

Justice Committee

Oral evidence: [The role of adult custodial remand in the criminal justice system](#), HC 264

Tuesday 5 July 2022

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Members present: Sir Robert Neill (Chair); Rob Butler; James Daly; Maria Eagle; Laura Farris; Kate Hollern; Paul Maynard; Dr Kieran Mullan; Karl Turner.

Questions 1 - 84

Witnesses

[I](#): Professor Anthea Hucklesby, Professor of Criminal Justice and Head of the School of Social Policy, University of Birmingham; Peter Dawson, Director, Prison Reform Trust; and Penelope Gibbs, Director, Transform Justice.

Examination of witnesses

Witnesses: Professor Hucklesby, Peter Dawson and Penelope Gibbs.

Chair: We are starting our inquiry into the use of remand in the adult custodial system. Welcome to our witnesses. Before we start, Members have to make their declarations of interest. I am a non-practising barrister.

Maria Eagle: I am a non-practising solicitor.

Karl Turner: I am a non-practising barrister.

Q1 **Chair:** Other people joining us may include Members with interests and I will get them to declare them as they come in. Could I invite our panel of witnesses to introduce themselves and their organisation, for the record?

Peter Dawson: I am Peter Dawson, director at the Prison Reform Trust.

Penelope Gibbs: I am Penelope Gibbs, director of Transform Justice.

Professor Hucklesby: I am Professor Anthea Hucklesby from the University of Birmingham.

Q2 **Chair:** It is nice to see you all. Can I put a general question? We all know that remand, and whether people are remanded in custody or not, has a statutory framework for the way it should be used under the Bail Act 1976. Subsequently that was amplified a bit by LASPO in 2012 in relation to certain types of offence. The essence of both the Bail Act and the Criminal Procedure Rules 2020, as we know, is that there are two grounds for remanding people in custody: either that there is a threat to public safety; or that there is a risk of absconding, to put it in lay terms. In addition, there is the presumption in the 2012 Act against remand for those where you are not likely to get a custodial sentence at the end of the day, for obvious reasons.

In practice, how much do you find that those tests work? Is the test for whether or not you should remand somebody in custody satisfactory in law, for a start, and is its application working well in practice or not? That might be an area. Can somebody help around that?

Penelope Gibbs: I posit that it should be satisfactory in law, that the law is okay, but the observation of the law, the application of the law, is very problematic. I have worked a lot on the issue of the remand of children. There, the Government have just raised the threshold. In a way, possibly the only way of getting the law observed as it is would be to raise the threshold in order to reduce the remand. We have had this law for a long time and the courts' observation of it and application of it has not changed.

Q3 **Chair:** Professor, you may have done some studies on this to try to indicate how it operates in practice. Perhaps you can help us on that.



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Professor Hucklesby: Yes. Generally, the framework works well. The three main tests are tests that can be applied by the courts. There are a number of areas that could be looked at. The reasons for the decision are not necessarily said in court in such a way that defendants or their legal advisers might be able to use them for bail applications in the future. One of the areas in which the law does not work particularly well is for persistent low-level offending—for example, shoplifting. That is one area that could be looked at further.

Q4 **Chair:** In what way might that happen?

Professor Hucklesby: There are some cases, and this leads into the remand population, where for low-level persistent offenders, there is no alternative but to remand them in custody because they are so frequently in court, but it is relatively low-level offending and quite a lot of them are women. The other area that I suggest could be looked at again is the law for bail applications only, and lack of review through the process. Cases change over time. One of the reasons why so many people get non-custodial sentences at the end is that their cases change as they progress through the courts. At the moment, you can only make two bail applications and that is probably insufficient, particularly when it is a very long time.

Q5 **Chair:** I see, yes. There is not a provision where you can go back more than that, if you can demonstrate a material change in circumstances, for example.

Professor Hucklesby: There is a way to do that but it is quite difficult and cumbersome. People have to be able to access legal advice and that is difficult if they are in prison.

Q6 **Chair:** I understand that. Is there any research that you have done at all about the number of people making bail applications who are not represented?

Professor Hucklesby: No. Anecdotally, I have heard that it has gone up.

Q7 **Chair:** That might be lack of availability of solicitors, yes.

Professor Hucklesby: Yes.

Q8 **Chair:** Mr Dawson, any thoughts?

Peter Dawson: No, I wouldn't pretend to any expertise on what happens in court. I can only speak for the people I meet in prisons. I would say that many of those certainly do not meet the public safety threshold, particularly women. It is interesting that you used the word "absconding", because I meet a lot of people who have nowhere else to go. They certainly might not appear, but I am not sure that is the same as absconding.

Q9 **Chair:** You are saying that it is not necessarily deliberately seeking to put



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yourself beyond the jurisdiction of the court.

Peter Dawson: Exactly, yes.

Penelope Gibbs: Foreign national people are especially suspected of absconding without there necessarily being hard evidence that they will.

Q10 **Chair:** Not unique to the UK, is it?

Penelope Gibbs: I want to bring up one bit that is not working properly, and that is the no real prospect test in the magistrates court. It is the bit of law that says the person who is remanded needs to have a real prospect of getting an immediate custodial sentence when they are remanded. Nearly two thirds of those remanded and dealt with by magistrates in the magistrates court do not get an immediate custodial sentence, so something is going wrong with the estimation of real prospect.

Q11 **Chair:** Is there any evidence anywhere—I have seen it from some other sources—about the quality of representation and advocacy during the course of bail hearings? We have seen something from JUSTICE—I don't know if you have seen it—that suggests that in applications prosecution advocates relied on the test in only 28% of cases, and defence advocates in only 34% of cases. It surprises me. When I used to prosecute and defend, it was a pretty basic thing you would say when opening to the Bench.

