

Making sense of sentencing

Doing justice to both victim and prisoner



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It is not an accident, neither is it an anachronism, that the name of every prison is prefaced by the initials HMP – Her Majesty’s Prison. This title, and the use of the phrase ‘At Her Majesty’s Pleasure’ to describe one prison sentence, point to an important principle in our unwritten constitution: that the authority to detain any subject and to deprive them of their liberty derives directly and ultimately from the Crown. Indeed, the whole judicial system from the arrest, trial and conviction of offenders to prison, parole and probation comes under the aegis of the Crown.

When the Sovereign is crowned during the coronation, service authority is explicitly bestowed upon them to administer justice. As the Sword of State is given into the hands of the new Monarch these words are spoken,

“With this Sword do justice / stop the growth of iniquity... punish and reform what is amiss.”

Then just before the crown is placed on the head of the Sovereign, the sceptre, which is the ‘ensign of Kingly power and justice’, is given with these words:

“So execute justice that you forget not mercy.”

In a service that dates back over a thousand years and is the nearest that the United Kingdom gets to a written constitution, the principles of our jurisprudence are made clear: punish and reform, execute justice with mercy. Herein lies the challenge of sentencing serious offenders. How do we balance the moral right to punish them for their grievous wrongdoing while at the same time pursuing the constitutional responsibility and opportunity to reform them and change their behaviour? How do we blend justice with mercy?

When judges pass sentence, they are obliged to have regard to a number of aims: punishment to fit the crime, the reduction of crime, deterrence, protecting the public, reparation, and rehabilitation.

In this report on the length of sentences we are following a bi-focal approach by taking and assessing evidence from the perspective of both the offended and the offenders. (I am deliberately not using the word ‘victim’ in this Foreword for as I have listened to those who have been violated, I have been persuaded that many of them feel that such a description of themselves further disempowers them. However, for the purpose of this report we shall use the word ‘victim’ which is in common parlance.)

As you will read in the quoted contributions both groups are pensive, passionate and provocative. For those who have suffered serious violation of themselves, or a loved one or both, understandably punishment is uppermost in their minds in their hope and expectation of a sentence that will fit the heinous crime; for many of those who have perpetrated the crime and have been sentenced, their hope is that they will use the time to work towards some form of rehabilitation and early release. These two responses – of retribution and reform – represent the two dominant polarities of this debate. However, instead of viewing these two poles as opposites we in the Commission begin to explore if they can be reconciled into a unified view of sentencing.

Moral outrage is the appropriate public response to the violation inflicted by many of the most serious offences. It merits retribution. Indeed, unless retribution and punishment are the just desert for wrongdoing, society would have no right to detain and imprison offenders and to impose on them a regime to reform. At the same time if there is no prospect of rehabilitation then the sentence is a dead end – not just for the offender but for society as a whole.

In my work with those affected by crime and injustice I have encountered understandable and justifiable anger in their grief and loss. These emotions often inspire families to campaign for justice and for changing the law in the name of their lost loved one, to ensure that nothing similar happens to anyone else in the future. This impressive ambition to making society safer is a wilful and positive outcome to tragedy. This grief-stricken and noble intention is exactly what also lies behind the moral purpose of rehabilitating and reforming the offender.

Society becomes a safer community when those who have done wrong come to see the error of their crimes and the full and true impact of their actions on those they have offended and determine to desist from their criminal behaviour. Those who have been offended against have a moral right to see that the offender is appropriately punished and that the offence is not repeated. Such a just hope is predicated on the reform of the offender.

Such a vision of justice depolarises retribution and rehabilitation and gives them equal emphasis in a unified view that serves both the offended and the offender.

The Sovereign's promise to 'so execute justice, that you forget not mercy' is for the sake of the offended as much as the offender.

One of the unimagined consequences of the Covid-19 lockdown is that we have gained experience of and insight into the punitive dimension of enforced isolation and what it means to be incarcerated and deprived of the liberty to socialise freely. Such imprisonment has had a major impact on our own well-being and mental health. It has helped us see what it does to a human being to be locked up in a confined space especially if you already have a mental health condition as do 70% of prisoners.

The deprivation of liberty is definitely punitive. When it comes to assessing the seriousness of an offence and the appropriate length of imprisonment which will fit the particular crime, then the number of years of punitive isolation is an essential element of the sentencing. But as important as the quantity of years is the quality of the time that is spent in prison. It is not just the length of the sentence but the content of the sentence that fulfils the requirements of the judge's direction for retribution, reduction of crime, deterrence, public protection, reparation and rehabilitation. It is clear that seen against this wider set of aims, sentencing has lost its way.

What happens to a prisoner while they are inside must, out of our own self-interest, render them safer human beings and less of a threat to society. But as our report shows, what happens – while the offenders are inside – to those they have hurt is also of paramount importance. Those that they have offended often feel abandoned by the criminal justice system. Many feel further traumatised by it and resent the focus on the offender in the criminal justice system – while their own grief goes largely ignored. The impersonal pursuit of blind-folded justice, they feel, neglects and neutralises their pain.

All this, and more, underlines the need for a fundamental re-assessment of sentencing policy so that it serves both retribution and rehabilitation – and makes sense to both the offended and the offender.

