

Justice Committee

Oral evidence: [Prison population 2022: planning for the future](#), HC 483

Wednesday 11 July 2018

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Members present: Robert Neill (Chair); Ruth Cadbury; Alex Chalk; Bambos Charalambous; David Hanson; John Howell; Gavin Newlands; Victoria Prentis; Ellie Reeves.

Questions 117 - 187

Witnesses

[I](#): Lord Justice Treacy, Chair, Sentencing Council for England and Wales; and Steve Wade, Head, Office of the Sentencing Council.

[II](#): Richard Garside, Centre for Crime and Justice Studies; Harvey Redgrave, Crest Advisory; and Rachel Tuffin OBE, What Works Centre for Crime Reduction, College of Policing.

Examination of witnesses

Witnesses: Lord Justice Treacy and Steve Wade.

Q117 **Chair:** Welcome to our evidence session on prison population 2022. Welcome to our two witnesses. Would you introduce yourselves, and then we will move on?

Lord Justice Treacy: I am Colman Treacy. I am a Lord Justice of Appeal and chair of the Sentencing Council.

Steve Wade: I am Steve Wade. I am the head of office at the Sentencing Council.

Chair: By way of declarations of interest, which we have to do at the beginning of all these sessions, as Members know, I am a non-practising barrister and consultant to a law firm.

Victoria Prentis: I am a non-practising barrister.

Alex Chalk: I am a barrister.

Ellie Reeves: I am a non-practising barrister.

Bambos Charalambous: I am a non-practising solicitor.

Chair: There are some non-lawyers as well.

John Howell: The most important members of this Committee.

Q118 **Chair:** Sir Colman, can we start with the work of the council as a whole? It is a statutory body, with certain specific functions that it has to carry out. You have quite an important work programme. Are you in a position, in terms of the resource and support you have, to carry out that programme effectively?

Lord Justice Treacy: We are right at the margins in terms of resource. The amount of money allowed to us each year has been reduced year on year, and we now receive about £1.4 million. The bulk of that is taken up with fixed staff costs. We have 17 staff—a mixture of researchers, policy lawyers and so on. Our free money, if I can call it that, is probably in the order of £250,000 a year. Of that, we are only able to allocate each year between £130,000 and £140,000 for research and analysis, which is really the engine room of the work we do. Our guidelines are evidence-based and we need proper resource for that.

We have got to a position whereby we have agreed a settlement up to 2020 with the MOJ. We made it plain in accepting that settlement that we had reached the bottom of the barrel and there was no further room for cuts. There was at one stage earlier this year a proposal that we be subject to further cuts. Together with Steve, we drafted a letter, which we were going to send to the permanent secretary, indicating that we could not continue to function in the way we have hitherto if those cuts were implemented. In fact, for whatever reason, the information we had



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been given as to what was going to happen did not come to pass, so the letter was never sent, but it is an illustration of where we have got to.

Q119 **Chair:** I understand that. You are planning to issue guidelines for nearly all major criminal offences by 2020.

Lord Justice Treacy: Yes.

Q120 **Chair:** Are you on track to do that?

Lord Justice Treacy: We are on track to do that.

Q121 **Alex Chalk:** On the specific point about resources, from a practitioner's point of view, the Sentencing Council is a fantastic thing because it provides a ready reference and provides for greater consistency. It is all the things that underpinned its being set up in the first place.

Are you able to form an assessment of the extent to which it has reduced the number of necessary appeals because everyone understands the sentencing landscape more readily, and therefore there has been a saving for the criminal justice system as a result of the work you do? Is it possible to make that assessment?

Lord Justice Treacy: Yes, because we can look at the number of sentencing appeals coming into the Court of Appeal criminal division, before our guidelines came into play, and those afterwards. The numbers have not changed greatly. They are slightly down. There are something like 5,000 sentencing appeals each year coming to the Court of Appeal. It is probably of the order of 4,500. In fact, it went up slightly after we started bringing in our guidelines.

I think the answer is that lawyers will always find something to argue about. If you put it on paper in the form that the guidelines are in, there is a document where they can argue about the interpretation and placement of every case, if they wish to. Before the guidelines started to multiply, I thought that they would reduce the number of sentencing appeals. What they have done is change the nature of the appeal, which is very much focused on the working of the guideline and how it applies to an individual case.

That has happened very much in the Crown court as well. The whole sentencing process there, which used to be largely an address by defence counsel and then the judge passing sentence, is now a three-way conversation with prosecutor, defence and judge all discussing the application of the guideline, with the judge having the final word. Guidelines have changed the mechanics of the sentencing process.

Q122 **Alex Chalk:** Has it led to a difference in the number of successful appeals? In other words, has the Court of Appeal been satisfied that there are fewer errors being made at first instance?



Lord Justice Treacy: No. I think the proportion of successful appeals is where it has been historically, which is somewhere between 25% and 30%.

Q123 **Chair:** A key objective of the guidelines and the council's work is to ensure transparency and consistency in sentencing above everything.

Lord Justice Treacy: Yes; consistency of approach to sentencing. You cannot legislate for consistency of result because the factors in every case are different.

Q124 **Chair:** Indeed, there is a specific proviso that the guidelines can be departed from if it is in the interests of justice to do so and the judge gives reasons.

Lord Justice Treacy: Yes.

Q125 **Chair:** Do you monitor the number of occasions on which the sentencer will apply that proviso?

Lord Justice Treacy: I do not think we have monitored for that specifically. What we do monitor, of course, is whether the sentences being passed are within the range of the guideline. As you will know from our analyses, there is very high compliance—over 95%—with our guidelines.

Q126 **Chair:** Has that come at the price of sentence inflation though?

Lord Justice Treacy: There has been sentence inflation, but that is due to a very large number of factors, some of which are legislative and some not. Both when a guideline is consulted on and when it goes definitive, we carry out a resource assessment to see if it is going to have an inflationary effect. Then we monitor afterwards.

We have produced analyses of our monitoring for a significant number of guidelines. A very large number of them have had no inflationary effect, but there are aspects of certain guidelines where undoubtedly sentences increased more than we expected. At the top end of our assault guideline, for section 18 offences, sentences have been heavier than we expected. There have been more domestic burglaries falling into the top category than we expected. Those are two examples, but generally sentence outcomes have been within the ranges we expected they would be after our guidelines.

We have engineered certain guidelines to effect sentencing—for example, in our sexual offences guideline for a campaign of rape. Where previous guidance stated that the starting point would be 15 years, our guideline said it would be 20 years. We deliberately took the decision that that sort of offending required heavier sentencing. We set our face against the use of firearms and weapons, particularly knives, and ensured that cases involving those sorts of weapons are put in the top categories. That will have had some effect on lifting sentences.



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On the other hand, with drug mules—people coming from third-world countries under very severe pressure—importing drugs into this country, we took the decision to reduce the level of sentences by about a third. That has been reflected in the practice of the courts.

By and large, at the start of every guideline, we see what current sentencing practice is, and then we have a discussion about whether there are aspects of current sentencing practice we want to change.

Q127 **Chair:** You have been the chairman of the Sentencing Council for a while.

Lord Justice Treacy: Yes, I am finishing very shortly.

Q128 **Chair:** You have done a three-year stint. Thank you for the work you have done. You have also been a senior judge in the Court of Appeal in the Queen's bench division for a time, and an experienced practitioner in the criminal field.

You said that there were a number of factors that drive sentence inflation. As we all know, that leads to inflation in the prison population. What do you think the principal factors are? If it is not largely the guidelines, what is it?