Penelope Gibbs: I think that comes from the research of Dr Tom Smith, who has done two waves of observations of the magistrates courts. He has found that, in quite a lot of cases, the defence does not apply for bail at all. That comes back to the problem of them having insufficient time and information with which to put together a good bail application. It is to do with the pressure of time put on them, and difficulties in getting to see their client and consulting them. It is also about the lack of bail information services in the court to aid that bail package.

Q12 **Chair:** I understand that. Equally, it could sometimes be a tactical decision by the defence and the defendant.

Professor Hucklesby: Yes. My research is quite old but I don't think things have changed very much, in the sense that defence solicitors may decide for credibility reasons that they do not want to apply for bail in a case. For me, it has always seemed strange that we have a presumption in favour of bail, yet it is the prosecution that goes first and the defendant who has to apply for bail when, in fact, they should not be applying for bail; bail is the presumption.

Q13 **Chair:** I have always worked on the basis that the prosecution, when they apply for remand in custody, set out their grounds first.

Professor Hucklesby: Yes, they do.

Q14 **Chair:** Which would be the right thing, because the burden is on them.



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Then the defence can rely on both the statutory tests and such evidence as they might be able to call to rebut it.

Penelope Gibbs: There is an interesting difference, though. As I understand it, in the youth court, solicitors and barristers nearly always oppose bail.

Chair: That is interesting. To come to any firm decision, maybe one needs to look at the nature of the offences, which might then come to the question of whether or not credibly you want to apply for bail or not, and indeed, sometimes, whether it is in your client's interest to apply for bail, if there is the likelihood they might get a custodial sentence.

Maria Eagle: If you can only apply and make two applications in the normal course of events, you might want to save them up until you know more about the defendant and the case. I suspect there is a psychological element.

Q15 **Chair:** There is probably a bit of that, I am sure. The only other thing I was going to ask about was the impact of video technology on remand hearings. I know, Penelope, that you have done some work around that and take an interest in it. The Magistrates Association thought about 76% of magistrates felt it did not really help communication. I was interested to see that. What is your evidence?

Penelope Gibbs: That was from research which was done during Covid. With remand decisions and video, there are two ways they have been taken. One is prison to court links, which have been going for years but we still do not have data on the respective outcomes. During the pandemic, there were links from police custody to the court. Quite often, on first appearances, remand decisions were made from those.

The problem we have is that no data has been collected on the difference in remand decisions. There is some data from a study published in 2020 on the police custody to court links, which indicates that the Bench gives more prison sentences if it is on video, but that is not remand; they are actual sentences. We are missing the remand piece.

Q16 **Chair:** I understand that. Is there anything you want to add, Professor Hucklesby?

Professor Hucklesby: Only that courts were always an opportunity for them to see their legal advisers, so that will be more difficult if it is through live link.

Chair: Fair enough.

Q17 **Dr Mullan:** Talking more broadly, my understanding is that three quarters of people held on remand will end up with a custodial sentence; a quarter of them do not. That is not a bad ratio, considering all the hurdles you have to go through for prosecution, all the uncertainty that is inherent in the justice system and making decisions. What would be the rate that you would think was a good rate?



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Penelope Gibbs: I hate to play figures, but I make it 38% who do not get an immediate custodial sentence. I can send you the figures afterwards.

Q18 **Dr Mullan:** It says in our notes that, "a quarter of all those remanded in custody were acquitted or released." So I presume that three quarters of them were not.

Penelope Gibbs: It is just the figures I have; slightly more than yours. I would say 40% of people remanded who do not get an immediate custodial sentence is still pretty high. Where for me the stats are not acceptable is the magistrates court stats, not really the Crown court stats. Practice could improve in the Crown court in decision making, information and so on. It is nearly two thirds in the magistrates courts who do not get an immediate custodial sentence.

Q19 **Dr Mullan:** To go back to my question, where would you feel we are getting it about right?

Chair: Is there a statistical figure?

Penelope Gibbs: It is a judgment figure, isn't it? I feel very few people should be remanded because it is a deprivation of liberty. A huge proportion of those remanded are innocent until proven guilty. Personally, I would say that it should be much less used than it is for non-violent offences. It is used a lot for people on drugs offences and so on. To me, it should be about a very evident risk of that person either not turning up at court or committing a further serious, dangerous offence.

Dr Mullan: Thank you.

Professor Hucklesby: Perhaps I could add to that.

Chair: Yes, of course.

Professor Hucklesby: There are obviously two parts to the remand population: the unconvicted and the unsentenced. It should be zero for the unsentenced, because they have been convicted and they are just waiting for reports.

Q20 **Dr Mullan:** It is bureaucratic.

Chair: Absolutely, yes.

Professor Hucklesby: That should be very low. We do not know what that figure is, so that is a piece of missing data that would be really useful.

Q21 **Chair:** Another bit of data.

Professor Hucklesby: The unconvicted is the bit that is more difficult, when cases change over time.

Chair: Indeed, because people may well end up being acquitted, and that is the risk. I understand that.



Q22 Paul Maynard: We are already wading through the custard of statistics that exist in this area, a veritable smorgasbord of indicators heading in the wrong direction, I suspect. Can you help us dig a little deeper not least, to state the obvious, so that we have it on record and we can put it in our report? We are seeing numbers on remand increase. Is this due to more individuals being remanded to custody or to those already remanded being in custody for a longer period untried? Where does the balance sit on that spectrum?

Professor Hucklesby: Most of the increase has been because of the length of time. Receptions have only increased by 3% during the pandemic; that is the number of people who are first receptions into prison. Mainly, it is people who are in for longer. One of the problems—yet again paucity of data—is that it used to be a published figure. The average time spent in custody is no longer published, so we do not know. That is some of the data that would be really useful if it was published.