The Right Reverend James Jones KBE

Executive summary

1 The number of people given a prison sentence of more than 10 years has more than doubled in a decade. Yet this report concludes that the constant increase in sentence length, at ever greater cost to the taxpayer, fails to achieve the results which legislators desired. Our conclusions as an Independent Commission are drawn from a bi-focal approach which has taken evidence from both the offended and the offenders – victims and prisoners – along with a number of oral and written submissions from people and authorities with experience of the current arrangements. The evidence presented in this report suggests that simply lengthening sentences for serious crime has not worked. It does not work for victims. It does not work for prisoners. And it does not work for society as a whole.

2 When a prisoner is sentenced the judge is required by law to ‘have regard’ to the following aims: the punishment of offenders; the reduction of crime (including its reduction by deterrence); the reform and rehabilitation of offenders; the protection of the public; and the making of reparation by offenders to persons affected by their offences. Having considered evidence from both victims and prisoners, it is clear to us that in our criminal justice system sentencing has lost its way.

3 The time has come to make sense of sentencing. And to do justice to both victims and prisoners. As an Independent Commission we call for a fundamental reassessment of the policy and practice of sentencing for the most serious of crimes in the form of a wide-ranging national debate to include:

- i** a review by the Law Commission of the sentencing framework for serious offences
- ii** a strengthening of the role for the Sentencing Council in promoting better public understanding of sentencing (including a better comprehension of the nature of life sentences) to build greater public confidence in sentencing policy
- iii** a Citizens’ Assembly on sentencing policy
- iv** a structured consideration by politicians across all parties, prompted and stimulated by the Justice and Home Affairs Select Committees, to debate the purpose, length, and content of prison sentences.

4 The purpose of this 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.

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

6 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.

7 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.

8 For sentencing to find its way again, a new national debate which looks at sentencing through a different lens is required. We also make eight other major recommendations.

The case for change

9 This 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.

10 The case for change 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 longerⁱ reveals:

i 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 decades¹

ii in 2009, 485 people were sentenced to more than 10 years in custody, a figure which more than doubled by 2019 to 1,188²

iii over the same period, the number of people sentenced to a determinate sentence of 20 years or more quadrupled³

iv the number of people serving an Extended Determinate Sentence trebled between 2015 and 2021⁴

v the proportion of life-sentenced prisoners serving 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%)⁵

vi the average minimum term imposed for murder rose from 13 years in 2000 to 20 years in 2020⁶; 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 release⁷

vii 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 years.⁸

11 The role of Parliament has been decisive in these increases in sentence lengths. But as a Commission we question whether the consequences which have followed were fully intended – or are even now properly acknowledged. Moreover, they do not treat prisoners in a way consistent with the purposes of sentencing. Nor do these increased sentences leave victims and their families satisfied. Successive chapters of this report provide evidence for all this.

12 In Chapter 2, drawing both on the evidence the Commission heard directly from victims and their families, and on other research presented to us, we have discovered that:

i victims' families want timely and accurate updates about the progress of their case and a clear understanding of what the sentence means, recognising that the point of sentencing may not be the best moment to absorb and digest that information

ii the process of sentencing leaves them feeling uncertain and confused about what the sentence means, and cut off from what happens to the prisoner thereafter

iii implicit and sometimes explicit in the testimony is the desire that the content of the sentence should lead the offender to recognise what they have done and to reform

iv where victims and their families have sought out restorative justice, they have often found it helpful: "… I saw the perpetrators as animals, not humans, these are monsters and that is how I saw them right up to the time we met them in that room, but during that process of talking I began seeing the human behind them and that changed the way I saw them"

v many other victims' families clearly have not had the opportunity to explore the possibility of restorative justice

vi there are lessons about listening to victims and their families and engaging with them which leads the Commission to a series of specific recommendations

vii providing longer sentences does not compensate victims for a failure in practice to consistently treat them and their families properly and in a way which respects the impact of the crime on them.

13 In Chapter 3, we look at the experience of prisoners, again drawing upon what we have heard directly and on the available research, some of it very new. In so doing we have discovered that:

i the perception of lost agency and autonomy, and the corresponding fear of becoming dependent, pose significant challenges to the mental health of prisoners

ii "most long termers have no or very few supporters or friends." Some prisoners deliberately lose contact with their family rationalising it as easier or simpler than continuing to feel like they were a burden

iii many prisoners recognised the difficulty (for prison staff and the Parole Board) of accurately assessing risk and reform. They believed these difficulties tended to mean that decisions turned, in practice, on the perfunctory completion of courses within prison

iv those who wanted to use their time productively, and not simply tread water, invoked the importance of gaining education and vocational skills

v but some questioned the purpose of participating in rehabilitative interventions at all when the sheer length of the sentence more or less guaranteed change of other kinds would intervene and render the course

ⁱ The Commission's definition of a long sentence includes: (1) determinate sentences of 10 years or more; (2) extended determinate sentences; (3) sentences of imprisonment for public

protection; and (4) life sentences. These sentences are described in detail in chapter 1 of this report.

contents irrelevant: “you might do a course at the beginning of your sentence say within the first 3-4 years and then serve another 17 years before you get out which then has no benefit”

vi a common belief was that the length of sentences was excessive from the point of view of nurturing positive change and also aiding a prisoner’s ability to progress from higher to lower category of prison and towards being released

vii even amongst those who have acknowledged their guilt, the strength of feeling was that life was pointless. This meant they saw few reasons to conform, and found little basis for believing that the sentence could in some way be productive

viii the main impact of longer sentences is to generate a lack of hope among prisoners.

