



Justice Committee

Oral evidence: Future prison population and estate capacity, HC 29

Tuesday 6 February 2024

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[Watch the meeting](#)

Members present: Sir Robert Neill (Chair); Dr Kieran Mullan; Edward Timpson.

Questions 140 - 213

Witnesses

I: Rt Hon Edward Argar MP, Minister for Prisons, Parole and Probation, Ministry of Justice; Amy Rees, Director General Chief Executive, HM Prison and Probation Service; and Ross Gribbin, Director General Policy for Prisons, Offenders and International Justice, Ministry of Justice.

Written evidence from witnesses:

[Ministry of Justice \(FPP0034\)](#)

Examination of witnesses

Witnesses: Rt Hon Edward Argar MP, Amy Rees and Ross Gribbin.

Chair: Welcome to this session of the Justice Committee, and welcome to our three witnesses. This is the final evidence session of our inquiry into the future prison population and estate capacity. We will deal first with the formal declarations of interest. I am a non-practising barrister and a former consultant to a law firm.

Edward Timpson: I am a barrister and former Solicitor General with a practising certificate. I am a former chair of CAF/CASS and former chair of the Child Safeguarding Practice Review Panel. My brother is chair of the Prison Reform Trust.

Chair: We shall take other Members' declarations of interest as and when they arrive.

I ask the Minister and his officials to introduce themselves.

Edward Argar: I am Minister of State for Prisons, Parole and Probation.



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Ross Gribbin: I am Director General Policy for Prisons, Offenders and International Justice at the Ministry of Justice.

Amy Rees: I am CEO of HMPPS.

Q140 **Chair:** It is good to see you again, Minister and Ms Rees, and it is the first time we have seen you, Mr Gribbin, so welcome.

May I kick off with some of the basics? We know—there is no argument about it—that the prison population statistics are at their highest since 2018. We have had trends, but what is your estimate of the prison population for each of the next three years?

Edward Argar: You refer to the projections published in February 2023. We seek to project some years ahead with a high, low and central estimate. The central estimate was that the total prison population will increase to 94,400 by March 2025 and to between 93,100 and 106,300 by March 2027. That is predicated on several factors, including increased police officer numbers and changes to sentencing policy to keep the most serious offenders in prison longer.

That broad range is indicative of the uncertainty underlying the forecasts, including how the CJS continues to recover from the effects of the pandemic and industrial action, but also changes that this House and the other place may choose to pass and judicial sentencing behaviour.

That is as far as we can go in our assessment; we cannot be more precise than that, I fear.

Q141 **Chair:** Do you have an intermediate figure for 2026?

Edward Argar: Not to hand, Sir, no.

Q142 **Chair:** Perhaps you could see whether you can find one. There has been a lot of concern about the accuracy of the statistics. It is more than holding a finger up to the wind, but given the ranges surely it must be possible, with the tools available, to develop more sophisticated means of analysing future trends. Is work being done on that?

Edward Argar: I would make two points, and Mr Gribbin may want to come in. If we went further to, say, five or 10 years, you would have a much bigger range with much less certainty. We have been doing projections since during the pandemic when, for a whole range of factors, they were not reflective of what happened.

Since the end of the pandemic, projections have roughly tallied with the central scenario, with a blip here and there. It is difficult to project much further beyond that because of the uncertainties—judicial behaviour; changes that this Parliament might implement; and the number of police officers and behaviour in terms of arrests and charges. We might come on to them later, but remand and recall are also significant factors.



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A range of questions were put in evidence from Professor Hardwick, Mr Allen, Charlie Taylor and others about data and greater granularity. I have asked Mr Gribbin and the team to look at that, but I would not want to give the Committee a false sense of hope or optimism about how reliable that could be, especially the further out we go, because of those variables.

Q143 Chair: We knew back in 2020 that we were likely to get to these figures, but here we are, rubbing along with 500 spare, give or take. It is very tight indeed. Why were steps not taken in 2020 to address the projected capacity crisis?

Edward Argar: I think that steps were taken—for example, the six new prisons that were projected to be built. We may turn to why some of them were delayed in the planning process and did not come on stream when we anticipated they would. It was anticipated that 10,000 places would come from them, with 10,000 other places more broadly across the system.

There were plans in place and action was taken at that point to increase places on the supply side. Covid slightly dented their impact and the projections of increase in demand slightly flattered to deceive, so they deferred it.

The short answer to your question is yes, a lot of steps have been taken to increase supply but, due to a number of changes by this place and others, demand outstrips the plan to increase supply. That was why you saw a number of measures brought forward by the Lord Chancellor late last year.

Q144 Chair: We will come to that. You and I have been involved in local council planning. It is not rocket science: there are always delays in the planning system. Surely officials realised that the odds of all those prison places coming on stream, with planning permission granted on time, were about as likely as the moon being made of blue cheese.

Edward Argar: You are right to highlight the challenges. Two of the six prisons have been completed, one is being built, and two have received planning permission in the past few months—one in the past few weeks, with the other still being under consideration.

Chair: Well after they were intended.

Edward Argar: The reality is that while we have managed to increase the number of prison places by other means—expanding existing sites—the Government and Parliament are asking for ever-longer sentences. To address that, you either address the demand side or the supply side by building more prison places, with a long lead time. We put in place the programme to do that some years ago.

I use the analogy that is not always the most helpful, but you and other Committee members will remember that I was a Health Minister during



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covid. The figures you looked at showed a lag in what had happened X weeks or X months ago.

Have Governments of all complexions not built enough prison places in a regular, rolling programme? Yes. Titan prisons were proposed by, I think, Jack Straw, with 7,500 places, but they were never built. We have built prison places, but the reality is that the demand, because of changes to sentencing and a range of other factors, is outstripping supply.

Q145 Chair: One thing that would have been known in 2020 was that there was already a maintenance backlog. We know that about 500 cells cannot be used at any given time because of maintenance backlogs. What steps were taken to increase the rate of maintenance and press the Treasury for more money for maintenance? That could have been done in 2020 to double the amount of headroom.

Edward Argar: I will invite Ms Rees to come in in a second, but may I give a headline? In the last financial year for which figures are available—I will be corrected if I am wrong—we spent £246 million on maintenance. We have a rolling programme not only for maintenance but, as you would expect, for critical fire safety measures, which we might talk about later.

The years 2020 and 2021 were challenging not only financially, because of the measures put in place to tackle the pandemic, but because of construction and work being able to be done routinely in the estate and elsewhere because of the restrictions imposed. We have continued to drive forward improvements and to spend on maintenance, including crucially on fire maintenance. I don't know whether Ms Rees wants to add anything to that.

Amy Rees: There are a couple of areas that I want to add. On top of the big new prisons we have a lot of smaller areas where we are adding house blocks, expanding and refurbishing, with major refurbishment under way at HMP Birmingham and HMP Liverpool, which will help to bring on cells.

We have spent a record—a really significant amount—on maintenance, which is allowing us to make full use of the estate. We are making good use of occupying all areas of the estate. For example, we are occupying the open estate really well, making sure we move people through the system.

One of the other challenges is not just the total number but whether we can progress prisoners through the system to make use of the full range of categories available in the different types of prisons.

Q146 Chair: What is the total value of the outstanding maintenance?

Amy Rees: The last figure that I am aware you have is the £900 million figure. We have been doing a full exercise that is due to complete at the end of February. As the Minister said, we have spent good amounts of money to bring that down but, sadly, the cost of the work has gone up.



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Q147 **Chair:** Effectively, you have spent about half of the estimated maintenance backlog.

Edward Argar: May I briefly come back on two things? In my previous appearance before the Committee I mentioned the state of the estate report, for want of a better way of putting it. When I have received that and the analysis, I shall be happy to write to the Committee with an update.

I will be honest with the Committee. The challenges posed by the level of capacity utilised have a knock-on on the ability to do maintenance work because there aren't cells to move people around.

