 31 January 2025

[10] MoJ, *Prison Population Projections: 2024 to 2029* (2024) https://www.gov.uk/government/statistics/prison-population-projections-2024-to-2029/prison-population-projections-2024-to-2029 accessed 31 January 2025

[11] UK Parliament, 'Update on Foreign National Offenders, Prisons and Probation. Statement by Lord Bellamy ', *Written questions, answers and statements* (UIN HLWS327, 12 March 2024) https://questions-statements.parliament.uk/written-statements/detail/2024-03-12/hlws327 accessed 31 January 2025

introduced by the previous government is yet to be seen.[12] Our previous work on remand illustrates the way in which resourcing challenges and deficits upstream can affect decision-making and processes in the courts.[13] This research found that young adults as a specific cohort lacked support from a Lead Criminal Justice practitioner whilst in prison to provide support and communication, resulting in a trickle-down effect of lack of information available to the courts.[14]

There is high-level political and sector concern regarding the overuse of remand.[15] HM Chief Inspector of Prisons identified the growing remand population as a current source of pressure on the system.

Remand has a disproportionate impact on different groups. The proportion of women on remand is higher than men (26% of the female prison population, compared to 20% of the male prison population).[16] This is despite the low-level, non-violent offences women typically commit.[17] While the proportion of white people on remand is lower than the sentenced population (65% compared to 74%), people from non-white backgrounds have the same or greater representation in the remand population (notably people from Asian and other ethnic groups).[18] FOI data showed that people from black backgrounds spent 70% longer on remand than their white counterparts.[19] This is exacerbated for women from minority ethnic backgrounds.[20] Children from black and minority ethnic backgrounds are also over-represented in the remand population.[21] Lack of scrutiny and bias may influence decision-making, and by extension court efficiency.

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[12] MoJ, *Prison population projections 2024 to 2029* (n10); and UK Parliament, 'Update on Foreign National Offenders, Prisons and Probation' (n11)
[13] Howard League for Penal Reform, *What's wrong with remanding young adults to prison: Voices and lessons learned* (2023) https://howardleague.org/wp-content/uploads/2023/10/Howard-League-briefing_Whats-wrong-with-remanding-young-adults-to-prison-voices-and-lessons-learned_October-2023.pdf accessed 31 January 2025
[14] *Ibid.*
[15] See for example Justice Committee, *The role of adult custodial remand in the criminal justice system. Seventh report of session 2022-23* (2022-23, HC 264) https://committees.parliament.uk/publications/33530/documents/182421/default/ accessed 31 January 2025
[16] MoJ, *Offender management statistics* (n9) Accompanying data: Prison population: 31 December 2024, Table 1Q1
[17] See for example MoJ, *Female Offender Strategy Delivery Plan* (2023) https://assets.publishing.service.gov.uk/media/63d78f63e90e0773e01f8960/female-offender-strategy-delivery-plan-2022-25.pdf accessed 31 January 2025
[18] MoJ, *Offender management statistics* (n9) Accompanying data: Prison population: 31 December 2024, Table 1Q7
[19] Mark Wilding and Rajeev Syal, 'Black remand prisoners held 70% longer than white counterparts in England and Wales' (*The Guardian*, 10 June 2023) https://www.theguardian.com/law/2023/jun/10/black-remand-prisoners-held-70-longer-than-white-counterparts-in-england-and-wales accessed 31 January 2025
[20] Women in Prison, *Policy briefing: The disproportionate use of remand for Black, minoritised and migrant women* (2023) https://womeninprison.org.uk/media/downloads/Briefing-APPG-5th-December-Disproportionate-impact-of-remand.pdf accessed 31 January 2025
[21] HMI Probation, *A joint thematic inspection of work with children subject to remand in youth detention* https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2023/11/A-joint-thematic-inspection-of-work-with-children-subject-to-remand-in-youth-detention-v1.02.pdf accessed 31 January 2025

Problems identified in previous reviews are now heightened amidst increasing capacity pressure. In 2001, Sir Robin Auld recommended the Prison Service should introduce national standards for access to due process for remand prisoners that ensure they experience no greater difficulty than bailed defendants in preparing for their trials.[22] Challenges remain – more recently, the Justice Committee found that provision for remand prisoners in support services and regime (including movement and communication, essential to contact with legal professionals) was lacking.[23] The experiences of people in prison highlight continued barriers to accessing legal support.[24] In 2015, the Leveson review highlighted problems with the transport of prisoners and timely arrival to court.[25] Recent data showed that hundreds of trials were derailed by this very problem.[26]

Opportunities to tackle the problem of remand are confounded by a lack of data and complex court procedures. The lack of available data results in a catch-22 situation whereby government and stakeholders are unable to fully scrutinise and understand, and therefore unable to identify points for improvement. Key data gaps include disaggregated data on the length of time spent on remand, and the reasons that people are remanded to custody.