Lord Justice Treacy: The principal factors are legislation; the only way is up in terms of legislation. There is constant pressure to increase maximum sentences for various crimes. There is the recent introduction of minimum sentences for a raft of crimes. Every time an offence captures the public eye or imagination there is clamour, either from the media or from your constituents, that something more severe must be done about it. There is very little balancing clamour for the reduction of sentences. Indeed, last week, or the week before, when the Minister, Rory Stewart, was referring to a desire to reduce the number of short prison sentences being passed, I noted that he coupled his remarks with the observation that the impetus was all in the opposite direction. It is a very hard sell. The very difficult part of that is the attitude of large sections of the media, which are very critical of sentencing and see most of it as over-lenient. That is one area.

On legislation, it is not just a question of maximum sentences. It is also a question of the structure of sentences; legislation has brought in extended determinate sentences, which require prisoners to serve at least two thirds of the term before they can be released. That has been a major growth area in the prison population in recent years. It makes a significant difference whether you can be released at the halfway or two-thirds stage. The two-thirds stage is only the point at which you can apply for consideration for release. The figures I have seen show that in fact people are serving 75% to 80% of their sentences when they have had an extended determinate sentence because of the way the parole system works and because people are knocked back. They do not always get it the first time.



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Those are some of the factors. We submitted a paper to you earlier in your inquiry that sets out a number of other factors.

Q129 **Chair:** Yes, and you endorse those.

Lord Justice Treacy: Yes.

Q130 **Chair:** Do we have sufficiently informed debate about sentencing, looking back on a career in the criminal justice system?

Lord Justice Treacy: There is constant debate about sentencing.

Q131 **Chair:** But is it informed?

Lord Justice Treacy: A lot of it is not informed, I think. There are serious tensions between the desire to protect the public, which is a very important part of sentencing, and the desire to punish. On the other side of the coin, there is the need to rehabilitate. They are aims of sentencing that pull in opposite directions. The way public debate has gone has been to favour very much the deterrent and the punishment rather than the rehabilitative.

One of the problems that exists lies around community sentences themselves. You recently produced a report on that. I have seen it and, if I may say so, I agree with a great deal of it. Although I do not speak for the judiciary, I am of course in regular contact with judges and hear what they have to say about their experience on the ground. There is real concern in the judiciary about the way the current arrangements are working and, in particular, the enforcement and the rigour of supervisory arrangements. There is a strong feeling that they have been allowed to slip.

The problem is that when a judge is faced with a difficult choice, as he or she will be in many cases, between custody and a community option, if there is no confidence in the efficacy of the community option being put into place properly, the judge will look to another option, and that will be custody. There is a lot of work to be done on regaining confidence, not only on the part of the public but on the part of the judiciary, in the working of community orders, and the enforcement of them.

Q132 **Chair:** That would seem to be consistent with Lord Thomas's observations about genuinely tough community sentences.

Lord Justice Treacy: Yes. There has always been a problem selling community sentences to the public because they are routinely portrayed as a slap on the wrist or "X walked free from court" as if nothing further was going to happen. There has always been a problem in selling them, but the problems have been compounded by the way the reforms have worked out in practice.

Q133 **Ruth Cadbury:** Can I shift to the type of offences and to what extent that is a factor? The MOJ says that the offence make-up of the population is changing, with a shift to offences that carry longer sentences.



Lord Justice Treacy: Yes.

Q134 **Ruth Cadbury:** How do you explain it? Are the offences perpetrated becoming more serious, or are there fewer less serious cases getting to court, resulting in a higher proportion of the people in custody being those convicted of more serious offences?

Lord Justice Treacy: The sentence mix coming before the courts has changed. We have evidence of that from the evaluations we have done. For example, for the section 18 offence—grievous bodily harm—more cases are falling into the higher category. It appears that weapons are being carried and used more often to inflict injury, so they fall into the upper categories.

In drug offending, supply and importation offences, which are at the very top end of the range of offences, involve larger quantities of drugs. Much more significant quantities of drugs are being detected, and that will obviously lead to higher levels of sentencing. The purity of the drugs is higher. Purity is an important factor in sentencing and will push sentencing up. We have evidence that that sort of offending is more serious.

Burglary is a crime that offenders tend to commit repetitively. Of course, there is the three-strikes rule, with a minimum term of three years on the third conviction. The longer people develop in their criminal careers, the more likely they are to be a third-strike burglar.

For those sorts of reasons, the mix of cases is becoming more serious. Sex is probably the greatest example, because the landscape of sexual offending has changed. Thirty years ago, it was a one-off offence, very often against somebody who was not particularly well known to the perpetrator. Now the whole focus has changed because investigations have changed and victims are coming forward. It is either familial offending or offending within a small circle. These people are not just offending on a single occasion, regrettably. They are offending repeatedly against the victim, or they are offending serially against members of a family. They will obviously attract significant sentences, and they will almost by definition be classified as dangerous, so they will be serving two thirds of their term before they get out. The prison population is swelling because significantly larger numbers of people are serving longer-term sentences and staying in prison longer.

The number of cases being dealt with in the Crown court has fallen since 2010, but there has not been a corresponding fall in the level of the prison population. It has remained broadly stable. That is a very good reflection of the fact that the case mix before the Crown court in particular, which passes the longer sentences, is becoming more serious. Fewer people are being sentenced, but those who are spend more time in custody, so the level of the prison population remains relatively high.



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The workload of the Crown court is such that now between 40% and 50% of cases coming to the Crown court involve sexual allegations. It has taken over. It is a bit like Japanese knotweed; it has just taken over the work of the Crown court. Because those are offences that attract stiff sentences, the prison population has remained stable despite the diminution in receipts.

Q135 Gavin Newlands: In terms of the make-up of the societal groups in the population, what does the council's research tell you about how current sentencing practice affects different groups societally such as women, BAME defendants, those with mental health difficulties or young people? A specific group I have in mind are care leavers or, as we say in Scotland, care-experienced people. They currently make up about half the prison population in Scotland, so it must be a significant proportion down here. How do the current guidelines affect different groups in society?

Lord Justice Treacy: When we do work on any guideline, we do an equalities evaluation before we start the work or at the start of the work. We do another one at the consultation stage, and one before we allow a guideline to go definitive, to see if our proposals are going to have a disproportionate impact on any particular group.

The factors in our guidelines are race and gender neutral, but within the guidelines there will be factors more apposite to a particular group—for example, females, where we have mitigating factors for being the sole carer for a child or dependent relative. That tends to be a factor that women are able to access in far greater numbers than men. Another example is if the offence is committed under coercion or under pressure. That tends to be what I would call a female-friendly factor in the guidelines. Women can avail themselves of it to a much greater extent than can males.

As far as ethnicity is concerned, the language we use in the guidelines is not of itself likely to discriminate against any particular ethnic group. We have recently started a process of removing the word "gang". "Offence committed in gang or group" was routinely mentioned in various guidelines. We have removed the word gang for two reasons. First, because the concept of a gang is not very clear in any event—whether it is something organised or something informal. It is too easy for a group of people simply to be characterised as a gang. The language works just as well without using the word gang. You can simply talk about a group of people committing an offence. Secondly, we recognised that in recent times gang had come to have overtones of BAME connotations. We did not want to stigmatise any particular group by the use of a factor of that sort. We are going through a process of removing that.

