

Justice Committee

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

Tuesday 25 October 2022

Ordered by the House of Commons to be published on 25 October 2022.

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Members present: Sir Robert Neill (Chair); James Daly; Maria Eagle; Laura Farris; Paul Maynard; Karl Turner.

Questions 161 - 290

Witnesses

[I](#): Charlie Taylor, HM Chief Inspector of Prisons.

[II](#): Gareth Johnson MP, Parliamentary Under-Secretary of State for Justice, Ministry of Justice; Rob Butler MP, Parliamentary Under-Secretary of State for Prisons and Probation, Ministry of Justice; Claire Fielder, Director of Youth Justice and Offender Policy, Ministry of Justice; and Michelle Jarman-Howe, Chief Operating Officer Prisons, HM Prison and Probation Service.

In the absence of the Chair, Maria Eagle was called to the Chair.

Examination of witness

Witness: Charlie Taylor.

Chair: I welcome you to the third oral evidence hearing in our inquiry into the role of adult custodial remand in the criminal justice system. I am not Sir Bob Neill. Sir Bob is to speak in the next debate on the Floor of the House and will be back at some point. I am just taking the Chair while he is temporarily elsewhere. We begin by talking to Mr Charlie Taylor, His Majesty's chief inspector of prisons, but first we have to make declarations as members of the Committee. I am a non-practising solicitor.

Karl Turner: I am a non-practising barrister, but for the purposes of this evidence session I ought to say that my wife is a fee-paid judge in the immigration tribunal.

Chair: Mr Maynard, do you have any declarations?

Paul Maynard: None.

Q161 **Chair:** In that case, I welcome Mr Taylor to the Committee. As you know, this is our inquiry into the spiralling increase in the remand population and what is going on with adult remand in prisons. Could you tell us what the key drivers are, as far as you are concerned, for the number being held on remand in prison, particularly those who are unsentenced, increasing as substantially as it has?

Charlie Taylor: We have seen some increases over the past decade. Historically, it seemed to sit at around 11% to 15% of the population, but certainly in recent years it has gone up. Obviously, during covid it went up and then began to plateau a bit. What we are seeing from trends is that it appears to be continuing to go up at the moment. That is certainly the trend. Some of the court delays with covid inevitably had a knock-on effect, and that was certainly part of the reason for the move. Obviously, the barristers' strike, which began at the end of the summer, has also made a difference. The knock-on effect from various bits of covid, along with industrial action, seems to be nudging it upwards, but when it comes to some of the more nuanced reasons it gets into more complicated things about the time cases are taking, listings and those sorts of things.

Q162 **Chair:** You mentioned the pandemic and the barristers' strike. Are there other drivers? We were seeing some of this increase ahead of the pandemic, were we not?

Charlie Taylor: We were.

Q163 **Chair:** Do you think there are other drivers of this increase?

Charlie Taylor: It would not be for me to say in much detail. Having talked to lawyers and friends, apocryphally some of the complexities with



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cases as they come through—for example, triangulation of mobile phone data—have added another layer of things that take a long time during a case, but I do not have evidence particularly on whether cases are taking any longer than they have in the past. That would be more within the expertise of my colleagues at the Crown Prosecution Service inspectorate.

Q164 Chair: There has been a disproportionate increase in the population of convicted but unsentenced on remand compared with those who are untried. Do you have any insights to share with us about why that might be from your experience?

Charlie Taylor: Part of it is the knock-on effects of delays generally. They have had a knock-on effect on what is happening with unsentenced prisoners. In my inspections we come across a lot of people who are waiting often quite long periods of time for sentencing to happen.

Q165 Chair: I would like to ask you a few questions about the impact having a lot of remand prisoners in prisons has on those institutions. The proportion of remand prisoners in category B prisons is increasing significantly. What impact does it have on a prison's ability to run an effective regime when much of the population is on remand?

Charlie Taylor: To give an example, at Forest Bank outside Manchester, where we inspected earlier in the year, the number of remands coming into custody meant that lots of prisoners were being moved from the jail incredibly quickly to make room for the new ones coming in. Even on the first day of the inspection, we found prisoners being shipped out to Leeds and Liverpool jails, so they were not being kept necessarily in the local area, simply because of pressure.

Secondly, we are seeing a flip in what prisons were set up for. For example, last summer we were in Belmarsh. In the past, about a third of prisoners at Belmarsh were on remand and two thirds were sentenced prisoners. That has now completely flipped. About 60% of prisoners are now remanded, and that changes very much the rhythm and the way in which the prison needs to operate, because remanded prisoners need to be got ready for court and legal visits need to be got ready. They often spend much shorter periods of time there than sentenced prisoners. Similarly, at Thameside about 62% of prisoners were remanded, but the prison was geared up better for a sentenced population. If you were a sentenced prisoner at Thameside, you had far more opportunities for things like education and work. Remand prisoners had fewer opportunities, partly because the prison was not used to having that population.

Q166 Chair: Would it be fair to say that a big increase in the remand population at a particular institution can have a destabilising effect on that institution?

Charlie Taylor: It certainly throws the institution, because, obviously, if there is a big increase in remand, the day-to-day functioning of the prison has to change. What we see sometimes is that prisons fail to keep



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up. Pentonville, which we went into a couple of months ago, had a resettlement strategy that simply had not been updated, despite the fact that there was a change in the population; in other words, the prison was not being set up for the population that was there. The population issues are particularly acute with the remand population, but there are issues across the estate, with prisoners not being in the right sort of prison at the right time, which is having a knock-on effect across the whole estate.

Q167 Chair: Is it possible for them to continue to maintain effective regimes when there has been a big increase in the remand population? The Prison Reform Trust has expressed some concerns to us about whether that is doable.

Charlie Taylor: What we see across the board is that regimes are being affected by a number of factors. If I were to summarise what we have seen on inspections in the last few months, our scores for safety, particularly for some of the quite risky category B prisons, have not been great, but they have not been too bad. A number of high-profile prisons, like Liverpool, Nottingham and Leeds, have been quite risky places in the past, but have been doing reasonably well on safety. Where we see prisons really struggle across the board, both category C but particularly category B prisons, is in purposeful activity. We find too many prisoners spending too much time locked up behind their door. What we often see is that the remand population is last in the pecking order when it comes to things like the allocation of jobs, education or training, which means that it is the remand population that is likely to be spending longer behind their door every day.

Q168 Chair: Many of your recent reports that are the most concerning have related to prisons with significant remand populations. You have made reference to that. That is fair to say, is it not?

Charlie Taylor: Yes, certainly.

Q169 Chair: You started to set out a little bit about the impact. Is there anything else you would like to say about why that is?

Charlie Taylor: I have probably covered most of the reasons as to why it is.

Q170 Chair: You also made reference to the emergence from covid restrictions. If everybody is behind a door, safety is in some ways at quite a high level, isn't it?

Charlie Taylor: Yes.

Q171 Chair: To what extent is what you have observed there to do with the handover of covid safety and the regimes not emerging from that, and to what extent is it about the remand population?

Charlie Taylor: When it comes to time out of cell and a return to activities, we see a number of factors. In some jails that we come across there appears to be a certain amount of comfort with having prisoners



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behind their door for long periods of time. Sometimes, we come across prisons that are really struggling with staffing, particularly in London, the south-east and the M1 corridor. There are some real issues about just having enough staff in prisons.

I put out a blog the other day about Swaleside prison on the Isle of Sheppey and Woodhill near Milton Keynes where they are struggling to run their regime, simply because they do not have enough staff. Some of it is to do with leadership ambition. For example, when we were at Altcourse we saw prisoners who were routinely out of their cells for five hours a day. That was towards the tail end of the pandemic. We go into other prisons, for example Norwich recently, where unemployed prisoners were still locked behind their door frequently for 21 and a half or 22 hours per day.

Sometimes it is to do with ambition and sometimes it is to do with inexperienced staff. Governors are nervous about returning to a more open regime because they have a very inexperienced staff group who have never seen a prison open and running. Finally, sometimes it is to do with industrial relations within individual prisons as well. It seems to me that a number of factors in some prisons, put together, mean there is inertia, a post-covid torpor, in getting prisons up and running. Because remand prisoners are at the bottom of the food chain when it comes to being prioritised by prisons they are often the ones who suffer most from restricted regimes.

Q172 Chair: How well have category B prisons, which obviously have most of the remand population as well, been managing their emergence from covid regimes? Have you noticed a distinction between categorisations in how well they are emerging, or not?

Charlie Taylor: Up to a point. We are equally as concerned about what is going on in category C prisons when it comes to emerging from covid as we are about category B and reception prisons. Some category C prisons have done really well in getting things up and running. Coldingley in Surrey was running a much more open regime, despite the fact that we inspected it while it had a covid outbreak going on. Not long before that we visited Rochester prison where prisoners were locked up for very long periods of time. We have seen that in a jail like Pentonville or Wandsworth prisoners are locked up for very long periods of time, but that at Altcourse outside Liverpool prisoners were getting out of their cells for much longer periods. There is something about staffing and the experience of staff, there is something about the ambition of governors and there is something about industrial relations, all of which are factors in some of the inertia we see.

Q173 Chair: From that perspective, it is probably not the relative size of the remand population that is making a difference.



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Charlie Taylor: I don't think it is specifically the relative size of the remand population, but it is the remand population that is suffering as a result.

Q174 **Karl Turner:** There is clearly an increase in the use of video link in the criminal justice system. What assessment have you made of the effect of the increasing use of video link on access to justice particularly?

Charlie Taylor: When it comes to policy, we take a wait-and-see view, so we will see how the policy plays out within prisons. Our view is not dissimilar from what the Select Committee found in the video work you did, which is that in some circumstances with some prisoners it has proven to be effective, but quite often what worries us is where more vulnerable prisoners require more support, and we would be nervous about them failing to get proper access to justice if court proceedings were videoed. For some parts of trials and cases it makes sense for video to be used, but there must be caveats and checks and balances to make sure that vulnerable prisoners in particular do not find themselves very exposed by the technology.

Q175 **Karl Turner:** Have you looked at the practical effect? For example, do defendants and remand prisoners have access to legal advice prior to a remand hearing? Is there an opportunity for a solicitor to speak to them prior to the actual court hearing?

Charlie Taylor: Yes. Some things have moved on a bit, partly as a result of covid. First, more prisoners now have in-cell telephones so they are able to make at least a reasonably private phone call and have a conversation with legal representatives. That is a big move. It is now rare that we go to a prison where there isn't in-cell telephony.