Q23 Paul Maynard: If you don't count it, it doesn't matter.

Penelope Gibbs: Exactly.

Q24 Paul Maynard: Taking that into account, would it, therefore, be fair to say that, if the numbers being received into remand are not increasing as sharply, Covid has not had a material impact on how the law is being applied? Would it also suggest that the impact of the video hearings has not been as great as some might fear because the receptions element has not changed? Is that a fair inference?

Professor Hucklesby: I am not sure that it is, because the courts have been so disrupted. The type of crime that has been committed has changed so much over the pandemic that it is like comparing apples with pears.

Q25 Paul Maynard: Fair enough. You hinted at or referred earlier to the difference between the unsentenced and the untried. We are seeing a disproportionate increase in those who are unsentenced. We agree there is lots of bureaucratic foul-up, by and large. What unblocks that bureaucratic foul-up? Do we need rapid sentencing courts so that we just churn them through? What is the solution?

Professor Hucklesby: Hopefully, not rapid sentencing courts. Certainly, the unified probation service will help in getting pre-sentence reports and stand-down reports done quickly. They have obviously been impacted by the pandemic as well. The new probation service, hopefully, if it is left to it, will sort out some of those reports. There are also medical reports and psychiatric reports. I do not have any data, but I suggest that they too have been hampered by the pandemic, when they were looking elsewhere.

Q26 Paul Maynard: It is quite a complex set of levers that officials will need to pull to make the sausage machine function that bit better, essentially.



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Professor Hucklesby: Absolutely. One of the things about the remand process is that it involves lots of different people at different times. It is a bit like a sandwich. It has lots of levers in and lots of levers out, and is very difficult to manage for that reason.

Penelope Gibbs: I want to talk about one story where things are going wrong. A family contacted me, the father and the sister of a man who is in prison at the moment. He pleaded guilty to conspiracy to supply some cocaine in January 2019. It was not a lot of cocaine. He has been waiting on remand for his sentence for three and a half years; he still has not been sentenced. His court date is apparently in February. That is an example. By the time it comes to his court date, it could be that whatever he should have been sentenced to, he has far exceeded. Everything that goes into the court backlog is contributing to people who are unsentenced, just sitting on remand. The problem with somebody sitting on remand for three and a half years is that you do not get the same access to programmes and so on. It is not good enough, three and a half years.

Q27 **Paul Maynard:** What is the point of having indicative custody time limits?

Penelope Gibbs: Custody time limits are for people awaiting their trial. This man pleaded guilty in January 2019.

Chair: So it does not apply.

Q28 **Paul Maynard:** We also have lengthy waits for people waiting to be tried.

Penelope Gibbs: Sure, those are terrible too.

Q29 **Paul Maynard:** We can find three-year waits for them as well.

Penelope Gibbs: In efficiency terms, that somebody, for a not that complex crime, has to wait three and a half years is an indictment of the system.

Q30 **Chair:** Mr Dawson?

Peter Dawson: This is a separate point. Briefly, I encourage you not to be too accepting that the reorganisation of probation will make a difference, partly because we should be sceptical of reorganising things, and partly because the National Probation Service has had responsibility for advice to the courts throughout, and that has not changed.

Chair: Thank you very much.

Q31 **Paul Maynard:** Finally, I want to try to rephrase Kieran's question from the other end of the telescope. I would put none of you three in the "Lock 'em up and throw away the key society of Great Britain." I think that is fair to suggest. We see many people remanded into custody for offences that are never going to result in a custodial sentence. Is there any set of circumstances, from your particular perspective, that would justify



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remanding someone to custody knowing they will never get a custodial sentence if found guilty? Can you conceive of any set of circumstances, or is it a complete moral and philosophical no-no?

Peter Dawson: It is an administrative failure, as well as moral and philosophical, that we should think that the prison environment could conceivably be the best place to put someone who, if that is true, plainly is in need of help. Prisons are not a good place to help people, and the conditions for people held who have not been convicted are the worst in the system. It seems a curious use of public money and a curious choice of location when the circumstances almost certainly mean that the person needs help and needs help where they live.

Q32 **Paul Maynard:** By that answer, you are suggesting that whether it is a custodial sentence or not is rather immaterial in taking a view as to whether they should be remanded into custody or not.

Peter Dawson: I think I am just answering your question, which is that if they are not going to get a custodial sentence, all the other circumstances—

Q33 **Paul Maynard:** I was just trying to clarify whether you meant all.

Peter Dawson: The bottom line is that sending someone to prison because you think it will be good for them is just wrong. It is wrong philosophically and morally, but it also does not work. We have a prison system that demonstrates pretty conclusively that it does not work.

Penelope Gibbs: If that person is truly dangerous, they should probably get an order putting them in a secure hospital.

Chair: There might be some people who fall between those stools—those who do not, in mental health terms, warrant a secure hospital. It might be people who have a history of violence, none the less. Unfortunately, some people are violent.

Paul Maynard: I will stop splitting hairs.

Chair: Okay, I understand.

Q34 **Karl Turner:** Before I come to the court backlog and remand, could I ask something following Dr Mullan's questioning? You said that two thirds of those who are remanded in custody by the magistrates do not end up with a custodial sentence.

Penelope Gibbs: The ones who were dealt with fully in the magistrates courts. It is not the ones who go up to the Crown court. It is those the magistrates try.

Q35 **Karl Turner:** Is there any analysis of those who have actually ended up with a custodial sentence as a result of being remanded in custody? What I mean by that is that they have spent several weeks or even months on remand, they probably appear before a district judge, in practicality, rather than a lay Bench, and the district judge says, "Well, you've spent



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time on remand now. That's your sentence."