At the end of your question, you mentioned something about those who are care leavers. Noting that there is a very high incidence of children who have been through the care system being brought into youth courts, one of the things we took care to do in our youth guideline was to lay



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particular emphasis on the need for the court to make allowance for that factor. The whole point about the youth guidance is to avoid criminalisation wherever possible. In some ways, the care system tends to direct children who go wrong more quickly into the criminal justice system, rather than dealing with them in other ways. We highlighted that and, in effect, asked courts to pause when they are deciding how to deal with children who have come before the court with a care history.

We noted from our research that BAME children are over-represented proportionately to the population in the care system. We highlighted that as well, saying that it was a factor that needed to be taken into account. We were criticised in some quarters for that, by people who said that we were seeking to deliver different sentence outcomes for people from different ethnic origins. We were not doing that. What we were seeking to do was to get the court to look at the individual before it, and take account of that individual's life experiences, which is a very different thing.

Q136 Gavin Newlands: Thank you very much for that very comprehensive answer. You made the interesting point that sometimes the care system points some people towards the criminal justice system. You outlined some mitigating factors. Do you think that at the moment you are missing any mitigating factors or that some could be strengthened further?

Lord Justice Treacy: You mentioned mental health as part of your question, and I wanted to respond to that. I am conscious that my answers are rather full.

Mental health is important and we are doing a specific guideline on mental health that works all the way across the system. It poses a real problem for judges to assess how culpability is affected by mental health conditions. It will be a very difficult piece of work. It is a piece of work on which we have just embarked. We are finding it very hard going, but we will persevere and we will eventually produce a piece of work on that, because so many coming before the courts have mental health difficulties.

It is a problem that is not just confined to the criminal justice system. There is a resources problem. The Department of Health will obviously have to be consulted, and we will have to produce a guideline that is in fact practical and useful. There is no point producing some theoretical one that courts cannot implement because there are not the resources to do what needs to be done.

Q137 Chair: It is an argument for a more holistic approach to mental health issues across society, which the Prime Minister has talked about.

Lord Justice Treacy: Yes.

Q138 Bambos Charalambous: On the issue of offenders who have been in care, local authorities release them at the age of 18, but would it



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sometimes be better if there was more provision after leaving care, or if they were able to be in care longer? Is that something that you think would make much difference?

Lord Justice Treacy: I am not really qualified to speak about that, I am afraid. It is not my territory. I am sorry, but it is just a bit outside my remit.

Chair: There is a mixture of factors, not all of which are judicial.

Q139 **Ruth Cadbury:** Picking up on Mr Newlands's questions about specific groups in the population, you covered young people under 18, but what about young adults, the 18 to 25-year-olds?

Lord Justice Treacy: As they say, I am glad you asked me that. We are doing a piece of work that seeks to explain some of the overarching factors in our guidelines—for example, abuse of trust or the impact of age and maturity. Specifically in regard to the cohort from 18 to 24, we will be producing a piece of work that enjoins the courts to see that you do not step off the edge of a cliff on your 18th birthday, and age and maturity do not cease to be a relevant factor.

The Howard League brought out a very valuable paper last year that highlighted the developmental issues for young adults and shows that maturity takes longer than achieving technical adulthood. We will be reflecting that in further guidance we give.

Q140 **Ruth Cadbury:** Another group is people with a learning disability or autism.

Lord Justice Treacy: Learning disability is included in our mental health review. It is mental health and learning disability, and those suffering from autism will also be under the umbrella.

Q141 **Victoria Prentis:** Have you done any assessment of victims' perceptions of community sentences?

Steve Wade: No, we have not. Obviously we seek the views of victims via our consultation processes on individual guidelines. We have a victims' representative on the council to present that perspective, but we have not done research specifically in relation to victims, their view of particular disposals and their confidence in them.

Q142 **Victoria Prentis:** Community sentences are where it's all happening at the moment. MOJ Ministers are very keen on them, particularly for shorter sentences—not sending people to prison for periods of under 12 months. This is the realistic alternative to that. As a Committee, we are very interested in investigating what victims think.

Have you done any thinking about the rehabilitative nature of community sentences as opposed to the punitive nature of community sentences? Is that something you have given any thought to?



Steve Wade: We are aware of the literature in the area, and the research that has been done, in broad terms. We frankly do not have the resources to carry out bespoke research ourselves in that area, but our research team has pulled together the available evidence on effectiveness as defined in terms of rehabilitation. There is obviously a variety of ways one might define effectiveness. That information has been pulled together in a digest that has been circulated to council members to help them have a fuller understanding of what the research currently shows.

Q143 **Victoria Prentis:** Is that something you could share with us or not?

Steve Wade: I think we may already have shared it informally with your Clerks, so you have access to that information.

Q144 **Victoria Prentis:** We are all finding our way in this area. How can we educate magistrates and judges as to what sort of community sentences are available? The paucity of information strikes us as a real issue.

Lord Justice Treacy: We have a judicial college whose job is to inform judges and magistrates. When magistrates are appointed they undergo a training process, which I anticipate will tell them what the various options available to them are. I think that judges and magistrates are aware of what the options are, not least because they receive pre-sentence reports when sentencing. They know what the options are and they know what the mechanics are, because very often the pre-sentence report will spell out what a particular proposal will mean for a particular offender. That information is there. I do not think it is a question of lack of knowledge.

Would you forgive me if I just came back to one thing that occurred to me? You asked if we had done any research with victims. We did one very small piece of research, but it had quite an interesting outcome. It was very small scale. It was when we were doing our drugs guideline, and it related to drug supply in neighbourhoods. We did a small-scale survey on the attitude of people living in neighbourhoods where drug dealing was taking place on the street corner.

Rather to our surprise, it was not all one way by any means; there was a significant body of opinion that was much less punitive than we had thought it would be. People spoke about addicts needing to fund their habit, and showed a degree of sympathy for the fact that they were addicted in the first place, and then that they had no means of coping with that addiction other than by selling further quantities of drugs. It certainly was not the overwhelming result in that particular piece of work, but it showed that there was a range of views that were sometimes surprising and not all of them punitive.

Q145 **Alex Chalk:** I realise it is hard to believe, but judges are also people. Judges, like ordinary people, may have some misgivings about the credibility of community sentences. When we read in the paper that Wayne Rooney has done his community penalty and he thought it was great fun and he really enjoyed it, that is great for him but it has a



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slightly corrosive effect on credibility.

In your experience, what would judges like to see in community penalties to give them confidence and, therefore, a greater readiness to apply them? The misgivings that the community share, no doubt they share as well.

Lord Justice Treacy: What I would like to see, first and foremost, is something that shows me that the supervision and management of the community sentence is rigorous and that excuses will not be tolerated; and that there will be frequent contact between the offender and the supervising officer, not merely a phone call every few weeks. I have only anecdotal evidence for that. I have heard examples quoted, but I have no specific evidence, of very light touch supervision being adopted in many cases. I would like to see the supervising officer very much more on the case of the offender, so that it becomes widely known that they are under the eye of a scrutineer and will be held to account if they do not comply with the various requirements.

Q146 **Alex Chalk:** Is it your sense among the judiciary that that is the sort of reassurance that could move the dial, to use that expression, and could make a meaningful impact in sentencing decisions at the margin, for somebody who is driving while disqualified or is on a lower level burglary offence?

Lord Justice Treacy: I think that would make quite a difference. In fact, some of the evidence on effectiveness of sentencing shows that the more intensive the requirement, the greater the likelihood of success. It is not true in all cases but there are a number of particular disposals of community orders with quite intensive requirements that seem to work the best.

Q147 **Chair:** That has been extremely helpful. I will end by asking a couple of things. Community sentences with greater intensity might, on the face of it, seem more expensive, but when you contrast them with the cost of imprisonment—

Ruth Cadbury: And reoffending.

