

Written evidence submitted by Bishop James Jones on behalf of the Independent Commission into the experience of victims and long-term Prisoners (OUS0003)

Introduction

This is to submit evidence to your inquiry ‘Public opinion and understanding of sentencing’, on behalf of Bishop James Jones, Chair of the Independent Commission into the experience of victims and long-term prisoners. The evidence is set out in this document. The Commission’s full report was published in June 2022 and is available at <https://icevlp.org.uk/wp-content/uploads/ICEVLP-Making-sense-of-sentencing-web-copy.pdf>

The Commission’s work is clearly relevant to your inquiry. Consultation questions to which the findings and recommendations of the report are of particular relevance include:

- What does the public know about the current approach to sentencing in England and Wales?
- What could be done to improve public understanding of sentencing?

About the Commission

The aim of the Independent Commission into the experience of victims and long-term prisoners is to provide the basis for a more measured and informed public and political debate about how the most serious crime is punished. That debate should include both the treatment of perpetrators and the attention given to victims and their families once sentence has been passed. The Commission is chaired by Bishop James Jones, former Bishop of Liverpool and of Prisons, and former Chair of the Hillsborough Independent Panel. Its expert panel members include the founder of the Forgiveness Project Marina Cantacuzino; public health expert Dr Bill Kirkup; criminal barrister Michelle Nelson QC; former chief executive of the prison and probation service Michael Spurr; and journalist and author Paul Vallely.

The work of the Commission, with its bi-focal approach of giving a voice to prisoners and to victims, is reflected in its terms of reference.¹ Through a programme of panel meetings and interviews, the Commission heard directly from victims and their families and from prisoners, former prisoners and their families. Preliminary meetings were held towards the end of 2019 and the process of gathering and receiving evidence ran from the start of 2020 until the summer of 2021. By working with specialists in engagement with victims and prisoners, the Commission ensured that participants were properly supported through the process of consultation and that a diverse and representative range of voices were heard. As part of its evidence gathering, the Commission also conducted a targeted written consultation with key stakeholders.

Making Sense of Sentencing – final report of the Commission

¹ <https://icevlp.org.uk/terms-of-reference/>

The Commission's final report, *Making Sense of Sentencing: Doing Justice to both Victim and Prisoner*, was published in June 2022. Its principal recommendation is for a national debate on sentencing backed by a Law Commission review of the sentencing framework for serious offences, a citizen's assembly on sentencing policy, and strengthening the remit of the Sentencing Council in promoting public understanding of sentencing. It also makes eight detailed recommendations to improve the administration of long sentences for victims and prisoners.

The case for change set out in the report is founded on the realisation that sentence lengths and the time prisoners are serving in prison for the most serious of crimes have lengthened, without public knowledge or understanding of what has occurred. A study of what has happened to those adults sentenced in England and Wales to 10 years or longer reveals:

- in June 2021 the number of prisoners serving determinate sentences of 10 years or more had grown to 8,720 from 2,724 in only two decades²
- in 2009, 485 people were sentenced to more than 10 years in custody, a figure which more than doubled by 2019 to 1,188³
- over the same period, the number of people sentenced to a determinate sentence of 20 years or more quadrupled⁴
- the number of people serving an Extended Determinate Sentence trebled between 2015 and 2021⁵
- the proportion of life-sentenced prisoners with a tariff of more than 20 years has more than doubled in the last ten years, from just over one in 10 people (12%) to nearly one in three (32%)⁶
- the average minimum term imposed for murder rose from 13 years in 2000 to 20 years in 2020⁷; and nearly a third (32%) of life-sentenced prisoners yet to be released from custody have a tariff of 20 years or more before they can be considered for release⁸
- in 1979 the average time spent in custody by life sentenced prisoners was nine years. By 2019 that figure had doubled to an average of 18 years⁹.