Penelope Gibbs: It might have been different had they never been on remand.

Karl Turner: Yes.

Penelope Gibbs: Those are the hidden people. Unless we observe the courts and really analyse, we would not find them. I agree with you that those people are there.

Q36 **Karl Turner:** There is no actual analysis of that?

Penelope Gibbs: No.

Karl Turner: Thank you.

Chair: Before we move on to the next topic—as you are moving on to prisons, Karl—I want to see if Rob Butler wants to come in on this topic.

Karl Turner: Certainly.

Q37 **Rob Butler:** Apologies for being late. I had not realised it was starting early. Sorry for coming in after you had started giving evidence.

First of all, Ms Gibbs, I want to check that I heard you correctly. I believe you said, "Solicitors or barristers in the youth court almost always oppose bail." Did I hear that correctly in your earlier evidence?

Penelope Gibbs: You have sat in the youth court. Is that not your experience?

Q38 **Rob Butler:** Absolutely not, but you are here to give evidence. Is that what you said?

Penelope Gibbs: I did say that.

Q39 **Rob Butler:** Do you have data to support that?

Penelope Gibbs: No.

Q40 **Rob Butler:** So it is a personal assertion, based on what?

Penelope Gibbs: Talking to people who work in the youth court. If you know different, you are going to be right and I am wrong.

Q41 **Rob Butler:** You have no data to support that.

Penelope Gibbs: No.

Q42 **Rob Butler:** It would be inappropriate for us in a parliamentary report to put an assertion like that, which has no evidence to back it up.

Penelope Gibbs: No. You sit in the youth court. If your experience is different, it will be superior to what I said.

Q43 **Rob Butler:** I am not the person giving evidence, but I wanted to clarify whether there was any evidence to support your assertion, which you



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have clarified.

Penelope Gibbs: Yes.

- Q44 **Rob Butler:** Professor Hucklesby, on the point you were making about those who are remanded post-conviction but prior to sentence, did I understand that you said that that should be a very small number? Can you clarify why you think that? You have also just been giving evidence across the piece that it is very important, when deciding on a sentence, that the correct reports are carried out to determine what type of sentence and particularly the duration of the sentence.

I was on the Sentencing Council; I know there are all sorts of mechanisms and mechanics that need to be gone through. How can those reports be done without the person who is convicted being remanded? If there is likely to be a custodial sentence, which a judge or magistrate would be able to ascertain, surely they will need to be remanded in custody while those reports are prepared. You cannot get to a very, very small number of people in that situation, can you, or have I missed something?

Professor Hucklesby: Yes, I think you misunderstood what I said, which was that it should be zero for people who do not get a custodial sentence.

- Q45 **Rob Butler:** Right. It is those who are convicted and not yet sentenced, but then subsequently do not receive a custodial sentence. Could you foresee a situation where it would only become apparent that it should not be a custodial sentence because of, for example, an in-depth medical report or something else that suggests that, contrary to the initial impression, a judge or magistrate on legal advice would be reaching to remand that person post-conviction? Is it not feasible that it is the report process or something that emerges in that time period that means there will need to be, almost by definition, always a number of people in that situation?

Professor Hucklesby: Yes, there is probably a small number who will end up getting a non-custodial sentence, having been remanded, because the reports suggest that. My understanding is that most sentences would have an idea about whether custody was a real prospect. I suppose it is that test; making sure that the test is as strong as possible to minimise the number who are remanded for reports, who then end up getting a non-custodial sentence.

- Q46 **Rob Butler:** That is really helpful to have clarified, thank you. Do you have a concern about the number of people who are remanded in custody post-conviction, prior to sentence, but who then have a custodial sentence imposed on them? Is that in and of itself a concern?

Professor Hucklesby: Anybody who is remanded in custody is a concern. If there is a real reason for them being remanded in custody—they are very violent; they have committed very serious offences—there is a small proportion. There is still room to get more people out. The



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unsentenced population is the population that is going up the most. We do not have enough data to understand why it is going up, and what are the forces making it go up. We can make assumptions by looking at how many reports are done, the drop-in reports and the issues with the probation service, but we do not actually know, so we need to disaggregate that data so that we can provide you with the evidence you are looking for.

- Q47 **Rob Butler:** Very helpful, thank you. You will all be familiar, Ms Gibbs in particular having sat as a magistrate, that there are very strict conditions before magistrates or judges can remand somebody to custody. Do you believe that those conditions need to be changed, that those specific requirements need to be changed? Are they pushing people too much towards remanding in custody? If so, how would you want those to be changed? Ms Gibbs, do you want to start?

Penelope Gibbs: If I was going to change the law, I would abolish the provision of remand as a place of safety for welfare or mental health reasons. I would probably also put some limits on the possibility of the commission of a serious offence and define that more narrowly. Possibly I would look, as we have done with child custodial remand changes, at evidence for absconding and how recent it is. I would look at what we have done on child custodial remand in changing the threshold and conditions and see which of those might read across to the adult population.

- Q48 **Rob Butler:** Do you think it continues to remain appropriate to consider, when somebody has previously been on bail, whether they committed an offence while on bail, which is one of the criteria currently used?

Penelope Gibbs: I think it should be about what kind of offence it was and whether it was once or more; you need to look at the whole picture.

- Q49 **Rob Butler:** Mr Dawson, based on your experience, not least as a prison governor of people coming through your establishment, do you think changes need to be made to the criteria that establish whether or not someone is remanded in custody or released on bail?

Peter Dawson: I am not sure I would say it is about the criteria. I worry about the information that is available to the court when those decisions are taken. My small observation on this is that it is a matter of a few minutes. The impact of that decision is exactly the same as the impact of being sentenced after conviction. All of the damage that we know going to prison causes to the person and their family is brought about by that decision, and it might be taken on the basis of insufficient information. For example, are any children affected by the decision? Very often, that simply will not be known when the decision is taken. I would be looking for an improvement in what the court must know before it takes a decision of that significance.