14 The experiences reported in Chapters 2 and 3 give rise to this key question: do long sentences achieve the purposes of sentencing? Judges deciding a sentence are required to ‘have regard’ to the following aims:

- i** the punishment of offenders
- ii** the reduction of crime (including its reduction by deterrence)
- iii** the reform and rehabilitation of offenders
- iv** the protection of the public
- v** the making of reparation by offenders to persons affected by their offences.

15 In Chapter 4 we confront the question whether very long sentences achieve these purposes. The first step in all sentencing guidelines is always to determine the deserved punishment. However, the evidence we have assembled raises questions over whether the purposes of sentencing are met through current practice. For example:

- i** the punishment of offenders: while in practice this aim always comes first, it should not exclude other aims. Its importance does not justify stepping beyond what is necessary for a retributive punishment or prioritising punishment at the expense of all the other purposes of sentencing
- ii** the reduction of crime: the general indication of the available research is that it is the certainty (and not the severity) of punishment that makes a deterrent effective. We found no evidence that greater severity equates to greater deterrence
- iii** the reform and rehabilitation of offenders: we assess the two available approaches: The first, risk-focused approach works from the ‘top down’ and describes what caused a person to offend, assesses the risk that they might do so again, prescribes what might be done about it, and expects the individual responsible to comply with this prescription. The second, desistance-focused approach works from the ‘bottom up’, and describes the efforts that offenders make for themselves, based on what they want and what motivates them. We examine

the tension between the two approaches and conclude that, as currently delivered, long sentences, for all that they might succeed in the aim of reducing risk, rule out the achievement of ‘fuller’ forms of rehabilitation associated with the desistance model

iv the protection of the public: long-term imprisonment can undeniably contribute to public protection by incapacitating the person. However, risk assessment is imprecise, and practitioners are often cautious in determining risk. Furthermore, public protection does not always require the use of imprisonment. It can be secured by effective probation work, stable housing, contact with family, and employment

v the making of reparation by offenders to persons affected by their offences: our analysis suggests that meaningful efforts to take responsibility for past wrongs are just as much a part of the offender’s moral rehabilitation as acting to change a complex and abstract set of risk factors that remain substantially outside their control. We recommend a more restorative emphasis in the delivery of rehabilitation aims.

Recommendations

16 Analysis of whether long sentences achieve the purposes of sentencing needs further reassessment. That is the principal recommendation (Recommendation 1) and in Chapter 5 we set out how that reassessment, and the national debate around it, may best be conducted.

17 As a Commission we stand ready and eager to participate in the review we are recommending and look forward to working with the government and other parties.

18 As a further contribution to the new debate we make eight specific recommendations of our own, drawing upon our bi-focal approach. These recommendations are set out below. Four of these concern how victims of serious crime should be better supported and treated at the trial, the moment of sentencing and beyond; and four of them suggest changes to the content of sentences, how they are served, and how they are reviewed by the Parole Board.

Recommendation 1

A national debate on sentencing

A new national debate is needed on how the most serious crimes are punished. It should consider the content of a sentence as well as its length. It must deliberate on 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:

- i** A Law Commission review of the sentencing framework for serious offences
- ii** A Citizens' Assembly on sentencing policy
- iii** Strengthening the role for the Sentencing Council in promoting public confidence in and understanding of sentencing.

Recommendation 2

Better information for victims of serious crime

The Commission has found evidence of inconsistencies in the way victims are initially contacted and supported following a serious crime. Greater support should be given to them, and this support should be better tailored to the individual needs of the victims and their relatives. This requires victims to be asked how they want to be communicated with and their responses listened to. Decisions should not be made – as happens all too often at present – on their behalf with no consultation. Key elements of an individualised approach should include:

- i** Victims should be asked what they want regarding regularity and style of communication from criminal justice agencies
- ii** Victims should be told early in the process about the Victim Personal Statement (VPS) and informed that they have the option of how they wish to write and deliver their statement. They must be more clearly informed about the role of the VPS within the trial and the impact and weight it will be accorded
- iii** A written report outlining what the sentence means – spelling out the implications of any conditions attached to it, together with the timeframe of the custodial sentence and subsequent licence conditions – should be made available to victims and their families
- iv** As part of assisting victims in understanding the sentence, victims should not be misled into believing they have a greater role in determining the course of a sentence than is possible. It should be fully explained that the Parole Board is bound in statute to base its decision-making on the assessment of risk alone. While victims have certain entitlements in the parole process, the Parole Board cannot base its decisions on the representations of victims, unless they are relevant to the assessment of risk.