Chair: They will be considerably less, won't they?

Lord Justice Treacy: Absolutely. We know that the average cost of a community order is between £4,000 and £5,000 per annum. The average cost of a prison place is about £32,000 per annum. The figures speak for themselves.

Q148 **Chair:** The council has power to promote awareness of the cost of different sentences. How much do you do that?

Lord Justice Treacy: We do not really promote awareness.

Q149 **Chair:** It is within your remit if you wish to, as I understand it.



Lord Justice Treacy: It is within our remit, but we do not particularly do that because, first of all, we are satisfied that judges and magistrates, who themselves are judges, are well aware of the differential costs of a community order and a prison sentence. They are notorious. We do not do anything particularly to promote that aspect.

Q150 **Chair:** Is there perhaps a role for the council in informing the broader public about that? You referred to the point about the attitude of the media and the political clamour from our constituents. Is there a role for an independent body such as yourselves to help with informing people?

Lord Justice Treacy: I think on our website we have some material directing people to information that shows them the differential costs of sentencing.

Steve Wade: It would be fair to say that we do what we can with the resources available to us. For example, we work with the Citizenship Foundation to try to get some awareness of sentencing guidelines, how they operate and the sentencing process as a whole, embedded into those kinds of programmes. It is very much having to take a quite targeted approach, working with others with the resource we have. The website is an area we are looking at in some detail at the moment. We have commissioned some research on public confidence in sentencing more broadly that might give us some interesting conclusions. Again, how we take that forward will be limited by the resources available to us.

Q151 **Victoria Prentis:** Have you done any analysis of the rates of reoffending following community sentences, following comparative crime and prison sentences? It may be very difficult to do.

Steve Wade: We have not. We have not been in a position to do that. All we have been able to do is take account of studies done elsewhere, and to form our view as to their quality.

Q152 **Victoria Prentis:** What is that view?

Steve Wade: It varies depending on the programme. As the chairman said earlier, there are some programmes or features of programmes—intensity of supervision, for example—that tend to be more successful; drug reoffending programmes would be one area. There are other programmes where the evidence about whether they are effective is more mixed. For example, addressing sex offending is an area where the evidence on the benefits, from our perspective, looks more mixed.

Q153 **Victoria Prentis:** Is that an area you are going to do more work on? Almost 20% of people in prison are there for a sex offence. As Lord Justice Treacy said earlier, that figure is bound to rise substantially.

Steve Wade: We are not going to be in a position to commission any research ourselves. The council has agreed that our research team continues to keep under review the evidence in that area and any new research that comes out. We work closely with the Ministry of Justice



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analysts. We are aware of the research they are doing and whatever studies they are aware of. We will form our own view of the quality of the study, depending on what the volumes have been.

Q154 Victoria Prentis: What concerns us is that not enough of this research is being done. We have had sex offender training programmes, which at best have now been shown not to work. Who do you feel ought to be doing this research?

Steve Wade: Ultimately it is for the Ministry of Justice to commission it. It will be funding the programmes, designing the programmes and looking at what is available nationally, and ensuring there is consistent availability of those types of interventions. It is something on which we would be able to work with Ministry of Justice analysts. Certainly we would be interested in any outputs, but it is probably for them to lead on this phase.

Q155 Chair: I know you are consciously independent of the Ministry of Justice, but equally there is learning out there that can be shared.

Lord Justice Treacy: Yes, we are fiercely independent as a body, but we work with the Ministry of Justice in accessing their data and their research material. That does not compromise our independence because we consider it and take our own view about it.

Steve Wade: And likewise we share our bespoke research with the Ministry of Justice analysts, so that they are able to use it and feed it into their wider perspective.

Q156 Chair: What would be the cost of reinstating the Crown court sentencing survey that was discontinued in 2015?

Steve Wade: It would be reasonably significant for us.

Q157 Chair: What is that in broad terms?

Steve Wade: It would probably be an extra two members of staff if we were to do it full time. The important thing to note is that obviously the Crown court sentencing survey, valuable resource though it was, only applied to the Crown court. Part of the reason we decided that resources were better diverted was to have bespoke research that covered both the magistrates courts and the Crown courts.

The other thing to point out is that it is quite a significant burden on the courts. It will be interesting to see where the digital aspects of the courts reform programme go with data that they can collect more routinely and in a more automated way. We are very interested in understanding what data might be available through that route. There are issues with trying to reinstate the CCSS, as we know it, in the same way as it operated, particularly with the other demands on courts' time, both sentencers and administrative staff, with the reform programme. It would be a tough ask of them to collate the same information again as we used to require of them.



Q158 **Alex Chalk:** There was a slight hoo-hah about letters going round to judges saying, "Don't forget about community penalties. Suspended sentence orders aren't simply a more severe form of community penalty." There was some push-back suggesting that this was all engineering and, effectively, the Sentencing Council intruding into the arena of politics. You made clear in your response to *The Times* that that was not the case and that you were simply trying to enforce good sentencing practice.

Earlier in your evidence today you used the words "engineered" and "set our face against" in the context, I think, of firearms and drugs. At the risk of stating the bleeding obvious, sentencing is intensely political. If you listen to the MOJ estimates day debate, there are people like me saying, "If you have fewer people in custody, you've got more for legal aid," and all this good stuff. It is intensely political. What can you say about the extent to which you are or are not intruding into the political arena in terms of the work you are doing on the Sentencing Council?

Lord Justice Treacy: We do not believe we are political. The first thing we look at when we are devising our guidelines is, "What is the current sentencing practice of the court?" By and large, that guides us as to the levels of sentencing and the sort of factors that are important in our guidelines.

The evidence presented to us through the course of consultation will show, though, that there may be concerns in particular areas. For example, in the over-sentencing of drug mules or under-sentencing of those who commit campaigns of rape. I do not see that making adjustments of that sort is political. I think that is simply re-weighting certain aspects of the sentencing system, in the same way that judges in the Court of Appeal who give guidance recognise that certain factors carry greater weight than they did in the past—for example, in manslaughter cases, where we are bringing out a guideline very shortly. Eight or nine years ago, the then Lord Chief Justice gave a very influential judgment saying that insufficient weight in manslaughter sentencing was being given to the fact that a death had resulted from an unlawful act, and signalled that there should be tougher sentencing.

I do not think that is political. In a sense, it is taking account of what Parliament has said. You said in 2003, in the Criminal Justice Act, that the two key drivers of sentencing are harm and culpability. Everything derives from those two things. I see us as merely applying the legislative steer.

Q159 **Alex Chalk:** But I respectfully suggest that there is a concern in using phrases such as engineered and set our face against.

Lord Justice Treacy: You can blame me for that. My language is perhaps too vivid. Perhaps I should have said something like influenced.

Q160 **Alex Chalk:** Or calibrated.



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Lord Justice Treacy: I agree. My language was too macho, I think. I would like to withdraw it.

Steve Wade: Because it is such a politicised environment, inevitably any of the decisions we take are seen through a political or politicised lens. I am thinking of the increase in fines for environmental offences. Although they would be seen as more punitive, it was not necessarily from a desire to be more punitive; it was in order to bring them in line with where they ought to have been in terms of the way the legislation was intended to operate.

Looked at from one perspective, they are more punitive, but that was not the rationale behind them. We were led by evidence on how fines, particularly for large companies, were being handed down at that particular time, and ensuring that they were brought into line based on what the evidence was telling us.

Q161 **Alex Chalk:** Creating consistency and calibration—all that stuff—is absolutely right, but I think one has to be careful about language and the political climate; it creates a hue and cry, as you know, and resonates here in Parliament.