Q148 **Edward Timpson:** Will the update include the number of cells out of service and the categories they are in so that we have a full picture? Perhaps Ms Rees is able to tell us.

Amy Rees: There are broadly three reasons why cells are out of use at the moment. One is completing the fire maintenance work, and we have about 1,500 places out at any one time—it fluctuates precisely depending on which project. We are under way in several prisons, doing that work as we speak, and we try to have that as a rolling programme to complete the fire works by 2027.

We will take places out of use if safety and stability make it not possible to run them. We continue to do that, despite the challenges. We have places offline at the moment, for that reason, at HMP Woodhill, Lowdham Grange and a YTS start at Cookham Wood.

The third reason for some places being out of use—we have covered staffing, and the reasons they would be out of use—is where we have general maintenance. For example, we did have places offline at HMP Swaleside because of safety and stability. We have moved them while fire maintenance work is completed on those sites.

Q149 **Edward Timpson:** It would be helpful to have a breakdown of that.

Edward Argar: I am happy to provide that. It fluctuates and changes between establishments; that is the point that Ms Rees made. Swaleside is a good example. A number of places were taken offline for operational reasons—to manage the estate, to manage staffing—and off the top of my head 126 fell into this category. When they are offline for another reason, we try to bring forward fire repairs at the same time so that we are doing two things at the same time.

Q150 **Chair:** You mentioned the changes that the Lord Chancellor announced in October; to what extent have they affected your projections and actual numbers?

Edward Argar: We aim to publish updated projections before the end of this month, which, in the usual way, we will share with you and your Committee. They will take account of the latest data and the best



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assumptions—with the caveats about assumptions—on behaviour in the criminal justice system.

Once Royal Assent is obtained, subject to the will of the House, for the measures that the Lord Chancellor announced in October, and once we have clear commencement dates, we will be able to add another layer of granularity. We hope that by the end of the month we will be able to share with you some more detailed projections.

Ross Gribbin: You will be aware that the convention is that we do not include in the projections things that Parliament has not yet approved. All the measures in the Lord Chancellor's October statement have impact assessments. We have published what we think the steady-state impacts will be on the prison system. There is transparency on the impacts on the population.

Q151 **Chair:** How much were they?

Edward Argar: Shall I take you through the individual measures? The impact assessments, with appropriate caveats, were that the presumption against short sentences would yield—it is a big range—between 200 to 1,000 places. The central estimate is that that would yield about 500 places in steady state. The expansion of home detention—curfew—would yield a range of 700 to 900 places gained. The central estimate is towards the higher end of that at 850 places.

The counterpoint to that—measures in the legislation go in the other direction—is that the range on whole-life orders is an additional 15 to 46 places required. Rape and serious sexual offence sentencing, in steady state, will require just under 3,000 places—2,850.

The phasing of those is subject to the House's will and to commencement, but I hope that gives a sense of the netting of the increased sentences and reduction in short sentences.

Q152 **Chair:** Looking at it in the round, what is your sense of the main drivers of the record prison population? Is it policy?

Edward Argar: I will give three things; Ross has been doing a lot of analysis and might want to add something.

The first one is the increase in the number of people on remand. I may be corrected, but I think it has gone up by about 9,000 to 16,000. That is a significant driver.

The increased number on recall is a trend we have seen for a long time. I suggest respectfully that you might remember this from when you were practising. In 1993, 1994, about 100 or 200 people were on recall. We are now into thousands.

As some of your witnesses have said, we cannot get away from the third element—a long-term trend that reflects the will of Parliament and



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Governments of all complexions to increase the length of sentences. We are also seeing people in prison for longer. We are seeing a mix of more serious sentences, so that is a long-term, for want of a better way of putting it, slower-burn driver of population.

In the short term, since the pandemic, it appears to be remand. Recall has continued to go up over that time, but the long-term driver remains the increase in the length of sentences handed down.

Chair: That is the issue of whether you will the means to achieve what you are trying to do.

Edward Argar: I don't know whether Mr Gribbin has anything to add.

Ross Gribbin: No, the Minister summarised it very well. The drivers are different in the short and the long term. Some of your previous witnesses have commented on investment in police numbers. You would expect that to increase the throughput of cases through the system.

Q153 **Chair:** I accept that the remand population might be partly driven by delays in the court system and elsewhere, but it has all been in the Ministry, so what steps are being taken to adopt a joined-up approach and to start to reduce the number of people on remand, particularly unconvicted people?

Edward Argar: As you will be aware, decisions are ultimately for the courts. We are seeking to give the courts greater confidence by doubling the number of tags, and increasing their ability to give an alternative—essentially, bail.

I know that at a previous Committee session a Member I do not think is present today raised the need to reflect on the Bail Act and how it operates. Ultimately, it will come down to judicial behaviour. There are three reasons why a sentencer will remand someone: flight risk; interference with witnesses or the case; and risk of serious further offences. One of the things I am looking at, because I think it helps, is what more we can do around giving sentencers the information they need and around approved premises to give them a genuine option. That is not a short-term fix, but it is important that we look at it.

Ross Gribbin: I think you have summarised all the key points. It is about raising awareness of the alternatives. Ultimately, the decisions are for the judiciary, as the Committee will be well aware. We have a significant programme of work to try to do that, and hopefully it will make some difference to the numbers.

Amy Rees: The Minister has mentioned oversight monitoring. The technology has come on a lot in the last five years. We have moved from radio frequency to GPS tagging, which has loads more functionality. There are a lot of options there.



The Minister mentioned the three forms of accommodation outside prison: CAS1 approved premises, where serious offenders often go after licence. CAS2 is bail accommodation, which gives people an alternative with a tag that they might not otherwise have. With CAS3 we are trying to prevent people from being released street homeless and instead have somewhere to go for 18 nights' accommodation. We are doing quite a lot to try to offer alternatives.

Q154 Chair: The judiciary do not have any say in recalls; it is purely an administrative process. You can do something directly about that. What steps are you taking to look at the growth in the recall population—at 13%, it is the highest for this time of year—which is in the gift and control of Government? Will you have a proper review of the operation of the recall system?

Edward Argar: The short answer is yes, we are looking very carefully at that. You will recall—your knowledge will be better than mine—that in 1998 there was a shift from magistrates having an involvement to probation staff making those decisions. Understandably, probation staff will rightly weigh up the risk, and there is always a chance—particularly given some of the headlines we have seen—that there will be risk aversion. It is important that we give our probation staff the support and guidance they need to enable them to look objectively at recall decisions. For me, the two things that are most important are: does it serve a public protection purpose and is there a genuine need for it; and what is the rehabilitative or other impact of a recall?

I am looking at it extremely carefully, as is the Lord Chancellor. I do not want to pre-empt any decisions that he or the House might make, or about the options around fixed-term recall. Those all give probation officers and staff greater clarity, which I hope will give them greater confidence in not automatically recalling some individuals.

Amy Rees: You will know that HMIP has looked at this several times. There is no evidence, even from the latest review of IPPs in December, that probation officers recall anyone unnecessarily. There is no evidence that they do not consider the alternatives.

Where we can always do more is: can we get in front and try to prevent them from getting to the point where recall is the only sensible thing a probation officer can do? Quite a lot of that is about how we manage them coming out of prison, particularly with long-term prisoners, where there is a big adjustment. Again, the role of the open estate might be helpful.

As the Minister mentioned, there is a very fine line between standard recall or fixed-term recall. We are looking at some cases where they might be appropriate, working with practitioners, but there is no evidence that people are recalled unnecessarily.

Q155 Chair: Other people might take a rather different view, especially given



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some of the evidence we have heard. What is the timeframe for the review?

Edward Argar: It is an internal piece of work. We are looking at the options around recall. I do not want to set false expectations. I would hope that we will be able to make progress within a matter of weeks, but Mr Gribbin might want to add to that.