Recommendation 3

An entitlement for victims to request a summary of the prisoner's sentence plan and progress in the sentence

The Parole Board has recently taken important steps to improving the transparency and accountability of its decision-making by publishing summaries of its decisions. Similarly, victims could be given an entitlement to request a summary of the prisoner's sentence plan one year after sentencing. They should also be entitled to request a summary of the prisoner's progress halfway through the custodial term or tariff. This would go some way to addressing the desire of many victims to know whether the offender has come to understand the impact of their crime and has sought to change long before a prisoner appears before the Parole Board, an event which can come as a shock to victims and their families. Such a summary would need to take account of safeguarding and privacy concerns, particularly relating to the disclosure of private information about the prisoner or information that could put the safety of individuals at risk.

Recommendation 4

Better enforcement of the entitlements of victims

Victims have a number of entitlements under the Victims' Code. However, it was clear from the testimony the Commission received from victims that too often they are unable to claim their entitlements. We welcome the intention of the government to place victims' entitlements under the Victims' Code on a statutory basis, but the resourcing and oversight of how the code is implemented are what will make a difference for victims in the future.

Recommendation 5

Better access to restorative justice for both victims and prisoners

The Commission has seen that restorative justice can be helpful to victims and their families. However, few of the prisoners who appeared before the Commission had had the opportunity to participate in a restorative justice programme and much of the evidence the Commission received suggested that the provision of restorative justice was patchy and under-resourced. We believe that restorative justice approaches, properly defined and designed, ought to be more prominent in the delivery of the sentence. They can promote victim participation and satisfaction, while signalling to long-sentenced prisoners that their harmful past conduct generates corresponding moral obligations.

Recommendation 6

Improve the content of long sentences

The Commission believes that more could be done to improve the content of long sentences, including through better education and other forms of purposeful activity. Greater attention should be given to ensuring effective education provision for long-sentenced prisoners, including by increasing the availability of higher-level qualifications. There is need for improved co-ordination between prisons to aid continuous and progressive learning when prisoners are transferred from one prison to another. Reforms should be made to ensure that prisoners can gain financial assistance to enable them to participate in further and higher education at any stage in their sentence. In addition, greater effort should be made to ensure a full range of purposeful activities are available, including vocational learning and opportunities in sport, music and the arts.

Recommendation 7

Greater external scrutiny of arrangements for sentence progression

The Commission believes that much greater external scrutiny is needed of the arrangements which exist to enable prisoners to progress during their sentences. Many of the prisoners the Commission consulted expressed concern that their sentences offered too few opportunities to prepare for the future after custody. Effective arrangements for sentence progression are particularly important for people serving indeterminate and extended sentences, whose release depends upon them being able to satisfy the Parole Board that they no longer pose such a risk that their imprisonment must continue.

Options for promoting better scrutiny of sentence progressions include:

- i** The Ministry of Justice should collect, collate and publish detailed data on the progression of prisoners through the system
- ii** The Parole Board could exercise earlier oversight of sentence progression for extended and indeterminate-sentenced prisoners
- iii** The Chief Inspector of Prisons could be given a new power to issue a formal notification to the Justice Secretary if they have concerns about the availability and quality of opportunities for sentence progression in a particular prison
- iv** Monitoring and scrutiny bodies such as HM Inspectorate of Prisons, Independent Monitoring Boards and the Parliamentary Justice Committee should exercise greater scrutiny of arrangements for sentence progression
- v** HM Prison and Probation Service should develop

key performance indicators for sentence progression and use these in prisons holding substantial numbers of long sentenced prisoners.

Recommendation 8

Improve the effectiveness of the parole system

The Commission would support the introduction of reforms to improve the efficiency and effectiveness of the parole system, to ensure that individuals whose release is determined by the Parole Board are not subject to unnecessary delays in the consideration of their cases. We note that the report of the government's Root and Branch Review of the Parole System⁹ has committed to the establishment of a new Parole System Oversight Group and the establishment of independent third-party scrutiny arrangements. We hope these reforms will lead to the creation of a more efficient and effective parole process which begins from the day a prisoner starts their sentence.

Recommendation 9

End the injustice faced by IPP prisoners

The Commission shares growing concerns across the political spectrum regarding the unfairness of the situation faced by people serving the indeterminate sentence of imprisonment for public protection (IPP). The IPP, which was abolished in 2012, continues to cause some prisoners to serve prison terms grossly out of proportion to what was deserved given the seriousness of their original offence. It epitomises the way in which sentencing policy has lost its way in this century. We note that the cross-party Justice Committee is conducting an inquiry into the IPP sentence. We hope its recommendations will be given careful consideration by the government.

¹ 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/offender-management-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

² 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

³ House of Lords. (2021). *Written question UIN HL14482*. <https://questions-statements.parliament.uk/written-questions/detail/2021-03-23/hl14482>

⁴ 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>

⁵ Table A1.14. Ibid.

⁶ Ministry of Justice. (2014). *Freedom of Information request 89346. Prison Reform Trust*. <https://prisonreformtrust.org.uk/wp-content/uploads/2022/06/FOI-89346%E2%80%944minimum-terms-for-murder.pdf> (2017). *Written question UIN HL2315*. <https://questions-statements.parliament.uk/written-questions/detail/2017-10-23/hl2315>

⁷ 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>

⁸ 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-december-2020>

⁹ Ministry of Justice. (2022). *Root and Branch Review of the Parole System: the Future of the Parole System in England and Wales*. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1064480/root-branch-review-parole-system.pdf

Chapter 1: What has happened to sentence lengths?