I was recently in Wandsworth where there are some good working facilities that barristers or solicitors found very helpful during covid. For some sorts of conversations with clients they found them useful. They still want to go into prisons and sit down with clients in some circumstances, but there are bits of the process where it is a long slog up to Leeds, if you are a London-based barrister, just for a fairly short conversation with a prisoner that could be done either online or over the telephone. Provided there are checks and balances in place to protect vulnerable prisoners, to make sure that bits of the trial or case are not heard inappropriately, generally we are happy with what we see.

Q176 **Paul Maynard:** At the risk of stating the obvious, anyone kept on remand for long periods will risk losing their job, almost certainly, their accommodation and in some cases even custody of their children. What are the key elements of support that you believe prisons need to put in place to mitigate those consequences, and are they widely available enough? How much work do prisons need to put into that?

Charlie Taylor: We have enormous concern about it at the moment. That is caused partly by the unification of probation services that happened recently. What we found with the community rehabilitation



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companies which preceded unification was that part of their contract was to support remanded prisoners. What we are finding now is that with the unification contracts remanded prisoners are not getting the support they used to get. For example, if someone comes into prison, they are not routinely getting the support on things like finance, benefit, debt, housing, direct debits and bills that they would have expected to have in the past. I went to places like Belmarsh, for example, where almost overnight the rug had been pulled on many of those services. There was a real concern that prisoners were remanded and spending longer periods of time on remand and the population was growing, but some of the services they might have expected simply were not there.

The second thing is that, when it comes to release and release planning, the services that kick in all revolve around a release date, but if you are a remanded prisoner you do not yet have a release date. We find that many remand prisoners are being released straight from court either because they are found not guilty or on time served, which means they had no support with things like finance, benefit and debt at the beginning of their sentence, and as they get to the end of their sentence they are not getting any support with resettlement needs—housing, jobcentre appointments and those kinds of things.

Q177 **Paul Maynard:** Your own report showed that 30% of prisoners in Nottingham were released without accommodation. You mentioned you had been in Wandsworth, and so have we. We were quite shocked to hear that they had stocks of tents to hand out to prisoners who were not being housed upon release.

Charlie Taylor: Indeed.

Q178 **Paul Maynard:** Where does the burden of taking action sit? Should it be for individual prisons? Does the MOJ need to co-ordinate far more? Is it for the third sector to step in and offer a bespoke solution? There is a problem. How is it best fixed?

Charlie Taylor: At the moment there are contracts in place for supporting resettlement, but those contracts are focused only on prisoners with a release date; in other words, if you do not have a release date and you are an unsentenced prisoner, there is no provision in place. Some of that is simply contractual. Because of the change in the contracts with unification they are not getting that support.

The Ministry of Justice has assured us that those contracts will be amended, so some of the support on things like finance, benefit, debt and, potentially, resettlement, although that is more complicated with remand prisoners, will be put in place. I am going to Eastwood Park prison tomorrow. I checked in with the team yesterday. They say that that contract has not been changed yet, so women on remand at Eastwood Park are not getting help with things like finance, benefit, debt and bills when they first come into custody.



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Paul Maynard: That is one for the Ministers very shortly, I suspect.

Q179 **Laura Farris:** I have a question about women on remand. This Select Committee did a separate piece of work, which you may have seen, about the impact of prison on female prisoners. It says in our briefing note that 40% of women remanded into custody do not go on to receive a custodial sentence and that the reason for their remand is for their own protection. I think it is right to say that women have a different response to prison from men. It is not completely different, but there are pressure points that are particularly acute when you are looking at the female prison population. Do you think it is wrong that women are going into remand? If they need to be housed in some way for their own protection, what do you think would be a better alternative?

Charlie Taylor: We have some real concerns. We went to Low Newton in the north-east and came across a number of women who had been remanded for their own protection.

Q180 **Laura Farris:** Sorry to stop you mid-flow. Can you explain what “for their own protection” means? I am not sure I’ve understood it.

Charlie Taylor: I will give an example of what we saw. There has been a change since, so we hope things will improve. We came across a case where a woman had threatened to take her life by jumping off a bridge. It had happened more than once. In the end, she was remanded for a public nuisance offence, but in effect it was for her own safety. That was a case in point.

We saw some incredibly unwell women who were put into an environment that was simply not conducive or supportive for them at all, with the risk that it would make things worse. It was also putting a huge burden on the prison. I was really struck by the hospital wing at Low Newton. Walking down that corridor, it felt like bedlam with distressed women, and staff desperately trying to do their best for them, but not having the skillset, expertise and resources to be able to give those women what they needed.

Q181 **Laura Farris:** I suppose the answer is probably implicit in my question. Are we missing probably the correct route of some sort of mental hospital where they could be temporarily placed under the Mental Health Act pending the criminal justice process?

Charlie Taylor: Yes. The Ministry of Justice has outlined a change so that people now will generally not be remanded for their own protection for mental health issues. There remains a question about where they will go, but we think it is absolutely right that people who are mentally ill should not be put into prison. Generally, they will not get better if they are put in prison, but there is a question about the right level of community provision that is in place, so we will watch that space.

We have asked the Ministry of Justice about collecting data on this. The Prison Service has begun to do it in the women’s estate but we think they



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can go further. We found when we went to Low Newton that there wasn't really a clear dataset on who were the people being remanded for their own protection.

My final point on this is that it is hard to think who could or should be remanded to custody for their own protection. If the change by the Ministry of Justice means that mentally ill people should not be remanded for their own protection, who are the people who should be remanded for their own protection? It feels fairly flimsy to us.

Q182 Laura Farris: You have already said that data gathering is imperfect, but do you have any sense of how many women are on remand and probably ought not to be in the prison estate, just because the female prison population is quite small overall anyway?

Charlie Taylor: It is very hard to say. Because the population is so fluid it is difficult for us to be able to say at any one time what we think that ought to be, or what it might be. Where we find that mental health provision in the community is not available, there is a greater danger that magistrates will simply think they have no other option when someone is putting their life at risk, for example.

Q183 Chair: I have a few questions about that as well. I think the number of women received into prison on remand increased by 9% between April 2020 and September 2021, making a total of 20% of the entire women's prison population. There has been a similar big increase in remanded people on the male side, but that makes a total of 16%, up from 10%, so an increase in remand is going on, but it seems to be greater for women than men. In your experience of looking at the women's prison estate, have you managed to work out any reason why that might be? Is the size the effect of being remanded for your own protection?

Charlie Taylor: I suspect that remand for your own protection is only a fairly small proportion of that. It is hard to say overall because the data is not yet good enough. I would say that is a proportion of it, but a fairly small proportion. We are finding that many of the reasons women are being remanded are similar to those for men in terms of processes. Some of the services available for women when they are released from prison are sometimes not in place, which means that prison becomes a revolving door for some women. For example, one of the most depressing things I saw on my travels was at HMP Styal where women leaving prison were simply leaving their property in the jail and storing it there because they knew they would be back there, so there was no point in taking it out with them. It shows that some women who are caught in the cycle of mental health difficulties, homelessness, substance misuse and crime just expect to return to prison.

Q184 Chair: Do you get a sense of whether or not it is getting worse, or is it improving over time? Is the increase in numbers the throughput, a faster flow in, leading to a larger stock of people in at any one snapshot moment, or is it a greater number of people?



Charlie Taylor: It is hard for us to say, partly because some of the published data is not entirely clear. For example, one of the bits of data we would be very keen to see published would be for how long people had been remanded. We know what the remand population is at any one particular time, but what we do not know is how long people are being remanded for and the extent to which that is changing. With lots of digging around we can get there with our researchers, but it is not something that is particularly easy to find in the public domain.

Q185 **Karl Turner:** My colleague, Ms Farris, touched briefly on data gathering. More generally on data collection in the justice system and how it is being used, should any additional data be recorded in relation to remand prisoners specifically?

Charlie Taylor: I will start by making a point about the use of data in prisons generally. I used to be a teacher. If you went back 20 years or so, you would find that secondary schools did an amazing job at collecting incredible amounts of data, but they did not always do anything with it. It would sit in somebody's office and they could show you all kinds of interesting facts and figures. Sometimes it feels to me that the Prison Service is a bit like that. Data is collected on a huge number of things, but it is not always used particularly well. In particular, I think data is not being used for setting benchmarks and targets, planning and then measuring progress, so that planning cycle does not really happen in prisons in a way we would want to see.

One of the reasons schools got better at using data was that Ofsted focused on the way in which schools were using data. I think there is a role there for the inspectorate and that is why I am very much focused on improving the data ask and being clear with prisons about what data we want to see, but critically about how they are using data as well. Our reporting takes much more account of that these days.

When it comes specifically to remand prisoners, we have some concerns. The published weekly figures currently do not include statistics on remand prisoners. That data just is not there. You can get it internally, but it is not in the public domain. The remand population by ethnicity comes out only every two years. I am not quite sure why that should be. Why couldn't it come out more often? Critically, the length of time people are spending on remand is not being kept and again that is not entirely clear.

We know that data on the number of self-inflicted deaths on remand is collected, but not data on non-self-inflicted deaths. If someone dies very quickly after coming into prison, for example because their medical needs were not met, that will not show up specifically as an issue with remand; it will just show up among the prison's data. That feels like a miss as well.

Finally, we see very high levels of self-harm in prisons, particularly women's prisons. While there is data on the number of self-harm



incidents, what is not in place is the number of people doing the self-harming. We find that sometimes it is a very small number of people who are doing the self-harm. There are a number of areas where we think data in the public domain, particularly on the amount of time people are spending on remand, would be really helpful for us, and more widely.

Q186 Karl Turner: That is very helpful. Perhaps I could turn now to immigration detainees in prisons. I know that you have done a thematic review. Could you outline the key findings of that recent review and, I suppose, the experience generally of immigration detainees held in prisons?

Charlie Taylor: We recently completed that thematic work. A couple of weeks ago I was in HMP Maidstone, which is a foreign national offender prison. Certain rights pertain to somebody once they are held beyond the end of their tariff, at the end of their sentence. They are served with an IS 91 form, which basically says, "We are keeping you in custody because you may be subject to deportation procedures." Those prisoners ought to have certain rights. For example, if they were in an immigration removal centre they would have a telephone and they would have better access. They would be allowed to have a mobile phone and would have better access to visits. They would have half an hour's free legal consultation.

