

# Criminal Justice System items to note

## Meeting on 5.9.23

### 1. Statistics

#### 1.1 **Offender Management Statistics** covering the first quarter of this year

Some significant changes are noted:

- *Prison population* This increased by 6% to 85,851 prisoners, a contributory factor being those on remand - those 'untried' increased by 16% and the 'convicted unsentenced' population increased by 15%. The number of first receptions into prison rose by 12%.
- Those released from prison was only 5% higher than the comparable period last year.
- *Recalls* Those recalled to prison jumped 23% and the proportion of the prison population by 20%. Reasons for recall include non-compliance (37%), failure to keep in touch with the supervisor (17%), facing a further charge (15%) and failing to reside where directed (14%)
- *Re-releases* 409 IPPs were re-released having spent an average further 26 months in prison on recall, and 190 lifers an average of 30 months
- *Adjudications* increased by 23% with additional days awarded on 895 occasions (54% higher)
- *Release on Temporary Licence* increased 13% but is still well short of pre-COVID levels
- *Foreign National Offenders* increased by 7%. There were 10,321 (3,355 remand, 6,453 sentenced and 513 non-criminal) foreign nationals held in custody - 12% of prison population
- *Probation* numbers decreased by 0.6% to 239,518. The caseload balance continues to change with a drop in the numbers on court orders (by 2%) but pre/post release increased by 1%. Violent offenders on supervision increased by 10%; more use was made of mental health treatment requirements; and PSRs increased by 7%

#### 1.2 **Prison trends – some key facts** (PRT Bromley Briefings Summer 2023)

- *Prison capacity* Nearly 10,700 prison places have been closed since 2010 but nearly 11,000 places have been created, a net increase of just 300 prison places
- *More people on remand* A rise of 45% in 3 years (17% of the prison population)
- *Longer periods of time on remand* 32% of people have been on remand for >6 mths, and 5% for >2 years. 35% of self-inflicted deaths involved those on remand
- *Racial disparity* Black people are 53%, Asian 55%, and other ethnic groups 81% more likely to be sent to prison for an indictable offence at the Crown Court
- *Extremism* Only 1% of Muslims in prison are currently there for Islamist extremist terrorism related offences, but those for right-wing extremism has risen
- *Care background for children in custody* Fewer than 1% of all children are in care, but almost 46% in STCs and 62% in YOIs have been in care
- *Mental health crisis* 1,057 people were transferred from prison to a secure hospital in 2022, the second highest number since records began
- *Longer Life sentences* 22% of lifers have already served their minimum term and have spent an average of 9.2 extra years in prison
- *Prison doesn't work* Research found that "the current evidence does not suggest that increasing the length of prison sentences is an effective way to reduce reoffending & that the evidence against the effectiveness of short custodial sentences is amongst the most robust".

#### 1.3 **Safety in Custody statistics** (MoJ quarterly bulletin)

- *Deaths in custody* 313 deaths (up by 9%). Of these, 88 were self-inflicted (26% increase)
- *Self-harm* Male incidents decreased but increased by 11% for females (59,722). The rate of self-harm in the female estate (5,826 incidents per 1,000 prisoners) was over eleven times higher than in the male estate
- *Assaults* These increased by 11% (22,319 incidents) of which 2,564 were serious assaults (up 23%). There was a significant gender difference – males increased by 7% and females by 16%. There were 7,461 assaults on staff in the 12 months to March 2023, a 2% decrease from the previous 12 months.

#### **1.4 Accommodation on Release** (MoJ statistics April 2022-March 2023)

Perhaps the most disturbing fact is that the proportion of people known to be housed dropped from 86.3% on the day of release to 75.5% three months later. Key to this drop is likely to be the fact that 23.2% are housed in bail/probation accommodation on the day of release and 7.5% in this form of housing 3 months later. The number of people known to be sleeping rough 3 months after release increased from 161 to 218

## **2 CJS agencies**

### **2.1 Courts**

#### **2.1.1 Government announcements**

The MoJ has announced that there will be no artificial cap on the number of days that judges can sit in the Crown Court for the rest of this financial year. The government describes this as the courts working “at full throttle” and “at maximum capacity for the third year running”. £220m is to be made available during this financial year and the next for essential modernisation and repair work.

#### **2.1.2 Listening to lived experience to affect change** (Revolving Doors paper on How can magistrates help to end the revolving door of crisis and crime?)

Revolving Doors are firm believers that changes to the CJS are rarely meaningful or effective unless they are driven by those who have experienced the system themselves. For many, multiple disadvantage (eg poverty, mental ill health, problematic substance use and trauma) is the key driver of low-level crime which, had they been addressed at an early stage, an often decades long cycle of crisis and crime could have been avoided. Prison sentences are becoming longer (expected to hit 100,000 within the next few years). MoJ data shows that people who are sentenced to < 6 mths have a proven reoffending rate of 57.5% whereas those starting a community order is 29.5%. There is a clear need for strong working relationships between the probation service and magistrates to ensure that people receive timely and appropriate sentences. PSRs are crucial in the process but the probation service is chronically understaffed, and serious attention and funding needs to be put into recruitment and retention. However, this does not mean magistrates are powerless as we would emphatically encourage sentencers to insist on good quality written PSRs to enable them to get a real idea of whether someone has had the opportunity to change their behaviour and what other interventions might help prevent reoffending. To achieve this, we must prioritise rehabilitation over punishment. We need to listen to people who have been through the CJS, understand what did and did not work for them, and be smart and cost-effective in our approach to CJ. Our ambition is to end the revolving door of crisis and crime. Magistrates are essential in achieving this.