Ross Gribbin: May I add one thing to what the Minister said? One of the significant drivers of the recall figures you are looking at is the IPP population, where the balance of people who are sentenced versus recalled has changed significantly over time. It is a large number. As the Committee will be aware, the Government are proposing action on that; it is with Parliament at the moment. Over the longer term, that will make quite a significant difference.

Edward Argar: I think I am due to meet you, Chair, in another capacity around IPP.

Amy Rees: I think that IPP is a really good example of what I was just talking about. Only recently, in December, HMIP looked at that and said that there was no evidence that we were recalling people unnecessarily, but that what they needed was the right support to try to be effective.

Q156 **Chair:** That suggests a system that is not properly joined up between prisons and probation, does it not?

Amy Rees: We certainly believe there is more to do. As you may know, I have interviewed an area executive director. It copies the model from Wales, where we are trying to have one executive director who manages the operation of prisons and probation to try to work on exactly that joining up.

Q157 **Chair:** We had a very useful roundtable with some of your prison governor colleagues. We were very grateful to them for giving their time; it was very insightful for us. One particular concern among some governors was that prisoners were being inappropriately recategorised because of capacity constraints. Capacity constraints in the category B estate meant that they were being recategorised as category C before they were ready for it. It was not in the best interests of their progression; it was being done to make space in the most pressurised part of the estate. That is surely a matter of concern. What is being done about it?

Amy Rees: Any individuals being inappropriately categorised would definitely be a matter of concern for me. There is no doubt that one of the impacts of the capacity pressures is that we need to move people through the system and through those categories.

On the whole, people moving down a category—from B to C or C to D—is helpful for their resettlement and what they can access. As you know,



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you can access a lot more in an open estate than you can in other places, and we do need to move people out of the reception system.

Individual recategorisation decisions should always be made with safety, security and all those individual aspects being taken into account. It is certainly true that the system has been focusing on ensuring that happens at the earliest opportunity and is not delayed.

Q158 **Chair:** Have governors come to you with the concern that they are being forced into doing it too early simply to make the numbers work?

Amy Rees: No, if they say—

Chair: It hasn't been raised with you.

Amy Rees: I haven't heard anyone say they were worried about an individual categorisation decision. We have had a lot of conversations about volumes of people moving into the open estate, particularly when we have brought on new places in the open estate and a volume of people have to move together. There is certainly concern among governors of open estates that they do not want to destabilise an interesting and carefully managed environment.

Q159 **Dr Mullan:** I appreciate you are reviewing recall, but besides the IPP have you done any in-depth analysis to try to understand the differences in behaviours or offender patterns that might give some insight into the recall population now and when it was lower?

Ross Gribbin: Yes, we have, as Amy referenced. There hasn't been any suggestion in reports of people being recalled inappropriately.

It is quite a complex picture, so I shall give the main themes. The IPP population is changing over time. The sentenced population is increasing, so one would expect the recall population to increase with it. The case mix is changing, and some of the approaches we take mean that issues are being picked up. All four of those factors affect the overall population. It is a different level at different times, depending on which moment you look at.

Q160 **Dr Mullan:** It might be a good thing because you are more effectively monitoring and supervising the behaviour of people released from prison. There is almost a suggestion that if it has gone up something bad must be happening.

Edward Argar: You are right. As you will know, probation officers do an incredibly difficult job incredibly well every day, making those difficult judgment calls. They are highly competent professionals, but they are also human so it can never be 100% scientific. They bring considerable expertise to bear. It is important that we give them clear guidance on the expectations. Similarly, it is important that where someone commits a serious breach recall takes place.



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It is right that we understand the drivers and the changes we are seeing over time. One of the perhaps least exciting but most important points, which Mr Gribbin highlighted, is that with a higher population in prison you will have a higher number of recalls.

Q161 **Dr Mullan:** Should it be an overt objective of the Department to get the recall population down? The Department might want to look at why people end up being recalled, but it might be inappropriate to have a drive to get the recall population down.

Edward Argar: It goes to Ms Rees's point. We are saying that it is important that we understand the drivers of the recall population. The IPP population is a distinct cohort. As Ms Rees said, there is no evidence thus far that recall is being inappropriately used. It is important, as with any area of quality, that we seek to understand the underlying drivers.

Amy Rees: To reassure you, the numbers speak for themselves. We are very clear that recall is a decision for an individual practitioner based on their experience.

Dr Mullan: I am slightly anxious about the Minister's foreshadowing of future announcements.

Edward Argar: May I clarify it for you? We will do the analysis. We will seek to understand the drivers. If there was—a quirk is the wrong word—something that was disproportionately driving recall and it was within our power to address it while still attaining the public protection objectives, that would be the sort of thing I wanted to look at.

Amy Rees: There are some factors that really help people to be successful in the community before they get to the recall point. You know that we have invested really heavily in accommodation. There is quite a lot of evidence that having settled accommodation, for example, will increase someone's chances of turning up on time to probation.

Q162 **Dr Mullan:** I alluded to that when I said that you might want to target the reasons why there is a need for people to be recalled, but not have an objective to get that down.

Edward Argar: The continuity of substance abuse treatment services and mental health support between custody and going into the community is a key factor in whether people lapse.

Q163 **Dr Mullan:** I want to move on to ask about the short sentencing element. We have seen the more widely used public figure of 200 to 1,000 spaces. I think you mentioned a mainline estimate that was somewhere between the two of those. I cannot remember exactly what you said a few moments ago.

Edward Argar: Yes, it is a large range. I think you are asking whether we can provide a more specific estimate, and if not, why not.

Dr Mullan: You did, earlier, when you went through it.



Edward Argar: My caveat to a more specific estimate within that—we went for what was almost the central scenario—is that the reason the range is so large is that it depends, essentially, on judicial behaviour. Although we are creating a presumption against, as a starting point, I have to be clear that sentencing decisions are and must remain a matter for the independent judiciary. Therefore, even with that presumption, a judge or sentencer will still have the option to utilise a short sentence for particular reasons, such as where there is a prolific offender. They may say, “We have tried everything in the community. It does not work. We have to do this.” We are seeking to model the behaviour that we think will happen, but that is subject to judicial behaviour and how they interpret and use it. That is why there is a wide range.

Q164 **Dr Mullan:** What strikes me—you articulated it then—is that in my experience it is not common for anyone to be sent to prison outside the circumstances you described. As for the narrative that judges casually send people to prison when they do not really need to go, and could have a community sentence, when I was a volunteer policeman all the people I dealt with who were going to prison at what we might call the lower level of offending had had multiple attempts at community orders, suspended sentences or rehab orders. What is this population of people you think are inadvertently and unnecessarily being sent to prison?

Edward Argar: There are two parts to this. I will invite Ross to come in on it. That is why the range is between 200 and 1,000.

Dr Mullan: Is that why you have such a low figure of 200?

Edward Argar: It will depend, for want of a better way of putting it, on the sentencer’s appetite for saying, “All right, we will give you another chance in the community.” But there are people who will go to prison for a short sentence on their first offence—or not on a first offence, but not as a prolific “I have seen you 10 times” offender.

Dr Mullan: What proportion is that? What proportion are first offenders?

Edward Argar: That is a very good question. I do not have the details to hand, but we could probably provide that for you.

Chair: If you could find out, please do.

Edward Argar: Another key point is the things that have changed in recent years, such as the doubling of the use of tags, and the ability to give tougher sentences. Those tags are not the tags of old. They are sophisticated GPS tags that allow you to impose a curfew and very detailed requirements and restrictions on someone. Therefore, we think that if you create that presumption, you are not fettering judicial discretion because the judiciary can still sentence in the other way. Alongside the tough community sentences that we are providing, with the technology to back them up, we think you will see a number of cases—this is why it is as low as 200 at the lower end—of judges and



magistrates saying, “Fine, we won’t impose a custodial sentence.” We still think it is the right thing to do.