There are various rights you would have if you were in an immigration removal centre, but if you were the same person in a prison—Wandsworth is a case in point because it has a very big foreign national offender population—you would not have those particular rights and the prison would not necessarily even know who you were. The average prison officer on the wing is too busy keeping the show on the road to be able to know that certain prisoners ought to be getting certain rights over other prisoners. This is an issue that we see with remand as well, but it is an issue with foreign national offenders who are being kept beyond their tariff in prison.

If you compare walking round Wandsworth with what it feels like to walk round Harmondsworth immigration removal centre, it is a very different place. At Harmondsworth, they are not routinely locked in their rooms during the day; the whole place is opened up during the day. If you go to Wandsworth, as you will have seen, most prisoners are banged up for most of the time. People are getting quite a different diet, even though they are beyond the end of their tariff.

The other thing is that the level of support they get from Home Office staff sometimes varies a lot. We were very critical of that. People become increasingly frustrated because they are served with an IS 91 form but they do not know what is going to happen next. They simply wait for long periods of time without being told what is going on with their case. That is a source of frustration. The forms come incredibly late. I came across the case of a guy at Wandsworth who had finished his sentence and whose parents were waiting outside the jail to pick him up. As he was waiting to be released he was served with an IS 91 form, which meant he



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was then not allowed to leave the jail. That is not uncommon. Similarly, we saw that at Maidstone jail where again prisoners did not know until very near the time they were due to be released that they would be subject to immigration detention.

Q187 Karl Turner: Is there no prospect of them being released to an immigration detention centre from prison at the end of their sentence?

Charlie Taylor: It depends on a number of things. First, the Home Office will make a decision about the risk. A small proportion of former prisoners may be seen as so risky that it might not be safe to put them in an immigration removal centre. The extent to which that is in place is a moot point, but sometimes we see that. Sometimes, it is simply to do with the fact that space isn't available. This may be unfair, but sometimes it feels to me that there is a convenience about it as well, in that if somebody is in Wandsworth or Maidstone, why not just leave them there rather than move them to an immigration removal centre?

We also see that some people are spending very long periods of time in immigration. In that inspection report, I think the longest was a guy had spent 33 months in a prison waiting for his immigration status to be dealt with. I will check the number, but I think that was right. Routinely, we see people spending long periods of time locked up. If there is no realistic prospect of the person being deported, if somebody has been locked up for 33 months, it begs the question whether there is a realistic prospect of them being deported, and they ought to be released from custody. They should not continue to be in custody.

The Home Office has a measuring system for assessing people's level of mental illness. There is an agreement that people should not be in custody if they hit a certain threshold of mental illness, but, unfortunately, because of lack of places in the community, we find that quite often people who are mentally ill, are past their tariff and ought to be released from custody remain in custody, simply because there isn't provision in the community. Of course, the risk is that their mental health deteriorates as a result.

Q188 Karl Turner: I don't want to put words into your mouth, but it sounds to me, if I might say so, as if this is probably about inefficiencies in the Home Office. What extra pressures are the inefficiencies in the Home Office causing, practically and otherwise, for prison governors in the running of prisons? People are being detained, potentially very often without a realistic prospect of being deported in any event, and they are clearly clogging up the prison.

Charlie Taylor: It is one thing in places like Huntercombe and Maidstone, which are prisons designed specifically for foreigner national offenders. At least those prisons are to some extent geared up for that sort of population. It particularly worries me in places like Wandsworth where there are lots of prisoners sharing incredibly cramped cells and only getting out of their cell for very short periods of time, and for whom



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there are not enough activity places available, not enough education places available and very little space or opportunities to get outdoors. If a group of foreign national offenders could be dealt with upstream more quickly by the Home Office, either released or deported, it would take the pressure off a prison like Wandsworth certainly, but also elsewhere in the system.

Q189 Karl Turner: Practically speaking, is it just the case that there are not enough Home Office officials reviewing individual cases as to whether there is a prospect of people being deported?

Charlie Taylor: Cases seem to take a very long time to come through. Some are incredibly complicated for all kinds of reasons and they appear to take a long time, but what we come across is that routinely as someone reaches the end of their sentence, when one imagines that it would make sense for their immigration status to be dealt with while they are still serving their sentence so that if, when they come to the end of it, they are to be deported that process can go ahead, we often see that cases are simply not dealt with and people languish in prison.

Q190 Laura Farris: You talked about a person who had spent 33 months in immigration detention. Was that because they were exhausting routes of appeal, or was it simply because the Home Office had not considered the practicalities of their deportation or had not made a decision?

Charlie Taylor: That was a particularly complex case which was going through the appeal process. It often comes down to some quite complicated things like knowing where somebody is from or understanding what the risk might be to them if they are repatriated. A whole load of criteria has to be taken into account by the Home Office or ultimately the tribunal.

Q191 Laura Farris: Would that be so bad? Isn't it right that principles about whether or not there is a realistic prospect of deportation are not necessarily extinguished just because the person is appealing the decision to deport? For example, if they are an offender who has completed their sentence and is now challenging the decision, because, as you say, they do not want to go back to a particular country and there are arguments about whether or not they can do so safely and so on, would it not be a legitimate judgment that they should remain on the prison estate while they are exhausting that?

Charlie Taylor: Our worry is that it simply takes so long and that the process could have begun earlier. I suspect that, if it has taken 33 months to deport somebody, that person will not be deported anyway. I do not know what will happen in that particular case, but if it is taking that long you would think that for whatever reason that person will not be deported. If that work was done upstream, you would have fewer prisoners sharing a cell in somewhere like Wandsworth, which would be a better deal for the remand prisoners that we began talking about.

Q192 Chair: You mentioned a case of somebody who was about to leave prison



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and his family was outside when he was suddenly served with papers that meant he had to stay in. From your experience, is that quite common, or was it an exceptional case?

Charlie Taylor: That was exceptionally late, but we often see it very late, so within a couple of weeks before release we see that happening. It is not uncommon that it is left much later than it ought to be.

Q193 **Chair:** It seems that the Home Office starts to look at it only when the release date is coming up.

Charlie Taylor: That appears to be the case.

Q194 **Chair:** Obviously, that causes people to have to stay in longer than perhaps they might otherwise have done.

Charlie Taylor: Yes, but you also end up with a population of people who are frustrated. That is why being on remand is very difficult for most prisoners; they do not know what is going to happen and the uncertainty makes it very difficult. I think that for these prisoners that uncertainty is incredibly difficult for them as well. They do not know whether they are going to be repatriated or where they are going to go. Some of them have family in the UK and they do not know whether they will be deported or will be able to stay in the UK. It simply adds to the churn of anxiety within a prison. The risk is that anxiety in prison can lead to some bad outcomes anyway either in suicide and self-harm or things like violence.

Q195 **Chair:** I want to ask one more question, not about immigration detainees but about remand. The Committee recently visited a prison in Ireland built pretty much only for remand prisoners. Do you see any merit in that idea?

Charlie Taylor: It has done the rounds policy-wise over the years. You can see the case for it because it means that the entire prison is geared up to a remand population, but the danger is that, thinking of our prisons in London for example, if they were entirely made up of a remand population some of the logistics would be incredibly difficult in those prisons. In somewhere like Durham, already the population turns over every 90 days on average, but if you ended up with an entirely remand prison, while you could gear up services to be in place for them, I suspect the ability of those prisons to manage that would be difficult.

Another thing is that other people who tend to be housed in a category B prison like Pentonville are being resettled. These are people at the end of a sentence who are moving back to London and want to be near their family; they are beginning to go back into the community. If you only had a remand population in somewhere like Pentonville, people from that part of London beginning the journey of release nearer to where they actually live would lose out.

Chair: Thank you, Mr Taylor, we have finished in plenty of time. Thank

you for your evidence today.

Examination of witnesses

Witnesses: Gareth Johnson MP, Rob Butler MP, Claire Fielder and Michelle Jarman-Howe.

Chair: Thank you very much. I welcome our second panel, and I am going to ask them to introduce themselves shortly. We know one or two of them. First of all, I would like to ask Mr Daly if he has a declaration of interest to make before the Committee today.

James Daly: I am a practising solicitor and a partner in a firm of solicitors.

Chair: Thank you. The rest of us made our declarations a little earlier, apart from Ms Farris, who needs to swiftly make her declaration.

Laura Farris: I am a non-practising barrister.

Chair: Thank you. We have to get all these things done. We do not have to ask Mr Butler if he has any declarations of interest, although he is technically still a member of the Committee.

Rob Butler: Quite. I have decided that, if the questions get too hard, I am going to come over to your side.

Q196 **Chair:** Thank you. As you all realise, this is our third evidence session in our investigation into the impact of adult custodial remand. I welcome both Ministers, Mr Johnson and Mr Butler, and officials. Would you all please introduce yourselves?

Gareth Johnson: I am Gareth Johnson, Parliamentary Under-Secretary of State responsible for legal aid and courts.

Rob Butler: Rob Butler, the Parliamentary Under-Secretary of State responsible for prisons, probation and youth justice.

Michelle Jarman-Howe: Good afternoon. Michelle Jarman-Howe, chief operating officer for prisons.

Claire Fielder: Claire Fielder; I am the director for youth justice and offender policy.

Q197 **Chair:** Thank you very much. In recent years, the number of cases entering the court system has decreased, yet the number of people held in prison as a result of being remanded to custody by the courts has increased. Mr Johnson, what is your assessment of why that is?

Gareth Johnson: There are a number of reasons. Obviously, decisions to keep people in custody, as the Committee is aware, are judicial decisions rather than ours. We provide the framework so that they can deal with that.



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We had a situation, as the Committee is very aware, with covid impacting the throughput of cases. Although we have started up jury trials, particularly in the Crown court, the backlog has increased to some 60,000 cases that are outstanding at the moment. We were then, post covid, able to start reducing that number. However, then with the Bar strike taking place, the number has been going back up again. The consequence of that is that we have seen an increase in the number of people being held on remand.

Q198 **Chair:** You mentioned covid and the barristers' strike. Are those the only drivers of this growth that we have seen in the remand population or are there others?

Gareth Johnson: The number of police officers we have now is at a very high level. There is an argument that that has increased the number of people being arrested and charged.

Q199 **Chair:** Can you provide us with figures that indicate that?

Gareth Johnson: We do not have the figures for the people who have been charged. We have some indicators, but we do not actually have statistics on the number of people appearing before the courts as a consequence of the rise in police officers. Also, the number is going up at the moment and there is always a lag. There is a theory, but I don't have any evidence I can give to the Committee of it.

Chair: Ah.