#### **2.1.3 IT system**

Every criminal court is now connected to a single data system for the first time. Common Platform is now live in every criminal court and links courts, CPS, and police to improve information sharing. All relevant case materials will be available in one accessible place from arrest through to trial and, for those convicted, on to the prison and probation service. This will help ensure that courts, police, prosecutors and legal professionals can track cases moving through the CJS. Each user will only be able to see the information that is relevant to them. The platform also allows for instant changes and updates to be made to a case, helping to make the justice process faster and more efficient.

### **2.2 Crown Prosecution Service**

#### **2.2.1 Quality of correspondence** (Thematic inspection of complaints)

Almost 1 in 2 letters the CPS sends to people who have made complaints, including victims of crime, are not good enough, with many containing incorrect basic details or spelling mistakes, or lacking information about delays, according to a damning official report. The CPS has been urged to “act urgently to get a grip of this situation”, warning that mistakes undermine public confidence. Overall, “the quality of letters has deteriorated” with 49% not meeting the required standard. The foreword states: “The best way to respond to a complaint, is by putting yourself in the shoes of the complainant. The CPS has a long way to go to reach this point of self-awareness.”

## **2.3 Lawyers**

### **2.3.1 Legal aid prison law** (Association of Prison Lawyers report)

Based on a survey of 98 prison lawyers, the report concludes that: “A toxic combination of emotionally exhausting, complex and poorly paid work means that prison law legal aid work is no longer sustainable.” From 2008-22, there was an 85% decrease in prison law legal aid providers. Prison law was excluded from the government’s 15% increase to criminal law legal aid rates in 2022, because they wanted to prioritise the backlog in criminal matters. However, there is also a significant backlog in parole cases caused in part by significant changes designed to toughen and open up the system. Further complex changes are proposed in the Victims and Prisoners Bill but no mention of an increase in fees to deal with them of the government’s approach to the additional work anticipated from the Illegal Migration Bill, where it has agreed a modest increase of 15% in legal aid fees to deal with the additional burden on providers. The work is not only legally complex, but emotionally exhausting which explains why so many prison lawyers feel that they cannot simply refuse to do unpaid work as clients are often distressed. The report concludes that the combination of emotionally exhausting, complex and poorly paid work is not sustainable and that investment now is essential to ensure the prison and parole system will function fairly so that people can be released from prison safely at the earliest opportunity from costly incarceration.

## **2.4 Parole Board**

### **2.4.1 Justice Secretary ruling**

The Justice Secretary has been told he cannot avoid his duty to comply with independent decisions of the Parole Board. He had challenged the release of a prisoner shortly before his 64-month sentence was due to expire, saying there was no suitable accommodation for the 33-year-old so this was a change in circumstances that justified setting aside the board’s earlier decision to grant parole. This was refused by the Parole Board: “It would not be in the interests of justice to enable decisions to be set aside on information which can be subject to such change. To do so would, in essence, provide a course of action which would allow the secretary of state to avoid his duty to take the steps required by law to give effect to independent decisions of the Parole Board”.

## **2.5 Police**

### **2.5.1 Right care, right person** (Home Office & DHSC agreement)

The new national agreement is designed to free up police time and ensure that those in mental health crisis will receive treatment from “the most appropriate” agency. Local health partners and police forces will work together on joint plans to implement the new approach, working towards ending the inappropriate involvement of police where no crime is being committed or there is no threat to safety. Where police officers do take a person in a mental health crisis to a health setting under the MHA, this agreement emphasises the need for local partners to work towards handovers happening within one hour. A key success factor in the Humberside pilot was training for staff in police control rooms to identify the right agency to deploy at the outset when responding to 999 calls about individuals experiencing a mental health crisis. They have created new dedicated response vehicles with mental health staff on board to attend calls and provide support, alongside other community-based mental health services. As well as patients receiving more appropriate care, they saved 1,441 officer hours per month and the government estimates that nationally this could free up 1m hours of police time pa, to focus on their primary responsibilities. The Humberside approach was built on several years of careful negotiation and planning between police and health services. The key question is whether this can be replicated nationally in terms of resourcing and when so many healthcare professionals are taking industrial action.

## **2.6 Prisons**

### **2.6.1 Performance ratings** (Annual Prison Performance report 2022/23)

The headline findings are:

- 13 (10.9%) prisons were given a rating of outstanding - the lowest number since 2016/17
- 9 (7.6%) prisons were of serious concern
- 2 adult prisons received an Urgent Notification meaning that they were of such serious concern that the Justice Secretary is required to publish a public action plan within 28 days.