Introduction

1 In England and Wales, as in most European countries, a sentence of imprisonment is the most severe criminal justice sanction the courts can impose. For those convicted of the most serious offences, a number of different types of custodial sentence are available to the courts. How long an individual spends in prison and the arrangements for their release and post release supervision will depend on the length and type of sentence passed.

2 As a starting point of its analysis, the Commission felt it was important to establish the facts of what sentences are being passed for the most serious offences and the length of time being spent in prison. It is also important to understand how this has changed over time and what factors are driving these changes. This chapter seeks to address these questions. The first part of the chapter provides a definition of a long sentence and describes different types of long determinate and indeterminate sentences. The second part examines how the use of long sentences has changed over time. The third part considers the key factors which have driven the changes in the use of long sentences. Factors considered include punitive sentencing increases, the growth in the use of preventative detention, and the likely impact of current policy proposals.

3 The Commission has been aided immeasurably in this analysis by the quality of the oral and written evidence it has received. We are particularly indebted to Professor Julian Roberts and Dr Jonathan Bild of the Sentencing Academy; separate submissions by Professor Ben Crewe, Dr Alice levins and Ben Jarman at Cambridge University; and the Building Futures programme at the Prison Reform Trust, whose evidence much of the proceeding analysis draws upon. We are also grateful to the victims and

prisoners who gave evidence to the Commission, whose testimony informs the analysis in Chapters 2, 3 and 4.

Types of long sentences

4 Any definition of a long sentence is to a certain extent arbitrary. For the purposes of its inquiry, the Commission has chosen as its definition a determinate sentence of 10 years or longer, extended and indeterminate sentences. The Commission has also chosen to focus on sentencing provision for people convicted as adults, given the separate and distinct arrangements that exist for juvenile offenders.ⁱ Similarly, given the devolved responsibilities of the Scottish and Northern Irish governments for justice policy, the Commission has restricted its inquiry to sentencing provision in England and Wales.

5 According to this definition, prisoners serving long sentences will be subject to either a determinate sentence, an Extended Determinate Sentence (EDS), an Imprisonment for Public Protection (IPP) sentence or a life sentence.ⁱⁱ These sentences differ primarily in their release and post-release arrangements. Below we provide a brief overview of these sentences, which draws on the written evidence submitted to the Commission by the Sentencing Academy.

Determinate sentences

6 The vast majority of prisoners serve a determinate sentence. Determinate sentences last for a fixed length of time and consist of a period spent in custody after which the prisoner is released and subject to supervision on licenceⁱⁱⁱ in the community. Most determinate sentenced prisoners will be released automatically at the halfway point in the sentence, with the second half of the sentence being served in the community but subject to possible recall to prison in the event of any breach of licence

ⁱ Some prisoners will have been convicted when they were under-18 and have subsequently progressed to the adult prison estate. As a result there will be a small number of people (tens) included in the adult prison population figures who were originally convicted as children.

ⁱⁱ A small number of prisoners will be serving a sentence of 'Special custodial sentence for certain offenders of particular concern' which is triggered by a conviction for either the rape or assault by penetration of a child under the age of 13 or certain terrorism offences. These are similar to determinate sentences but with release through the Parole Board from the halfway point (rather than automatically) and they have an additional one year on licence after the expiry of the custodial sentence. The statistical data produced by the Ministry of Justice does not specify the number of prisoners serving such sentences.

ⁱⁱⁱ Licence conditions are the set of rules prisoners must follow if they are released from prison but still have a part of their sentence to serve in the community. The aim of a period on

licence is to protect the public, to prevent re-offending, and to secure the successful reintegration of the individual back into the community. Licence conditions are supposed to be preventative as opposed to punitive and must be proportionate, reasonable and necessary. For prisoners whose release is automatic (most determinate sentenced prisoners), the licence conditions are set by the offender manager. If a prisoner is released by the Parole Board (extended, IPP and life-sentenced prisoners), the licence conditions will be proposed by the offender manager but will be agreed by the Parole Board. Standard licence conditions apply to everyone released on licence and include requirements to be of good behaviour, not commit a further offence, to keep in touch with and receive visits from the supervising officer, to reside permanently at an address, and not to undertake employment or travel outside the UK without the permission of the supervising officer. Additional restrictions may also be imposed if considered proportionate and necessary. These may include requirements to reside at a particular place, restrictions on contact with particular individuals, requirements to participate in a programme or be supervised by a particular individual or organisation, restrictions

conditions or further offending. For determinate and extended sentenced prisoners, licence conditions cease to have an effect once the full length of the sentence has been served.