Gareth Johnson: Yes, I don't have any evidence of it. There is this theory that, because we have an extra number of police officers, we are getting extra cases coming through. You can look at all sorts of societal reasons and such as to what has an impact on the number of people in remand. The two main factors as to why we have seen an increase in the backlog in the courts has been, first of all, covid and then the Bar strike after that. They are the two main reasons behind it.

Q200 **Chair:** You accept that the backlog in the courts was at a very high level before covid.

Gareth Johnson: It was at a level that we were not content with before covid hit; that is right. We put in a whole catalogue of measures to try to deal with the backlog. Dealing with the Bar strike was key to that. The negotiations that took place were very important. As the Committee is aware, that has now settled and will have a positive impact on the backlog as we go forward.

Q201 **Chair:** Mr Butler, would you like to add anything?

Rob Butler: This is primarily at this stage about the courts and the decisions the courts are making. It is probably worth noting that on 30 June 2019 the remand population was 9,145. That was 11% of the custodial population pre-covid. A year later, 30 June 2020, it was 11,388; 14%. That suggests that covid caused a very big initial jump.



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Q202 **Chair:** Now 16%.

Rob Butler: Indeed.

Q203 **Chair:** It is 16% of the prison population; on the women's side, 20% of the prison population. Do you have any insight as to why that has happened?

Rob Butler: We do not have explicit reasons why necessarily there are more women in numerical terms being remanded in custody. What could be a factor in the proportion being higher is that typically, in sentencing, judges and magistrates are asked to consider very carefully, in the case of women, whether a custodial sentence is appropriate. It could be that the number of sentenced women is lower than correspondingly in the male estate, whereas the remand decision does not have that distinction, although a magistrate or a judge deciding whether to remand would be asked to consider, for example, caring responsibilities. There are two different tests.

One of the challenges we have, and I absolutely acknowledge it is a challenge because I was on the Committee when I suggested this was a good subject for the Committee to do an inquiry into, is that we do not have all of the information. A lot of the information, a lot of the data, simply does not exist. I hope the Committee will be able to shed some light on areas where there may be potential for improvement in that.

Q204 **Chair:** I am going to leave it to our two Ministers to bring in their officials, if they wish, rather than just ask everybody about everything.

What is your projection, Mr Butler, of the size of the remand populations over the next few years? You referred to a lack of data. Obviously, you have projections about what you think is going to happen to the prison population and the remand population.

Rob Butler: Yes, we do. The remand population was 13,409 as of 30 June. The public projections were that the remand population by July 2022 would be 13,000 and by July 2023, it would be 13,800. For July 2024, it is 13,400. That will have taken the percentage down from 15% to 14%. For July 2025, we estimate that the remand population will be 13,000; that will be 13%. It is worth noting that by that time the projections are that the total population in custody, in July 2025, will have gone up to 97,500 from 84,800 today.

Q205 **Chair:** On what basis are you thinking that you will be able to reduce the remand population in that way? What are your assumptions?

Rob Butler: The assumption is that a huge amount of the backlog will have worked through by then. At the moment, we have a bulge, if you like, of people waiting to have their trials heard. Over time, that will be reduced. Some of those will be released because they will be found not guilty. That will take down some of the population. Some of them will be found guilty but they will be time-served. In the meanwhile, there will be some who will be convicted but unsentenced, but that will be a smaller



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bulge that will work its way through the system. The assumption we are working on is that by July 2025 there will have been a significant amount of progress in the court backlog.

Q206 **Chair:** Is it not the case that the convicted but unsentenced proportion of the remand population is increasing?

Rob Butler: Yes, it is at the moment.

Q207 **Chair:** You are still confident about your capacity to reduce, even though that percentage is now up to half of remanded prisoners.

Rob Butler: Yes, for the reason I just explained; at the moment there is a huge bulge that has not yet been on trial. We believe that will decrease over time.

Q208 **Chair:** Remand prisoners have to be held in category B reception prisons. Has that created capacity challenges? Do you believe you will have sufficient capacity to hold your forecast number of remand prisoners?

Rob Butler: The answer to both is yes. It has created pressures, but we have the capacity. There is flexibility in the system that has enabled us to move the right people to the right place at the right time. There is a population management unit in the Ministry of Justice. I was there last week looking at how they operate on a daily basis and saw the flip side of that on a visit to HMP Chelmsford and how they managed it locally. It can be dealt with on a day-by-day basis.

It is true that it obviously has knock-on implications in order to free up space in local prisons, the remand prisons. Michelle can certainly talk in more detail on that. The important thing is for people to know that there is the capacity, if someone is remanded in custody, that there will be a place for them and it will be the right place.

Q209 **Chair:** What about the women's estate because, obviously, there are fewer prisons, more widely spread?

Rob Butler: Yes.

Q210 **Chair:** The percentage of the population, for whatever reason, is higher than on the men's side. Are you confident that you will have enough spaces to hold women?

Rob Butler: Yes. The capacity in the women's estate is better than it is at the moment in the male estate. You can correct me if I am wrong.

Q211 **Karl Turner:** The Bail Act 1976, if memory serves, has a presumption of bail but for serious offences, murder, manslaughter, serious sexual offences and so on. For any other offence, there is a presumption of bail. How effectively is the presumption working in favour of bail operating?

Gareth Johnson: Since 1976, the Bail Act has had to be adapted to suit certain changes in technology. We have had various amendments that have enabled electronic monitoring, for example, to take place; that is a



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fairly new change in the Bail Act. We have the Bail (Amendment) Act as well. There have also been amendments that have helped to ensure that there is drug testing, for example, when people are on bail.

The presumption in favour of bail is the correct approach for most offences. That presumption has served us well and mirrors human rights. That is a factor of bail we are all keen to retain where possible.

Q212 Karl Turner: Is it working in a practical sense? Does it actually happen?

Gareth Johnson: The whole issue with bail, as you know, is judgment of risks. No one in their right mind would suggest that we keep everybody in custody. Therefore, there has to be a risk when you are releasing on bail certain people who are accused of offences. As soon as you do that, there is a risk and it will be for courts to decide on the level of risk. The framework that we have at the moment, while it always can and should be kept under review to see if we can improve it, enables courts to decide, as best as they can, the level of risk and whether someone, albeit under condition on occasions, can be released into society again.

Q213 Karl Turner: Has the Department done any work to see how effectively that presumption of bail is working in the real world?

Gareth Johnson: The presumption of bail is a fundamental principle, I would argue, of British law and the British constitution. The right to be free is a fundamental right that people have. I am not aware of there being any investigation into that.

As politicians, we would say this is a principle that we would not let go easily; people have a right to be free unless there are very good reasons for them not to be. As a principle, whatever investigation or surveys say about that, it is an instinct we all have that it is fair and right and how it should be; it is the same as the presumption of innocence.

Q214 Karl Turner: I am not disagreeing with that at all, Minister. You are probably right and I agree with you, for the record, but I am surprised that there has not been a piece of work done by the Department to inquire into whether the presumption of bail is operating as it should be.

Gareth Johnson: I am not aware of there being a piece of work, unless there is anything further you can add.

Q215 Karl Turner: Should there be?

Gareth Johnson: If it can add anything. If you can show that it could add anything, then maybe. It is like the presumption of innocence. You can have an investigation into it but the presumption is such a strong one that it needs to be retained.

Q216 Karl Turner: I am not saying it should not be retained, Minister, with respect. I am asking whether you think it is a good idea for the Department to be asking the judiciary whether the presumption of bail is operating as the legislation, the 1976 Act, says it should be.



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Gareth Johnson: I have no objections to any investigation on that taking place. I am not aware of any.

Q217 **Chair:** The point is that there is, perhaps, increasing defensiveness among sentencers and courts, and magistrates and judges. That is partly where the question is coming from; is there increasing defensiveness that means that—

Karl Turner: Exactly.

Chair: —notwithstanding the requirement of the Bail Act, risk aversion is such that those who perhaps in the past would have been released on bail are being remanded into custody? Would that not be one reason why we are seeing this increase in the remand population? Could that not be an explanation?

Gareth Johnson: I can ask if there has been any investigation that has taken place that I am unaware of.

Claire Fielder: We have not done formal research looking at that. It is an interesting question thinking about what we mean by effectiveness and what we are testing it against. We have not done a formal piece of work exploring that. We have looked a bit at what the stats tell us about whether people who have spent time on remand in custody are subsequently sentenced to custody. Of course, that does not necessarily tell you whether the original decision was effective. There are some other factors that we probably would want to look at if we were to do a piece of work like that. The case mix of those coming in front of the courts would likely be a factor in terms of a shift over time. As you know, we have seen a shift to more serious cases.

Finally, in relation to the judiciary, as the Minister said, these are absolutely decisions for the judiciary. That said, there is ongoing dialogue between the Department and the judiciary on a range of matters through a range of different for a—for example, on the roll-out of electronic monitoring and GPS tagging on bail. There is quite extensive dialogue and engagement with the judiciary. There is that sort of ongoing contact, but we have not done a formal piece of research that looks at these issues. I hope that is helpful.

Q218 **Karl Turner:** It is fair to say that the unsentenced prisoner population is growing rapidly, isn't it? What are you doing to reduce the length of time that people are waiting for their sentences to be determined? I am asking about those who are convicted already, who are waiting to be sentenced. They might be waiting for pre-sentence reports; they might be waiting for psychiatric reports. What is the Department doing?

Gareth Johnson: You are absolutely right; it is an issue. There is a growing number of people who are convicted but not sentenced. Part of the reason why there has been that increase is that we have seen situations where there are co-defendants. Trials have not been able to take place of those who pleaded not guilty, where others have pleaded



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guilty, and there has been a delay in the trial. Judges, understandably, are reluctant to sentence one co-defendant separately from another co-defendant. That has helped to increase the number of people who are convicted but not sentenced.

There are a number of measures that we have brought into place. You mentioned pre-sentence reports. We have been able to change the system so that when cases are on committal, in anticipation of a guilty plea, to the Crown court, we have ordered pre-sentence reports at that stage, rather than waiting for the case to get to the Crown court and the judge ordering them. That is helping to speed things up. We are also enabling judges to move around jurisdictions so that we can identify where there is a particular problem, as you have alluded to. Judges are able then to help deal with the backlog. We have been setting up particular sentencing courts as well, so more of that is taking place.

Ultimately, many of these issues are for the judiciary. What we are trying to create is a framework the judiciary can use in order to reduce the numbers that you mentioned. Getting sentencing courts in place is absolutely vital because it enables the throughput of sentencing to take place. Judges are very reluctant to do that when there is a co-defendant yet to be tried in the case. As we know, there has been a hold-up in the number of trials that have taken place recently because of the Bar strike.