Lord Justice Treacy: You are right, if I may say so, and I regret the use of the word engineered.

Alex Chalk: It is not a big deal.

Q162 **Chair:** Do you always do a resource impact assessment for your guidelines? Simply in the period May 2010 to 2014, 1,076 offences were created, two thirds of which are potentially imprisonable. Are you aware of a resource impact assessment being done in relation to the offences that were created, either by Government Departments or Parliament?

Steve Wade: I imagine that the Departments bringing forward the legislation would need to form some kind of assessment of what they think the likely impact would be. Our own resources estimates are only based on what we think the impacts of our guidelines will be.

Chair: I have a sense that legislators are less scrupulous about investigating the impacts of legislation than you are about your guidelines. That is to your credit.

Thank you very much, gentlemen, for your evidence. You are regular interlocutors of ours, often on paper, because of course we are statutory consultees on the guidelines. We appreciate the engagement that we have with the council and the work you do there.

Alex Chalk: And we appreciate very much the work of the Sentencing Council overall.

Chair: That is very true. It is an important institution and I am personally grateful, Lord Justice Treacy, for the work that you have done as its chair. We wish you well for the future, and you, Mr Wade, and your staff and team there. It is an important and perhaps often unrecognised



institution.

Alex Chalk: It is valued. Thank you very much.

Chair: We are very grateful to you.

Examination of witnesses

Witnesses: Richard Garside, Harvey Redgrave and Rachel Tuffin.

Q163 **Chair:** Good morning, everyone. Welcome to our second panel for today. Would you introduce yourselves and the organisations you represent, and then we will get into the questions?

Harvey Redgrave: I am Harvey Redgrave, managing director of Crest Advisory, which is a specialist criminal justice organisation.

Chair: Would you speak up a little, if you can, Mr Redgrave? This is quite a big room.

Rachel Tuffin: I am Rachel Tuffin. I am director of knowledge, research and education at the College of Policing, in the What Works Centre for Crime Reduction.

Richard Garside: I am Richard Garside. I am the director of the Centre for Crime and Justice Studies, an independent educational charity.

Q164 **Chair:** Thank you for the evidence you have submitted to the inquiry. As far as each of you is concerned, what in a nutshell are the key drivers of sentence inflation? Everybody agrees that sentences have gone up and that the prison population rises continually. You heard what Lord Justice Treacy said about the guidelines not being a principal driver and that there are many other factors. What do you identify as the key factors?

Harvey Redgrave: If you look at the prison population, there are two major drivers. There has been a change in the mix of offences coming before the courts, with growth in serious, high-harm offences. No doubt there has been a legislative impact from longer sentences at the more serious end. The changes to the Criminal Justice Act 2003 in particular had an inflationary effect on the prison population.

This has happened against the backdrop of falling crime, falling numbers of people being brought before the courts, and falling convictions and prosecutions. There have been quite strong headwinds pushing in the other direction. What we have seen is a shift in the mix in the composition of the prison population over time, which has driven it up.

Q165 **Chair:** Would you agree with Lord Justice Treacy's observation that that is partly because of the nature and seriousness of the offences, or is it a more punitive public climate?

Harvey Redgrave: I would say it was more to do with the nature of the offences, if you pressed me. It is quite hard to disentangle some of these things. There has been a more punitive political climate. Perhaps we will



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come on to that, but the inflationary effect of legislation tends to have been at the more serious end. There has probably been a deflationary effect at the less serious end, so it is not a uniform trend.

Rachel Tuffin: I concur with that. We did some work in 2015 looking at demand, with a particular focus on the front end—the policing demand. It showed that shift in mix. The costs of crime information that we looked at showed a very clear picture of increasing complexity, particularly around fraud and sexual offences. Those are both areas where you would expect significant knock-on effects in the prison population. Yes, I concur with that.

Richard Garside: To answer this question you need to think about why people are drawn into the criminal justice system in the first place. At the end of the day, prisons are the end point of quite a complex set of decisions, which start with somebody being arrested and the decision to prosecute, and so on.

There are questions about why people end up in prison specifically, and how long they remain in prison. There is certainly evidence—I think the Committee is very aware of it—to suggest that prison sentences have become longer, and that people are more likely to go to prison for certain types of offences.

There are then questions about how people find it difficult to leave the system, and avoid recapture or re-criminalisation by the system. Again, there is a range of things, from criminal records and the drag effect they have on people trying to move on with their lives. The breach recall system has seen a dramatic increase in the number of people returning to prison for breach and on recall. Decision making in the Parole Board has probably become more cautious. It is quite difficult to identify any one particular factor because at the end of the day the system operates as a system.

Without a doubt, ultimately, it is nestled in a set of legislative and political decisions. Through a series of decisions over 20-odd years, many of them rooted in legislation, we have seen a quite sharp but sustained increase in the prison population. That is ultimately resolvable legislatively and politically, but the current situation, in the latest legislative deadlock in Parliament, is perhaps not the best time to try to make these kinds of big, grand plans.

Q166 **David Hanson:** I declare an interest, in that I did work with Mr Redgrave when I was a Home Office Minister and a shadow Home Office Minister. I think it is important to have that transparency.

We have been round the houses several times with regard to community sentences and how we make them stronger, and how we reduce the number of short-term prison sentences. If you were the Ministry of Justice, what would be the one suggestion that you would make about what we could do now to move the agenda on? We think there is general



agreement that community sentences are a good thing to reduce the short-term prison population, but we seem continually to have a logjam; the rhetoric is talked but the actual practicalities are not delivered.

Richard Garside: To preface my remarks, it is worth bearing in mind, as I am sure the Committee is aware, that as a proportion of the total prison population those on short sentences are a pretty small number. We are talking of maybe 6% to 8% under 12 months. Even if all of those under 12 months were on some form of community or non-custodial sentence instead, although it would be very good for them and the disruption to their lives because we are talking about tens of thousands every year, in practical terms it does not really solve the prison population problem; it just slightly mitigates it.

My own view is that one of the real problems with community sentences, and the discussion around them over a number of years, is the endless attempt to make them sound tough—trying to toughen them up. You can go right back to the Halliday review in the early noughties. There was talk then about toughening up community sentences. Indeed you can go back before then. It is not clear to me where all this tough talk has got us. At the end of the day, I suspect that if an average member of the public is asked which is tougher, six months' community sentence or six months in Wormwood Scrubs, however tough you made community sentences, most people would say, "A prison sentence sounds a lot tougher to me."

In order to get that shift, we need to get away from the tough-talking language and just ask who should be on community sentences, what kind of risk they might pose and what kind of arrangements can be put in place in the community to ensure that those sentences are discharged effectively. Critically, we must not throw up so many hurdles and obstacles for those under the community sentence that they are destined to fail and end up being recalled to custody.

Rachel Tuffin: I would take it in two parts. First, there was a question earlier about the views of victims about community sentences. It is important for us to have a strong story for the public about community sentences. Individual victims are often understanding about what individual offenders might experience. When individual members of the public are asked about specific case study examples, they are often more lenient in their decision making than a jury might necessarily be, or a judge. I am sure the Committee is aware of that evidence. It is about how we communicate that to the wider public. People who are involved in decision making and who get more information about individual examples are generally very accepting of community sentencing. I am not sure that message gets out strongly at all.

Because we focus on crime reduction more broadly, I would take a further step: how are we getting upstream? I appreciate that the focus of the Committee today is very much on the prison population and sentencing issues, but I would want to take a step further and look at what we are investing in, in reducing the pipeline of people coming into



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the system. That is where I would always want to concentrate most energy and investment, both in research and in resources.