- Q50 **Rob Butler:** Can I push you on that? Someone suggested that to us in evidence in a hearing on a different topic. Why would somebody not



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know? Surely, normally the defendant would tell their advocate that they had children. From my experience of magistrates courts, it is not uncommon for the magistrates themselves to ask that question, or a judge might ask it. Is there evidence to suggest that defendants are turning up in custody having not told somebody in the court process that they have children?

Peter Dawson: I cannot point to a research study that shows that, but we know that women in prison do not disclose that they have children because they are concerned that those children may be taken away from them. There is plenty of anecdotal evidence that people take that decision for a perfectly rational reason.

Q51 **Rob Butler:** It is useful to have that context. Professor Hucklesby?

Professor Hucklesby: I would reverse the presumption of bail when offending on bail for serious offences and more generally. I have already raised the issue of shoplifting. The low-level persistent offender who is non-violent and ends up in prison is there partly because of the offending on bail legislation. The evidence suggests that the courts see that as relatively presentational anyway and they would use those criteria, but it gives them back the flexibility to do what they used to do and not necessarily remand somebody in custody, particularly for low-level offending on bail.

Rob Butler: Do you seek to change any of the other criteria that magistrates and judges are looking at? No? Thank you very much.

Q52 **Karl Turner:** We have had a backlog in the criminal courts for some time, long before the pandemic ever hit. Given that the backlog is projected to remain high, what practical steps, if any, could help to shorten periods on remand? Is there anything you can suggest?

Penelope Gibbs: The ideal is to prevent the remand at the first hearing and give somebody bail. In order to make that happen more often we need the bail information services. Those were probation-trained officers who talked to the defendant and the defence barrister or solicitor, found out about addresses, relatives, possible conditions and tagging, and put together a bail package. During the pandemic, there were some suggestions from the Ministry of Justice that they would ramp up the bail information services in court, but, according to my quick survey of lawyers, that did not happen, so no lawyer knew of bail information services.

The critical thing is that the court needs reassurance right at the beginning that the risks involved in giving bail to the person have been minimised as much as possible. You will not be able to do that without a good bail package. A defence solicitor can do it on their own, and they often do, but they would be so helped by a trained officer whose job it was to do that.

Q53 **Karl Turner:** Are we talking about a problem of resources?



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Penelope Gibbs: I don't know. I would have thought the MOJ would save money if they invested in these people in the courts to help put together bail packages, just as a YOT will help put together a bail package, but so far I do not think those resources have been available.

Q54 **Karl Turner:** It is a long time ago since I practised in the criminal courts, but resources were definitely an issue then. Has it improved at all in the last few years in practical terms? Has it got better or worse?

Penelope Gibbs: I think the pressure of speed on people in the courts and the availability of time for defence practitioners who are legally aided has got worse.

Q55 **Karl Turner:** Has the number of bail hostels gone up or down?

Professor Hucklesby: Bail hostels are not really used for bail. There is no such thing as a bail hostel any more. They are used mainly for sentenced schedule 1 offenders.

Chair: It has moved on a bit from our time.

Q56 **Karl Turner:** But I suspect that housing is an issue.

Penelope Gibbs: It is.

Q57 **Karl Turner:** One would presume that having a safe address where a defendant can reside while proceedings are ongoing is still an issue.

Professor Hucklesby: My understanding is that the Bail, Accommodation and Support Service—BASS—which was set up a few years ago, is now used predominantly for HDC, and there are hardly any beds available for bail, so there is not really any accommodation available for these people.

If I may go back to your backlog question, in the latest criminal justice inspection progress report on the pandemic there is an interesting paragraph on page 16: "One area used its Crown advocates to peer review its 250 oldest bail cases to weed out the weak and unsustainable," and about a third were discontinued as a result. I suggest that quite a good way of cutting the backlog in the courts would be to do that exercise across the piece.

Q58 **Karl Turner:** That is very helpful. Thank you very much indeed. Mr Dawson, do you want to add anything in that particular area?

Peter Dawson: We understand that there were three separate pilots or experiments during the pandemic about bail information, which suggests there is an opportunity to examine those and see what impact they had.

Q59 **Karl Turner:** What are the particular difficulties that remand prisoners might face? I don't mean the fact that they do not like being in prison very much; I am sure they are not very keen on it. What about access to lawyers and other services—for example, probation officers? Is there enough support around that?



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Peter Dawson: Remand prisoners go to the prisons that are least able to cope. The present system, and indeed the future plans for the prison system, direct resources to training prisons. The new prisons that the Government have promised will be for people who have been convicted and are serving quite long sentences, which means that remand prisoners end up with short-sentence prisoners in places like Wandsworth and Pentonville that, as you know, are physically in a poor condition and tend to struggle with staff and be in inner cities. It is more expensive to live and travel to those places to work. The work is less satisfying and is often more demanding for staff. There are often very deep-seated cultural problems in those prisons, and I am sure that the chief inspector would confirm that many of his most worrying reports relate to prisons where people who are innocent until proven guilty are held.

Before the pandemic, the quality of life for those people was very poor. During the pandemic, in common with most prisoners, it meant 22 or 23 hours a day in cell. One thing that I hope you might ask the Ministry when you get the opportunity is whether they know how many people are in that situation. I do not think they do. When a prison regime is running normally you could perhaps get away with that, but when you know that the majority of prisoners have spent two years largely locked in their cells it seems to me that it is something you should know.