Q219 Karl Turner: For those on custodial remand in prison, is there any priority for a court hearing?

Gareth Johnson: Yes, there is. Courts prioritise cases that are coming close to custody time limits. They prioritise cases where someone is in custody. What they also prioritise are serious sexual offences and domestic violence cases. We know that the longer those cases go on, the more pressure builds up on the victim. While listing is a judicial function, courts are, nevertheless, absolutely prioritising custody cases in the magistrates courts and in the Crown court.

Q220 Paul Maynard: Those who are on remand clearly have no obvious release date, which can make handling their release that bit more challenging. When we visited HMP Wandsworth—you, Minister, were with us for that visit as a Committee member—we heard that people were being let out of prison there with tents because no suitable accommodation could be found for them. Is that acceptable in your view as a Minister?

Rob Butler: No.

Q221 Paul Maynard: No. What, therefore, are you doing to ensure that those held on remand are not being released without suitable accommodation to go to?

Rob Butler: It depends when they are released and what the reasons are for their release. If they have gone to court for trial and been found not guilty, they are innocent of any offence. The probation service has no



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possible remit over them, so HMPPS, however much it might want to, cannot do anything because they are completely free citizens. If somebody is released on licence, things are rather different, but from a remand situation, that is unlikely.

What we have done recently is develop different types of accommodation for people on release. I do not want to use too much jargon but, for example, there are essentially three tiers. We have approved premises, which are the most secure tier. Only about 1% of those beds are used for remand prisoners and they are for people who are incredibly high risk. There is a next level down, tier 2, known as CAS-2, what used to be called BASS, the Bail Accommodation and Support Services. What we have done more recently for people on release is what is called CAS-3. That is working with the private sector and with third parties such as Nacro, for example, to provide accommodation. It is important to say that that can only be if probation has some kind of locus over them. As I said at the outset, we cannot, if somebody is freed immediately, give them accommodation ourselves because it is not within our remit. Michelle might have some more details.

Michelle Jarman-Howe: Key is CAS-2 and around 20% of BASS prisoners ended up being sent there on bail, so that is really helpful. The other thing is to note the presence of pre-release teams in prisons to support the release of prisoners, even if it is at short notice. You are absolutely right to recognise that those who do not have the certainty of a release date are at a disadvantage. Probation are working with prisons to make sure that there is an amount of support and signposting if that is what is required to try to deliver on some of that.

Q222 **Paul Maynard:** They are still clearly walking out of the door with a tent. Does the Ministry need to give additional support to those who are acquitted?

Michelle Jarman-Howe: You come back to the point of unpredictability in being able to see the outcome. Certainly, probation would not, in those circumstances—

Q223 **Paul Maynard:** Shouldn't somebody?

Michelle Jarman-Howe: Yes, but I guess it is which service would pick that up that is the challenge.

Rob Butler: People in prison, if that happened and they knew about it, would signpost towards the local authority. The challenge you have is that if somebody is acquitted, HMPPS literally has no responsibility nor could it. It is like any other citizen in the community who is looking for somewhere to live, and becomes the responsibility of the local authority. What prisons can do, and the teams that have been established, which Michelle was just referring to, is to signpost in advance.

Q224 **Paul Maynard:** We heard evidence from Charlie Taylor. You won't have had a chance to hear what he said. He mentioned in regard to this issue



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that since the unification of probation, and the contractual obligations that the new structures are under, you had committed, as a Ministry, to renegotiate in those contracts to place more responsibility for remand prisoners. He said that in many prisons he is about to visit those contracts were still to be updated despite commitments from the Ministry. Are you aware of that?

Rob Butler: The situation is that, when we had the CRCs, the CRCs had varying requirements to provide a service when people left prison, but it varied very much according to the resourcing of the individual CRC and, frankly, how effectively it was fulfilling its role. The aspect we are particularly talking about was almost an add-on at the last stage; there was additional funding of, I think, £22 million provided in 2019, when it was recognised that there needed to be an uplift in funding for the CRCs when some of them were having particularly difficult times ahead of unification.

When unification happened, there was a more standardised process and a changed process. What had been through the gate has effectively been divided. There is now the service that is provided in prison and then, on release from prison, there are separately commissioned rehabilitative services. Those tend to be third-party organisations, typically charities. Nacro, which I mentioned earlier, would be one of them. This is not to cast aspersions on their individual performance, but that is done separately, with separate money. It is fair to say there is not as much resource available for that service as we perhaps provided before, because of the financial challenges that there were even then.

Q225 **Paul Maynard:** Mr Taylor was clear that there was going to be renegotiation of those contracts. You may not be aware, but maybe Ms Jarman-Howe is.

Michelle Jarman-Howe: It remains the plan to update those contracts. It is just the timing of the delivery that is the challenge.

Q226 **Paul Maynard:** Weeks, months, in due course?

Michelle Jarman-Howe: Some by Christmas.

Claire Fielder: By the end of the year.

Q227 **Paul Maynard:** By the end of the year. Which year?

Michelle Jarman-Howe: This year. Sorry, I was just checking with my colleague from probation. Currently in HMP Winchester, everywhere else in the rest of the estate, in the male estate, by Christmas. Then women's prisons by April 2023.

Q228 **Paul Maynard:** Final question from me. Many of those held on remand are there for a similar length of time to those on a short sentence, but access a very different suite of education and support services. Does that need to change and, if so, how might you go about it as a Ministry?



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Rob Butler: It is a question I have had in my mind. It is a question I asked when I was at HMP Chelmsford last week. There are shorter courses. The prisons are looking—they are not looking at it, they are doing it. They are running shorter courses, whether they be conventional education courses or practical courses.

It can be harder to get conventional jobs in prison for shorter periods of time. That can be because it is harder to prove that you have earned the right to the job. Frequently, there is a progression regime in terms of different types of job that you may get in a prison. You obviously cannot make as much progress if you are there for a shorter time on remand. That is an area I have been directly asking about and it is one where I have been getting a lot of reassurance. Michelle may want to add to that. I have been pretty pleased with what I have heard.

Michelle Jarman-Howe: The specific question was about education and employment, but there are other services that individuals need when they come into custody, particularly on remand. It tends to be quite a shocking experience for them, so individual support to make sure that we have secured their safety is helpful; if they need signposting to drugs services, for example, or a number of those areas. The regime is not just education and employment; it is a big part of the regime, but it is not all there is.

Rob Butler: It is also worth pointing out that prisoners on remand do not have any requirement to participate in either education or employment, or the various opportunities that are afforded to them. Sometimes they choose not to and that is entirely up to them. There are two sides to the coin, to some extent.

Sir Robert Neill resumed the Chair.

Q229 **Chair:** Thank you very much, Mr Maynard. I am very grateful to Ms Eagle for chairing the Committee in my absence. I didn't want rumours to be flying around on a day like this.

Rob Butler: We thought you might be our new boss, Sir Bob.

Chair: I won't even respond to that one, Mr Butler. I am endeavouring to speak in the retained EU law Bill, which has a number of justice-related aspects and, therefore, one has to be present for the opening speeches before going back later. It is very good to see all of you here. I am grateful to Maria for taking the Chair.

Q230 **James Daly:** Mr Butler, I have probably lured you here on false pretences on the basis of the question I am about to ask you. The Committee very recently published a report on IPP. Ms Eagle, at the start of her questioning, talked about total prison numbers. If any assessment has been made and were the Government to follow the Committee's excellent proposal regarding resentencing, how would that relieve the burden on the total prison population and how many people could potentially be released from custody?



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Rob Butler: As I said in the House last week, the Committee's report, which is very much welcomed, and obviously has some very thorough recommendations, is currently being looked at in great detail by the Department, including the recommendation on resentencing. We have not formed a view on that as yet, because it has not come across my desk for detailed consideration. Whether or not I still have a desk in the Department will be a matter for future weeks.

James Daly: I'm sure you will.

Rob Butler: In terms of where we are now, as I said in the House last week during Justice questions, what I am very clear about is that there is not a one-size-fits-all solution to this. Having been on the Committee at the time we were taking evidence about IPP prisoners, it was very clear from those who spoke to us that there are problems with every single potential solution. It will be the job of the Department in the weeks and months ahead to look at what can be done and what cannot be done, so I am making no commitments whatsoever in terms of any specific recommendations that have been proposed.

It is, of course, very clear that there is a high number of prisoners serving IPP sentences in custody. We must not forget that very nearly half of those are there because they have been recalled, having been released on licence. We estimate it will not be long before the number who have been recalled on licence is higher than those who have not been released at all. That throws into question the whole debate about recall on licence and whether that is appropriate. I know you have a recommendation that the licence period be reduced from 10 years to five years, for example. We also need to bear in mind that what we cannot do, and I do not think any Government would want to do, is release into the community people who are still seen as posing a serious risk to the community. It would be very hard to justify to anybody that that is the case.

The IPP population is now at about 1,450. It was 6,000 at its highest, which I think was in 2012, but with recalls, the total IPP population in custody is about 3,000 at the moment.

Q231 **James Daly:** That's absolutely fine. I have some very brief questions for Mr Johnson. I should say about these two Ministers that we are dealing with people—I do not apologise for saying this—who have real expertise and real-world experience. Finding another defence solicitor in this place, with Mr Turner as well, is a wonderful thing.

Are you saying the Bail Act is working well? Was that the evidence you gave?

Gareth Johnson: Yes, I would argue that it is working well but that does not mean that it cannot be improved. We must continuously keep these things under review; we must continuously modernise. It is why there have been changes to it, quite frankly. There will always ultimately have to be a judicial judgment taken as to whether or not somebody can



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be released on bail. There will always be risks involved; courts will get it wrong. You could argue that was down to the legislation in place, or you could argue it was the actual decision that was wrong; nevertheless, there will always be an element of risk when it comes to bail. I come back to Mr Turner's point earlier; looking at the number of offences that are committed by people having been released on bail may be one way of looking at how successful it is.

Q232 James Daly: That is a very fair point but it clashes with public policy. I think we all agree that we want to see fewer people in a custodial environment. You will correct me, gentlemen, if I am wrong in respect of that.

You spent time in front of magistrates, Mr Johnson, in terms of your clients. There is an argument that, if you give more opportunity to lay magistrates to lock somebody up, they may well take it. Am I being completely unfair on lay magistrates in respect of that or do you think there is something in it?

Gareth Johnson: That is unfair, if I am being blunt with you.

James Daly: Okay.