7 The automatic release under supervision of determinate sentenced prisoners at the halfway point of the sentence is a relatively recent development. Before 1948, at a time when the prison population was significantly smaller than it is today, prisoners were required to serve the full length of the sentence in custody. However, in that year, the government decided that prisoners should be released once they had served two-thirds of their sentence. At that time, there was no parole and prisoners were released without being on licence. The 1967 Criminal Justice Act established the Parole Board and gave it a role in deciding whether *determinately* sentenced prisoners should be released early. The Board also made recommendations on the release of the relatively small number of prisoners serving life sentences. Concerns over whether these early-release tests were being applied fairly and equitably, and the general hardening of public and political attitudes towards prisons and crime during the 1990s, eventually led to a system of automatic release at the half-way point for most determinate sentences, with the rest of the sentence to be served in the community on licence. The Parole Board's role evolved too: now, a far greater proportion of its work is to decide whether *indeterminately* sentenced prisoners should be released *after* their tariff date. The majority of determinately sentenced prisoners are now released automatically. The Parole Board's role in relation to the determinately sentenced population is only to decide whether they should be released if they have been recalled to prison.

8 The question of at what point in the sentence it is appropriate to release a determinate sentenced prisoner remains politically controversial, and policy in the area continues to evolve. Automatic release at the halfway point

on movement including the imposition of curfews, restrictions on the possession of particular items, and requirements to disclose certain information. Licence conditions can be altered by the offender supervisor depending on the level of risk presented by the individual. However, any changes must be necessary and proportionate. A breach of licence conditions can result in a recall of the prisoner back to custody. Individuals serving a sentence for a violent or sexual offence or an extended determinate sentence are subject to standard recall. Individuals subject to standard recall require parole authorisation for re-release and can potentially remain in custody until the end of the sentence (or indefinitely if the individual is serving an indeterminate sentence). For determinate and extended sentenced prisoners, the licence remains in force from the point of release for the remainder of the length of sentence. For prisoners sentenced to an IPP or a life sentence, the licence remains in force indefinitely, although IPP prisoners can apply to the Parole Board to have their licence terminated 10 years after their first release date.

has recently been removed for prisoners serving a determinate sentence of seven years or longer for certain violent and sexual offences (the most serious types of these offences which carry a maximum sentence of life imprisonment). They now have to serve two-thirds of their sentence in custody. The Police, Crime, Sentencing and Courts Act 2022 will extend the requirement to serve two-thirds to prisoners sentenced to four years or more for some of the applicable violent or sexual offences. In terms of the time spent in custody, these reforms have an impact on who may be considered a long-term prisoner by the Commission: offenders sentenced to nine years' imprisonment for certain violent or sexual offences will spend longer in prison (six years) than someone sentenced to 10 years' imprisonment for an offence not covered by these provisions (who will serve five years before automatic release).

9 On 30 June 2021 there were 8,720 adult prisoners serving a determinate sentence of 10 years or longer.¹ This compares to 2,724 prisoners serving a determinate sentence of over 10 years on 30 June 2002.²

Extended Determinate Sentences

10 Extended sentences were first introduced by the Criminal Justice Act 2003 and have become more prominent since the abolition of the Imprisonment for Public Protection (IPP) sentence in 2012.^{iv} They comprise two parts, a determinate custodial term and an extended licence period. The extension period fixed at the time of sentencing, is based upon the length of time considered necessary for the purposes of protecting the public from serious harm. These sentences now fill the gap between determinate sentences and life sentences (they are imposed when an offender is deemed by the sentencing judge to be a dangerous offender but where a life sentence is not warranted. The test for dangerousness is met when there is a significant risk to members of the public of the commission of further specified offences^v by the offender.

^{iv} The extended sentence introduced by the Criminal Justice Act 2003 was called the Extended sentence for Public Protection (EPP). EPP sentenced prisoners sentenced after 4 April 2005 but before 14 July 2008 became eligible for Parole at the halfway point of the custodial sentence. EPP prisoners sentenced on or after 14 July 2008 and convicted before 3 December 2012 were automatically released at the halfway point of the custodial sentence. EPPs were replaced by the Extended Determinate Sentence (EDS) introduced by the provisions of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. EDS prisoners sentenced before 13 April 2015 with a custodial term of less than 10 years were released automatically at the two thirds part of the custodial sentence. EDS prisoners sentenced before 13 April 2015 with a custodial term of more than 10 years became eligible for Parole at the two thirds stage of the sentence. If they are not released by the Parole Board they are released automatically at the end of the custodial term.

^v Specified offences are defined as violent, sexual or terrorism offences listed in Schedule 15 of the Criminal Justice Act 2003.

11 Before 2015 EDS prisoners with a custodial term of less than 10 years were released automatically at the two-thirds part of the custodial sentence. Only those whose custodial term was 10 years or more or who had been convicted of one or more serious listed offences^{vi} required parole authorised release. However, changes introduced by the Crime and Courts Act 2015 require that all EDS prisoners must serve at least two-thirds of their sentence in custody and then require Parole Board approval to be released before the expiry of the full term of the sentence (therefore they become eligible for release at the two-thirds stage of their sentence but are not entitled to be released). After release there is an extended period on licence; this can be up to five years for a violent offence and up to eight years for a sexual offence. This serves as the safeguard in the case of an offender for whom release has not been directed by the Parole Board before the end of their full custodial sentence; they would otherwise be released with no licence conditions without this extension period.