The practical implication is that you do not get to see probation and you do not get to see a lawyer. You do not get to see a mental health nurse. You certainly do not get to see anybody in authority in the prison. You wait for any complaint to be dealt with. A sort of torpor settles on the prisoner and the prison, and you are simply sleeping through most days until your time comes to an end. The people who, in a sense, deserve the most favourable treatment, in that they are not considered guilty, get the worst treatment. That shows no prospect of changing. There is no plan to change that. There is nothing in the prison building programme or the reorganisation of the prison estate which will prevent that from continuing to happen.

Karl Turner: I have to say it is incredibly depressing but very helpful for the purposes of the Committee.

Q60 **Rob Butler:** Having had the experience of running prisons, do you think it would be better to have dedicated prisons for remand prisoners, which some countries do, or would that create a completely different set of problems?

Peter Dawson: The reverse. Our experience of dedicated remand prisons is that they are very difficult to run, for the reason that a good prison commands the consent of the people in it for it to work, and people who are not expecting to be in prison for very long, or even if they think their future lies in prison think it lies in a different prison, do not take part in the regime. There are catastrophic stories from quite a long way back of remand prisons being ungovernable.



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- Q61 **Rob Butler:** It is about having a mixed population but making sure that there is provision for both populations.

Peter Dawson: That is the traditional wisdom, and that would be my view. I think a lot of governors would say that for a prison to run successfully you need a cohort within it of people who are dedicated to that prison. In a sense, the local prisons—the Wandsworths and Pentonvilles—have historically got away with it because people are close to home and visits are easier, although that is not really true; it certainly has not been true during the pandemic and it is not true if there are severe staffing shortages, so people's tolerance of very poor conditions on the basis that they are close to home and will get visits is probably starting to erode in any case.

Chair: James Daly wants to come in. For the record, he is a practising solicitor.

- Q62 **James Daly:** Yes, and I am a partner in a firm of solicitors. Forgive me for being late; I was in the Chamber.

The problem with this debate, like everything to do with the criminal justice system, is that unless this panel of MPs sits in every single court hearing in the country and hears the bespoke circumstances of every single defendant there is never an easy answer in respect of this. If we are to have legal rules or principles that magistrates or courts have to follow, the problem with remand is that judges or individual magistrates may not agree with those decisions, but if they are able to put forward those principles there is nothing statutorily that MPs or anybody else can do about it.

This is not an easy question, because the question we are asking does not give rise to an easy answer, if I can put it that way. How would the three of you sum up the conundrum that we are facing today, that two different defendants have different personal circumstances which may mean that the magistrate will take a different view on them? How can we have a bespoke arrangement within the wider system?

Penelope Gibbs: We need a system where every person has access to a legally aided lawyer who feels they have the time to spend with that person as an individual.

- Q63 **James Daly:** They do. You know that in a magistrates court if you have the possibility of being remanded into custody you will have a solicitor representing you.

Penelope Gibbs: About seven years ago there was a Magistrates Association survey about unrepresented defendants. Magistrates reported back that they felt that about 20% of remand decisions were unrepresented. I will go back to that survey and send you a note.

- Q64 **James Daly:** How do we as politicians tell a magistrate at Bognor Regis magistrates court what to do when he or she knows the defendant's circumstances?



Penelope Gibbs: You don't.

Q65 **James Daly:** I think you make an extremely valid point. We are all making extremely valid points. There are things about bail hostels and various other things, but unfortunately the system is imperfect. An imperfect system will make imperfect decisions on occasions and we just have to mitigate that in the best way, which, as Mr Turner said, is through investment in services in prisons and bail hostel placements, but the system is the system, unfortunately, isn't it?

Penelope Gibbs: We could improve the system a lot. In particular, notwithstanding the fact that maybe quite a few defence lawyers do not present a bail application in the youth court, there are usually youth offending teams in the youth court. The youth offending teams often produce a bail package, whereas we do not have the equivalent for adults.

James Daly: I completely agree with that. I am simply saying that the legal principles that underpin whether or not you get bail are not the issue, in my view; it is the services around that, as you have quite rightly said, in respect to youth offending teams and other things like that. In my view, that is where this debate needs to take place; it is not a debate on whether magistrates make the right decisions on the legal principles they are dealing with.

Q66 **Maria Eagle:** Some of what I have taken from the evidence you have given so far is that remand prisoners are somewhat overlooked in the system. In the past I was a Prisons Minister. I know that, while remand prisoners are always known to be there, they are not necessarily at the top of the list of problems to solve, as it were.

I wonder whether or not you believe that the support available in prisons before, during and since the pandemic—there have been changes—is appropriate. What support is available for remand prisoners? I am thinking mainly about those on remand before conviction rather than those on remand awaiting sentence. What support ought to be available? Obviously, there is no sentence plan if you have not been convicted; there is no issue about trying to help rehabilitation if you have not been convicted; and there is no attempt to try to deal with resettlement if you are not convicted. What support services ought there to be, and are they there?

Peter Dawson: I do not think there is anything wrong with the ambition. I think people understand the basic needs of those who have gone into prison. The big gap, the one thing that I would say is missing, is any through-the-gate support for people who are released from prison without being convicted, which is curious because it is a significant group of people. It is an obvious service that needs to be provided. It may not be about reducing reoffending, but it is certainly about resettlement.

Most of the work that is done to try to prevent reoffending is the same as you need to do to help someone who has been in prison for six weeks or



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six months. It is somewhere to live; it is what has happened to your job, your bank account and your family. The fact that there is no commissioned service for people on remand is odd. I understand that the Ministry intends to put it right, but not until those services are recommissioned, which I think is two or three years down the line. That is a gap.