Gareth Johnson: It depends on the lay magistrate involved. I have met some excellent lay magistrates and some less than excellent magistrates, it is fair to say. All in all, lay magistrates do a good job. Where they are at their best is when you have a blend of district judges in a courthouse and lay magistrates because you get professionalism and the objectivity that lay magistrates bring.

Can it be improved as a system? I am not going to push back if anybody says it could be improved. It would be unfair to generalise and say that lay magistrates tend to have a mission about them when they come to sentencing.

Q233 James Daly: I fully accept that. Should the remand list at every court in the country be dealt with by a district judge? Would that potentially have an impact on the number of people being remanded into custody?

Gareth Johnson: It should not have to be, no. We see some rural courts where there is no district judge at all available. If you go to a London court, it would be almost entirely district judges in some of the courts in London, for example. It should not have to be a district judge. In my experience, I have come across some pretty tough district judges, frankly. The idea that lay magistrates are all hardened people who want to send everybody to prison, and more than anybody else, is not my experience.

Q234 James Daly: You talked about risk. Mr Butler, I would welcome your views in respect of this. It is a very fair point. Somewhere in the pack we have it says—my colleagues will correct me if I am wrong—that 53% of people on remand have been charged with non-violent offences. I can



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find it in a second; it is somewhere in there.

When you talk about risk, it means different things to different people. If over half the prison remand population are not at risk or there is not a belief that they are going to commit a violent offence—

Gareth Johnson: I was not aware of that statistic; it is quite a stark statistic. If you have just had your house burgled by someone who is a prolific burglar, the fact that the person is non-violent but in custody would not really bother you. There are many people who are not charged or accused of violent offences who are rightly in custody, if it is impossible to release that person on bail because of fear of commission of further offences, for example, or fear of them failing to turn up. It is quite correct that some of those people are in custody, but I was not aware of that particular statistic, which is obviously quite—

Q235 **James Daly:** Do magistrates impose too many conditions on many defendants who appear in front of them, leading them inevitably to be remanded into custody, not for the offence but for breaching a condition rather than committing a further offence while on bail?

Gareth Johnson: If I may, Mr Daly, I will answer that question on my experience of going to courts, rather than any evidence that I have in front of me.

James Daly: Of course.

Gareth Johnson: The biggest problem comes when conditions of bail are not clear, when they lack logic. I have had clients who have had a condition of bail not to associate with more than one person. Then they turn up at court and say, "I'm sorry, I can't talk to you. You're with somebody, you're with your partner and, therefore, I can't talk to you." Then you have to get the bail conditions changed in order to take instructions from them. It is a lack of common sense sometimes. I would like to see clearer, more sensible conditions imposed on people that they can comply with, frankly. That is the cause of a good number of breaches, in my experience.

Q236 **Karl Turner:** Can I come back briefly? That example you gave was ridiculous, frankly, but it is a real example; it happens. Isn't it about the court clerk though? You have a legal adviser advising the lay bench. Isn't that something they should be addressing, if conditions are utterly ridiculous?

Gareth Johnson: Sometimes. You are absolutely right. On other occasions, it is conditions of bail that have been imposed at the police station, for someone to be bailed to go to the court on. Occasionally, magistrates will make decisions on bail without necessarily consulting the clerk. These are judicial decisions. You would hope that, if there is an opportunity, the legal adviser or the court clerk—I was a court clerk myself for a good number of years; that is something I would have advised magistrates on—would turn their attention to it if they had



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imposed it, but it is not always the magistrates who get it wrong. Sometimes the police place conditions of bail that are just not sensible.

Chair: Thank you very much. Ms Eagle.

Maria Eagle: Thank you. Because I am now sat over here—

Rob Butler: You escaped.

Q237 **Maria Eagle:** Don't worry. Because remand prisoners do not have a release date, they are unlikely to have access to rehabilitative or resettlement opportunities that are driven by release dates. That is a fair statement, isn't it?

Michelle Jarman-Howe: Yes.

Maria Eagle: They often do not have access, notwithstanding the fact that, as you said, Mr Butler, they sometimes choose not to participate; that is true. Also, they often do not have access to the support, education and training services that convicted prisoners have. Certainly some of them, perhaps, would like to have those opportunities. Is that accurate?

Rob Butler: With respect, I am not sure that it is, no. As I was saying in answer to an earlier question, remand prisoners, and prisons that are not solely dedicated to remand prisoners, but which have remand prisoners in them, provide courses and opportunities, whether that is education or skills that are vocational.

It is not that there are not courses at all or other opportunities that they can partake in, but of course what one needs to remember is that, in remand prisons, the main focus is the process of remand, the process of making sure people get to the right place at the right time. That is why we all hope people can be on remand for as short a period as possible.

Q238 **Maria Eagle:** Am I right to say that, if there were some spaces on education and training opportunities that remand prisoners perhaps could participate in, they would be at the bottom of the list behind those who were convicted? How are they allocated where you have both remand and convicted prisoners?

Rob Butler: To the best of my knowledge, there is no pecking order, as such. Michelle may be able to talk in more detail.

Michelle Jarman-Howe: The key issue on the education side is that it would not make sense for a governor to put a prisoner who has a very short period of time potentially to serve in custody on a long-standing education course—a degree course or a lengthy course. That does not make sense. It relies on prisons having shorter courses, whether that is education courses or fitness for employment, a range of activity. Unless a prisoner found himself in an establishment where all the short-term courses were filled, which seems very unlikely, it is not the case at all that there is a pecking order. It is making sure that they are getting the right intervention at the right time.



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Remands are able to work in employment. There might be some jobs that would not be suitable for them, because of the nature of their allegation or their stability or otherwise in prison. It is not the case at all that they cannot access those opportunities. There are also health interventions, and other work that we do with prisoners.

Q239 Maria Eagle: You are happy that in most cases those on remand can have access to courses that are suitable. We know that the average number of days on remand is going up. It was up to 209 according to the National Audit Office in June 2021 and I do not suppose it has come down since then. People are quite often on remand for over six months, certainly long enough to do something useful with their time in prison. Are you clear that those who are on remand for that period of time have the chance and the capacity and are able to take advantage of those courses?

Michelle Jarman-Howe: That's right. There is nothing that inhibits that unless, of course, they choose not to.

Q240 Maria Eagle: Yes, which is a different point.

Michelle Jarman-Howe: Yes. We should acknowledge that remands are held in local reception prisons. Those are prisons that have generally the least amount of availability of education and workshops. That is not what they are set up to do. There may be a genuine challenge in those establishments about availability of a number of courses, particularly because, as we touched on earlier in the hearing, the proportion of remands being held in locals has increased. That may be playing out in terms of numbers. In principle, it is absolutely fine. It is also right to point out that access to family engagement is really important for prisoners on remand. We are very supportive of that because we are mindful of their safety. It is not all about education and employment; there is a range of services we enable them to access.

Q241 Maria Eagle: You seem to be saying that in theory there is access to these things, but in practice, because they are in category B prisons, there might not be the access you would hope there to be. Is that fair?

Michelle Jarman-Howe: We need to recognise that it would be outstanding if we had full regimes available for everybody in every prison; that is not the reality in some types of establishment that are not set up to deliver that. In principle, absolutely, remand prisoners can access education.

Q242 Maria Eagle: There are some cat B prisons that have extremely high percentages of women prisoners. Do you have any plans in those cases to increase the provision and availability of purposeful activity for remand prisoners?

Michelle Jarman-Howe: During covid, prisons set up a range of initiatives, for example, to enable prisoners to work in cells and gain access to education services in cells, which has been very helpful in some



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sites where we do not necessarily have the physical education facilities to be able to deliver that. Governors have the flexibility through their education provider to commission shorter courses or different kinds of courses to meet the risk of their population, so they are absolutely able to do that. In reality, many prisons do not have the footprint to put on additional workshop activity, and so on—things like access to key work, access to the gym, access to visits. All of those things become really important. We are limited by the physicality of the estate in increasing workshop spaces, for example.

Q243 Maria Eagle: Mr Taylor said to us earlier that in many prisons where remand prisoners are held, their focus for remand prisoners is getting them to and from court, as one would expect. Do you have enough prison staff in the places where remand prisoners are concentrated to make sure that they can have a purposeful regime, as well as just doing the basics of getting them to and from court, which of course you need to do to make sure they can perhaps get out or get to trial faster?

Rob Butler: We all know that recruitment and retention across the Prison Service is challenging at the moment, but there has been a lot of progress. For example, between the end of October 2016 and the end of June this year, the number of prison officers has gone up from 17,955 to 21,725. We are talking about almost 4,000. We are working on recruitment campaigns, as we speak, to encourage more people to join the service. We need to get people in across the whole prison estate.

The challenges tend to be more on a geographical basis. There are certain parts of the country where it is much harder to find people to work in prisons. I do not think it is specific to the type of prison, whether it is a remand prison, a trainer or resettlement, or an open prison. It very much depends on the specifics of the establishment. Clearly, each and every prison has to fulfil its most basic functions every day; getting people out of their cells, locking them up again, making sure they get the right food and so on. That is the case whether or not it is primarily a local/remand prison or a different type of prison. Is there anything you would like to add, Michelle?

Michelle Jarman-Howe: No.

Q244 Maria Eagle: Is there any difference in the women's estate in respect of that recruitment and being able to provide a purposeful regime for remand prisoners?

Rob Butler: Not specifically. We are very keen to recruit to the women's estate as well and we have approved the training for officers working in the women's estate. It is something I have taken a close interest in since being appointed, not least because of the report on women in custody this Committee did while I was a member of it. I am very keen to see that the recommendations, almost all of which were accepted by the Department, are acted on. There is no particular crisis that I am aware of in the women's estate in the area you are talking about. Michelle may



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have other things she wants to say about the women's estate more generally.

Michelle Jarman-Howe: I reinforce what the Minister says; it is more an issue of geography than type of establishment. The women's prisons tend to be smaller. There is an issue about the smaller sites, particularly the open sites, which tend to have a longer-serving staff group. Our focus on retention and recruitment is consistent across the whole system. We are making sure that we recruit the right type of staff to the women's sites, as well as reflecting that in our training.

Q245 **Maria Eagle:** Has the Department started to think about what to do if legislation is passed to remove the use of prisons as a place of safety? This relates particularly to the women's estate. Those vulnerable people are currently being sent to prison because it is supposed to be safer for them. Where will they go?