The dashboard uses 17 outcome-focussed measures to formally assess prisons. HMPPS manage the performance framework, which is structured against four main priority areas: Security and stability; Training, skills and work; Drug and alcohol addiction; and Family, accommodation and readjustment to society. Overall, 75 prisons were rated as either good or outstanding and 44 as being of concern/serious concern [NB HMP Hewell was rated as good, and HMP Long Lartin as of serious concern]. In summary, a declining number of prisons are performing well and an increasing number are performing poorly

### **2.6.2 Miscarriage of justice compensation scheme** (new guidance)

Wrongly convicted people will no longer face having “saved living costs” deducted from compensation payments following an update to guidance. Lord Chancellor and Secretary of State for Justice said: “Fairness is a core pillar of our justice system and it is not right that victims of devastating miscarriages of justice can have deductions made for saved living expenses. This common-sense change will ensure victims do not face paying twice for crimes they did not commit. This is designed to help individuals restart and rebuild their lives. It is just one route in which an individual can receive compensation for a wrongful conviction, with other options including suing public bodies”. The maximum amount of compensation payable under the miscarriage of justice system is £1m for >10 years imprisonment or £500k for up to 10 years.

### **2.6.3 HMPPS Annual Digest for 2022/23** Some interesting facts were:

- *“Proper jobs”* An average of 1,088 prisoners worked each month and were subject to the Prisoners Earnings Act. This was a 37% increase on last year
- *Security* Drug (17%) and mobile phone (2%) finds decreased but alcohol and weapon finds increased by 9% and 17% respectively
- *Pregnant in prison* 196 women were known to be pregnant
- *Releases* 71 prisoners were released in error, an increase of 31% compared with last year
- *ROTL* More were granted temporary release with only 65 out of 386,435 failing to return
- *Private prison overcrowding* These were highest in private prisons and in male locals (49% having to share a tiny cell with others)
- *Hostage incidents* There were 52 incidents - up by 33%
- *Tobacco finds* Smoking inside was banned in September 2015 and last year there were 3,694 incidents, up 16%
- *Basic* The proportion of prisoners on a Basic incentive status increased to 3% from 1%
- *Mother and baby units* 78 applications were made for a place (40 approved and 15 refused)

### **2.6.4 Prison population crisis** (Extract from a Blog by Chief Inspector of Prisons)

Overcrowding has consequences for all of us. Just last week, we issued a second Urgent Notification for HMP Bristol, citing overcrowding as one of the key reasons. Almost half of prisoners were living in double cells designed for one man, with a significant minority in single cells with no internal sanitation. The most immediate pressure comes from the backlog of remanded prisoners, but in the medium and longer term, the most sustained increases will come from a rise in the longer-term population. The biggest concern that we have repeatedly highlighted in our reports has been the lack of purposeful activity. This means that they are going to leave prison without having been given anything like the support that they need to successfully resettle back into the community. If they are not in the habit of getting up and going to work or college every morning, are not working part-time or if they are allocated to whatever activity happens to have spaces rather than the one they need or want to do, then it will come as no surprise if they commit more crime when they come out. This means neighbourhoods that are unsafe, fatherless children and more victims. The population crisis is not just a technocratic headache for ministers and the prison service; there will be consequences for all of us.

### **2.6.5 Prison segregation** (Ethnographic study)

Segregation units are a challenging part of the prison system. Segregated prisoners are locked alone in their cells for 22/24 hours a day, cannot associate with other prisoners, often have limited visitation rights and cannot take part in the full range of prison activities. Segregation is a “place”

(a unit in the prison) but it also occurs as a “practice” on the wings, where prisoners are confined to their cells for long periods, without association, often outside the legal safeguards afforded to those in the segregation unit. The IMB and HMIP routinely raise concerns about the use of segregation due to their limited regimes, little purposeful activity and poor material conditions (some cells lacking even basic provisions like electricity). The study found that segregation is not always used as a last resort and is embedded in prison culture. “Segregation survives in our penal system as a result of entrenched thinking - ‘that’s the way it has always been done’. It is the accepted response to threats of violence and disorder in prison. We choose something different; not out of bravery, not out of curiosity but out of a responsibility to victims, offenders, society and what remains of our democracy. It is not just about asking whether there is an appetite (or political will) for something new, but we should also be asking whether there is any moral, ethical or practical basis for continuing with the old”.

### **2.6.6 Impact evaluation** (of the prison-based Thinking Skills Programme (TSP) on reoffending)

TSP is an accredited offending behaviour programme designed and delivered by HMPPS and is the highest volume accredited programme delivered in custody. It is designed to reduce general reoffending by supporting improvements in developing and applying thinking skills. The programme format comprises 19 sessions (15 group sessions and 4 individual sessions, resulting in around 38 hours of contact time. The report concludes that “over a two-year period from release, those who had participated in TSP were less likely to reoffend, reoffended less frequently, and took longer to reoffend, compared to males who did not participate in TSP”. The evaluation found that results were more positive for men and that for maximum impact, people have to be suitable for the programme, they need to complete it and it needs to be delivered to the requisite high standards.