The sad fact is that people on remand are over-represented in self-inflicted deaths in custody. We know that when someone first comes into custody their needs are predominantly about keeping them alive and attending to very immediate physical and mental health needs. I think the Prison Service understands what those needs are and goes to considerable lengths to identify them for the individual, but in the prisons where they are held the gap between what you would expect to be there and what is actually there is huge, and that is across the country.

Q67 **Maria Eagle:** Penelope Gibbs, do you have anything to say on this?

Penelope Gibbs: One of the reasons why it is not ideal to have people on remand for a very long time is that it is almost impossible, for the reasons you give, to make a productive prison environment for somebody on remand, but they should have access to very good health services, particularly mental health services, and education, libraries and occupation as much as is possible. It is difficult for prisons, but they have to be oriented in such a way that somebody can still access those things; otherwise, remand prisoners have a much inferior experience to sentenced prisoners.

Q68 **Maria Eagle:** Professor?

Professor Hucklesby: Prison bail information schemes, not just the court ones, are vital, so that as soon as a person is remanded in custody somebody has another look to see whether there is any additional information that might get them out on their next appearance. The immediate issues, particularly if they have no support in the community, of sorting out the lives they have possibly left behind, like housing, accommodation, even pets, are vital. I do not know how well that is done.

Q69 **Maria Eagle:** We know that suicides among the remand population have gone up a lot. In the latest figures, 2020-21, the number doubled. When I was a Minister, we always looked at three-year trends. Does anybody know whether there is a longer trend that suggests suicides in prison are higher among remand prisoners than those who have been convicted?

Penelope Gibbs: That has been a long-term trend. They are higher. I do not know much higher they are, but I think they have always been higher.

Q70 **Maria Eagle:** What has been the effect of the increasing remand population? We are seeing the percentage of those in prison on remand going up and the pandemic has not helped in that respect. Whether it is



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length of time on remand ahead of conviction and sentence, or whether it is the fact that the percentage of people in prison at any one time is higher on remand, what effect does that increasing remand population have on the system as a whole? Mr Dawson has already said that the particular prisons where remand prisoners tend to be held are not designed to look after them. What impact does the increase in the remand population have on the system as a whole?

Peter Dawson: It increases the number of people with the highest level of need, just because it is people who come directly to prison from the community. I encourage you to think about it alongside another much faster-growing population than the remand population, which is people who have been recalled to prison. They face many of the same practical issues. The staff will recognise similarities. These are people who are coping with the first shock of imprisonment, in that case reimprisonment. They end up in reception prisons, so you have another population of rootless, discontented, confused and often ill people. That comes to dominate the life of those particular prisons.

The rise in the remand population at the moment in any individual prison probably does not have a dramatic effect, but you struggle to run a prison where people do not have hope and are despairing. If you have gone past the custody time limit and all reasonable expectation of when you might have moved on to the next stage of your life, whether that is in prison or not, it breeds despair and loss of hope.

Q71 **Dr Mullan:** We have talked a lot about people who are perhaps unfairly on remand. If you leave prison because it is intended you should be there, there is support. You might think it is lacking, but there is some attempt at support. What do you think needs to be done for people who are released because they have not been given a custodial sentence or are unconvicted and have been on remand?

Peter Dawson: It is odd, isn't it, that if you have been convicted and are released you get whatever it now is—£78—to help you through the first few days and, if you have not, you do not? That would be an obvious change to make. As I said earlier, it is strange that there is a through-the-gate service for people who have been convicted, but not for those who have not, when their needs are pretty much identical. I am not quite sure why it has taken this long to correct that obvious unfairness, but it should be corrected.

Q72 **Dr Mullan:** Their needs are identical, but you could argue that they are in difficulties not entirely of their own making, in particular for someone who is unconvicted.

Peter Dawson: I cannot explain it. I do not know whether in the past legislators thought that people would be so relieved to be out that they would just return to their life. In some countries, people are prepared to go to prison. You are given a date for court when you know you are likely to go to prison on that day, and you put your affairs in order. We still get



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people to turn up in the morning and in the afternoon they go to prison when they had absolutely no idea that was going to happen to them.

Professor Hucklesby: My understanding is that sentenced prisoners will soon no longer be released on a Friday, but that does not go for people on remand. They can be released at any time. My understanding is that if it is too late in the day they can ask to be kept in for an additional night, and they have to sign something to say that is happening.

Q73 **Chair:** You waive your right to release; otherwise it is false imprisonment.

Professor Hucklesby: Yes. It seems rather odd that they can be released at any time, whereas sentenced prisoners cannot be. Use of live links makes it all the more likely that those people are being released from prison rather than from court, because historically they would go to court and take all of their belongings with them and then they would be released from court, but if they are not in court they are more likely to get released through the prison system. Obviously, that affects women more than men because women are more likely to get a non-custodial sentence or be acquitted.

Q74 **Dr Mullan:** Ms Gibbs?

Penelope Gibbs: I am with the others. People need support. We are lacking research on the outcomes of remand. There is a lot of research about reoffending post a custodial sentence, or a non-custodial, but we have literally nothing about the life of somebody on release after remand, not short term, medium or long term. Maybe that person, having lost housing and a job, walks free from prison not convicted and then commits an offence because they now have no structure to their life. We just do not know.

Q75 **Dr Mullan:** Say you are unconvicted and maybe, as you mentioned, you have lost your home, or you may have lost a deposit if you were renting. Is there anything in the system that recognises that and compensates you if you are not convicted?

Penelope Gibbs: There is no financial compensation for remand.

Q76 **Maria Eagle:** What are the differences between men and women in the use of remand into custody? There used to be differences when I was the Minister. Professor Hucklesby, I think we have had some reference to existing differences. I suspect it is not awfully different from how it was when I was Minister some years ago, but what are the differences at the moment in the use of remand in custody between men and women?

