

## **Written evidence submitted by the Independent Advisory Panel on Deaths in Custody (FPP0037)**

1. The role of the Independent Advisory Panel on Deaths in Custody (IAPDC) is to advise Ministers and senior officials on how they can meet their human rights obligations to prevent deaths and protect the lives of people detained in state custody. The IAPDC welcomes the opportunity to submit evidence to the Justice Select Committee's (JSC) inquiry on the future of the prison population and estate capacity. Our evidence will focus on our sole purpose of preventing all deaths – natural and self-inflicted – in custody.

### **Summary**

2. As of 27 October 2023, there were 87,801 people in prison,<sup>1</sup> with the population estimated to increase to 94,400 by March 2025.<sup>2</sup> Data shows that 23% of prisoners were held in 'crowded' conditions<sup>3</sup> – such as where two prisoners are held in a single occupancy cell – in the 12 months to March 2023.<sup>4</sup> Male local prisons had the highest level of crowding at 49%.
3. The latest statistics on prison deaths paint a disturbing picture, with 304 deaths in the 12 months to September 2023. This is more than a 50% increase in the rate of deaths over the last ten years, from a rate of 2.3 per 1,000 prisoners in 2013 to 3.6 in 2023. Based on the rate staying the same with a projected population increase to 94,400 by March 2025, our calculations show that there will be around 340 deaths per year. It should be noted that this is based on the mortality rate in 2025/26 being the same as this year's mortality rate – the total number will be higher or lower depending on fluctuations in the rate of death. Of the 304 deaths in the 12 months to September 2023, 92 were self-inflicted which represents a 24% increase compared to the previous 12-month period. There was a 65% increase in self-harm incidents in female prisons compared to the previous 12 months to June 2023.<sup>5</sup> The Ministry of Justice (MoJ), HM Prison and Probation Service, and key relevant agencies must now treat this as a crisis point in prison safety and respond accordingly.
4. The prison capacity crisis did not come out of nowhere. Due warning has come from scrutiny bodies, unions and staff associations, and the prison service itself. The steep increase in the prison population was anticipated in the government's own projections in 2020, 2021, and 2022.<sup>6</sup> The increasingly precarious prison system, in part fuelled by an ever-growing remand population which increased by 12% between September 2022 and September 2023<sup>7</sup>, has the potential to have a catastrophic impact on staff and prisoner safety.

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<sup>1</sup> MoJ, 'Population bulletin: weekly 27 October 2023' 27 October 2023, available [here](#).

<sup>2</sup> MoJ, 'Prison Population Projections 2022 to 2027, England and Wales', 23 February 2023, available [here](#).

<sup>3</sup> Crowding is the count of total number of prisoners who, on the last day of the month, are held in a cell, cubicle or room where the number of occupants exceeds the baseline certified normal accommodation of the cell, cubicle, or room.

<sup>4</sup> MoJ, 'HMPPS Annual Digest 2022/23', 27 July 2023, available [here](#).

<sup>5</sup> MoJ & HMPPS, 'Safety in Custody Statistics, England and Wales: Deaths in Prison Custody to September 2023 Assaults and Self-harm to June 2023', 26 October 2023, available [here](#).

<sup>6</sup> House of Commons Library, 'The Prison Estate in England and Wales', 29 June 2023, available [here](#).

<sup>7</sup> MoJ, 'Offender management statistics quarterly, April to June 2023', 26 October 2023, available [here](#).

5. This is compounded by workforce pressures in the prison system, with governors having to receive more prisoners while officer numbers continue to dwindle. As we set out in our written evidence to the JSC's inquiry into the prison operational workforce, it is important to understand that imbalances in the staff-to-prisoner ratio create real risks of both natural and self-inflicted deaths.<sup>8</sup> There is a direct parallel to be drawn to similar situations in the early 2010s when staff-to-prisoner ratios fell and safety decreased as a result.
6. Last November, Operation Safeguard was invoked to allow prisoners to be held briefly in police cells pending places becoming available in prisons. While there have been no reported deaths to date under the protocol, it raises serious concerns relating to the ability to provide appropriate support to prisoners, many of whom may have underlying drug, alcohol and/or mental health issues. Meanwhile, the expansion of the prison estate is underway, with a government commitment to create an additional 20,000 prison places by the mid-2020s.<sup>9</sup>
7. Narrow definitions of 'safety' should be avoided. Instead, safety should be understood as engendering a sense of purpose, identity, and dignity. As we explain further below, we are deeply concerned that unless ongoing issues around staffing numbers and skill mix, the delivery of rehabilitative regimes, and robust healthcare and mental health support are urgently resolved, further expansion of prison places will increase, not decrease, rates of self-harm and deaths as the environment will remain fundamentally unsafe. The IAPDC's warnings in 2020, in response to the MoJ's Prisons Strategy White Paper, remain true: prisons are not safe places, and any expansion of an already outsized estate will lead to an increase in deaths in custody.<sup>10</sup>

