

Justice Committee

Oral evidence: [Recent urgent notifications on the prison estate](#), HC 1929

Tuesday 24 October 2023

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Members present: Sir Robert Neill (Chair); Tahir Ali; James Daly; Edward Timpson.

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Witnesses

I: Damian Hinds, Minister for Prisons and Probation, Ministry of Justice; and Michelle Jarman-Howe, Chief Operating Officer Prisons, His Majesty's Prison and Probation Service.

Examination of witnesses

Witnesses: Damian Hinds and Michelle Jarman-Howe.

Q1 Chair: Welcome to this session of the Justice Committee, and welcome to our witnesses. Events have conspired against us a little bit today in terms of timings, with the debate on a statutory instrument in the Chamber, which most of us were involved in. I am told we are going to have votes before too long this afternoon and then we will run into problems with quorum.

Minister, I thought that we might start on the general topics that relate to the package of measures announced by the Secretary of State last week, and your announcements today as well. We may need to return at a future point to the systemic issue around the urgent notification procedure, which is a serious matter, as we may not have time to go into as much depth on that as we need.

Declarations of interest: I am a non-practising barrister, and a former consultant to a law firm.

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

Edward Timpson: I am a barrister with a current practising certificate, but not taking any court work. I am a former Solicitor General, former chair of Cafcass and former chair of the national Child Safeguarding Practice Review Panel, and my brother is chair of the Prison Reform Trust, as you heard a few moments ago in the Chamber.

Chair: Indeed. Welcome to our two witnesses, the right hon. Damian Hinds MP, Minister of State for Prisons and Probation at the Ministry of Justice, and Ms Michelle Jarman-Howe, chief operating officer of His Majesty's Prison and Probation Service. Welcome to you both.

Damian Hinds: Thank you for having us.

Q2 Chair: Last week, we had the announcement of a package of measures by the Secretary of State. It all stems, doesn't it, from the fact that the prison population has been rising steadily since the pandemic? It has got to the stage where emergency measures have had to be taken as, in effect, we were running out of space in the prisons; it is as simple as that. But this isn't new, is it? It has been projected as something that was likely to happen for months, if not years. Why was it allowed to get to this stage before we had, as a matter of emergency, to take those measures, which perhaps could have been taken months before?

Damian Hinds: You are quite right to identify particularly the post-covid increase in the prison population. You will know, Chair, the underlying factors in that. The biggest single thing is the growth in the remand population; there are other factors as well. Yes, we got to the point where the number of available places in prisons was very thin. It was necessary at that point to take further action. You cannot get to a point in the system where there are no places. It is the first responsibility to



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ensure that there are places so that when a court orders someone to go to prison, whether sentenced or on remand, there is available space for them.

That said, some of the measures we have taken—the short-term, limited-time and limited-scope measures—are not things that ideally would have become necessary. At the same time, over the period you mention, we have been increasing capacity very significantly. When you say, “Couldn’t something have been done months or longer ago?”, the answer is that we have been doing things. Bringing on places at an average rate of 100 a week, 5,000 over the course of a year, is pretty much unprecedented in the modern era.

The issue was, as you know, that, over that period, demand kept growing, and was growing at a rate somewhat faster than the rate at which we were able to match it with supply. That is why we got to the point we did, but it is really important to note that the package the Lord Chancellor has come forward with is a good package and it is a reforming package. It is not just about dealing with the immediate—what we have to do right now. It is a proper reforming package and sets us on a good path.

Q3 Chair: How many of the measures do you envisage will be temporary and how many are longer-term, perhaps welcome, reforms?

Damian Hinds: The key thing that is temporary is the ECSL, end of custody supervised licence; that is absolutely a temporary measure, limited in time, place and scope.

Q4 Chair: But you envisage that the rest will probably remain.

Damian Hinds: You and I and others here have just been in the main Chamber talking about measures to deport more foreign national offenders, or to deport them sooner. These things are things that we want to do. The reforms on presuming against short sentences, we can deploy well. It is always important to stress that that does not ban short sentences; that is not envisaged at all. There will always be judicial discretion to do that, but where there are good alternatives available, and we can get people better rehabilitated into a more regularised and regular life and work, and off drugs and so on, these are good reforms to make.

Q5 Chair: I understand that. Ms Jarman-Howe, can you help with one thing? The Minister talked about prison places—physical cell spaces, where there is a difficulty. What about the constraints around staffing? We know that a number of prisons, including some of those we have had urgent notifications about, are desperately short of staff. What is the overall shortfall in prison officers?

Michelle Jarman-Howe: We do not publish vacancy data.