I think my predecessor said to the Committee that it not only assists with prison capacity constraints—of course it does, and I will be honest about it—but it is the right policy decision to be making in this place. A short sentence for someone who is not a prolific offender is often long enough to remove the last vestiges of order in someone’s life, such as accommodation, rent or family links. But if it is a stand-alone short sentence, often it is not long enough for any meaningful impact to be made on the person’s life, such as by getting them off drugs or alcohol, or giving mental health support. Where there is a viable community alternative, in addition to assisting with prison capacity, the presumption we are talking about is the right thing. It leaves the discretion to use custody if the judge wishes.

Q165 Dr Mullan: I want to talk about the statistics that the Department used in talking about comparing reoffending rates for short sentences. You were using comparisons that suggested there would be a difference somewhere in double figures. That is quite a crude analysis. The MoJ commissioned a proper study of reoffending rates, which was case-controlled and looked at different offenders. It found that the difference was about 4%. Why did you use those crude figures when you had available really quite sophisticated figures that compared reoffending rates between short and longer sentences?

Ross Gribbin: I think the study you are talking about is one that the Department published, so I think there was transparency about the evidence.

Dr Mullan: Yes, a long time ago—in 2019, it did the study and published it.

Ross Gribbin: I don’t know the specific reason why those figures were different. I would imagine they were looking at different cohorts. I think there is quite a broad evidence base on this. A lot of the evidence base, as I am sure you will have heard, shows similar trends, where the overall reoffending rate is lower for community sentences than for sentenced populations.

Q166 Dr Mullan: Yes, because most of the evidence base is based on just comparing different people in a crude way. The Department did the sensible thing, as you do with other things sometimes, of comparing the actual cases—the details, the sentencing patterns—so that the comparison was like for like. That study found that the difference was about 4%. I think it is important for your own work about reoffending and what you are going to need probation to do that you have a proper understanding. If you are banking this policy assuming that you are going to get a 10% or 20% difference, when the evidence is that you will not, that is important for your planning.



Ross Gribbin: As you say, there is quite a broad range of evidence on reoffending. We will not know for sure until we are able to evaluate the policy what the impact will be. Different studies have shown different effect sizes over time. You are quite right that we should try to control for different factors but, as the Minister just said, we do not know precisely which cohort will be affected by the policy, because that is down to judicial behaviour. It is not quite as straightforward as saying that 4% is the right answer and the other numbers are wrong. We absolutely will need to look at that and evaluate it over time.

Amy Rees: To be fair, our own impact evaluation says 1,000 to 200, so we are not banking thousands of places on this policy. What we are banking is a good, proper conversation with all the relevant people in the justice system about where and when, to your point, it is much more appropriate to try to use community sentences.

Q167 **Dr Mullan:** That is why the 4% figure is important. It reflects more accurately what you might call judicial behaviour when they are choosing to make a decision based on all the factors concerned. That is probably a better guide for you than a crude comparison of what happens to people depending on the sentence they get. I do not think it will get what you think it is going to get, because the study showed a very small difference. It really took into account what is taken into account in decisions by the judiciary: whether the person has offended before, and what that offence was—all that complex stuff. I am concerned that you used much less sophisticated figures in promoting the policy.

Edward Argar: Both sets of numbers are important and useful as part of the debate, and that is reflected in the 200 to 1,000 range. I am not sure that either would necessarily lead to, "If you have that and extrapolate, this is what will happen." That is why we have such a big range.

Q168 **Dr Mullan:** Maybe you could write to us about how the modelling took into account your own study on reoffending and short sentences. It just seemed to be totally ignored in everything you put out at the time. That is not particularly helpful for the debate. People hear it and think, "Oh, that is what the figure is," when actually it is probably not.

On that, are you confident that the probation service is equipped to deal with this? You have mentioned small numbers. Can you talk us through what preparation the probation service is making for it?

Edward Argar: Everyone will be aware of the case loads that probation are already dealing with. We are looking at a number of things. On the supply side, we have 4,000 more probation officers in training at the moment. They will come through in different cohorts of fully qualified probation officers, but that is an important part—feeding more people into the system. That will help with case loads and it comes with £155 million of investment.



I am also looking—I welcome any reflections or inputs from the Committee—at the nature of probation officers' workload. The key things for them are about whether what they do day to day adds to public protection or rehabilitative outcomes. Is anything being done that does not particularly move the dial on either of those? Can we, therefore, as well as increasing the number of people able to take on the workload, look at things they do that they do not need to, which do not add value in protecting the public or in rehabilitation? There is a piece of work under way on that.

I do not want to presume when Parliament will approve the legislation or what form it will have on Royal Assent but, in parallel with its passage through this House, we are doing exactly that piece of work with probation, to look at what things they do that they do not need to. Again, I am, as always, happy to look at any reflections from the Committee on that.

Q169 Dr Mullan: From my experience, which is perhaps out of date as it is from about six months ago, I know that there is a challenge with community orders, for example. They cannot get people out on community orders and have to go back to court and extend them, because there is not the capacity from a recruitment point of view.

I imagine that the other stuff we are doing, around antisocial behaviour and having to do some kind of community service within a week, will put a strain on probation services if they are asked to do that at local level.

Amy Rees: Right across HMPPS, we are delighted with the progress we have made on staffing. Recruitment is up. You will have seen that in the September figures. Resignation rates are down. Sickness levels are down. We have done an extraordinary amount of work in the last year, which means that we are much closer to a fully staffed position.

There are two buts. One is that we still do not have the staff all in the right places. There are big geographical discrepancies. The second is that what we have traded for an overall numbers problem is an inexperience problem. Particularly in probation, they are not fully qualified and therefore cannot carry a full case load. That means the colleagues who can carry a full case load are under a bit of pressure.

As the Minister has rightly said, that means that in the short term we have to consider probation capacity as finite, although it will build as we go on, so we have to look properly at prioritisation. I am pleased to say that, with the Minister and trade union colleagues, we are looking at where we would like to prioritise fully qualified probation officers' time, and at the work we would like them to do to make sure there is capacity for the new stuff coming online.

Edward Argar: In that context, I have met the unions to discuss this, as you would expect.

Q170 Dr Mullan: I want to ask about the early release on licence scheme,



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which was described at the time as a short-term measure to provide immediate relief. I want to understand how the scheme has operated to date, how many people have been let out and for how long, and what your future projections are for its use.

Edward Argar: The key point is that I do not think you can project use, or numbers, on this. It is a very targeted scheme that operates only in specific prisons, when absolutely necessary. Those prisons will change and the numbers will change operationally, potentially week by week. I do not think it is possible to project on that basis. It is a short-term remedial measure, not—unlike what we have been talking about—a long-term policy that will be baked into legislation. We cannot project X by this or that date, because that depends on which prisons are utilising it, and for what period. I would be cautious about that.

Q171 **Dr Mullan:** Do you have in your internal modelling figures on how much you expect it to be used? Does that exist?

Edward Argar: We have committed to publish, on an annual basis, figures for usage, but we do not think that the figures would be appropriate for publication as a running commentary or as a more regular projection.

Q172 **Chair:** Do you have the actual figures on how many have been released? That was Dr Mullan's very simple question.

Edward Argar: We have internal management information, but that is not something we will be publishing.

Q173 **Chair:** If the Committee asks you for them, are you not prepared to give them, Minister?

Edward Argar: Chair, on this we believe that, in line with publication of other statistics, what the Lord Chancellor has committed to is an annual publication. We believe that would be more appropriate. That is the Lord Chancellor's position.

Q174 **Chair:** Why?

Edward Argar: Because that is what we do with a range of other similar statistics, such as the death in custody figures.

Q175 **Chair:** Are you not prepared to give the Committee the information, Minister?

Edward Argar: The Lord Chancellor's decision has been clear. This will be published on an annual basis.

Q176 **Chair:** Can I have it for the record, Minister, that you are not prepared to give the Committee the information that you have?

Edward Argar: The decision made, Chair, with respect to the Committee, is that these will be published on an annual basis and we do not intend to publish management information in the interim, Sir.