### ***Impact of capacity challenges on deaths in prison custody***

8. The exponential growth in the prison population has had an impact on prisoner safety across the prison estate. It is well known that access to high-quality physical and mental healthcare, purposeful activity, peer support, the key work scheme, and family contact are vital to ensuring safety and decency in prisons. Yet the capacity crisis – which has been severely compounded by workforce pressures – has meant that prisoners are spending up to 23 hours in their cells, missing vital healthcare appointments, and unable to access support as staff struggle to keep up with demand. As we examine below, increasing capacity alone, without addressing other pressures in the system, will fail to bring down the unacceptably high number of prisoner deaths each year.

#### ***A. Impact on delivery of full regime, purposeful activity, and key work scheme***

9. Getting the basics right is essential to protecting lives in prison. Ensuring adequate staffing levels – with suitable knowledge, skill, and experience – to provide proper support and supervision, deliver a full regime, and facilitate contact with families is key to

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<sup>8</sup> UK Parliament, 'Written evidence submitted by the Independent Advisory Panel on Deaths in Custody', 25 January 2023, available [here](#).

<sup>9</sup> MoJ, 'Prisons Strategy White Paper', 7 December 2021, available [here](#).

<sup>10</sup> IAPDC, 'Independent Advisory Panel on Deaths in Custody Response to the Prisons Strategy White Paper consultation', February 2022, available [here](#).

instilling a sense of hope and purpose in prisoners. Vital to this is strong leadership and a positive and empowering culture, as highlighted in Lord Harris' review into self-inflicted deaths in custody of 18- to 24-year-olds.<sup>11</sup>

10. However, overcrowding in the prison estate and unstable leadership places staff under a great deal of pressure to maintain an environment where prisoners feel safe and cared for. HM Inspector of Prisons' (HMIP) annual report found that in around 80% of the prisons inspected, there had been at least one change in governor since the previous inspection.<sup>12</sup> Further, its inspection of HMP Woodhill, which recently received an Urgent Notification, pointed to a link between prisoners' frustration about a lack of access to basic amenities and self-harm.<sup>13</sup>
11. The key work scheme, which was introduced following Lord Harris' review, is an important way to help prisoners cope with custody and improve safety. Some progress was made in implementing this scheme prior to the Covid-19 pandemic, but we understand it currently exists in little more than name. A PFD report into the death of Jason Williams at HMP Guy Marsh raised this very concern, with the Coroner urging for a review of the scheme across the prison estate.<sup>14</sup>
12. Remand prisoners are a particularly vulnerable cohort, making up 35% of all self-inflicted deaths in 2022<sup>15</sup> despite representing only 17% of the total prison population.<sup>16</sup> Similarly, there were nine self-inflicted deaths among prisoners serving an indeterminate sentence for public protection (IPP) in 2022, the highest number since the sentence was introduced almost two decades ago, with these deaths continuing into 2023.<sup>17</sup> Both groups must be prioritised for key work to help reverse these worrying trends, but without additional capacity and resources this important additional support will come at the expense of support for other prisoners.
13. The Prisons and Probation Ombudsman's (PPO) raised similar concerns regarding staffing shortages and a lack of meaningful contact between staff and prisoners in its recent annual report.<sup>18</sup> The ability of prisoners to build close relationships with staff is especially difficult within a context where staff are being parachuted in from other establishments as short-term cover.
14. In a prison consultation we carried out in 2022 via Inside Time, prisoners stressed the importance of peer support programmes such as the Samaritans Listener scheme. However, staff shortages have severely impacted on the provision of the scheme. Issues

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<sup>11</sup> MoJ, 'Changing Prisons, Saving Lives: Report of the Independent Review into Self-inflicted Deaths in Custody of 18-24 year olds', 1 July 2015, available [here](#).