### **2.6.7 Inquest finding on death of a baby**

A coroner found that serious operational and systemic failings contributed to the full-term baby of an 18-year-old Black woman "being delivered in a prison cell without medical assistance and... losing the chance of resuscitation and survival". The mother was a vulnerable teenage care leaver who was left to give birth alone in her cell without any care or assistance. Her calls for help were ignored and she was found in the morning, covered in blood and the baby was dead. Responses include “Prison will never be a safe place to be pregnant and it’s long overdue for courts to stop sending pregnant women there. There are plenty of other countries that do not send pregnant women to prison, including Italy, Brazil, and Mexico, yet the UK lags behind. It’s time for the government to listen to the experts and end the imprisonment of pregnant women. When a mother is supported in her community, she is able to tackle the issues that swept her up into crime in the first place and get the support to give her child the best start in life, and herself the best future”; and “It’s not enough to promise improvements in care that we all know will be impossible to deliver...If the government ends the use of custody for pregnant women and mothers of infants, if it prioritises services that address the root causes of offending and delivers better support for girls & women in LA care, it will break intergenerational cycles of disadvantage and deliver huge benefits for women, their families and society.”

### **2.6.8 IPPs** (The Centre for Crime and Justice briefing on indeterminate custodial sentences)

For the first time, Northern Ireland & Scotland were included. The main conclusion relates to the question of whether such sentences should be considered a form of psychological torture, as their torturous and unfair aspects are likely to become ever more apparent. The impact includes:

- risks to health and mental health decline
- risk assessments are not individualised
- an individual’s mental health (and possible behaviour) is likely to deteriorate when it is not clear what they need to do to secure their release
- a lack of access to rehabilitation and support
- a high bar for release
- lack of adequate post-release support leading to recall

The bulletin concludes with the key question: “How is it that the IPP sentence, abolished by Parliament over ten years ago can be allowed to inflict more despair?”

### **2.6.9 Prisoner wellbeing** (Article in the Prison Service Journal)

This looks at how we can apply the lessons from recent research into wellbeing to people in prison. Wellbeing in the general population is linked to a range of positive outcomes, including increased productivity at work, better relationships, and better health. Promoting and supporting the wellbeing of people in prison is closely linked with HMPPS' duty of care to provide safe and supportive environments. The authors synthesise the evidence base on wellbeing and identify the 'Five Ways to Wellbeing' adopted by MIND, adding a further one (to build):

- Connect
- Being active eg physical activity, healthy diet, in-cell books and TV
- Take notice eg mindfulness/meditation/yoga, out of cell music activities
- Keep learning eg access to CBT and therapies, and creative activities
- Give eg enable support & peer delivered interventions, foster interest in helping others
- Build eg opportunities to help develop optimism hope and meaning, ways to help manage the passing of time, and foster a safe, clean and decent prison environment

### **2.6.10 HMIP Inspector's Annual Report**

The main areas covered were:

- *Reduced regimes* Criticism for prisons continuing to operate greatly reduced regimes & asked how people could be rehabilitated without access to education, training and work opportunities. Despite the litany of reasons, it was clear that much of the failure must come down to a lack of leadership within both prisons and the prison service
- *Other key concerns* included the living conditions in reception prisons; a lack of helping services for remand prisoners; much reduced access to libraries and gyms; an over-reliance on agency staff for many prison healthcare teams and concerns around support for mental health problems; lack of effective key work; and persistent racial disparity and the experiences of black prisoners (and black staff)
- *Women's prisons* Continuing concern about the treatment of women displaying the most extreme mental health difficulties, particularly those who prolifically self-harmed. It is clear that many of them should not have been in prison and in most cases, the wait to transfer to hospital remained much too long
- *The children's estate* A greater proportion of children are on remand and serving very long sentences. Overall levels of violence remained much too high, regimes continued to be limited; with only one letting children out of their cells for longer than 6.5 hours a day, with even less time at weekends. Fear of violence had created a vicious circle that meant children were more likely to carry and use weapons, ostensibly for self-protection, but which predictably resulted in further incidents.

Staff shortages and the growing proportion of inexperienced staff were noted but regarding leadership: "One of the most valuable resources in our prisons is the best 20 or 30 governors who are visionary, dynamic, courageous and inspiring. If the prison service was able to make better use of their expertise, from both the public and private sectors, much more progress could be made. It continues to be far more hierarchical than other public services, with limits on autonomy at every level that stifle creativity and risk-taking."

### **2.6.11 Friday release**

The Offenders (Day of Release from Detention) Act, which should see an end to Friday prison releases for the most vulnerable, has become law. This gives prison governors the right to release vulnerable prisoners up to 48 hours earlier during the working week. This will allow access to vital extra time to get the support they need with eg accommodation, mental health or substance misuse support and financial support, as well as attending meetings with probation. Getting this in place in the first few days helps to reduce reoffending and give people the best chance at a second chance.

### **2.6.12 Prison Gangs** (Does the Government 'do God?' report - Government-commissioned review)

This found that prison gangs are ordering prisoners to become Muslims or face violence, using the phrase "convert or get hurt". The author visited jails and spoke with staff, officials and chaplains: "I heard numerous stories that the phrase 'convert or get hurt' was commonly used by some Muslim

gangs, and copies of the Quran would be left on the beds of new prisoners. Failure to identify as a Muslim meant that at best the new prisoner would be denied 'protection' from the dominant Muslim gang on that wing, or at worst the new prisoner would be subjected to violence and intimidation from that same gang." It was recommended that the Government undertake an urgent investigation into the problems of forced conversions, faith-based gangs and radicalisation in jails, including a commitment to examine whether prison staff or volunteers had colluded to help extremist views thrive. Such an investigation could "help identify any gaps in services that allow these issues to flourish, compromising the human rights and safety of prisoners, and the effectiveness of HMPPS as a rehabilitative system".