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Q177 **Chair:** You understand, Minister, that we regard that as a most unsatisfactory answer. I hope you will take that back to the Lord Chancellor.

Edward Argar: I appreciate that, Chair. I suspect you may wish to follow up in writing with me or the Lord Chancellor.

Q178 **Dr Mullan:** To pick up, then, we are not going to hear the number of people who have been released, and you have said you think it is hard to predict. To ask a clear question, does the Department have modelling for how many people it thinks will be released in the next 12 or 24 months? Does it have the modelling?

Amy Rees: We cannot have modelling on that, because the legal basis for the ECSL scheme is that it can be used only where absolutely necessary to alleviate the pressures. I genuinely would not be able to have modelling out into the future, because the legal basis for the scheme is that it can be used only where absolutely necessary.

Q179 **Dr Mullan:** Why does the fact that it can be used only when absolutely necessary prevent you from making an estimate of when it might be used?

Amy Rees: Because I do it on, literally, a prison-by-prison basis, not on a whole-system basis.

Q180 **Dr Mullan:** Is that because you don't think you can do it reliably? The legal position does not affect whether in principle you could model it. Are you just saying that it is impossible to model it, from your point of view?

Amy Rees: Yes. It is impossible for us to future-project, because I only make an estimate of where I might need it based on something like 10 days out, because of where we really need to alleviate the pressure.

Q181 **Dr Mullan:** Okay. From a strategic point of view, then, if it was pressed at a particular point in time, do you have any idea when you think you might be able to make less use of it, broadly, than you have to at the minute?

Edward Argar: Again, it is an operational decision. My understanding is that this will flex up and down over time, because it has a relatively narrow legal basis. Therefore, I cannot predict when we will see population changes reflecting capacity in individual prisons or regions. As Ms Rees has said, on a 10-day or 14-day basis she and her operational team will make decisions based on whether the criterion is met for it to be used in a particular prison or context.

Amy Rees: For example, it was used a lot less over Christmas. There was a lot less court activity and therefore a lot less need to alleviate pressures.

Q182 **Edward Timpson:** May I pick up on the annual statement that has been referred to, which originates from the Lord Chancellor's October



statement last year that he will now lay an annual statement on prison capacity before Parliament? The difficulty for the Committee when we ask for information and assessments that have been made by the Department is that, at the moment, we do not know when that will be laid before Parliament. Will it be this side of an election? We may be none the wiser, come the election. It is not a statutory requirement, as it is for the Lord Chancellor when he or she makes an annual statement on the courts system.

My two questions are about when the annual statement on prison capacity will be laid before Parliament, and whether you think it would be helpful if there were a statutory requirement for it, in the same way as for other annual statements made by the Lord Chancellor.

Edward Argar: If I may, I will take the second of those first, and then invite Mr Gribbin to speak about the latest work on this.

I can see pros and cons to a statutory statement. You are right about the court system. I think that to a degree that reflects, also, the Lord Chancellor's obligations in that space, and his oath. It is a significant and positive step forward that he has committed to publishing this information in a format and a way that it has not been published before. I would be keen to see it published and see how that works, and whether the Committee and the House are satisfied with it on that basis, or whether they subsequently feel that more needs to be done to strengthen its impact. My instinct is that we should start off with its publication by the Lord Chancellor in the way he has set out, rather than automatically making it a statutory statement.

Ross Gribbin: On timing, as of now a decision has not been made about when it will be published. It is important to add that of course this is not happening in a vacuum. It builds on information that the Department already publishes. For example, the demand projections referenced earlier are due before the end of the month, and a number of other bits of information that will, I think, ultimately be part of the commitment that the Lord Chancellor gave, are already published regularly.

Edward Timpson: And the second part of the question.

Edward Argar: I think that is what Mr Gribbin was saying: there are a number of different parts to this, some of which are already published statistics that we have to wait for and tie in with, so at the moment I do not have a precise date for you, when we put all the different pieces together. I am happy to write to the Committee with the latest estimate of when we hope we may have all those moving parts in one place.

Q183 **Edward Timpson:** We have had a long discussion about projections, which, in the economic sphere, normally turn out to be wildly inaccurate, so what will there be in the statement that will give confidence to Parliament both that it is meaningful and that it provides a true and transparent picture of prison capacity in England and Wales?



Edward Argar: In terms of projections and reliability, I take your point about economic statistics and, equally, in the case of our projections for demand, there will always be caveats depending on decisions made by this place, Governments and sentencers.

It may give you a little reassurance that when I look through the different published projections for prison capacity demand going back to 2020—aside from during the pandemic, when they were way out because the pandemic’s impact on judicial processes, sentencing and a range of things had not been anticipated—since that time the demand has broadly tracked alongside the central projections. I spent a large amount of time recently with Ross and his team, going through it and, as you would expect, challenging the projections.

I look at this from the perspective of having been a Health Minister during the pandemic. I looked then at projections for hospital bed capacity and a range of other things. That, as you might expect, engendered a certain degree of challenge and cynicism about projections and modelling because, depending on what you put in and the assumptions that you bake in, you will get different answers.

Having gone through this with Mr Gribbin’s team, and coming from that background in health, I was reassured of the robustness of the modelling, with the caveat that it cannot take into account the human factor or, indeed, any changes that are made and enacted by Ministers or this House. I hope that that, and the methodology behind it, will be reflected in the statement, and I hope that that will reassure those reading it. Equally, the further out you go the less reliable it will be. If you are predicting one, two, three or four years ahead, there is a degree of predictability that you do not have if you go to 10 years, because of a range of external factors.

Q184 **Edward Timpson:** Okay, but we can expect the statement, whenever it appears, both to be retrospective, looking at the current state of prison capacity, and to do some future-proofing on what the current policies will bring to the prison estate for the subsequent year.

Edward Argar: Yes, with two caveats: first, that things depend on future events, and secondly, as Mr Gribbin pointed out, that there is a slight sequencing here. As you will be aware, we cannot, in something that is an official publication or similar, presume Parliament’s approval of particular measures. You can look at different scenarios, but only when Parliament has made its view known will we be able to bake that into long-term projections.

Q185 **Edward Timpson:** Can I focus on one other aspect of the Lord Chancellor’s statement—the Government’s plan to rent prison places overseas? What is the current timeframe for implementing that policy?

Edward Argar: There are a number of factors here. First, we have to wait for the passing of the legislation that gives permission. That is



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obviously in the hands of both Houses and the business managers. Parliament is still considering the legislation to enable it and I do not want to pre-empt that approval. The policy in parallel with that is still in development.

I have to be honest with the Committee about the complexities. First, you have to get the legislation in place. In parallel, you have to consider a whole range of policy factors, some of which have been discussed in this Committee before, about familial links, visits, language, and inspections and how conditions are inspected. A range of policy issues would need to be considered. Then, there would have to be formal discussions with potential host countries. That, as you might surmise, is going to take some time.

If you are asking whether it is something that in the next few months will address the trajectory and the capacity points that the Chair has rightly highlighted, then no, it is not something that will happen in the next few months, partly because we are dependent on Parliament's decision. Then we would have to have the policy and external conversations.

Q186 Edward Timpson: The impact assessment for the Criminal Justice Bill states that 600 places could be provided overseas at a cost of £202.9 million—quite a precise figure—over 10 years. In that case, what Ministry of Justice budget allocation has been made in the 2024-25 budget?

Edward Argar: As you would expect, budget allocations that pre-empt Parliament are not made. We have to get the legislation through, and we will then look at future budget allocations depending on the will of both Houses and depending on further working up of the policy.

From the impact assessment, you will also see that there is a 10-year horizon and that, as I have alluded to, legislation and quite detailed and complex policy decisions will be required—and then conversations with another country. We would be premature to make budget allocations in 2024-25 and, of course, anything beyond that horizon would be a matter for the spending review.