<sup>12</sup> HMIP, 'HM Chief Inspector of Prisons for England and Wales Annual Report 2022-23', 5 July 2023, available [here](#).

<sup>13</sup> HMIP, 'Debriefing paper for the inspection of HMP Woodhill', 25 August 2023, available [here](#).

<sup>14</sup> Courts and Tribunals Judiciary, 'Jason Williams: Prevention of future deaths report', 13 February 2023, available [here](#).

<sup>15</sup> MoJ & HMPPS, 'Safety in Custody Statistics, England and Wales: Deaths in Prison Custody to December 2022 Assaults and Self-harm to September 2022', 26 January 2023, available [here](#).

<sup>16</sup> MoJ & HMPPS, 'Offender management statistics quarterly: July to September 2022', 26 January 2023, available [here](#).

<sup>17</sup> MoJ, 'Deaths in prison custody 1978 to 2022', 26 January 2023, available [here](#).

<sup>18</sup> Prisons and Probation Ombudsman, 'Annual Report 2022/23', 14 September 2023, available [here](#).

include Listeners not being unlocked to facilitate 'listens' and 'listens' taking place through closed cell doors due to a lack of dedicated suites on busy and overcrowded wings. This issue is highlighted in HMIP's annual report which found that only 38% of prisoners said it was easy to speak to a Listener.<sup>19</sup>

15. Imbalances in staff-to-prisoner levels and staff inexperience contribute to deaths in a variety of ways. It is essential that prisons are adequately resourced and staff are incentivised to stay in the service. Selecting, recruiting, and retaining good, decent people who will treat prisoners with humanity, respect, and common sense is vital to reducing deaths and must be prioritised urgently before creating additional prison places.

### ***B. Impact on facilitating family contact***

16. Our report on the prevention of suicide in places of detention and Lord Farmers' review of family ties highlight the importance of family contact to reduce the risk of self-harm and suicide.<sup>20</sup> The increased pressure on the prison estate and the high prisoner churn may also make it increasingly difficult to detain prisoners reasonably close to their homes, families, and communities. We are aware of people who have been moved to prisons far from their homes purely due to current capacity challenges.
17. As one prisoner at HMP Frankland told us, *"It is really difficult for men and women not to be with their families. It causes a lot of distress, plays in your mind, and can have such an impact that you can lose the will to live."*<sup>21</sup> Of particular concern are recent plans to bring forward legislation to rent prison spaces abroad, since it is difficult to see how family visits could be facilitated for prisoners detained abroad.<sup>22</sup>

### ***C. Impact on provision of adequate and timely healthcare***

18. The first few days in custody are known to be a time of heightened vulnerability for prisoners. In 2022, 20% of self-inflicted deaths occurred within the first 30 days of custody, with 8% occurring within the first week.<sup>23</sup> It is crucial that risk factors are identified and monitored at this stage. Comprehensive and timely screenings are vital to the early identification of vulnerabilities and health and support needs that prisoners may have. However, these processes are often strained due to capacity pressures.
19. We understand that prisoners are often being received after core hours – when prisons are operating with reduced capacity – and not receiving the medical attention they would normally receive had they arrived at an appropriate time of day. Similarly, overcrowding has meant that prisoners are frequently being moved around the estate at short notice, creating challenges for access to medical records and continuity of care.

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<sup>19</sup> HMIP, 'HM Chief Inspector of Prisons for England and Wales Annual Report 2022–23', 5 July 2023, available [here](#).

<sup>20</sup> MoJ, 'The Importance of Strengthening Prisoners' Family Ties to Prevent Reoffending and Reduce Intergenerational Crime', 10 August 2017, available [here](#).

<sup>21</sup> IAPDC, "'It's time things change": Priorities for detention for the Department of Health and Social Care's suicide prevention strategy', 12 September 2023, available [here](#).

<sup>22</sup> <sup>22</sup> UK Parliament, 'Prison Capacity: volume 738', 16 October 2023, available [here](#).

<sup>23</sup> MoJ & HMPPS, 'Safety in Custody Statistics, England and Wales: Deaths in Prison Custody to December 2022 Assaults and Self-harm to September 2022', 26 January 2023, available [here](#).