12 The Counter-Terrorism and Sentencing Act 2021 introduced a new form of sentence for serious terrorist offenders loosely based on the EDS. The Serious Terrorism Sentence (STS) imposes a minimum 14-year custodial term and licence period set at the point of sentencing of a minimum of seven years and a maximum of 25 years. Most EDS prisoners are eligible for parole-authorised release after they have served two-thirds of the custodial term. By contrast, individuals serving an STS do not become eligible for parole-authorised release and must serve the full length of the custodial term. The 2021 Act also removes parole-authorised release for terrorist offenders given an EDS for an offence where the maximum penalty is life imprisonment. These offenders are now required to serve the full custodial term of the extended sentence, after which they are released automatically on licence.

13 Not all prisoners serving an EDS will be serving a sentence of 10 years or longer but due to the relative seriousness of the offending that is likely to merit an EDS, and the extended proportion of the sentence served in prison, many extended sentence prisoners will serve a considerable period in custody.

14 On 30 September 2020 there were 5,838 prisoners serving an EDS. Of these, 2,652 – 45% were serving a sentence of over 10 years.³

Imprisonment for Public Protection sentence

15 Imprisonment for Public Protection (IPP) sentences were imposed by courts between 2005 and 2013.^{vii} A minimum term was imposed as punishment for the offence but, once that had been served in full, release could only be ordered if the Parole Board was satisfied that the prisoner was safe to release. In this sense they were identical to life sentences; the key difference being that someone sentenced to an IPP sentence could apply to have their licence cancelled 10 years after release from custody.^{viii}

16 As the IPP sentence was abolished in December 2012, almost all IPP prisoners now in custody have completed the minimum term imposed for their offence, meaning they remain detained solely because the Parole Board has not deemed them safe to release or because they have been recalled to custody.^{ix}

17 On 31 December 2021 there were 1,602 prisoners serving an IPP sentence who had yet to be released from custody and a further 1,360 IPP sentence prisoners in custody who had been released and then subsequently recalled.⁴

Life sentences

18 Life sentences are the most severe sentences a sentencing judge can impose. A minimum term (also known as the ‘tariff period’) is to be served for the purposes of punishment for the offence committed. The length of the minimum term imposed by the court also encompasses the need for public protection. Release after this term has been served in full can only be ordered by the Parole Board. If release is attained, a life sentence prisoner remains on licence for the rest of their life and they can be recalled to prison at any time if they fail to comply with their licence conditions or commit further offences.^x

19 The vast majority of prisoners serving a life sentence have been convicted of murder; a life sentence is mandatory upon conviction for this offence. However, life sentences can be imposed on three other categories of offenders:

i Life sentences for dangerous offenders: A court may impose a life sentence if all the following criteria are met: an offender is convicted of a specified offence (listed in Schedule 19 of the new Sentencing Code); in the court’s opinion the offender poses a significant risk to the public

^{vi} Serious listed offences are offences listed in Part 1 to 3 of Schedule 15B of the Criminal Justice Act 2003.

^{vii} The equivalent of an IPP sentence for juveniles is called the sentence of Detention for Public Protection (DPP).

^{viii} Life sentence prisoners are subject to licence for the rest of their lives.

^{ix} On 30 September 2021 only 70 people in prison serving an IPP sentence were yet to complete their minimum term. 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>

^x The equivalent of a life sentence for children is Detention at Her Majesty’s Pleasure.

of serious harm by the commission of further specified offences; the maximum penalty for the offence is life imprisonment; and the court considers that the seriousness of the offence justifies the imposition of imprisonment for life.

ii Life sentence for second listed offence: Unless it would be unjust to do so in all the circumstances, the court must impose a life sentence where: the offender is convicted of an offence listed in Schedule 15 to the Sentencing Code (a number of the most serious violent, sexual and terrorist offences); and the court would impose a sentence of imprisonment of 10 years or more for the offence; and the offender has a previous conviction for a listed offence for which he received a life sentence with a minimum term of at least 5 years or a sentence of imprisonment of at least 10 years. No finding of dangerousness is required for this form of life sentence to be imposed.

iii Discretionary life sentences: Although rarely used in practice, courts have the power to impose a discretionary life sentence on an offender convicted of any offence where the maximum sentence is life imprisonment even where the conditions for dangerous offenders or those convicted of a second listed offence have not been met. The two-stage test for a discretionary life sentence is that: (1) the offender has been convicted of a very serious offence; and (2) there are good grounds for believing that the offender may remain a serious danger to the public for a period which cannot be reliably estimated at the date of sentence.

20 On 31 December 2021 there were a total of 7,689 people in prison serving a life sentence (all variations combined). Of these, 7,024 had not been released and a further 665 life sentence prisoners were back in custody having been released then subsequently recalled.⁵

Whole life order

21 The whole life order (formerly a whole life tariff) is a court order whereby someone who is sentenced to life imprisonment is ordered to serve that sentence without any possibility of parole or conditional release. This order may be made in cases of aggravated murders committed by anyone aged 21 or above at the time of the offence. The Police, Crime, Sentencing and Courts Act 2022 amends this criteria to enable a whole life order to be imposed on a young adult aged 18 to 20 in exceptional circumstances. The Bill also amends existing legislation to make a whole life order the starting point for the premeditated murder of a child.