Harvey Redgrave: I agree with the question. There is good evidence that community sentences can be a robust alternative to custody. The problem is that there has been a dramatic collapse in the use of community sentences. I think they have more or less halved over the last decade. We have done some work on this, and it is clear that judges do not really have confidence in community sentences. Magistrates lack confidence. They lack information about what they are and they lack confidence in how robust they are. That has to be addressed.

I am in favour of what Ministers have said about moving towards the Scottish model of a new presumption against the use of short custodial sentences, but the quid pro quo is that you have to invest properly in community sentences, and that will require them to be more intensive. Where I would potentially disagree with Richard is that I think they have to have a punitive element, because that is about the public consent that you need in order to be able to use them.

Q167 **David Hanson:** You argued in the rewiring justice report that they are too lenient. I want to get a flavour of it. From your point of view, Mr Redgrave, what should change now? In my time, we put orange jackets on them so that they were visible. We made it a requirement and we were publicly up front about what people were doing. What does too lenient mean? What should the Minister of Justice do tomorrow to make the sentences harder, in your view, and to make them more acceptable by judges?

Harvey Redgrave: I thought the community payback initiative was a good initiative. I supported the work that Dame Louise Casey did—I know it was controversial—and the work that you did in Government to push that along. There is a sentence that they have developed in Greater Manchester called the intensive community order. It is a bespoke sentence for the 18 to 25s and has been developed specifically as an alternative to short custodial sentences. The early evaluations of that sentence are that it is very good.

Part of the answer is that you need to devolve power and responsibility down to police and crime commissioners and to mayors. That is where you are going to get the energy to invest in some of the alternatives and to build sentences that are bespoke to the needs of offenders in those areas.

Q168 **David Hanson:** What do we do about breaches?

Harvey Redgrave: They need to be properly enforced. We do not have confidence at the moment that they are properly enforced. The inspectorate has said that it has concerns that they are not as toughly enforced as they should be. That obviously needs to be looked at.



Richard Garside: The difficulty with talking up the toughness of community sentences is that the dramatic decline in community sentences that Harvey referred to came at a time when there had been endless political attempts to talk up the toughness of community sentences. It is too simple to say that one is causal of the other, but there may be a relationship worth pondering. The tougher you make the community sentences, the more breaches you are going to have, all other things being equal. The tougher they are, the more likely it is that people are going to breach them. Then people will end up going back to prison.

Q169 **David Hanson:** But is it reasonable for a court to say, "You will do 25 hours. You will turn up at this venue. You will do this work. If you do not turn up at this venue or do not do this work, you will face a consequence accordingly"? I envisage toughness as a regime where you have to commit to do the work that has been determined by the state, which is visible, which gives confidence to the victim and which at the end of the time may invest you with a small amount of skill, potentially, or something you have not done before. At the end of it you will say, "I have done 25 hours or 30 hours. I have completed the task given to me. I have done it in a visible way and I have paid my penance to society in a way that does not rob me of my independence and life, outside prison, which allows me to continue an ordinary day-to-day life while doing a sentence in the community." Is that too tough?

Richard Garside: I am not saying it is too tough. I am very strongly in favour of people who have committed offences and been convicted of them being visibly held to account for their behaviour. The question is how you do that alongside addressing the problems that got them into the situation in the first place. All I am saying is that when courts order particular sentences, there has to be a credible and coherent understanding that it is a realistic sentence that somebody can discharge and move on with their life.

The other side goes back to the connectivity of the system. We are trying to do all of this when there is significant chaos in the probation service. If there was one thing the Minister was going to do to try to sort out community sentences, it would be to sort out probation so that those who are subject to probation supervision have good quality support, good quality interventions and an opportunity to move on with their lives.

Q170 **David Hanson:** That is a reasonable point. People with drug, alcohol or other problems should have some treatment order attached to the order that is part of the community sentence. There are a range of orders in a community sentence; they include treatment orders as well as physical activity orders, tidying up orders, building orders or whatever they may be in terms of the activity undertaken. We might be on the same page.

Again, if we were the Minister today, what would be the most effective thing that could be done to increase the number in an effective way and reduce the number of prison sentences? I am still not quite sure I have an answer, if we were the Minister today, as to what we would do



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tomorrow to influence the sentencers, who appear to be the people who are less inclined to operate that sentence.

Richard Garside: Perhaps the language of effectiveness and impact would be a better place to start than the language of toughness.

- Q171 **Chair:** The judge is going to have to be accountable to public opinion for what he does. The general public might not be terribly impressed if we talk about impacts and accountability. They might say that somebody who has done something wrong has breached the contract with society, and the most effective way to stop them doing it again would be one of the interventions that Mr Hanson talked about, and you referred to, Mr Garside, to try to change their lifestyles around. There has also got to be some visible recognition by them that they did wrong, and some payback to the community. There is nothing wrong with that mixture, is there?

Richard Garside: I am not arguing against that. All I am saying is that this year's tough community sentence becomes next year's weak and soft sentence, and then we have to make it tougher again and tougher again. At some point, we have to stop talking about toughness and start focusing on effectiveness and the impact of the sentence.

- Q172 **Alex Chalk:** With respect, aren't you looking at this from the wrong end of the telescope? Surely what needs to happen is that there need to be tough, credible community sentences, just as the Chair says, so that my constituents can have confidence that somebody who has breached their debt to society is going to take some pain for it, put bluntly. The key to it, as Lord Justice Treacy said, is that there are sufficient resources to monitor that and to ensure that the person does turn up, has someone keeping an eye on them and, if they breach, they will come down on them like a ton of bricks. The sentencing judge has to know that a sword of Damocles genuinely hangs over that convict and that there will be consequences if they do not do it at all.

The problem at the moment is that a sentence is imposed, but goodness knows the extent to which they are being monitored and goodness knows the extent to which they are being breached if they are not doing their job. You don't ditch the toughness of it; you need to add supervision and the intensity of resources to supervise. Isn't that really what needs to happen?

Richard Garside: I certainly agree that there need to be appropriate resources for the probation service to do their job, and they are certainly not there at the moment. Courts need to impose sentences that have a realistic prospect of being delivered and completed successfully. At the moment, there is a misalignment because probation does not have the resources to do its job.

Alex Chalk: That is the point.

Richard Garside: Courts are arguably, on some occasions, throwing up barriers and hurdles to people that are unnecessary and make it more likely that they are going to fail.



Q173 **Alex Chalk:** Like what?

Richard Garside: For example, if a community sentence is very much focused around work as a punitive aspect, someone is not necessarily going to become a better person from being forced to do a whole load of work.

Q174 **Alex Chalk:** I don't care. They have to be punished, don't they?

Richard Garside: That's fine, and that is a political judgment. What I am saying is that if we are thinking about whether sentences have the impact—

Q175 **Alex Chalk:** If you constantly say, "Poor lamb, we've got to make sure that they are rehabilitated," isn't that precisely the problem? Of course that is an aspect, but my constituents want to know that, if that person is not going inside, they are going to be credibly punished in the community. If we are to sell this and give judges confidence, hasn't that got to be the focus of the rehabilitation of community punishment orders in the eyes of the public? Doesn't that really have to be our centre of effort?

Richard Garside: The point I am making is that it is a very difficult sell. Obviously you know your constituents and I do not, and that is your judgment and not mine, but it is a very difficult sell to persuade members of the public that any community sentence, however tough, is as tough as a prison sentence.