Rob Butler: The idea is that they will go to a more suitable type of provision provided by the NHS. It is absolutely right that prison should not be seen as a place of safety. There is a difference between place of safety and people who are remanded for their own protection. There is the distinction between the two. From a bail point of view, being remanded in custody would be more likely to be for your own protection rather than prison as a place of safety. In both cases, the whole point is that prison is not the appropriate location if we are talking about mental health. Consequently, the responsibility will be on the NHS to provide the right facilities, the right location. The challenge could potentially be if somebody does not meet a threshold for in-patient treatment, for example. Work is going on between the NHS, the DHSC and the MOJ to make sure there is appropriate provision when that legislation takes effect.

Q246 **Maria Eagle:** Are you talking to the Department of Health about this?

Rob Butler: The Department is, yes, absolutely. Claire can give you more detail on that but yes.

Claire Fielder: Yes. We speak to the Department of Health. I speak to my counterparts in the Department of Health and the NHS on a regular basis. We have, as you would expect, a whole load of governance.

Q247 **Maria Eagle:** Do they provide the money?

Claire Fielder: We have had very positive and constructive discussions about this over recent months, along with clear plans and work in progress to make sure that it works in practice. There is a real commitment on all sides to make it work in practice, which is not to underplay the level of challenge that it will involve to make that happen.

Maria Eagle: Thank you.

Q248 **Chair:** It seems Mr Raab has returned to the Department as Secretary of State.



Gareth Johnson: He is our boss today. Tomorrow is another day.

Rob Butler: He is our boss for now. We don't know if we will still be there tomorrow.

Q249 **Laura Farris:** I want to ask about alternatives to remand and the efforts that the MOJ has made in relation to electronic tagging and electronic monitoring. I confess I do not know very much about either of those. How prevalent is their use as an alternative to remand and has the MOJ yet made an assessment of their effectiveness?

Gareth Johnson: Last month, there were 6,000 people on an electronic tag, a mixture of the old-fashioned tags where they cannot leave their house, so purely for curfew defendants, and about a quarter of them GPS-tagged. We know that the GPS tag is a newer type of system of electronic monitoring. They are incredibly accurate. They are within 5 metres, 20 ft, of the actual location the individual is in. If, for example, you have someone placed on curfew and not to go to a particular address, it is very accurate in determining whether or not that person went to that address.

Where there have been difficulties and challenges with this kind of thing in the past is when someone is in their garden, for example. It has been so accurate that it has beeped that they have breached their conditions of bail, when they have not breached the spirit of their conditions of bail. That is the kind of thing we have to learn from because it is quite a new piece of technology.

It has been very effective by the fact that, as I say, just under 6,000 people last month were on a tag. It shows that the courts are using it; the courts seem to have confidence in the tag and, therefore, it can be a very effective tool to monitor bail conditions. Quite a few people end up not being remanded into custody because we have them. We can see whether somebody is potentially going to interfere with a witness or go to a location they should not be going to and that they are staying at home during the hours the courts have determined.

Q250 **Laura Farris:** We were perhaps joking slightly about the different responses you might have from a district judge or a lay magistrate and their various propensities to go for remand in custody. There is a serious point, which is that sometimes there isn't a linear approach taken. Is there sufficient knowledge of alternatives to remand—for example, the effectiveness of GPS tags?

Gareth Johnson: That is a very good question. We have to ensure that lay magistrates particularly are fully trained to know about the existence of GPS tags.

Training is predominantly dealt with by the judiciary themselves, rather than from the Ministry of Justice. We ensure that there are training programmes in place so that they are updated with the latest knowledge



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of electronic tagging and training systems as well as its effectiveness and availability.

- Q251 **Laura Farris:** I have no idea what the answer to this is. Do they know what the MOJ's objective is? If, for example, the MOJ had a view that it would be preferable to reduce the numbers on remand because of prison population and backlogs, would they know that they were being nudged towards choosing alternatives if possible?

Gareth Johnson: The key thing is to make sure they are aware of it. It is not a judicial decision to wonder if there is a prison place; that is not the role of the courts. Prison places are for us to worry about, not the judiciary. It is important that they are aware of the packages available to them and their effectiveness so that they can make a proper decision.

If you take the view that there are substantial grounds for believing that someone might interfere with a witness if they were not tagged, but not substantial grounds for believing that they would interfere with a witness if they were tagged, they can release them on conditional bail. That is something where the Department and the judiciary overlap in terms of us providing the facilities and them making the judicial decision.

- Q252 **Laura Farris:** I want to ask about the bail support service. What is your view about the effectiveness of that? Is it being used too much as an alternative to the home curfew scheme?

Gareth Johnson: Do you mean the Bail Information Service?

- Q253 **Laura Farris:** We have it in our briefing note. It is the accommodation service.

Gareth Johnson: Bail hostels.

Rob Butler: Do you mean the Bail Information Service, BIS, that has been set up? We have started a pilot, which goes back to something that was done a long time ago, of the Bail Information Service. That is about making sure that we provide the information the court needs in order to make a proper decision; it is factual, it is objective, it is verified. The court has in front of it the right information to decide, "Do we need to resort to our final option?", which is to remand somebody in custody, or, "Are we in a position where we have enough information that we could remand somebody on bail with the appropriate conditions?" That was specifically set up in response to covid-19 and the remand population that was then growing as a result of covid-19. The pilot has funding until next year.

- Q254 **Laura Farris:** I think we are talking about something else. I am asking about the bail accommodation service.

James Daly: Yes, you are at cross-purposes.

Rob Butler: BASS. You are talking about what used to be called Bail Accommodation Support Services, which I was describing earlier, where



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we have three different tiers. Essentially, that is accommodation which sometimes used to be called bail hostels. The idea then would be that instead of having to remand somebody into custody, if you knew there was an available place, a magistrate or a judge could make it a condition of residence to be in that location.

I agree with Mr Daly; I would like to see, within reason, as few people—the only people I want to see in prison are the people who absolutely need to be in prison and have to be in prison. Ultimately, it is for Parliament to decide where to draw the line in sentencing policy.

Laura Farris: Yes.

Rob Butler: If there are alternatives within legislation at the moment that mean it is safe for somebody not to have to go into custody while they are still unconvicted of an offence, and to have electronic monitoring, be it the RF traditional style, or GPS, and/or accommodating them in supported accommodation such as you are describing, my feeling is that that is exactly what we should be doing. That is where we are putting some money behind it.

Q255 **Laura Farris:** My question was about the adequacy of that service. How widely used is it? It does not sound like there are that many beds anyway.

Rob Butler: We have 550 beds across England and Wales for people who do not have a suitable release address. That might sound a relatively small number, and of course one would always like these things to be bigger, but we are talking about people where it is not judged appropriate for them to go home or to somebody else's address, and yet it is not quite severe enough for them to go into custody. There is probably going to be a relatively small pool of those.

I want to see as many people having that opportunity as possible. None the less, we have to face the reality that there are limited resources, irrespective of the fact that we have an impending fiscal event. There have always been limited resources, even when we have felt relatively comfortable, let me put it that way.

Chair: Thank you very much. Mr Maynard.

Paul Maynard: Thank you. I wasn't aware I was coming next; you caught me by surprise.

Q256 **James Daly:** While Mr Maynard is finding his place, I have a quick question. Forgive me if you have answered this question. On remands in custody for sentence in the magistrates courts between a guilty plea and sentence, what is the average time for remand in the magistrates court?

Gareth Johnson: Post sentence?

Q257 **James Daly:** Post conviction.



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Gareth Johnson: Post conviction, there is a statutory limit on the amount of time someone can be remanded in custody. I believe it is three weeks.

Q258 **James Daly:** Is that happening? In the magistrates court, unless you are awaiting trial in the magistrates court, you should not be remanded in custody for more than three weeks.

Gareth Johnson: At a time. In theory, you can remand for three weeks in custody. If the magistrates were unable to sentence, there can be an adjournment but it cannot be a remand for more than three weeks at a time. That is my recollection.

Q259 **James Daly:** Absolutely. I was not trying to catch you out at all. So that we have a clear picture on remand in the magistrates courts, do we have a figure for the average time for a remand in the magistrates courts? In a Crown court trial, we have a figure of 209 days.

Gareth Johnson: No is the short answer. The long answer is that we are hoping with the common platform for that to become robust enough, once it is rolled out to all magistrates courts, that we will be able to glean that information from the system. At the moment, we do not have an average amount of time that someone spends in custody from the magistrates court.

Q260 **James Daly:** Why do we not? When I was doing the job, we could do most pre-sentence reports on the day. We do not need three weeks for a pre-sentence report.

Gareth Johnson: It depends on the intentions of the court as to what they want included in the pre-sentence report. You are absolutely right; it is not always necessary to have a pre-sentence report at all. If it is necessary to have a pre-sentence report, it can be provided quite often on the day. It depends on the intentions of the magistrates and the availability of probation.

Q261 **James Daly:** That is a very important point. We both know, as does everybody who has been involved in this, that most of the things in a pre-sentence report are prepared very professionally and are probably things that the court is aware of on the day the guilty plea is entered. It is generally not revolutionary stuff that is coming through. Do you have any view on trying to look at that as a way of speeding up remands of young people, or them not having to be remanded in custody?

Gareth Johnson: Magistrates can still send someone to prison if they deem a pre-sentence report unnecessary. That is my understanding of the law. If they are looking at a community-based penalty, they need to have the question answered as to whether or not that defendant is suitable for that particular type of community penalty. That is the only question they need to ask the probation service, so that can be given.

Q262 **James Daly:** It is curious that it needs three weeks, isn't it?



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Gareth Johnson: I am telling you what I think is the law.

Q263 **James Daly:** I am not criticising you at all, with respect.

Gareth Johnson: You are right; they do not have to go for the whole three weeks just because they have the power to do so. They do not have to use that. Those kinds of remands should be as short as possible.

Chair: Thank you very much. Mr Maynard.

Q264 **Paul Maynard:** Thank you. Order has been restored and I have located my question. I am not sure which Minister to put it to though.

We recently went to Dublin to look at their remand prison; it is remand only. They have invested significant amounts of money in a suite of video link facilities to ensure that prisoners have no need to leave the remand jail at all to engage in further parts of the judicial process. What are you doing to ensure, as a Government, high-quality video link facilities to improve access to justice in the prison estate?

Gareth Johnson: There is an element of your question that comes under both Minister Butler and me.

Q265 **Paul Maynard:** That is why I was not sure who to ask.

Gareth Johnson: If I may go first, I am sure Mr Butler will want to follow.

Rob Butler: You do the courts; I will do the prisons.