Q187 Edward Timpson: Can I tease out some of the policy elements that you alluded to? How is it envisaged that the inspection and oversight of a regime overseas would operate?

Edward Argar: That is something we would have to discuss. There are two elements in this and you have heard from both previously—the inspectorate and the IMB element in this country, which, while not a formal inspectorate, does a huge amount of work in monitoring and oversight. They are lay people who do not just go in for a snapshot but are there every other week or every week, and who see how an establishment operates. As was alluded to by, I think, the chief inspector in your previous session, we will be looking to have conversations with him and his inspectorate, and, indeed, with the IMBs. I have met both in recent weeks, not on this topic but more broadly.



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Again, I do not think we are yet at the point where we would have those detailed discussions on how it would operate, but you are right to highlight that that is a key element of the implementation of the policy, subject to the will of Parliament.

Q188 **Edward Timpson:** You mentioned family ties and resettlement support.

Edward Argar: Family ties, visits, linguistic issues in being able to communicate with staff, regime, access to legal advice and a whole range of factors are all elements that would have to be and will be carefully considered and addressed before such a policy could be operational, subject, of course, to any negotiations with another country.

Q189 **Edward Timpson:** How wedded are the Government to this policy? We are going to be up against the clock. There is a lot of legislation to get through. You could end up in all sorts of ping-pong, and then the wash-up. This is the sort of thing that could disappear off the edge of the legislative page. Is this flying a kite or putting a marker down? How wedded are the Government to making sure this gets on to the statute book?

Edward Argar: I do not want to pre-empt when a general election might be called and, therefore, how much parliamentary time remains for any legislation to get through, but the Lord Chancellor has been clear in his intent that this should form part of the legislation that will be put before Parliament.

I am not for a moment, as I hope I have conveyed to you, understating the amount of policy work that will need to be done to operationalise that, but we have been very clear about the importance of this, alongside a range of other factors. It is obviously right that the Committee is looking at this element, but there is a range of other supply side pieces of work that are being done in this space. We have addressed some of them here today. This is one, but not the only one. It is part of an overall package. It is about enabling an option and it remains part of the legislation that the Government are keen to see enacted by this place.

Q190 **Dr Mullan:** I want to ask about the 2021 commitment to 20,000 new prison places. I could be wrong, but on my understanding we are at 8,200 by May 2025, roughly. Is that accurate? I want to re-check whether there is still a commitment to get to 20,000 by the mid-2020s, and where you think those further places might come from, or whether I have misunderstood the figures in any way.

Edward Argar: I am very happy to be as open with you as I can be. That was the commitment. You have seen the projections for the mid-2020s. We are working towards that. There have been factors that may push that further back. Among them are the planning permission decisions that we talked about. The Chair rightly highlighted that planning can always be complex and may occasionally throw things up that one had not anticipated or wished. We had anticipated all six of those prisons



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having had planning permission well in advance of now. Of course, the delays are going to push a number of those places back.

It is also important to be open with the Committee that a number of the other routes being used—additional cells and house blocks—have been delayed. I am hopeful that we are unblocking them. There are planning considerations, such as, in a number of prisons, nutrient neutrality regulations and what can be done to gain credits to offset them or address them by other mitigation. That has caused delays. If the Committee is asking the straight of question whether 20,000 will be in place by 2025, I do not anticipate that happening. We continue to work towards it.

I would also highlight that it refers to “by the mid-2020s”. It depends on how you define that, Dr Mullan. It could be 2027, but I am being honest with the Committee that there have been delays, as the Lord Chancellor set out previously.

Q191 Dr Mullan: You have put forward some of the challenges. Where do you think you might get some of the additional few thousand? What is your lowest hanging fruit? Where do you most expect to be able to make progress from your existing projections?

Edward Argar: We continue to work on rapid deployment cells and additional house blocks. I want to be honest with the Committee in providing a caveat or addendum to that. A number of these things will be in category D establishments. As the Committee will be aware, that is useful to us—it increases capacity—but it is in categories B and C where I most want to see additional places. It is harder to do that. Permitted development has been helpful to us up to a point but, even with additional rapid deployment cells and house blocks, you run up against things like nutrient neutrality. We respect the rule and we will work within it, but that does delay us.

There is a whole range of different elements. If it is helpful to the Committee—I will not necessarily run through it now—I have a list of the different subsets: new prisons, refurbishments, PFI updates, urgent temporary accommodation and more secure house blocks, and how many we have delivered and how many we are aiming to deliver, so you can see each of those different categories.

Q192 Chair: That would be very helpful and would be appreciated.

Amy Rees: Your question was also about the lowest-hanging fruit. If I put it in the simplest terms, which of these is the easiest to deliver? I am genuinely not trying to duck the question, but that really depends on what you are trying to deliver for where. For example, we might come on to talk about rapid deployment cells, which are good, helpful, standard accommodation, but I cannot use them for everyone; they are good only for risk-assessed cat Cs or cat Ds, so it is not a total solution.



Small secure house blocks are very good where we might have permitted development; it is much more difficult to do in other places. I do not think there is anything that is the easiest thing to deliver; it really depends on where we are trying to deliver them and what we are trying to do across the estate.

Q193 Dr Mullan: If we look at the higher end of your own projection for March 2025, which is a prison population of 98,400, do you think you will have enough spaces?

Edward Argar: Those projections reflect whether the policy changes are made on the demand side. I suspect that any Government will look at the facts. If you are talking about recall, I take your point, Dr Mullan—I take the point about remand and a whole range of other things. We can continue to increase supply, as we are, but is there a risk of demand outstripping supply? If we continue to see ever-longer sentences, there is. We are doing what we can to address that.

One thing I would say is that you see a dip at the moment, notwithstanding some of the points Ms Rees makes about the rapid deployment cells and house blocks, in new secure prison places coming along. We have had two finished and one is being built. You will see a slight lag for a few years because of those that have just got planning but have not started building. Once you start bringing online those two, and hopefully the sixth one in due course, subject to planning—I do not want to pre-empt the decision—you will see what we saw last year, which was that demand was going up, but every week my predecessor and I would be told that we had an increase of X number on the supply side. You will start to see a short dip because of where we are in the builds of those with planning permission.

Q194 Dr Mullan: Do you have a projected shortfall? Do you have a worst-case scenario, or reasonable scenario, where, unfortunately, you think there will be a shortfall? What ends up happening is that that drives policy, does it not? If you have a shortfall, Ministers and officials are tasked with finding out how to get more people out of prison, which is not necessarily a bad thing, but it can also be a bad thing if you do it in the wrong way for victims of crime, justice and so on.

Edward Argar: You are absolutely right about the need for balance. It goes to your point about recall. If you want to free up space, would you say that you should not use recall so much but, hang on, there is a reason those people are being recalled?

The Lord Chancellor has always been clear. He will ensure that there are always sufficient prison places to meet the demands of the courts when they sentence. Is that a challenge for those projections? Yes. Equally, I would highlight the size of those projections, the range and the fact we will have new prison places coming online. I would also argue there is a case for any Government to continue that programme rather than a stop-start on investment in our prisons.



Amy Rees: Notwithstanding the planning permission, which we have talked about quite a few times, once outline planning is granted we have a good track record in building new prisons on time. Millsike is on time as we speak and is due to open in 2025. The team has done a brilliant job in building those sites and adding new, good-quality accommodation.

Q195 **Dr Mullan:** I think that in October the Lord Chancellor committed to urgent work to identify new sites for purchase for prisons. I wonder whether you could update us on the progress of that work.

Edward Argar: In a moment, I will invite Ms Rees to talk about the specific process we go through. I do not want to pre-empt anything that is commercially sensitive, but we have funding available to secure such sites when we identify one. The prism through which it is looked at is where demand is greatest. One of the things we have not touched on today is the regional disparity in pressure on capacity and demand—we are looking at it from that perspective—and land that is potentially available so we can secure it early, so we have that option.

Dr Mullan: Where have we got to?