² Table A1.1. Ministry of Justice. (2021). Offender management statistics quarterly: January to March 2021, Annual Prison Population: 2021. <https://www.gov.uk/government/statistics/offendermanagement-statistics-quarterly-january-to-march-2021> and Table 1.8. Home Office. (2003). Prison statistics England and Wales 2002.

https://web.archive.org/web/20050514192824if_/http://www.official-documents.co.uk:80/document/cm59/5996/5996.pdf

³ Table Q5.4. Ministry of Justice. (2021). Criminal justice system statistics quarterly: December 2020. <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2020>, and earlier editions.

⁴ House of Lords. (2021). Written question UIN HL14482. <https://questions-statements.parliament.uk/written-questions/detail/2021-03-23/hl14482>

⁵ Table A1.1. Ministry of Justice. (2021). Offender management statistics: Prison population 2021. <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-january-to-march-2021>

⁶ Table A1.14. Ibid.

⁷ House of Lords. (2021). Written question UIN HL466. <https://questions-statements.parliament.uk/written-questions/detail/2021-05-24/hl466>

⁸ Table 1.9a. Ministry of Justice. (2021). Offender management statistics quarterly: April to June 2021.

<https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-april-to-june-2021>

⁹ Cullen, E. & Newell, T. (2003). *Murderers and Life Imprisonment: Containment, treatment, safety and risk*. Waterside Press;

Table 8.5. Home Office. (1990). Prison statistics England and Wales 1989. HM Stationery Office;

Table 8.5. Home Office. (1993). Prison statistics England and Wales 1991. HM Stationery Office;

Table 5.8. Home Office. (2003). Prison statistics England and Wales 2002. HM Stationery Office; and

Table A3.3. Ministry of Justice. (2021). Offender management statistics quarterly: October to December 2020, Prison Releases: 2020. <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-october-to->

The report begins by looking carefully at what has happened to sentence lengths (Chapter 1). We then apply our bi-focal approach: Chapter 2 sets out what victims and their families have said to us and Chapter 3 describes the experience of prisoners. Having gathered this evidence, Chapter 4 confronts the key question: do the long sentences that are increasingly being served achieve the stated purposes of sentencing? Finally in Chapter 5 we set out our own recommendations in more detail, together with the blueprint of how this process should be conducted. Given the focus of this inquiry on public opinion, below we reproduce in full the Commission's main recommendation for a national debate on sentencing for serious crime.

Recommendation 1: National debate on sentencing

A new national debate on how the most serious crimes are punished is needed, which considers the content of a sentence as well as its length; and looks rationally at the impact of sentence length on all of the statutory purposes of sentencing, not just punishment. The debate should be conducted in a way that engages with both expert bodies and ordinary citizens, supported through an open and transparent process of consultation and engaging with the media and the public in wider deliberation and discussion. There should be a requirement on government and parliament to respond to the recommendations put forward, including where necessary bringing forward legislation to reform the sentencing framework.

We make three specific proposals for how this work might be taken forward:

1A: Law Commission review of the sentencing framework for serious offences

In 2018 the Law Commission completed a review of the sentencing framework which led to the consolidation of the existing sentencing framework into one unified sentencing code. The review has been helpful in bringing together the disparate sources of sentencing legislation, but it was always intended as a codification rather than a simplification. Indeed, the Sentencing Act 2020 which it produced serves to highlight the extraordinary complexity of sentencing law that remains. Nowhere is that more obvious than in the sentencing of the most serious offences, where one might generally expect clarity and certainty to be most highly prized.

We believe there is now a strong case for the Law Commission to carry out a fundamental assessment of the impact of legislation in this century on the effectiveness of the sentencing framework for the most serious crimes, including the introduction of new offences, the imposition of mandatory minimum sentences and tariffs, and increases in the maximum sentence length for certain offences. It should consider the extent to which the law on sentencing now either enables or impedes judges in fulfilling the statutory purposes of sentencing for these crimes, and whether a rebalancing is required in order for them to do so. The review should be presented to Parliament with a requirement for the government to respond in detail to the recommendations made.