Gareth Johnson: An awful lot is being done is the answer to your question. Particularly when covid hit, the court system relied on video link provision in order to continue with its cases. It pre-dates covid; a lot of video work was being done. It has helped enormously for remote hearings to take place for remand hearings, for example, without the necessity of bringing a prisoner from prison; it can be dealt with via video link. From the last figures I saw, 90% of Crown courts now have video evidence capabilities, and 80% of magistrates courts have those facilities as well. It is something that is very widespread across the whole judicial system.

Q266 **Paul Maynard:** Is that for use for remand specifically?

Gareth Johnson: It is a judicial decision as to whether it can be done that way. It does not have to be just with remand. For example, in very serious sexual offences, the victim can give evidence via video link. That has been a breakthrough in ensuring that that happens; it has been a very positive thing. There are various situations where it can take place. It is quite common now and it is something that has its place.

Rob Butler: This is where there is a solid goods news story, I am pleased to say. We have the capacity to have video hearings from every single remand prison in the country. There is a very substantial investment programme going on, which includes 13 already operational



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video conferencing centres. They look a bit like a television control room, where there are lots of screens. Their great advantage is that you can have multiple court hearings going on at the same time and you do not have to have a prison officer outside each and every door at the same time. It is a very effective use of time.

What really stands out about this is the hours. Those facilities are available from 8 am until 6 pm. That was not the case when I was a magistrate, when they used to knock off in the prison at 11.30 to have lunch at 12. Then the magistrates would knock off at 1 to have lunch until 2. You would have three hours in the middle of the day when there was no possibility to do anything on a video link. Those days are gone from the point of view of the Prison Service. There is a seamless service from 8 until 6. That means there is plenty of opportunity for representatives, for lawyers, to talk to their clients before and after the hearing in the court.

In the first nine months of this year, from 1 January until 30 September, prisons facilitated 240,000 video calls. About 100,000 of those were in the specific video conferencing centres that I was talking about. Ultimately, the decision about whether to use the video facility is for the judiciary; it is for the courts. When they want to do it, we are delivering.

Q267 **James Daly:** Is that for remand applications as well, bail applications?

Rob Butler: Yes.

Q268 **James Daly:** You are a supporter of people not being produced to the court for a bail application?

Rob Butler: In my role as Minister for Prisons, it is not for me to say whether or not that is appropriate. That is for the judiciary or for the Courts Minister. What I am telling you is that, where it is wanted by the courts, we have set up a huge panoply of facilities for it to be delivered in a cost-effective way. It is using fewer prison officers who can then spend their time doing other things.

One of the points worth stressing is that quite often a hearing might only last five minutes. Historically, a prisoner would potentially have to spend a whole day, potentially a very long day, out of their prison cell. If we can give them the facility to have a short court hearing via video link, they can still engage in meaningful activity in the prison for the rest of that day. We are not using the resources that it takes for them to go off in a van; they are not going to be stuck in a court cell, which obviously does not have facilities, through the day.

I am very keen, where it is appropriate, where the legal representatives and the judiciary think it is appropriate, for us to facilitate the opportunity for as much use of video conferencing to courts as possible.

Q269 **Chair:** The ultimate decision must be what is in the interests of justice.



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Rob Butler: Precisely.

Gareth Johnson: That's right.

Q270 **Chair:** The object of the Department is to provide the facilities either way.

Gareth Johnson: Precisely.

Rob Butler: Absolutely.

Q271 **Chair:** Are you actually doing that?

Rob Butler: Yes.

Gareth Johnson: Yes.

Q272 **Chair:** To a satisfactory degree?

Gareth Johnson: We have provided facilities to 90% of Crown courts and 80% of magistrates courts. It is a very widespread facility and they are taking advantage of it.

Rob Butler: It is worth adding that we also provide the facility for video calls to enable legal visits. Some of our prisons are geographically difficult to reach. Lawyers, be they solicitors or barristers, can have a conference with their client through a video link to the prison rather than them having to give up half a day of their time to do the travelling, have the conference and then go back.

Q273 **Chair:** We get the point. Do you have enough data, as a Department? The MOJ always says, "Our ambition is to be a data-driven Department." Mr Butler will know that we have not always felt that happens in practice.

Rob Butler: Yes.

Q274 **Chair:** In relation to remand, do you think there is enough data on remand?

Rob Butler: No. Today, the answer to some of the questions has been, "We don't have all of the data that we would like to have." We have huge amounts of data; we do not always have the right data. The data has to be processed in such a way that it is robust enough to be shared publicly. I am not a qualified statistician and I cannot tell you why I am allowed to see some stuff internally but we are not allowed to publish it. You can rest assured that I frequently ask about data and what I can share, and I know a lot of work is going on in that domain.

That is not to criticise the way things are. It is absolutely right and proper that the statistics and data provided to the public have to be absolutely trustworthy. Of course, we would like to have more data. Common platform will give much more data about what is going on in the courts at the different stages where you have been asking some of the specific questions to which we do not currently have the answers. Certainly, we



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are a data-driven Department and we are keen to have as much data as can help inform the decisions that we make.

Q275 **Chair:** Common platform may well help in some areas.

Rob Butler: Yes, absolutely.

Q276 **Chair:** There are some other bits, which I think we would all agree are missing, that we will need to find other means to access, won't we? Are we looking at going beyond common platform to have one single point at which you can access the data? We have heard that it is spread over a vast range of publications.

Gareth Johnson: There is data that is published quarterly from the Department and other data that is published annually, which can help inform the public on the prison population. There are various statistics that the MOJ is responsible for.

Q277 **Chair:** And you ought to be able to find, even for your own management purposes, data on the number of defendants subject to conditional bail and data on what the conditions are.

Gareth Johnson: That is one area where, hopefully, common platform will be able to assist. Common platform, at the moment, is only rolled out to 60% of the criminal courts. As and when we get closer to 100%, the data is going to become reliable. We do not have that data yet, but if we were to have it, it would be based on only 60% of the criminal courts in the country.

Q278 **Chair:** Would common platform give you something like the length of time a defendant was remanded in custody or bail, or would we need to look to the Prison Service or somewhere else to find that?

Gareth Johnson: My understanding, Sir Bob, is that, yes, in time we will be able to understand the average length of time that people are kept in custody awaiting their court case, but, as I say, not until the whole system has been rolled out.

Q279 **Chair:** Can you help, Minister, as to when we are going to be in that position?

Gareth Johnson: Off the top of my head, I think it is the end of next year.

Q280 **Chair:** Common platform or the more holistic approach?

Gareth Johnson: Common platform.

Q281 **Chair:** And to get the broader data we were just talking about?

Rob Butler: I think it is those infamous words, "In due course."

Q282 **Chair:** I know you take it seriously, Mr Butler, because you have raised it many times.



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Rob Butler: Yes, absolutely right.

Q283 **Chair:** Do you have a sense that officials now understand the importance of it?

Rob Butler: I absolutely think officials understand the importance of data, but we should not underestimate the difficulty of gathering from so many disparate sources data that is reliable and can then be published in a way that is absolutely statistically robust.

Q284 **Chair:** I understand. Are there specific steps you can tell us about that are being taken to improve the quality of data?

Rob Butler: Specifically in the Prison Service?

Q285 **Chair:** We have common platform in courts. Are there other specific things that you have under way in the Prison Service?

Rob Butler: I need to defer to Claire.

Claire Fielder: That is an answer to a different question, which is about the roll-out of common platform. To confirm, it is February 2023, so that is quite soon. We might need to write to you with more details on that if that is acceptable to you.

Chair: If you could, I would be grateful.

Rob Butler: I don't think it would surprise you to learn that I often ask questions about data and what we have, but we have to recognise that there are challenges. We have the best part of 120 prisons and it can be difficult for there to be consistency in the way things are measured and recorded, with the pressure of the day-to-day job that we have already been talking about, and making sure that is done in a way that we could be absolutely certain was reliable and robust. Michelle?

Michelle Jarman-Howe: First of all, we have a huge amount of information about prisons. It is the particular issue around remand that is a challenge for us. We have lots of performance information about how prisons are doing, about what their regime looks like and what their education outcomes are. The permanent secretary to the Department is very focused on making sure that we are improving data. We are absolutely tuned into that, but there is a particular challenge with this population.

Q286 **James Daly:** Building on Ms Farris's excellent questions, to get a definitive answer from two of the Ministers, is it Government policy, is it the policy of the MOJ, the view of the MOJ, that courts are remanding too many people to custody? Ms Farris talked about courts being aware of the view of the MOJ and the view of the Government in respect of remand and the number of people in prisons.

Gareth Johnson: The short answer to that question is no, it is a judicial decision entirely.



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Q287 **Chair:** Thank you, that is helpful. The final topic I want to raise, probably with you, Mr Butler, is in relation to the impact of immigration detainees in the prison system. The chief inspector published a thematic report on 13 October on the experience of immigration detainees held in prisons. It raises a number of concerns. You may not have had a chance to look at it. It is an awkward thing, as it fits between the Home Office and you. He refers, in particular, to the length of time that many are being held in prison custody with little progress on their cases. That has an impact, obviously, on your area of responsibility because it is your prison places they are taking up, if things are being delayed. Can you help us as to what level of pressure is being caused on the system by immigration detainees?

Rob Butler: I have seen that report, but I do not have it with me and I have not refreshed my memory on the details of it ahead of today's hearing. I would not want to give you inaccurate information.

What I know is that MOJ officials and HMPPS are working very closely with the Home Office on this. Sometimes, some of the issues around progression are what the Home Office is able to facilitate. If the Committee has some specific questions it would like to raise on the issue, we are very happy to respond in writing. It is slightly beyond the remit of what we were anticipating on remand today, but absolutely, obviously, it is an important issue to raise.

Q288 **Chair:** We want to look at the numbers impact on regime.

Rob Butler: Yes.

Q289 **Chair:** What discussions should or could be had in due course at ministerial level with the Home Office?

Rob Butler: We are, as we all know, in the process of changing Government as we speak. I have already received advice and agreed to a meeting with my Home Office counterpart to discuss exactly these issues. They are cross-cutting; indeed, they cut across different ministerial responsibilities as the MOJ is currently set up, because Minister Freer in the MOJ has some specific responsibilities in the area of foreign national offenders.

We are absolutely taking very seriously the report that the chief inspector has produced and we intend to have those ministerial discussions. Ministers will have those discussions, whoever the Ministers may be.

Q290 **Chair:** Thank you all very much. It has been very useful. I am grateful to you for your time, ladies and gentlemen. Gentlemen, I hope we will have a chance to see you again in the future.

Rob Butler: Thank you very much indeed.

Gareth Johnson: Thank you.

Chair: Thank you for your time. The session is concluded.