Amy Rees: I think you are referring to the £30 million from the October statement. The reason that is very important is just as the Minister said. It is allowing us to get ahead. On your earlier point, Chair, about how we know planning permission is tricky, this is allowing us to look at and purchase sites on which we could go for planning permission many years ahead so we are not so reliant on getting planning permission done in a very quick period.

Q196 **Dr Mullan:** How have you been getting on with that work since October?

Amy Rees: I have personally been in discussions with some areas in particular. One of the ways we can try to get through planning permission is maybe to go to areas that want to have prisons built in their patch. There are some good things about having prisons built in their patch: job opportunities, spending and so on.

I will be very open and say that at the moment our biggest operational pressures are in the north-west and south-east. Ideally, that is where we would like to purchase some land. How much we can buy for the £30 million will depend on what state we go for the land in and how big the pieces of land are, or whatever. Our requirements are quite big. We need 12 to 14 hectares, so we have quite big transport requirements. We are already engaged in those discussions. As I say, we are looking for local authorities that would really like to partner with us.

Edward Argar: We even had some colleagues who volunteered with their constituents.

Q197 **Dr Mullan:** What engagement do you have with DLUHC Ministers on this challenge?



Edward Argar: I have had not only correspondence at official level but meetings with my counterparts: the housing and planning Minister and the relevant DEFRA Minister, Mr Moore, on obligations around nutrient neutrality. Those discussions obviously have to be quite narrowly based. I do not want to prejudice any individual planning obligations around a particular application, but we have had constructive conversations about what we need to do in the short term, and I look forward to further such conversations around that broader piece of strategic infrastructure. I know that my boss, the Lord Chancellor, is having those conversations with the Secretary of State. That is a broader discussion across Government.

Q198 **Dr Mullan:** On community engagement, I notice that in my own area when a new development is taking place developers are becoming more engaged in their communities, with flyering and having open events. What is your approach to engagement with communities where you might build prison places?

Edward Argar: I would cite a couple of recent examples. In this context, I pay tribute to our colleagues, the Members for Harborough and for Buckingham. They have, quite rightly, highlighted their constituents' concerns in the context of planning applications, both of which have been granted. I would add the caveat that Grendon could still be subject to judicial review within the six-week period, so I do not want to pre-empt that. Harborough is not.

We have sought to have that public engagement. I consider the engagement with the Member of Parliament very important. I have spoken to them both since those decisions were handed down. I personally look at and sign off the pack that goes to councils and communities. Flyering is being done in one of those areas—the one that is further ahead—as we speak. There are community engagement meetings.

Notwithstanding the specific details of any particular planning permission, I have been very clear that I want to engage with those communities through those Members of Parliament to make sure that, even if they are not happy with the ultimate outcome of the planning decision, we can work with them in a way that minimises the impact of construction and subsequent operation on those communities.

Chair: We need to move on a bit. If there is supplementary stuff, perhaps we will get it in writing.

Q199 **Edward Timpson:** One of the opportunities with spending a huge amount of capital on new prisons is to make sure that the design of the prisons reflects present need and what future need may be relative to the types of policies being implemented within the prison estate and adjacent to it. On a Select Committee trip, we saw in Finland and the Netherlands different ways of designing prisons to meet that need. Although we went to see HMP Five Wells and found some good things there, one of the



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complaints from prisoners was poor air flow on the landings. In addition, the IMBs' first annual report—this being a new prison that opened only in 2022—showed design faults in the building, including low-mobility cells on each wing that could not be occupied for safety reasons.

Clearly, these are things that people wanted to avoid and maybe some retrofitting needs to be done to remedy them, but there are others in the pipeline. How are you ensuring that some of these issues will not repeat themselves and that you are learning from some of the design faults that have arisen in Five Wells?

Edward Argar: I will say a few words, and then Amy may want to come in. As you would expect, we always look not only abroad but in this country as to whether there are things we can improve or learn. The short answer is that we will learn from what we have built before, but also what we see abroad.

Given the nature of these coming on stream as they are, one of the challenges is that many of those currently in the pipeline have already been through planning and have had their planning processes done in a way that was set out for determination prior to the full operationalising of, for example, Five Wells. That does not mean that if there are in-flight tweaks that we can make consistent with planning to iron out exactly the issues you have highlighted, we will not look at that, but, when we are building, this Government and future Governments of whatever complexion will, I hope, continue to build modern, fit-for-purpose prisons and, as part of that, will look at what has gone before. There is a programme of real-time evaluation of these builds and an assessment of what is and is not working that can be used to inform both what we are building now but also future design, so there is analytical work being done around that.

Amy Rees: First, as the Minister has said, the basic design is the same for the new prisons, but we try to tweak them to our very local requirements and so on.

Secondly, on your specific question about how we learn the lessons, we had a different set of challenges when we opened HMP Berwyn. We have physically rolled off one of the senior managers who worked there to work on opening Fosse Way and Five Wells, so we try to learn the lessons. We have a proper system of saying what worked and did not work in terms of wrap-up and physical design. We will retrofit where we get those things wrong, as we have done at Berwyn, Isis and other places, but we try not to repeat the same mistakes. We change, evaluate and learn all the time as we are going through.

Q200 **Edward Timpson:** I think we met that manager when we were at Five Wells. He was the first person to greet us.

Can I move on to the issue of overcrowding in prisons? As of January 2024, how many prisons were overcrowded? Will you briefly explain the terminology of overcrowding and how a prison is determined to be



overcrowded?

Edward Argar: I will ask Ms Rees to give the technical definition of certified normal accommodation, crowding and similar because it is a particular definition or approach that we adopt. I will then turn to your point about what percentage of prisoners are in crowded conditions and similar.

Amy Rees: Certified normal accommodation is without any crowding at all. Operational capacity is when we have been through a robust system decided by operational managers about how many people can occupy that establishment. That is not just how many people we can physically put in a cell; it is what kitchen availability we have, what regime we can offer them and so on. It is decided through a robust process that goes up ultimately to the prison group director.

Q201 **Edward Timpson:** What role does the prison governor have in that process?

Amy Rees: The prison governor has a big role to play in it. The prison governor will put forward their argument, case or submission for how many they think they could reasonably hold. They will also say, "I think we could hold 10 more, but I need an extension to my kitchen," or, "I need some extra workshop places and, therefore, some investment," and ultimately a decision is made and the cell certification is signed off by the prison group director, or area manager equivalent.

Q202 **Edward Timpson:** When we had our roundtable with prison governors that the Chair mentioned earlier, we heard that a prison's operational capacity can be increased without the number of available cells increasing. Is that correct?

Amy Rees: As I said, we make a proper judgment based on all things as to how many people can be held. For example, when I was governor of HMP Brixton you could physically have doubled up every cell. We did not physically double up every cell because we made a judgment on what ancillaries were available and so on. It is not a straightforward calculation of how many people we can physically put in this cell and how many we have; it is about how many we think that prison can safely manage in terms of security.

Edward Argar: On an annualised average basis—I do not know whether this is helpful, Mr Timpson—the number of prisoners in crowded conditions, based upon the definition Ms Rees has given, for 2023, which is the latest full year for which we have numbers, was 18,710. Going back to 2010, it was 20,656. The 18,710 is also a smaller number of a higher overall population. The average for all prisoners in crowded conditions was 22.9% in 2023, the last period for which we have numbers. I can give you previous years in due course, if that is helpful.

Q203 **Edward Timpson:** Between February and October last year 48 prisons in England and Wales saw their operational capacity increase, while only 12



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saw it reduce. Many of those that saw an increase were inner-city jails—for example, Liverpool, Birmingham, Nottingham, Pentonville and Brixton. What do we read into this variation in the extent to which prisons are overcrowded across the estate, and what support is being provided to try to help those that are overcrowded to remedy that position?