20. Capacity challenges are likely to be impacting the ability of prisoners to access vital support and healthcare appointments. In some instances, we understand that a shortage of staff to escort prisoners is resulting in healthcare appointments being cancelled or missed. At HMP Bristol, only 34 of 65 planned appointments took place in June 2023 due to an absence of prison officer escorts.<sup>24</sup> HMIP's most recent annual report highlighted an overreliance on agency workers and an *"emerging fragility"* in healthcare, *"particularly the support for mental health problems"*.<sup>25</sup>
21. An NHS England-commissioned mental health needs analysis by the Centre for Mental Health found that only 14% of the prison population is on a mental health service caseload.<sup>26</sup> However, the prevalence of mental health issues within the prison population is likely to be significantly higher, with the discrepancy pointing to a severe under-resourcing of mental health services to address the overall needs of the population. Decades of research demonstrate a strong link between severe mental illness and suicidal behaviours, with psychiatric diagnosis being one of the strongest clinical risk factors associated with prison suicides.<sup>27</sup>
22. Staffing shortfalls and turnover, an increasingly young and inexperienced workforce, and high prisoner churn also mean that the Assessment, Care in Custody and Teamwork (ACCT) care planning process for prisoners identified at risk of self-harm or suicide is often under pressure. For example, HMP Exeter saw eight different heads of safety and eight deputy governors between two inspections, playing a key role in the issuing of a second, consecutive Urgent Notification.<sup>28</sup> Only 45% of prisoners on an ACCT plan across the estate told HMIP that they felt cared for by staff in the last year.<sup>29</sup> The latest inspection of HMP Bristol highlighted concerns around staff shortages undermining strategies to reduce self-harm.<sup>30</sup> A recent PFD report into the self-inflicted death of Jack Zarrop at HMP Wormwood Scrubs raised concerns about the apparent lack of training on ACCT for agency staff who make up 65% of primary healthcare staff in prison.<sup>31</sup>
23. Access to the highest attainable standard of physical and mental health is a fundamental human right. Prisoners are entitled to the "equivalent" standard of medical care as people living in the community.<sup>32</sup> However, current capacity and workforce pressures have meant this is not happening, posing serious health implications for the prison population and resulting in poorer outcomes compared to the general population. Where there can be no alternative to custody, the prison environment should be safe and used to improve both physical and mental health in a trauma-informed way.

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<sup>24</sup> HMIP, 'Report of an unannounced inspection of HMP Bristol', 17 October 2023, available [here](#).

<sup>25</sup> HMIP, 'HM Chief Inspector of Prisons for England and Wales Annual Report 2022–23', 5 July 2023, available [here](#).

<sup>26</sup> Centre for Mental Health, 'Prison Mental Health Services in England, 2023', 4 April 2023, available [here](#).

<sup>27</sup> Zhong, S., et al, 'Risk factors for suicide in prisons: a systematic review and meta-analysis', *The Lancet*, volume 6, issue 3, March 2021, pages 164-174, available [here](#).

<sup>28</sup> HMIP, 'HM Chief Inspector of Prisons for England and Wales Annual Report 2022–23', 5 July 2023, available [here](#).

<sup>29</sup> *Ibid.*

<sup>30</sup> HMIP, 'Report of an unannounced inspection of HMP Bristol', 17 October 2023, available [here](#).

<sup>31</sup> Courts and Tribunals Judiciary, 'Jack Zarrop: Prevention of future deaths report', 6 October 2023, available [here](#).

<sup>32</sup> RCGP, 'Equivalence of care in Secure Environments', July 2018, available [here](#).