Q6 Chair: Why not?



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Michelle Jarman-Howe: We just haven't published that previously, I don't think.

Q7 **Chair:** Do you have the figures?

Michelle Jarman-Howe: Yes, I know the vacancy rates.

Q8 **Chair:** Can we have them, please?

Michelle Jarman-Howe: Yes, of course. One thing that it is probably helpful to say around staffing is that we are in a very much improved position from when we came to this Committee previously. The number of staff in post over the first quarter of the year increased by 700. We are expecting that to increase again in the next lot of published data. These figures have not been verified by analysts, so I want to be really careful when I put them into the public domain because, as I say, we do not normally use published—we do not normally use—

Q9 **Chair:** The Minister might agree that it is a very legitimate matter to be in the public domain, the number of prison officers—

Damian Hinds: These are very legitimate issues. What Michelle was just stressing is that obviously, when you publish things according to Government publishing guidelines, there is an extra degree of quality assurance and so on that goes with them. I think you are just making the caveat, Michelle, that these are not published statistics in that way.

Michelle Jarman-Howe: Yes, that's right. I have August data as opposed to more recently than that. Current vacancy is around 1,022 across the staffing position.

Q10 **Chair:** That is 1,022 across the whole prison estate.

Michelle Jarman-Howe: That's right. But we are expecting the number of vacancies to reduce in the next quarter and, likewise again, by the end of the year.

Q11 **Chair:** While we are on this topic, I know that you have been taking some steps, in some prisons where there have been urgent notification procedures, to put them in a special category in terms of recruitment. In relation to how many prisons are you doing that special recruitment drive?

Michelle Jarman-Howe: We are recruiting everywhere there are vacancies. Places like Woodhill, for example, which are chronically challenged in terms of staffing, are getting the highest level of recruitment support we can provide. It is actually the most expensive prison we have in terms of recruitment activity. By the end of this year, the number of establishments experiencing chronic staffing shortfalls will have reduced significantly, so there will be less than 10 by the end of the year out of the entire estate, but we will continue to recruit everywhere that it is possible. We have undertaken some over-recruitment in the system, so that we can deploy staff who were over-recruited in some



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prisons to where staff are really struggling. We are already doing that at some sites, including a number of the UN sites and very much at Woodhill, which, of all the prisons we are talking about, has the most challenging circumstances.

Q12 **Chair:** It will be down to less than 10 by the end of the year, from what at the moment?

Michelle Jarman-Howe: From a peak of—amber and red—about 15 earlier in the year.

Q13 **Chair:** From 15 down to less than 10, as a ballpark figure.

Michelle Jarman-Howe: Yes. By the end of this year.

Chair: I understand that.

Damian Hinds: It is also worth stressing that, when we talk about over-recruiting, we have some prisons that are at more than 100% of target staffing. It is perhaps not immediately apparent that we would have more people in post in some places than the total requirement. That is partly because, through detached deployment, detached duty, prison officers can be lent from one establishment to another, to help to even out the demand.

Q14 **Chair:** One thing you referred to about the attempts to increase prison capacity—prison places—was an objective originally for 20,000 extra places. That stalled, in some measure, because of delays in the planning process. What discussions, if any, are you having at either ministerial or official level with the Department for Levelling Up about the way the planning process operates in relation to prisons? Are there specific problems that you are thinking of addressing?

Damian Hinds: We are very conscious of the proprieties around the way that the planning system works. We do and will always work within that. In a broader sense, of course I am frustrated in some ways with some of the delays that come along.

Yes, it is true that there are three prisons that we have currently got delayed in planning. Of course, there were three others; two of them are already open and there is a third under construction. It is also worth saying that we have brought forward quite a few places and found—created—quite a lot more places over time, through finding more sites in which we could put rapid deployment cells, more places that we can do small secure house blocks and so on. That does not fully offset the delay in those three, but it is not all one-way traffic.

Q15 **Chair:** I understand. I notice that there is a small amendment to planning regulations, I think within permitted development rights, in relation to the ability to build additional blocks in some of the open estate. Are they going to be additional open accommodation, or will they be closed blocks within what are otherwise open prisons?



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Damian Hinds: It is difficult for me to pinpoint exactly the document you refer to, but we are expanding in both the closed estate and the open estate. As you will be aware, Chair, the rules around permitted development vary between the estates in terms of things like—Michelle may correct me—single-storey temporary development, the height of fences, the distance from the perimeter and so on. Forgive me, I cannot quote you chapter and verse on all the detail, but it varies between the two.

Michelle Jarman-Howe: If it is helpful, in response to your query, we would only put open units in open prisons.