The recording and sharing of key remand data, for example custody time limits (CTL), appears to be a complex process. The guidance suggests that CTL expiry dates are recorded by HM Courts and Tribunal Service (HMCTS) and Crown Prosecution Service (CPS) case management systems, that CTL extension applications are submitted in writing and that CPS managers are supposed to check CTL compliance on a weekly basis.

In 2023, HM Crown Prosecution Service Inspectorate (CPSI) criticised that CTL progression logs were not kept updated. The CPS committed to improved consistent use and updating of the CTL case progression log; and the development of a system to monitor compliance with CTL policies.[27] The Review should seek to ascertain whether these changes have been made, and if so, their impact.

Tackling remand will help to resolve pressure in all areas of the criminal justice system. The Review should explore ways that courts could improve processes and ensure that data is transparent and accessible. As recommended by the Institute for

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[22] Rt Hon Lord Justice Auld, *Review of the Criminal Courts of England and Wales. Chapter 2* (2001) https://www.criminal-courts-review.org.uk/auldconts.htm accessed 31 January 2025
[23] Justice Committee, *The role of adult custodial remand* (n15)
[24] Fair Trials, *Written evidence to the Justice Select Committee Inquiry into The role of adult custodial remand in the criminal justice system (REM0015)* (HC, 2022) https://committees.parliament.uk/writtenevidence/108077/pdf/ accessed 31 January 2025
[25] Rt Hon Sir Brian Leveson, *Review of Efficiency in Criminal Proceedings* (2015) https://www.judiciary.uk/wp-content/uploads/2015/01/review-of-efficiency-in-criminal-proceedings-20151.pdf accessed 31 January 2025
[26] Michael Goodier and Matthew Weaver, 'Hundreds of trials derailed by failure to get defendants to court on time' (*The Guardian*, 10 December 2024) https://www.theguardian.com/law/2024/dec/10/hundreds-trials-derailed-failure-transport-defendants-court-serco-geoamey accessed 31 January 2025
[27] CPS, *CPS Response to HMCPSI follow-up Inspection on Custody Time Limits, 30 November 2023* (2023) https://www.cps.gov.uk/publication/cps-response-hmcpsi-follow-inspection-custody-time-limits-30-november-2023 accessed 31 January 2025

Government, the Review should explore ways to encourage joined-up thinking and long-term planning, as opposed to 'siloed firefighting'.[28]

New technologies

The use of video technology in courts increased during the pandemic. There are benefits to the use of video technology in routine hearings, where it limits resource requirements and transfer delays. It may also enhance engagement and can be a cost-effective alternative to in-person appearances. However, further evaluation is required to assess the impact on experience, access, and procedural justice.[29]

Care should be taken to ensure equitable access in relation to technological literacy, inclusion, and diversity in communication styles (for example, reading non-verbal cues). Fair Trials found that 'audio or video-link hearings disadvantage defendants with cognitive impairments, and/or serious mental health or neurodivergent conditions' and that they may result in unfavourable outcomes for defendants, particularly relating to remand or bail decisions.[30] HM Chief Inspector of Prisons also raised concerns about proper access to justice for vulnerable people in prison.[31]

As stated by the Justice Committee, '…the convenience of video technology must not affect a defendant's access to justice, and should not become a default position because of resource or capacity pressures.'

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[28] Cassia Rowland, 'Overflowing prisons are just one aspect of deep dysfunction' (n1)
[29] For existing discussion see: Dorris de Vocht and Pauline Jacobs, 'Can Remote Trials be Fair Trials? Exploring the Potential Effects of Communication Technology in the Criminal Justice Context from an Interdisciplinary Perspective' (2024) *Tilburg Law Review*, 29(2), p. 1–9; Janet Carter, 'Evaluation of remote
hearings during the COVID 19 pandemic' (*HMCTS*, 2021) https://assets.publishing.service.gov.uk/media/61b71ebd8fa8f5037b09c7b1/Evaluation_of_remote_hearings_v23.pdf accessed 31 January 2025; and Transform Justice, *Remote justice – a view of the pros and cons from an anonymous judge* (2020) https://www.transformjustice.org.uk/news-insight/remote-justice-a-view-of-the-pros-and-cons-from-an-anonymous-judge/ accessed 31 January 2025
[30] Fair Trials, *Written evidence* (n24) and Justice Committee, *The role of adult custodial remand* (n15)
[31] Justice Committee, *The role of adult custodial remand* (n15)