Professor Hucklesby: We know that the outcomes are different. Women are less likely to get a custodial sentence after they have been remanded. There are a relatively small number of women, so they are a minority of an already minority population. Peter Dawson will be able to say more about what happens in prison, but they are mixed up much



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more with the sentenced population because of the small numbers. We know that women are not as risky as men in terms of violent offences and their previous records, so they tend to commit less serious offences. There are bigger questions for me about why they are in custody.

Peter Dawson: There is an anomaly, in that the proportion of the female prison population held on remand is larger than the male population, yet we know that the offences committed by women for which they go to prison are less serious, so that is obviously the wrong way round.

The other thing is that there are very few prisons that hold women on remand, so you are much more likely to be held a very long way from home. There will be women in Peterborough prison who live in Wales; that is where they go on remand. I know you are aware of this, but if you add that to the fact they are quite likely to be primary carers, it is not surprising that the rates of self-harm and distress among women on remand are very high.

Penelope Gibbs: To quote from the evidence of my colleagues at the Criminal Justice Alliance to your Committee: "After violent offences, the most common offences for which women are remanded are for theft, drugs and other low-level offences such as TV licence evasion."

Q77 **Chair:** What about alternatives? We have a lot of information about better bail information services and that magistrates and judges are better informed as to the alternatives. In your experience, what are the most effective alternatives? Is it some form of accommodation? Is it conditional bail? Is it tagging? A number of those are posited. Which seem to be the most effective as far as you can judge?

Professor Hucklesby: I do not think we can answer the effectiveness question. What we can say is that there are a lot of people on conditional bail. We cannot tell you exactly how many. The use of conditions is completely unregulated. Courts can attach whatever conditions they want and for however long. The number of people who are under conditional bail is rising because it has become the norm. I said in my evidence that this also needs to be looked at, because they might be out of custody but sometimes they are under very restrictive regimes. The number of conditions and their range and intrusiveness needs to be looked at. Again, we need data to look at exactly what is going on.

From my understanding and observations of court, because they are not in prison, there is less scrutiny of the decisions. It is less likely that reasons are given in open court and less likely that defendants or lawyers will say that a condition is not applicable because they are concerned that the person will be remanded in custody.

Q78 **Chair:** The decision by the magistrates has to be in open court; they have to do that. Where is the issue as regards supervision? Is there less probation supervision, or are people less aware of it while they are released on their tag or whatever? They are otherwise rather on their



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own.

Professor Hucklesby: Basically, you are given whatever conditions the court deems appropriate. Often, the package is put forward by defence solicitors as a big package. It can be overly intrusive. There is also a necessity and proportionality issue that might change over time. If you are told to keep away from X person because they are a witness, you will probably be told to keep away from that person for the whole of your remand period, but it may be that the police at some point in the scheme find out that that person is no longer a witness and those conditions are not necessarily removed.

Chair: To take a step back, defence solicitors will only put forward a package on the instructions of the client, or it might be a matter of negotiation with the court.

James Daly: You make a very interesting point. We used to argue this in court all the time. If you release somebody on bail, it tends to be because you do not view them as a threat to somebody else. There is an argument that if you are to grant bail, grant them conditional bail, because if a magistrate or a court has a real fear that the defendant is likely either to hurt somebody or commit a criminal offence, it is highly unlikely that putting bail conditions on them will stop them doing that. That is where the problem comes in the system. We heard what you said in respect of parole. Excessive conditions are not easy for someone with a problem with drug addiction. How can they abide by a very strict curfew and things like that? They will be straight back into custody. I think you make a very interesting point.

Q79 **Rob Butler:** The defence could come to court and apply to vary the terms of bail. That happens, so it is not impossible, is it?

Professor Hucklesby: It happens sometimes.

Q80 **Rob Butler:** I am not sure whether it was on the record right from the beginning, but all courts start from the presumption of unconditional bail and you have to work up from there. It does not work in reverse, that there is the assumption that somebody will be remanded in custody. The prosecution always has to make the case, even for conditional bail, let alone a remand in custody. It is important we make sure that is very clear to everybody, is it not?

Professor Hucklesby: That is how it is supposed to work.

Q81 **Rob Butler:** But in law the presumption is for unconditional bail.

Professor Hucklesby: In law, the presumption is for unconditional bail. In practice, I question whether that is the case.

Q82 **Rob Butler:** You suggest that is not the starting point judges and magistrates work from.

Chair: What is the evidence base for that?



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Professor Hucklesby: All we know is that the use of conditional bail is increasing, although we do not have data for that because those data are not available. We know that more and more people are being released on conditional bail, but we do not know how many.

Q83 **Chair:** Are there any particular barriers to making more use of alternatives to custody, be it conditions of residence or whatever? Are there any particular barriers—for example, accommodation or something like that?

Peter Dawson: This may not be a helpful remark, but this Committee will hear it very often. There is a danger of looking at everything through the criminal justice lens. When it comes to public protection maybe that is right, but if we are talking about the risk of people not attending for their next appearance it is about mental health services and housing.

It is absolutely right. We cannot answer the effectiveness question, but in relation to reoffending we are starting to get towards an answer to the effectiveness question, and it is about services outside criminal justice and more than the court itself can do.

Q84 **Chair:** More than the justice system itself?

Peter Dawson: Yes.

Penelope Gibbs: There is a big issue about accommodation. The real question is: on the first appearance is there accommodation available that reassures the court? Too often, somebody is remanded and maybe an address is found later, but the tragedy is that there is not enough time, and there isn't the accommodation supply that it can be produced at that first appearance.

Chair: That is a fair point. Thank you very much. This has been very helpful to us. We are grateful for your time and your evidence. You are happy to send through the additional material that you said you had. Many thanks.