## **2.7 Probation**

### **2.7.1 Community Performance Annual report** (MoJ April 2022-March 2023)

Headline findings are:

- *Ratings* Only 2 of 12 regions are operating at a 'good' level – all others are rated as either 'requiring improvement' or 'inadequate' [NB West Midlands is inadequate)
- *Meeting targets* Only 10 out of 26 probation service levels were above or equal to their target. 2 out of 3 Commissioned Rehabilitative Services were not hitting their target
- *Performance* improved in the last quarter but some levels remain well shy of their target levels eg 57.5% of targeted interventions for sex offenders are completed; 76.5% of sentence requirements are completed before the sentence expires; Unpaid work completions are still only 50.6% as the service is still struggling with the pandemic backlog; 40.5% of accredited programmes are completed; and 51.2% handover meetings between the Prison and Community offender managers take place

Although staffing levels have started to improve, this is still to translate into better performance.

### **2.7.2 Probation Staff Experiences of the Unification of Services** (British Journal of Criminology)

A discourse of professionalism has proved crucial to driving recent organisational restructurings of the probation service. The Coalition Government argued that bureaucratic, state provision of services had stifled probation practice - for which the introduction of market logic, via the 2014 Transforming Rehabilitation (TR) reforms, would restore professional discretion. And yet, the detrimental impact of TR on practice meant that re-professionalisation was an important objective of yet more restructuring. The paper explores probation staff experiences of organisational change, particularly since services were returned to the public sector in June 2021. It argues that the exercise of professionalism in probation has been, and continues to be, shaped by a legacy of organisational change that is both bureaucratic and dependent upon market(-like) mechanisms. It contends that the ongoing impact of a 'discursive battle' between market and bureaucratic forces has further eroded professionalism in probation. The findings highlight how re-nationalisation alone is not sufficient to improve performance. Without meaningful action to address the failures that lead to re-nationalisation, all services will be beset by the same challenges. In a probation context, retention must be improved - notably, through pay, but also through workloads that enable staff to realise a client-centred ideology of service. Staff, after all, are the service's most valuable asset; they should be treated accordingly.

### **2.7.3 The impact of pre-sentence reports** (MoJ research)

This looked at the impact of oral and fast delivery PSRs on the completion of court orders. The overall results show statistically significant evidence that those who received a PSR (oral or fast delivery) in 2016 were more likely to successfully complete their court community sentence order, compared with a group of similar offenders who did not receive a PSR. Researchers found that PSRs were not completed in 21% of cases where community orders were made, and Standard (full, written) PSRs were produced in just 3% cases. 49% were Oral PSRs. The low number of full PSRs is an important issue. A recent FOI request showed that 86 women were sent to custody on the basis of an oral report with over a quarter of these sentenced to >6 months.

#### **2.7.4 Serious Further Offences** (Probation Inspectorate's second annual report of SFO reviews)

Headline conclusions were that assessments of the risk of harm people on probation pose remain inaccurate and incomplete; not enough is being done to stop people on probation reoffending; and SFO reviews themselves remain below the expected standard. Over 500 SFOs are notified to HMPPS pa and for the victims & families affected, the impact and consequences cannot be underestimated. Of the 55 murders notified in 2020/21, 38 were serving determinate prison sentences while 17 were subject to community supervision. Most reviews are conducted by HMPPS itself and the inspectorate looked at 20% (86 cases) of them. 30 involved murder, and 20 rape. 42% had been assessed as posing a medium risk of serious harm, and 44% as high risk. 42% were managed under MAPPA (74% at level 1 and 26% at level 2). Only 49% of the reviews were given a rating of 'Good' cf 66% the previous year. The Chief Inspector attributed the declining performance to low staffing levels but said: "It is disappointing to see the quality of satisfactory reviews of SFOs conducted by the Probation Service reduce by nearly 20%. It is clear that the Probation Service must strive to do a better job of consistently and accurately identifying the minority of people on probation at risk of causing serious harm. And learning the lessons from these very concerning incidents."

#### **2.7.5 Learning from the deaths of people under probation supervision** (Probation Quarterly)

It is important to recognise the differing responsibilities across the justice sector. Unlike custody, where there is a duty of care in the preservation of life as the person is in the custody of the state, this is not reflected in the community other than, to an extent, within Approved Premises. Probation practitioners in the community are not the lead partner in preventing death. That said, they can encourage and support addressing issues affecting health and wellbeing. Many of the risk factors for nonnatural deaths align with those for offending behaviour including physical and mental health needs, poverty and family breakdown and substance misuse which reinforces probation's role in the pathway to prevention. The study identified an extremely high proportion of non-natural deaths within this population (25.9% for drug overdose, 10% suspected suicides, 7.9% accidental death and 4.8% homicide). This equates to nearly 50% of cases reported as non-natural deaths, far more than the general population (90% are from natural causes).