Chair: That is what I assumed would be the case, otherwise you would have to look at the perimeters. Thank you.

- Q16 **James Daly:** Minister, as we have discussed, the Lord Chancellor announced the intention to legislate for a presumption that custodial sentences of less than 12 months in prison will be suspended. In terms of explaining that to the public rather than to members of this Committee, does that mean that any court in this country that is considering imposing a sentence of less than 12 months will be required to suspend it, come what may?

Damian Hinds: No.

- Q17 **James Daly:** Could you explain the circumstances in which that won't be the case?

Damian Hinds: Ultimately, it is for judges to decide. It is a matter of weight. The presumption will mean, other things being equal, that we will see fewer individuals going to immediate custody and more going to suspended sentences. But you cannot predict exactly what that number is. Ultimately, it is still for the judge to decide.

- Q18 **James Daly:** As far as you are aware—perhaps Michelle might be able to answer this—did the MOJ consult the Sentencing Council prior to the announcement? The reason why I ask is that it was a little unclear to me, when the announcement was made, whether sentencing guidelines for the whole raft of offences that this sentencing exercise will cover would be amended or not. I understand, having spoken to the Lord Chancellor, that sentencing guidelines remain exactly as they are. Is that correct?

Damian Hinds: There are a number of things in the package, as announced last week, that will come forward in different formats. The ECSL, which we were just talking about, is operational now. Obviously, we have just had a statutory instrument debate on foreign national offenders. Early release scheme provisions and others of the provisions will come forward in due course, but those are the things that have changed already.

- Q19 **James Daly:** If you can't answer this because it is not information that you have to hand, that is fine, but are the sentencing guidelines for all



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types of offences where you could potentially receive a custodial sentence of 12 months or less not going to be amended at all by this new policy?

Damian Hinds: I cannot confirm that to you right now. I will be happy to follow up separately to the Committee.

Chair: If you could.

Q20 **James Daly:** If that is the case—if sentencing guidelines are to stay the same—we essentially have the same sentencing regime as we had already prior to the announcement.

Damian Hinds: No, there will be a change. That was what I was trying to say in my previous answer. In different formats, the various things that were in the package announced last week will come forward. As of this moment, that has not.

Q21 **James Daly:** What I am trying to ask, Minister, is this. The word “presumption” is a big part of this—

Damian Hinds: Yes.

James Daly: And I am trying to get an idea from a policy perspective—not necessarily in terms of how courts will interpret it—what the word “presumption” means in these circumstances. If your sentencing guideline for shoplifting, assault—whatever it is—says, “This person should go to prison,” what is it that turns that from a sentencing guideline saying that you go straight to prison into a suspended sentence?

Damian Hinds: I don’t want to sound like I am dodging your question. On courts and court processes, I am more on the receiving end, in the prison system and in probation and suspended sentences, community orders and so on. Obviously, with all of these words, a number of them have legal meaning and some of them have ordinary usage meaning, but they all have meaning of some sort. When things are codified and brought forward in black and white, it will be clear.

Q22 **James Daly:** I fully accept that. Regarding the new policy and your ministerial discussions, is the presumption that sentences of less than 12 months will be suspended time limited? From your perspective, is it something that will come to an end in 12 months, two years, three years?

Damian Hinds: No. That is intended to be a reform.

Chair: A permanent reform.

Q23 **James Daly:** A permanent reform, okay. And what is it going to achieve? What is the public benefit of putting this policy in place?

Damian Hinds: First, let me stress again that we are not proposing to ban short sentences. Almost everybody—I was going to say everybody, but it is not quite everybody—agrees that you need the ultimate sanction of incarceration. If you have the same person in front of you for the 15th



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time or 150th time of offence, where do you go? You need that threat. But we know that, for many people, short sentences—and quite often it is a plural, when there is a cycle of them—are not having the effect we want them to have.

The presumption goes along with a number of other things we are doing, some of which I have had the opportunity to discuss with your Committee and the House of Lords Justice and Home Affairs Committee previously, to make sure that in suspended sentence orders and community orders we have the very best options available for sentences. To make sure that drug rehabilitation requirements work as well as they can, we have drug testing that goes with them; there are all manner of considerations.

Q24 James Daly: I do not doubt for a second, knowing you and the Lord Chancellor, that this is done with the best of intentions. I don't think there is any criticism in that respect. But what is curious about this big announcement is that, essentially, the courts have this power already.

Damian Hinds: Yes, that is true.

James Daly: They can impose a suspended sentence if they feel it is in the interests of justice to do that.

Damian Hinds: And many do—frequently.