### ***Impact of approaches to address capacity challenges on deaths in prison custody***

24. The planned expansion of capacity to an already outsized prison estate presents a very real risk that the number and rate of deaths will increase. But expansion of the physical estate by itself will not resolve challenges around workforce, access to healthcare and mental health support, and the provision of sustained regimes – all of which have a knock-on effect on prisoner safety. Prisons are not safe places and building new prisons should only be to replace old, unsafe establishments which are no longer fit for purpose and to ease overcrowding. Importantly, there needs to be adequate resourcing of both prison and healthcare services to address current population pressures prior to further expansion.
25. It is important that alternatives to custodial sentences are prioritised. Our joint report with the RCGP called for investment in healthcare and community alternatives to custody in order to protect lives.<sup>33</sup> We welcome the Lord Chancellor’s recent announcement that a presumption against sentences less than 12 months will be introduced, recognising that custodial sentences lead to *“offenders losing their homes”* and *“breaking contact with key support networks”*.<sup>34</sup>
26. However, a move away from short-term prison sentences should only be part of the solution to the capacity crisis, particularly within the context of long-term sentence inflation. People over 50 represent the fastest growing section of the prison population,<sup>35</sup> which has implications for the health needs across the prison estate, as well as for deaths by ‘natural’ causes in custody.
27. Further, government plans to curtail the IPP licence period is welcome, particularly as the recalled IPP prison population has exceeded the number of IPP prisoners who have never been released.<sup>36</sup> However, we urge the government to also reconsider its position on conducting a resentencing exercise of IPP prisoners. This would go some way to alleviate current capacity pressures and address what the Lord Chancellor described as a *“stain on our justice system”*.<sup>37</sup>
28. The initial period following reception into custody is known to carry a high risk of suicide and self-harm, making it crucial that prisoners are settled in as quickly and effectively as possible. In November 2022, the MoJ activated Operation Safeguard which has seen the emergency use of police cells to provide immediate capacity. While there have been no reported deaths of prisoners held under Operation Safeguard to date, the use of police cells raises significant questions about the safety of prisoners as police and allied health services are placed under additional pressure. We welcome assurances given to us by Ministers that the use of the protocol will wind down following recent announcements to address capacity pressures.

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<sup>33</sup> IAPDC, ‘Protecting lives: a cross-system approach to addressing alcohol and drug-related deaths within the criminal justice system’, January 2022, available [here](#).

<sup>34</sup> UK Parliament, ‘Prison Capacity: volume 738’, 16 October 2023, available [here](#).

<sup>35</sup> Inside Time, ‘What do older prisoners want?’, 31 July 2023, available [here](#).

<sup>36</sup> PPO, ‘Learning lessons bulletin: Self-inflicted deaths of IPP prisoners’, 8 September 2023, available [here](#).

<sup>37</sup> UK Parliament, ‘Prison Capacity: volume 738’, 16 October 2023, available [here](#).

29. Additionally, capacity pressures have seen the re-commissioning of abandoned prison cells – which risks setting back important planned improvements to fire safety and alarm systems – continued delays to maintenance works, and the deterioration in prisoners’ living conditions. As an example of the latter, the most recent HMIP’s inspection of HMP Dartmoor found the doubling up of 49 cells designed for one prisoner, in contrast with a 2020 inspection which found that all prisoners lived in a single cell.<sup>38</sup> Concerns were also raised about a “*decaying*” infrastructure.<sup>39</sup> It may not, therefore, be appropriate to include 2,400 additional places by “doubling up on cell occupancy where it is safe to do so” in current estate capacity calculations.<sup>40</sup> In a 2021 report, the Public Accounts Committee stated that it remained concerned that the “*maintenance backlog poses a real threat to achieving a safe and secure prison estate*”.<sup>41</sup>
30. As HMIP has stated, current capacity and staffing challenges need not directly equate to poor safety outcomes.<sup>42</sup> But it is also true that these strategic issues are likely having a direct impact on the service’s ability to deliver the remedial actions that we know prevent deaths, with regimes and offender management approaches also still yet to be restored to pre-Covid-19 levels. Proposals for increased prison capacity within an already outsized estate – without first addressing the serious shortfall in prison and healthcare staff, for example – risks an increase in deaths in custody. Efforts to ease current capacity pressures must be informed by the need to ensure that the numbers in prison do not exceed the prison estate capacity to deliver the humane and rehabilitative regimes that help to keep prisoners safe.
31. The IAPDC would welcome the opportunity to provide further information or oral evidence if required by the Committee.

October 2023

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<sup>38</sup> HMIP, ‘Report on a scrutiny visit to HMP Dartmoor by HM Chief Inspector of Prisons’, 3 November 2020, available [here](#).

<sup>39</sup> HMIP, ‘Report on an unannounced inspection of HMP Dartmoor by HM Chief Inspector of Prisons’, 6 July 2023, available [here](#).

<sup>40</sup> MoJ, ‘Foreign prison rental to ensure public protection’, 3 October 2023, available [here](#).

<sup>41</sup> UK Parliament, ‘Key challenges facing the Ministry of Justice’, 24 March 2021, available [here](#).

<sup>42</sup> E.g. HMIP’s recent HMYOI Cookham Wood report outlines how staffing numbers do not directly explain poor safety outcomes.