Alex Chalk: But if yours is the language, of course they are going to take that view, because you do not even have confidence in them as a matter of punishment. If we are to win this argument, there has to be better PR for community punishment orders. The key point about that is ensuring that members of the public, my constituents, think that someone will pay for their crime against the community. As soon as you start ditching that as your centre of effort, you are doomed to fail. I really think that.

Q176 **Chair:** Ms Tuffin, you have been very quiet during this dialogue.

Rachel Tuffin: It comes back to what you are looking at in terms of effectiveness. I appreciate the point about the constituents, but we have usually found in research that, as soon as you have the opportunity to engage people with the impact question, they very quickly come to the conclusion that it does seem like a better option. They are perfectly capable of looking at impact and cost with us, and taking those things into account, setting aside the question about reparation and punishment for a moment. They quickly come to different decisions when they are given the evidence on community sentencing and imprisonment. It makes sense for the wider public, who are actually spending more money and getting worse outcomes.

That broad high-level argument is hugely important and not used enough. It is a bit like the policing world and bobbies on the beat. We know that they are only useful if they are actually at hotspots or



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engaging as part of community problem solving. Those big arguments are often useful to come back to and to try to emphasise. I appreciate it is difficult. You are probably right: it is a very tough sell unless you are concentrating on overall crime reduction and cost to the public purse.

Chair: Is that the message we ought to be concentrating on?

Rachel Tuffin: Yes.

Q177 **Chair:** You can punish and make reparation at the same time, and have impact in that way.

Rachel Tuffin: Yes. There is a further point that is really interesting. It is about the storytelling. What is the mechanism? In our crime reduction toolkit, we do not just look at impact, cost and implementation. We also try to explore the mechanism. Why does this work? What is actually happening in the course of the mechanism? That helps you think about how to replicate it and make sure that people are supervising the right things.

What do we think is happening in a community sentence? Is it that we are helping people to be a bit less disorganised? Is it that they are shamed in some way? Is it that we are restraining their liberty? There are those elements, and there will be other things happening as well. It is understanding what we expect to happen and how supervisors should make sure those mechanisms are firing during the period of the intervention. That is hugely important too.

Q178 **Chair:** That is how to avoid what Mr Redgrave's evidence described as the false choice between punitive and rehabilitation. You are saying it is not an either/or.

Harvey Redgrave: I am saying it is not an either/or. I think it is a bit of a dead end to get into the argument about whether we should be more punitive or more welfarist. There is a social value to punishment and a social value to rehabilitation, and you need both combined.

There is a political argument, which I would say is about democratic legitimacy and consent. People have to have confidence that wrongdoing has consequences. There is also an evidential argument, which is that swiftness and certainty act as a greater deterrent. Community sentences are not swift and they are not certain. Often, they do not even begin for months after the sentence is handed down.

Q179 **Chair:** There has to be a relationship in the offender's mind as well as in the public's between the wrongdoing and the comeback for it.

Harvey Redgrave: Yes, exactly.

Q180 **Ellie Reeves:** I want to ask about characteristics of interventions in the criminal justice system, but before I do that I want to go back to public confidence in community sentences. There is a really important issue around judges not having the confidence to give out community



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sentences. If we are serious about them, judges have to have confidence to give them out. What one thing would you do to make judges have more confidence in community sentences?

Harvey Redgrave: We looked at this; we polled some magistrates and we held some focus groups. Two things became clear. One was the quality of advice that magistrates get. The pre-sentence report used to be quite an in-depth report giving all the information, the case history and the background circumstances of the offender. The majority of those reports are now oral and handed out on the same day. Written reports are much less likely. That makes it more difficult for judges to give community sentences; they have less information.

Magistrates told us that they did not feel that their training or the level of information they had was adequate to equip them to understand what community sentences and their benefits were. All of that had been cut back and hollowed out. For a relatively small amount of money, it seems to me that you could put some of that back in place. Magistrates could have presentations from the probation service: "This is what a community sentence involves. This is how it works. These are the requirements. This is what is available in our local area." That does not cost an awful lot of money. Magistrates say to us that they do not get any of that.

Rachel Tuffin: Information, particularly about what is available locally, is probably one of the critical things. We often find that there is a lack of information about the services available more generally in all sorts of ways to do with crime reduction and community interventions. It is usually poor. Local service providers find it very difficult to know, and the people working locally in the criminal justice system often have difficulty keeping up with who is providing what services, and how much confidence they can have in those services. There are third-party providers offering things. Knowing whether or not they are particularly strong in the local area would be difficult.

Richard Garside: Going back to an earlier point, and building on the two previous points, we need a properly organised and properly resourced probation service, with the correct sorts of interventions available. This is part of the problem. You can have situations where courts might want to propose a particular intervention, but they do not know whether it is available, or it is not available because the particular CRC operating in that area does not provide that service. There needs to be a national perspective on how the probation service should be organised, what kinds of programmes should be available and making sure that they are providing the right kind of reports with the right form of detail for sentencers to make informed decisions.

Q181 **Ellie Reeves:** Sentencing practice affects different groups. We know, for example, that young people leaving care are at least 15 times more likely to end up in the criminal justice system and in prison. There are more BAME defendants; they are disproportionately represented in the criminal



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justice system. Women are more likely to go to prison for first offences. There are all those sorts of issues. What does your research tell you about how sentencing practice affects different groups?

Rachel Tuffin: We do not look specifically at sentencing practice. We concentrate on higher up the system. In a recent publication by the Children's Commissioner, for example, there are lots of categories of vulnerability. If you start with people's individual vulnerability, you can very quickly see that that translates into worse pathways in all sorts of ways. That is what leads to people being more present in the criminal justice system.

We are working with the Economic and Social Research Council and, we hope, a number of Government Departments on an evidence hub that concentrates on the groups of people who are most at risk as early as possible, to explore what kinds of interventions could help them way before we get to that point. I appreciate that I am not answering your specific question, but from our perspective—the crime reduction perspective—we want to be much further upstream in terms of vulnerability.

We also want to think about trauma-informed perspectives and cycles. Children of prisoners are a vulnerable group. In relation to trauma-informed perspectives, there is a lot of work going on in Wales on adverse childhood experiences. It is looking at how much those kinds of experiences can affect the brain patterns of young children, and the way they respond to different kinds of difficult experiences. That can have such long-term consequences that you are bound to end up with worse outcomes later—health outcomes as well as criminal justice outcomes. For us, it is all about trying to invest energy and effort at the right point in the system. That would affect all the categories you talked about.

Harvey Redgrave: When we work with police and crime commissioners, the types of groups they often ask us to think about are young people, young adults, and women, all of which you mentioned. The statistics are really clear: custody is a poor response for women, who often shoplift and commit crime for economic reasons. Lots of them get short custodial sentences when they could be much more effectively dealt with through women's centres and alternatives.

Similarly, with young adults there is a dropping-off point when they get to the age of 21, and they are then shoved into the adult system. You had an inquiry and there is a very good report about some of the issues that surround that. We support that. You can segment the population into those different cohorts.

A big rump of the population are the prolific offenders who are recycled in and out of the system, committing low-harm but high-volume offences. They are the ones who have been in front of the courts 15 or 16 times before they get to prison, and the judge does not know what else to do with them. To make a dent in the overall numbers, that is the group you



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need to concentrate on. You need to think about what your strategy is for prolific offenders who are committing theft and shoplifting. How do we shift them out of the criminal justice system earlier on, and into something more meaningful?