#### **2.7.6 Specialist sex offender teams**

Plans to disband specialist teams that deliver treatment courses for sex offenders have prompted fears public safety will be jeopardised. Under MoJ proposals, which are being fiercely resisted internally, behaviour programmes for a wide variety of offenders would be delivered by staff who are not fully qualified probation officers. Officials are understood to be considering whether to scrap two of the intervention programmes for sex offenders even though a MoJ evaluation found they were leading to positive change. Specialist units across 12 probation regions are run by highly skilled probation officers who have extensive experience of dealing with rapists, paedophiles and online abusers. The MoJ intends to replace each team with a generic unit able to deliver courses for all types of offender, including domestic abusers, with sessions facilitated by non-fully qualified staff. The probation union Napo said: "The government wants to create a 'one size fits all' regime. It's an efficiency measure. We have made it absolutely clear that there must be a change of direction. We think it presents a real and present danger to public safety." The MoJ said: "Our number-one priority is public protection and we will never compromise on safety. Our proposals would mean more staff can deliver high-quality programmes that steer offenders away from crime."

## **2.8 Youth Justice**

### **2.8.1 Restraint Regime** (MoJ policy)

Staff working in children's prisons are to be banned from using techniques that deliberately cause pain, except in emergency scenarios to save life or to prevent life-changing injury. This new policy will be effective from February 2024 and states that it is "never acceptable to deliberately cause pain when a non-painful alternative can safely achieve the same objective". Three official methods of pain-inducing restraint are still in use in children's prisons, involving the infliction of severe pain to the area below a child's ear, thumb and wrist, but the MoJ has conceded that a fourth technique ("inverted wrist hold") causes "considerable pain and discomfort" and agreed to recategorise it after



a review concluded that it had “become a pain-inducing technique in all but name”. The policy will be implemented 20 years after a 14-year-old killed himself following a restraint by four Serco officers for non-compliance using a technique called “nose distraction”, which involved a karate-like chop to the nose. He left a note behind asking “what gives them the right to hit a 14-year-old child in the nose?” Six hours after the restraint he hanged himself. 1,258 separate incidents took place last year. The inverted wrist hold is the most used to inflict pain (97%). Article 39’s director, said: “Had ministers and the prison establishment listened properly to children nearly 20 years ago, and drawn a line in the sand after Adam’s preventable death, this policy change would not have dragged on to 2024. We will continue to closely monitor and hold government and institutions to account, since this is an area of policy replete with broken promises and catastrophic child protection failures.”

### **2.8.2 Unaccompanied children**

Vulnerable children who arrive in Britain by small boat are being placed in an adult prison that holds significant numbers of sex offenders. A growing number of cases have been identified where unaccompanied children, many of whom appear to be trafficked, have been sent to a Kent prison, and placed among foreign adult prisoners. According to the most recent inspection, the block also houses sex offenders. One is believed to have been 14 when they spent 7 months in the prison. Most involve Sudanese children who travelled to the UK via Libya, often being trafficked or having experienced some form of exploitation. The children were declared adults by the Home Office following what many experts describe as a “cursory and arbitrary” age assessment by officials, often conducted within hours of them reaching the UK by small boat. A number of these decisions that meant children were sent to an adult prison have already been overturned after detailed assessments by independent or LA specialists. In 10 councils, all of the young people assessed were found to be children. A government spokesperson said: “Assessing age is a challenging but vital process to identify genuine children and stop abuse of the system. We must prevent adults claiming to be children, or children being wrongly treated as adults – both present serious safeguarding risks“

### **2.8.3 YOI conditions** (A letter from the new IMB National Chair)

In post for less than a month, the chair has already written to the prisons minister to urge him to take urgent action to improve the conditions in which children are held across YOIs. IMB feedback found that at in every YOI, children were subject to severely restricted regimes and were commonly spending 19-21 hours a day in their rooms, some up to 23, described as “unacceptable treatment of children in custody”. 4 other key issues were highlighted:

- Children are being denied access to purposeful activity and education
- Violence remains a problem and sometimes incidents were triggered by the impact of restricted regimes. This results in many more children feeling unsafe and unprotected in an environment where they should be safeguarded
- There is an increasing cohort of children with complex needs, such as histories of trauma and neurodiversity, whose needs were not being met
- There is a marked deterioration and these concerns are now “endemic” across every YOI

In conclusion: “There have always been children with profound needs in the custodial estate. Often they can present a high risk to themselves and others... If more focus was placed on providing structured and fuller regimes, cycles of violence and poor behaviour would be reduced and outcomes for children improved. “

### **2.8.4 Increase in young adults held in children’s estate**

A coalition of groups has highlighted the ‘appalling conditions’ children and young adults are being subjected to in the children’s estate and called for a halt on the proposed introduction of PAVA spray. Some 30 signatories have expressed their concerns about the rapid increase in young adults held in prisons in a letter to the justice minister. The MoJ shifted the presumed date a young person transitions from youth to adult custody from the 18th to 19th birthday as part of the government’s Operation Safeguard for overcrowding in prisons. The number >18 increased by 140% in the 5 months after this was announced. The groups are ‘gravely concerned’ about the ‘appalling,

potentially unlawful treatment of children and young people in custody’ including prolonged solitary confinement and reports of those at risk of serious harm ‘often driven by frustration at inadequate regimes and needs not being met’. It highlights the deployment of ‘general purpose dogs’ such as German Shepherds used by the prison service as ‘deterrence’ during incidents and devices such as stun grenades or ‘flashbangs’. ‘We are dismayed that rather than putting the time and resources into addressing the root causes of their behaviour, policymakers are seriously considering arming custody staff with harmful irritant sprays to use on children. Concern for 18 year olds is not why the policy decision to increasingly keep them in the children’s estate was made. Nor was the decision made because it had been deemed the children’s estate was in a good, fit state to meet the needs of the children held there as well as a rapidly increasing population of young adults. Rather, the decision was purely based on capacity failures in the adult estate.’