Q25 James Daly: Indeed. If the courts have the power to do it and can impose the types of sentences that the Government and the probation service are providing for them, why do you need to make this announcement at all?

Damian Hinds: James, you are a lawyer and I am not. You will know that there are many things that courts can do, and yet in legislation and so on, the will of Parliament gets expressed. I said at the outset, and it is true, that we are not talking about banning short sentences. It is also true, of course, that courts now can impose suspended sentence orders. This is clearly not the first time that, through legislation, Parliament will express a weighting—I don't know if that is the best word but it is the best word that occurs to me at the moment—about wanting to see more sentence suspension.

Q26 James Daly: I fully accept that the philosophy behind the policy is to address the pressure in the prison system, so can I ask you this, Minister? Over the next week, if a court wishes to send somebody to prison, whether it is for a short sentence or a long sentence or whatever, will we have sufficient places in the custodial estate to house them? Do we have sufficient places at this moment in time to house the numbers that, potentially, say in the next seven days, are going to get sent to prison?

Damian Hinds: Yes, and we will always make sure we have sufficient prison places to serve the order of the courts.

Q27 James Daly: My final question is in relation to the intention to require



offenders convicted of rape to serve their entire custodial term in prison, which I think is to be welcomed. There is a lot of public support in respect of that policy. Will the change be retrospective or for new sentences? How much capacity will need to be available before the policy is commenced?

Damian Hinds: When Parliament makes sentences longer or brings more offences into scope for custody, we absolutely need to make sure that we have prison places available. The honest truth is that hitherto—under Conservative Governments, Labour Governments, whoever—the two things have not been joined up. I was going to say that they haven't always been, but they haven't at all really. We will make sure, in future, that they are. We make projections now which are published, but in future, to go with the population projections, there will be a statement of capacity projection to make sure that we have the required places.

James Daly: Can I finish off with one very brief question?

Chair: Yes.

Q28 **James Daly:** One of the issues you have very articulately outlined, Minister, is the remand population at this moment in time. The question of remand, and the powers of the court in respect of remand, is as big a question as the community orders and some of the things we are talking about. The Bail Act is something that, subject to your point of view, may well be viewed as a little bit out of date, or perhaps due for a review or suchlike. Do you think the Bail Act gives too wide a discretion to courts to remand people to custody? For example, people can be remanded to custody, as we both know, Minister, if they fail to attend for one hearing. Failure to attend is something the Bail Act deals with. You can be remanded in custody for a matter of weeks, if not months, as a result of that. Do we need to look at remand provisions and the Bail Act as a way, perhaps an alternative viewpoint, of addressing pressures in the estate?

Damian Hinds: To come back to what you were saying a few moments ago, it is not obligatory to do that in those circumstances. There is discretion and judgment to be made. That is why, again, it is a question about weighting. This Committee has recommended in the past a review of the Bail Act. That is totally legitimate; these are very legitimate subjects for public debate and public policy scrutiny. I welcome the fact that this Committee has done that, and I am sure it will continue to do it.

One thing possibly worth clarifying about the remand population and prison pressures is that, although there has been some increase in the number of individuals being remanded, the bigger issue since covid has been the length of time that people have been on remand. Obviously, with the court backlogs that followed the pandemic, things were not moving as quickly through the system as possible, so we have ended up with quite a chunk, a lump, a blockage—I don't know what the right word is—in the system of individuals who are on remand for longer than historically would have been the case.



Q29 **James Daly:** The problem there is that they have probably served their sentence by the time they come to trial.

Damian Hinds: For some of them, that is true; they will be released, time served. Some of them will be acquitted, of course.

Chair: Indeed. That is perhaps even more worrying.

Damian Hinds: There are other issues around remand. I don't know whether we will come on to this when we talk about the UNs. In reception prisons, there are particular difficulties with managing a very large remand population when you do not know, and they do not know, how long they are going to be there, and whether they are going to start education programmes and employment programmes. All of that is harder with a large remand—

Chair: You cannot start them on sentence planning and so on.

Damian Hinds: A number of things are harder with a larger remand population.

Chair: Understood.

Q30 **Edward Timpson:** Minister, can I take you back to one of the announcements made last week by the Lord Chancellor that we have referred to—the presumption against short sentences? The measures of success are, from the Government's point of view, a reduction in the demand on the prison estate, but also, I hope, a reduction in reoffending rates by the use of effective community sentences and orders. Taking that as one of those measures, clearly there will be more potential workload for the probation service.

Damian Hinds: Yes.