1B: Citizens' Assembly on sentencing policy

Running alongside the Law Commission review, we believe it will be important to have a process which engages the public in a measured and transparent debate on sentencing policy in relation to serious crime. This would recognise that striking the right balance in these most

high profile and distressing cases is not a matter of law alone. It would enable the public to become more informed about the realities both of serious crime and how it is punished through a process of open debate and deliberation.

We believe there are lessons to be learnt from the Citizens' Assembly set up in Ireland in 2016 to consider several controversial political questions including the Constitution of Ireland, abortion, fixed term parliaments, referendums, population ageing, and climate change. Participants were randomly selected to represent a broad cross section of Irish society. The assembly was chaired by an experienced former secretary general of the European Commission and supported by a secretariat. Over 18 months the assembly held regular meetings, took expert evidence and conducted a public consultation leading to the production of a report on each topic. The government was required to respond to each report in Parliament.

Applied to the UK context, this process would help bring the public into an informed debate about how the most serious crime should be punished, but in a way that avoids it becoming a specific controversy or a subject of party-political competition. The debate would be supported through wider engagement with the media in order to inform the public of the work of the Assembly. This might in turn then allow the government and Parliament to reflect on the issue in a measured way and on a cross-party basis.

1C: Strengthening the role for the Sentencing Council in promoting public confidence in and understanding of sentencing

In addition to the above, improvements should be made to the existing arrangements for promoting public confidence in and understanding of sentencing. The statutory remit of the Sentencing Council includes requirements to promote public awareness of the realities of sentencing, as well as through the publication of its guidelines to promote public understanding of, and confidence in, sentencing and the criminal justice system. These responsibilities deserve a higher priority in how the Council's limited resources are deployed. We believe that the best approach the Council could take to promoting public confidence would be to seek to address the lack of public knowledge of the realities of sentencing. This will require understanding public confidence, or the lack of it, in a more sophisticated way, recognising that there is no single view; and, in turn, addressing in its approach the factors that drive public confidence across a range of situations, places and demographic cohorts. This is likely to require the Council to respond more readily to factors which undermine public confidence, correcting inaccurate and misleading commentary, as well as independently promoting an accurate account. Given the extent of misinformation about sentencing spread by the mainstream and online media, and sometimes repeated in a political context, a more assertive approach from the Council is justified.

Conclusion

The purpose of the report is to explain the case for a rethink on this issue, and to make our own contribution as the debate takes shape. We would like our report to be helpful to politicians across all parties in understanding what has happened and to help them engage with the public afresh and in new ways – so that consideration of this important issue takes place in a measured and evidence-based context, rather than in the highly-charged emotional context of one particular horrific crime, which is generally the only time that the issue is a matter of public debate. We want to encourage organisations with experience of these issues

from all sides to enter this national conversation. Most particularly we want to assure those most closely involved, as victims or prisoners, that they do have a voice and that they should be listened to. Such listening is something we as a Commission have sought to do.

Listening to both victims and to prisoners has brought us to the understanding that the existing system serves neither well.

Victims and their families feel overlooked, disregarded, neglected and marginalised by the criminal justice system – a justified complaint for which constantly longer sentences for offenders offers neither redress nor resolution. This report recommends ways in which society can better address the legitimate calls from victims and their families to be treated in a way which properly understands and respects the impact of crime upon them. It is entirely right that the harm caused to victims is taken into account in the sentencing process. In addition, the criminal justice system should ensure that victims are treated properly before and after sentencing, helped to understand what the sentence means, and not left forgotten after the sentence is handed down. In the Commission's view, victims should not be misled into believing they have a greater role in determining the course of a sentence than is possible – for instance by influencing parole decisions on when a prisoner should be released.

Prisoners, even those who acknowledge the depth of their wrong-doing, feel, with considerable justification, that the present workings of the prison system fail to address all of the statutory purposes of sentences including the reform and rehabilitation of offenders which are essential if the aim of a safer society is to be met in practice.

For sentencing to find its way again, a new national debate which looks at sentencing through a different lens is required.

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