Richard Garside: We did some research a few years ago particularly looking at the interface between racial profiling and gangs and joint enterprise convictions. We certainly found some significant evidence that young black men were far more likely to end up being convicted under joint enterprise provisions. That is an ongoing dialogue and discussion, and I know this Committee has a great interest in it.

Another area is that young people with acquired brain injury are highly over-represented in the prison population. That tells us something both about the presenting behaviours that get them into trouble with the law and about the failure to address the problems that they face as a result of brain injury at an earlier point, whether through the health system or the educational system. Care leavers are a really good example.

Back in 2016, in one of his last speeches, David Cameron said that “the prison population draws mostly from the ranks of those whose life chances were shot to pieces from the start.” You can find evidence of that across a whole range of social markers. It tells you, in a sense, how bad the criminal justice and punishment process is at addressing those social problems. It does not mean that when people do things they should not be held to account, but it does point to the broader social challenge to prevent that kind of drift into the criminal justice system to begin with.

Rachel Tuffin: Picking up on Mr Redgrave’s point, something can be done by police organisations. Currently, there are two trials, and more coming, on deferred prosecution: Turning Point in the West Midlands and Checkpoint in Durham. In both cases, there is quite an extensive effort around what sort of intervention is put in place and who provides that intervention. In Durham, they use navigators, not police officers. They are people who often have experience of the criminal justice system themselves. It sounds like a sword of Damocles-type approach; people are provided with opportunities in exchange for a deferred prosecution. If they do not meet the terms, the prosecution can still occur. It is showing really promising results so far across both areas, and there are further replications to come in other police forces. That is a practical intervention that we can look to.

Q182 **Bambos Charalambous:** The Legal Aid, Sentencing and Punishment of Offenders Act 2012 was initially conceived to cut crime, prevent reoffending and potentially curtail growth in the prison population—for example, through changes in remand, release and recall arrangements. Why do you think that legislation seems not to have had the desired effect or impact? What are your views on that?

Rachel Tuffin: It is not something I know a great deal about, so I defer to my colleagues.



Richard Garside: There was a question in the earlier session about the degree to which Government Departments do assessments of impact. I have the impact assessment from the LASPO Bill, as it then was. The estimate there, if I am reading it correctly, was that there would be 2,600 fewer prison places. I know that when the Minister appeared before you, last week or the week before, he had some thoughts about the gap between the Ministry's expectations, and indeed the then Secretary of State's expectations, and what happened in practice.

Clearly the main thing, which you do not need me to tell you, was that removing the IPP sentence—even when it was got rid of, which was obviously a very positive thing—did not resolve the inertia and the cumulative number of people on IPPs. There are still thousands, as you know. It has not resolved that, even if it at least stopped more being sentenced.

The introduction of the enhanced determinate sentence was an attempt to respond, or offer an alternative, and that has had its own effect. There were about 2,000 dished out last year. It is almost like a toothpaste tube; you squeeze it and the toothpaste just moves to another part of the tube.

The other thing is that currently we are in a situation where, compared with the prison population that the Ministry was expecting, it is 3,000 or 4,000 lower than their anticipated figure. I suspect that illustrates how difficult it is to try to map particular legislative innovations and changes to the ultimate knock-on effects on a prison population.

Harvey Redgrave: LASPO probably had a deflationary effect in some areas. It curbed the use of remand for young people, which will have made a difference. The abolition of IPPs probably has made a difference. The counterfactual is that the number would have been even higher had it not done some of those things.

As Richard says, determinate sentences and the use of mandatory minimums were pushed forward as a result of that Act. The biggest driver though has been the growth in serious violence that we have seen since 2013-14. That is not necessarily within Government's control. That has happened, as we have seen, in all our major cities. I think that has probably had a bigger impact on the population than anything that was in that legislation.

Q183 **Ruth Cadbury:** Reoffending rates seem to be quite hard to reduce, irrespective of the sentence. Why do they not fall?

Rachel Tuffin: That is the \$64,000 question. All the evidence we have suggests that a lot of it is to do with preparation for leaving prison or at the end of any kind of sentence. It falls into the classic elements of education, employment and accommodation. Those are the big three. There are others. Most of the evidence suggests that for reoffending to reduce those are the things that need to be in place.



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There are a few examples that are quite helpful. In the States, there were diamond districts, where local judges had a much stronger role in what happened with offenders. We tried to replicate that here. It seems that the reason why it did not work was that they were not able to provide the sort of wraparound effect that they were able to achieve in the States. They could not get education, employment and accommodation settled for the offender before they left prison. If I was going to highlight one thing, that would be the key.

Harvey Redgrave: I support that. The biggest levers for reducing reoffending lie outside the criminal justice system. They are in housing, employment and health. Often the problem in the last 20 or 25 years has been that services have very much been delivered in silos. You are talking about prolific offenders with very chaotic lives and multiple, complex needs. You need services to wrap around those people and to be integrated and personalised, because they probably have very unique and distinct challenges. It is quite hard to do that from Whitehall, which is one of the reasons why we are in favour of the devolution of power. It makes it easier to pool budgets locally and create integrated services around people, so that you can provide some personalised care.

The rates have fallen a bit, I think. Didn't Rory Stewart say they had fallen slightly? But I agree that the overall trend is that they are pretty flat and hard to get down. They have fallen slightly.

Q184 **Chair:** You were talking about Red Hook in the States, weren't you?

Rachel Tuffin: Yes.

Q185 **Chair:** Most of the elements of the justice system, and social security and housing, have been devolved to the city administration virtually, plus the judiciary.

Rachel Tuffin: Yes. There are other interesting examples. The Pugh Foundation, working at state level, encourages states to look at their budgets and think about where resourcing is going and how much is being spent on prisons and corrections, and then to think about how they could actually move money around and invest more in that kind of wraparound service, which would mean they could reduce their prison budgets. They have had some success with the kind of very detailed work being done. Sometimes quite a lot of detail is required to make those arguments.

Q186 **Chair:** That is the case for more criminal justice devolution, for Manchester, for example. The intensive community order is perhaps easier to achieve there because of the level of devolution.

Harvey Redgrave: Once you devolve the costs of custody, you have a very powerful financial incentive to invest in alternatives and to try to shift people out earlier. At the moment, once people go to prison they are off the local authority's books.



Q187 **Chair:** The cost is shunted, literally.

Harvey Redgrave: Yes.

Richard Garside: The most effective way of reducing the reconvictions of those who have been in prison is to not put them in prison in the first place. I know in one sense that is a banal point, but if you think about the imprisonment process, you are taking people whose lives are in many cases quite chaotic. Perhaps they do not have particularly consistent housing, employment, familial and other kinds of arrangements. You take them out of that, you put them in prison and then you spit them out the other side with very little support. The disruption in their lives is obviously enormous; likewise the effect it has on their family and friends.

In one sense, I would go as far as saying that prison is a very effective way of creating crime. It is certainly a very effective way of creating reconvictions. A good argument for reducing the number of people in prison is that you will reduce reconvictions that way.

Successive Governments have put quite a lot of weight on reducing reoffending as a means of reducing the prison population. My view is that, even if the programmes that Governments have sought to introduce work as well as they possibly can, the benefits will be relatively marginal. There seems to be a fairly stubborn reconviction rate for people who have been in prison, although it obviously depends partly on the sentence length and the nature of the presenting offence. There is a relatively stubborn level and it has not changed for many years. It is not obvious to me that it is likely to change in the future.

Chair: That is very helpful. Thank you all very much for the evidence you have given us, both written and oral. It is all part of the material for our report. We very much appreciate your time and your trouble. The session is concluded.