### **2.8.5 Legal representation in the youth justice system** (report on its quality)

This research found the urgent need for clear guidance around training for solicitors to ensure children are adequately represented. There is clear evidence that children coming into contact with the CJS have a range of complex needs and vulnerabilities which require those representing them to have specialist skills, knowledge and expertise. The report sets out five key recommendations to ensure children are adequately represented, without being unnecessarily onerous for solicitors working in a challenging sector.

### **2.8.6 State of YJ Services** (HMIP’s Annual Report on youth justice services)

The report found strong youth justice services that are delivering high quality services to children, young people, and the communities in which they live. Overall, they know how to work with their partners to get the best outcomes for children, management boards understand their services and partnerships, and essential requirements such as substance misuse treatment and mental health support are being met. In marked contrast to the Probation Service, the overall ratings for YJSs have borne up remarkably well during the pandemic. Across 108 services, 55 were rated ‘Good’ and 12 ‘Outstanding’. Last year they rated 70% in these top two categories, with particularly strong scores for staffing, partnerships, and IT and facilities. They are generally finding low vacancy rates; manageable caseloads; strong relationships with local partners; and a good range of services for children being delivered in-house. The report notes that a small proportion of children are now processed through formal CJ processes, whether through the courts system or a police caution/conditional caution. Instead, increasingly children are dealt with via out-of-court disposals which are increasingly taking the form of a community resolution— where children are offered support and intervention without receiving a criminal sanction. Concerns remain around ETE and high levels of permanent exclusion from mainstream education. The Chief Inspector praised the “resilience, compassion, commitment, and imagination” of youth justice workers in keeping their services running throughout the pandemic and providing an increasingly high quality of service to young people in contact with the justice system and their local communities”.

## **Sentencing**

### **3.1 Repeat shoplifting** (Blog by Lilly Lewis, Women's Involvement Advisor at One Small Thing)

Using new legislation in the CJ bill, the government plans to force judges to impose jail terms when sentencing repeat offenders for shoplifting. Criminalising those shoplifting out of a necessity to feed and clothe their children is disastrous, will not have any impact on those who shoplift and is not the answer to the cost-of-living crisis. Sending women to prison even on short sentences has a huge negative impact on their mental health and separating children from their mother for any length of time creates childhood trauma. One MP stated that the most stolen item in her borough was Calpol. If the government plan goes ahead, we will see a huge spike in women being criminalised and more children affected by separation. The government could do more in supporting women and families through this cost-of-living crisis eg by providing weekly food vouchers for local supermarkets, on top of low income or any benefits she is already receiving. Increasing free childcare places for those women who want to work and are on lower incomes, and providing Gas and Electricity support all year round not just in the winter months would all make a big difference.

### **3.2 Electronic monitoring** (Electronic Monitoring Statistics)

The government's tough stance on crime is not restricted to incarceration as it is also increasingly keen on making more offenders subject to electronic tagging. In 2022/23 the total number of individuals fitted with an electronic or alcohol monitoring device increased by 22%.

*Bail orders* Court bail accounted for 36% of those fitted with an electronic monitoring device, (up by 14%)

*GPS tagging* increased by 67% due to the continued rollout of electronic monitoring to new offender cohorts, particularly immigration bail

*Alcohol monitoring* increased by 119% mainly for the post-release cohort

*Tagging as part of a court sentence* decreased by 19%, likely associated with mandating domestic abuse and safeguarding checks in all cases where electronic monitored curfews are proposed.

This growth is seen to be more about the government's desire to appear tough on crime than any evidence base. The most recent NAO report on tagging is critical of the performance, noting that the system is not doing what it promised. HMPPS cannot collect information on the timeliness or quality of the service; their ability to carry out analysis and evaluation is severely constrained by the poor quality and availability of data; and they did not analyse reoffending and offenders' diversion from prison as planned because of constrained resources. The NAO (which reports that the MoJ had to write off £98m when it terminated the Gemini contract) concludes with a further warning that the lack of a proper evidence base means we do not know the value of electronic monitoring in protecting the public and reducing reoffending.

## **4. Other issues**

### **4.1 HMPPS Staffing** (BBC report)

The MoJ mistakenly published a comment on a government website that prison and probation staffing is approaching dangerously low levels which was spotted by the Labour Party. The comments were not meant to be made public and have now been removed. Government commitments on prison expansion and high staff attrition levels are blamed for the shortages. 15% of prisons are expected to have fewer than 80% of the prison staff that they need, and a third of probation regions have fewer than 80% of the necessary probation officers. In February, internal figures showed that some probation officers had workloads twice as large as their recommended capacity. A whistleblower warned the risks to the public are "significant". A MoJ spokesperson said: "We have hired a record 4,000 probation officers since 2021 and we will recruit up to 5,000 more prison officers by the mid-2020s to steer offenders away from crime and keep people safe."