Edward Timpson: What assessment have you made as to the impact these changes will have on the probation service and its ability to provide sufficiently resourced, high-quality opportunities for rehabilitation around education, housing, sobriety and a job—all the key areas that we know make a difference and help to reduce reoffending rates?

Damian Hinds: You are absolutely right about the central role of probation and the huge difference that probation officers make in the lives of those individuals. As you know, we have put more money into the probation service—£155 million a year—and we have recruited quite heavily. There had been—and, as you will know, in some parts of the country there still are—significant staffing challenges. Because we have recruited a lot of people in the last two to three years, there are quite a lot of people who are, effectively, going through their training and development. They will of course become experienced probation officers in time, but right now, as we speak today, there is on average a relatively shorter time in post.



Your question was about what assessment we have made. We have absolutely made an assessment of the impact of these changes. The probation service is looking very carefully at how to make the most effective use of the time of its professional resource.

- Q31 Edward Timpson:** Can you help us in understanding the workload of an individual probation officer, accepting that every case is different, so an absolute number does not necessarily tell the whole story? Is there an accepted level of case load for a probation officer? Is the assessment that that will still be met with these changes?

Damian Hinds: There is such a view. You are absolutely right that situations vary by the exact type of case, by risk level and so on. Because of what I was saying about staffing challenges and how they have been different in different parts of the country, there have been a number of places where workloads have been too high and need to be made more manageable. What I was saying about the service—and the service itself is looking at this—is that we need to make sure that resource is being most effectively directed to where it makes most difference.

- Q32 Edward Timpson:** Can I raise one other aspect of the change? That is public understanding and confidence in community orders. Sometimes they are portrayed as being a soft touch. Past Governments have made attempts to address that, occasionally quite crudely, like by putting people in orange jumpsuits on the side of motorways or whatever it might be—I might be over-caricaturing that.

Damian Hinds: Not motorways, but yes.

Edward Timpson: Maybe less of the motorway, but wherever there was litter. There may be a bit of a job to convince members of the public that this is a better alternative to a short sentence so that, as has happened in other countries that the Committee has seen, there is greater acceptance and understanding of the positive impact they can have. Is any work planned to try to address that so that the public see the benefits of this change in policy?

Damian Hinds: Edward, you are absolutely right. I think most of our constituents and most people see that part of the concept of a just society includes punishment for wrongdoing. There is nothing wrong with that view. It is right that there is a consequence of doing wrong, and, yes, people want to see that enacted.

When we talk to our constituents, though, they also get the fact that if you can get someone off drugs, deal with a mental health issue if there is one, deal with an alcohol issue if there is one, get somebody into regular work or into the habit of a regular pattern in their life—all those things—there is a much better chance of their not reoffending. Ultimately, the reason why we have this system is to keep people safe. The two things go hand in hand.



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You asked whether there was any work planned to enhance it. Particularly on unpaid work, we do want to make that more visible. We want more people to know these people are—I was going to say having to give up their free time—having their time taken off them to make reparations to society and, where possible, doing it in such a way that the typical member of the public sees it and goes, “Right, I totally get that. That is a good thing happening in my community that wouldn’t get done otherwise.” When that works well, I think it does attract public support.

Q33 Tahir Ali: Before the bell goes, Minister, the Lord Chancellor announced plans to rent prison places overseas. Which countries is the MOJ in discussions with?

Damian Hinds: We are not in formal stages with any country as yet. We are in discussions with other countries. I think this is a good prospect. We shall see. Obviously, it is all subject to—

Q34 Tahir Ali: Is it Australia?

Damian Hinds: If you start temping me to go through the countries it is not, we will eventually come to a short list. I am happy to confirm that no, it is not Australia, but I am not going to go further in conversation than that.

Tahir Ali: I was starting at A—I have a list of countries.

Damian Hinds: I see. Look, it is all subject to the conditions being right. Of course, the conditions in which people are imprisoned have to be comparable to those in the United Kingdom. It is subject to suitable access arrangements and dealing with language, cost and many other considerations. There is sense in saying that there are places in the world—in the near world—where there is unused capacity, which is not very efficient for those countries, and then there are other countries that need to use extra capacity. We are not the only ones, by the way. Previously, the Netherlands has provided prison places, for a fee, to Belgium, its neighbour, and to Norway. That is an arrangement that worked well. *[Interruption.]*

Chair: I fear we have a Division. We are not going to have a quorum after the Division, so I think we will have to reschedule the remainder of the session.

Damian Hinds: In that case, thank you, Chair and Committee.

Chair: I am sorry about that. We got through a chunk of it. Thank you for your time, and we will reconvene after Prorogation.

Damian Hinds: Very good.

Chair: If there is some urgent stuff, we will write.