Amy Rees: The first thing is to go back to the process that we use. It is a very robust process; we do it only when safety and security are taken into consideration. You also mentioned the places where we have taken crowding out. I also told you I have three places at the moment where I have taken cells out of use because we just do not think it would be safe to operate them. That is Woodhill. We have the same in Cookham Wood. We have a very clear organisational and moral compass of what we think we can run in terms of safety and security.

However, there is no doubt that more prisoners inside an establishment put pressure on all of the resources, both human and physical. Things like accessing the regime get more difficult. We try to take that into consideration. We also try to look at whether we can support them in any other way. For example, I mentioned getting additional kitchen ancillaries and those kinds of things.

We also try to enhance their regime, if that is possible anywhere, but I do not want to duck your straightforward question. The more people we have in an establishment the more challenging it is to run it. That is true, but we have a very clear moral compass as to what level we will run that.

Chair: There is one topic we do want to deal with, Minister and witnesses. We are a bit pressed by time constraints today. Other matters we can follow up in writing, as you helpfully indicated. Dr Mullan wants to deal with some mental health issues, which I know are very pressing.

Q204 **Dr Mullan:** My understanding is that the number of secure beds for prisoners has stayed at roughly 7,500 for about five years. Is that correct? Do you have any plans to increase that number? As a result of that number being where it is, are there people who are waiting and should be in one of those but are not?

Edward Argar: Are you speaking in the context of hospital secure beds for mental health patients?

Dr Mullan: Yes.

Edward Argar: I should clarify that the responsibility for the commissioning of those beds is with NHS England and DHSC. I do not have the exact number, but the number you give does not seem an unreasonable one, if that makes sense. I will clarify it in writing if I have got it wrong.

Today we have seen Charlie Taylor's report on adherence to the 28-day transfer target when people need to be transferred to a secure bed, and I recall similar rates from when I was Minister in the Department in 2018-



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19 around the concept of a prison as a place of safety or otherwise and the issues around that. I worked on that with the then Health Minister, Jackie Doyle-Price. I am picking it up now as an issue once again.

The bottom line is that prisoners who meet the threshold for detention under the Mental Health Act and require a transfer to hospital continue to experience delays in accessing the specialist treatment they need, as highlighted by the report. We are determined to do what we can to reduce unnecessary delays and ensure that patients can access the care they need within the timescales.

Q205 Dr Mullan: To how many people would that apply? How many people who everybody agrees should be in a secure unit are not?

Edward Argar: That is one of the pieces. Following Charlie Taylor's report, I have asked for the numbers of those meeting the 28-day target but also those over a year, for example. I am happy to share that information with the Committee.

While responsibility for the commissioning of those beds sits with NHS England, clearly we have a shared interest and obligation because these people are being looked after in prison by, I have to say, incredibly dedicated and hard-working prison officers, but that is not part of their primary training. It is difficult and it has an impact there. We are working with DHSC and the NHS to introduce a non-statutory independent role designed to improve oversight and monitoring of delivery of the obligation to meet that 28-day limit and more broadly.

Q206 Dr Mullan: When someone goes into the secure mental health estate you do not pay for any of that.

Edward Argar: That is commissioned by NHS England.

Q207 Dr Mullan: Do you lobby Treasury for money for that?

Edward Argar: We work together. The responsibility for commissioning sits with NHS England and, ultimately, DHSC, but we have a shared interest in the system working well, because these are people who should be in a secure clinical mental health setting. Equally, not only do people need that, but it is challenging for our prison officers and staff to meet their needs in the context of the custodial environment.

Q208 Dr Mullan: My last question is around self-harm and suicide, which I understand has increased recently. Do you expect that to carry on? Do you have a goal to reduce it by a certain time, or at least have it on a trend? What steps are you taking to enable that?

Edward Argar: The short answer is that one self-inflicted death in custody is one too many. The overall number of deaths in custody came down, if I recall, in the past year, from 307 to 304. I am pleased that it is three lower, but there are still 304 that I want to understand. Of course, some of those will be from natural causes. We see that with increased numbers of older prisoners in the custodial estate, or people with very



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severe health issues, but within that the number of self-inflicted deaths continues to be too high a proportion.

We continue to do a range of things: first, with Samaritans and the Listener service to address that, and secondly, there are physical changes we can make—for example, what we can do to remove ligature points. It comes back to what I think lay behind your original question about mental health support. Self-harm is much higher in the female estate than it is in the adult male estate. Again, it is about getting timely mental health intervention. I think we have made progress, but there is more to do. The numbers of incidents of self-harm in the female estate should be read alongside the number of individuals self-harming, because we know that a small number of very prolific self-harmers can have a big impact. It is important we look at both figures together to get a clear picture.

Amy Rees: Safety of prisoners and reducing self-harm and self-inflicted deaths is an absolute priority for us, as is the safety of our staff and reducing the number of assaults. As the Minister said, there are lots of very specific initiatives, which we can talk you through, but we know there are two basics. One is staffing levels, where we have been all out, to enable and facilitate a decent regime that will allow people to be out of cells and interact with staff and other available support services. We are focused on those two areas as the basic drivers of safety.

Q209 **Chair:** We have some factual questions on which we will write to you. It is always very helpful. Ms Rees, have you come across the Windrush wellbeing centre at HMP Birmingham?

Amy Rees: Yes.

Chair: We were very impressed by it.

Edward Argar: I have not visited. I have a forward plan of visits and I suspect, Chair, you have just got it added to that list.

Q210 **Chair:** Are there plans to do more around that and improve staff welfare, because staff retention is an issue, is it not?

Amy Rees: We have done loads of things on staff retention. I would just mention the big things like staff recruitment. We have it going up by nearly 5,000 staff in one year. That will really help us with retention.

What you are talking about, I think, are new colleague mentors, who have been really supportive in local establishments, and standard coaching teams to try to bridge the gap with an experience that we have.

What I think you are also talking about are local initiatives. We have loads of brilliant local initiatives, some of which might be right for other places. For example, I was in Brixton recently; the Clink there is excellent. They also had a brilliant reading programme, as did HMP Leeds, which was not just for prisoners—the staff are very engaged in all these things.



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Therefore, the answer is yes, but those things are very local to what works for the establishment, what needs they are trying to fulfil and so on, but we absolutely encourage those wellbeing activities.

Q211 **Chair:** Prisoner churn can be a problem, can it not, in keeping those local programmes going? Is anything being done to try to reduce and deal with the disruption caused by churn for those good initiatives?

Amy Rees: Are you talking about peer support?

Chair: The churn of prisoners, peer support and other things.

Amy Rees: Churn has always been an issue, particularly in local prisons. It arose long before we even had capacity challenges. I remember as governor of Brixton arguing about those things and wanting to keep my listeners, mentors and all those sorts of things. Obviously, we have to balance keeping those local peer support things running with the blessing of prisoners in the way we have talked about moving through the estate. We try to enable those things where we can, but we have to balance them with individual progression and getting those prisoners to the right place as well.

Q212 **Chair:** On maintenance contracts, we have had governors raise the issue that they often think they could sort things out locally when it takes a long time. For how long are you locked into the current maintenance contracts?

Amy Rees: Our maintenance contracts are coming up for review, so we are actively working on them at the moment. Obviously, that would not just be me; that is with MoJ colleagues as well.

Q213 **Chair:** Minister, does it give an opportunity for much more local autonomy for governors?

Edward Argar: It does. I do not want to pre-empt what we might look for in the spec, but it will not surprise you to know that I have fortnightly roundtables with different prison governors, who are encouraged to speak as frankly to me as they like. It will not surprise you to know that this is a regular topic of those conversations.

What I would like to see is something that manages expenditure so that public money is carefully monitored but, at the same time, where there is scope for greater autonomy to get a light fixed, or something done by a governor with an accredited and security-cleared local tradesperson, that is the sort of thing I would like to see happen, if we can do it.

Chair: I am sure that would be very welcome. Minister, Ms Rees and Mr Gribbin, thank you for your time and evidence today. We will follow up any other matters in writing.