Other staffing concerns include:

- the leaving rate of 1 in 8 prison officers, making the challenge of increasing overall staff numbers particularly problematic. Research indicates high stress rates, burnout and PTSD with some departing prison officers
- leaving rates for probation staff are also high, cancelling out the advantage of recruitment
- sickness rates remain a concern with probation staff off sick for an average of 12.1 workdays pa, the reason for 57.4% being for mental and behavioural disorders

### **4.2 Response to crises in the CJS** (Extract from *PRT Building Futures discussion paper*)

This sets out to encourage an open and constructive debate about crisis and scandal in the CJS and the role they play in shaping policy and practice. The authors set the discussion within the context of what many people consider to be a permanent crisis in CJ, in particular in prisons. Key points are: "As we know, crises often prompt politicians to initiate "knee-jerk" responses, desperate to seem tough on crime and prisoners in particular". People inside are often subject to changes experienced as collective punishment. The authors conclude that a clear strategic direction and associated policy positions rarely exist in terms of governing our CJS: "Far from the exception to the rule, episodic moments of crisis and scandal emerge as critical components of the policymaking cycle. Policy decisions made under conditions of crisis can alter the delicate equilibrium of control, safety and legitimacy that underpins the delivery of an effective penal system. These complex policy legacies can endure for decades in ways that shape the options available to successive generations of penal policymakers."

### **4.3 The alarming Americanisation of British prisons** (Extract from article by former editor of the New York Times)

It is hard to imagine a system more perfectly designed for failure than ours in the US, which in the name of “corrections” helps perpetuate a cycle of poverty, crime, community dysfunction and despair. The UK locks up a larger percentage of its subjects than its neighbours in western Europe, but its per capita incarceration rate is only about a third of America’s. While the UK, like most democracies, long ago abolished capital punishment, the US put 18 prisoners to death last year and has about 2,500 more awaiting execution. The US also has an insane gun culture, on both sides of the law. And there is no equivalent to HMIP, the independent agency that conducts unannounced, in-depth inspections and publishes the often harrowing findings. But the UK’s version of punishment has many echoes of American dysfunction and they are growing louder: overcrowded cell blocks, low staff morale, violence and self-harm, rampant drug use and mental illness, a severe shortage of rehabilitative activities and a parole system widely described as an abject failure in safely reintroducing prisoners to the free world. As in the US, the UK’s incarcerated population is disproportionately black - about 13% cf 4% of the general population and inmates of colour find the system suffused with racism, subtle and not so subtle. And while the US has begun to reduce its incarceration rate; spawned reform movements on the left and right; elected several progressive prosecutors; restored college grants for incarcerated students and created tentative pockets of innovative prison management, the UK seems to be drifting in the other direction. Sentences are growing more draconian, driving up prison populations; experienced staff are jumping ship; opportunities for self-improvement are shrinking. And prisons that locked down the cell blocks for 23 hours a day during the pandemic have been slow to let inmates out of their claustrophobic cages now the crisis has passed. More prisoners than ever will have left custody after spending almost their entire sentence locked in their cells. Neither the ruling party nor the opposition has made reversing these trends a priority. To an American, this is the familiar, performative approach to crime-fighting that panders to voters’ fears without actually making the country safer. “I’m more pessimistic now than I think I’ve ever been“. The pendulum is swinging in the wrong direction.” The 1991 Woolf report following the Strangeways laid out a blueprint for prisons that would be more secure and more humane. In summary: “The Service must seek to minimise the negative effects of imprisonment, to encourage prisoners to take some responsibility for what happens to them in prison, to match the demands of life in prison as closely to the demands of life outside as the conditions of imprisonment permit, and to prepare prisoners properly for their return into society.” The riot was a British version of the infamous 1971 Attica prison uprising in New York. Like Attica, it produced a period of introspection and some short-lived improvements, before the politics of tough-on-crime brought reforms to a halt. Some worry that it may take another Strangeways to awaken public attention. “If there’s no crisis, they’ll just keep on doing what they’re doing.”

### **4.4 Mental health** (IMB report on women’s prisons)

Women continue to be sent to prison for their ‘own protection’ or as a ‘place of safety’ due to their severe mental health needs, high risk of self-harm and suicide, previous suicide attempts and a lack of secure or community mental health beds. For women with severe mental health issues, prison is not an appropriate environment. Some women with mental health needs were being held in segregation or on general prison wings without adequate treatment and support. Inpatient and specialist units in women’s prisons, where they existed, were often full due to high levels of mental health need. Women requiring assessment and admission to secure mental health hospitals were not assessed or transferred promptly enough. Overall, the rate of self-harm across the women’s estate has continually increased. There are a small number of women with particularly complex needs who account for many of these incidents across the estate. Prison staff are required to care for and supervise women with high levels of need which has exacerbated staffing shortages.