22 The purpose of a whole life order is for a prisoner to spend the rest of their life in prison until they die, although they may be released on compassionate grounds or pardoned by the monarch, within the royal prerogative of mercy.

23 On 31 December 2021 there were a total of 61 people serving a whole life order.⁶

Changes in the use of long sentences

24 How the use of long sentences has changed over time is a complex question to answer. The Commission's definition of a long sentence covers a number of different types of disposal, each with their own unique history of development and use in the criminal justice system. Below we assess changes in the use of the different types of long sentence identified above.

25 For purposes of assessing historical trends in the use of long sentences, it should be noted that 2020 witnessed a significant decline in the number of sentences of all types passed by the courts, with court closures and jury trials suspended as a result of the Covid-19 pandemic. We have therefore used figures for 2019 as our comparator for the majority of the data highlighted below.

Determinate sentences

26 The Commission heard evidence of a significant increase in the use of long determinate sentences of 10 years or more. Figure 1 shows the number of determinate sentences passed by the courts according to sentence length. It shows that sentences of 10 years or more account for the smallest number of determinate sentences passed by the courts. However, the use of these sentences has grown significantly, rising from 485 in 2009 to 1,188 in 2019. By contrast, the use of short sentences of six months or less fell sharply during the same period, from 58,076 in 2008 to 40,378 in 2019.⁷

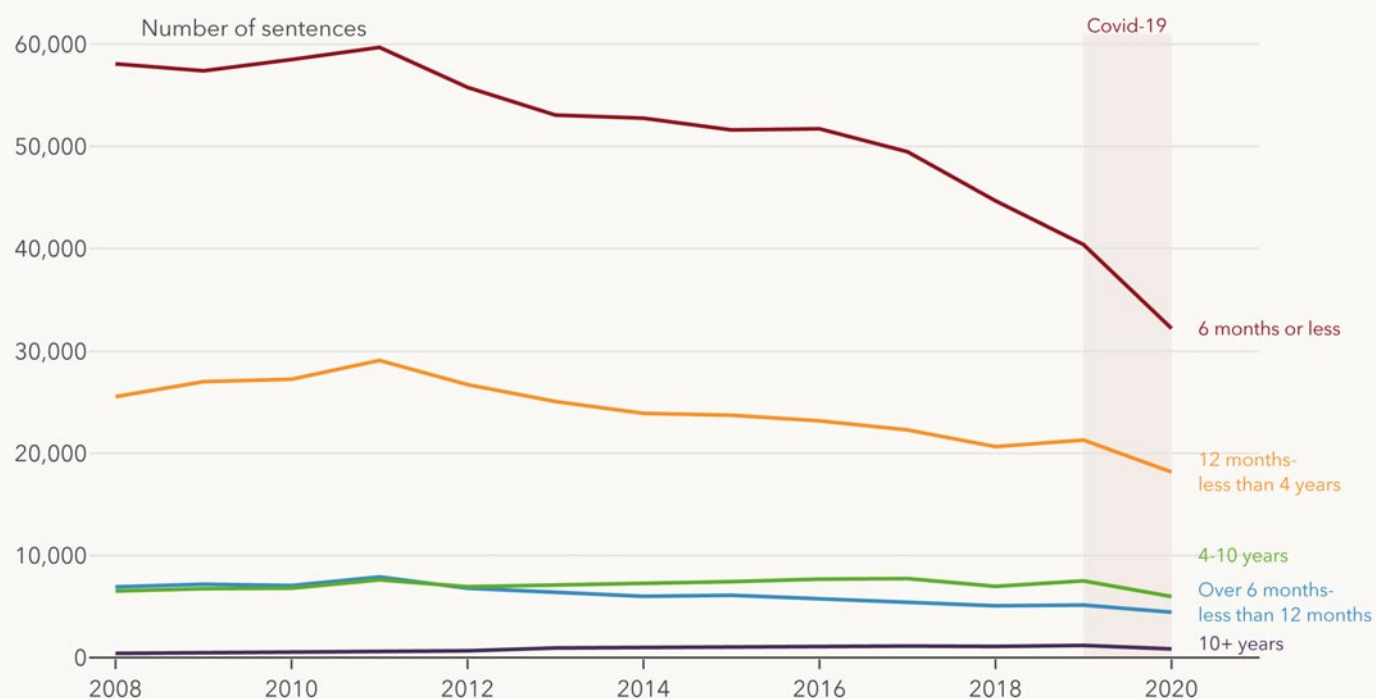
27 Figure 2 shows the percentage change in the use of different lengths of determinate sentences from 2008. It shows that the annual use of determinate sentences of over 10 years increased almost 200% between 2008 and 2019. By contrast, over the same period, the use of determinate sentences of four to 10 years increased by 15%, while the use of determinate sentences of less than four years declined.

28 In its written evidence to the Commission, the Building Futures programme highlighted a marked shift in the number of people being given very long determinate sentences of 20 years or more. Figure 3 shows the number of people sentenced to a determinate sentence of 20 years or more between 2009 and 2019. In 2019, the latest year for which data are available, 124 people were sentenced to custody for 20 years or more (excluding life sentences) – four times the number of just a decade ago.

29 Figure 4 shows the average length of custodial sentences since 2010 for people sentenced to more than 10 years in custody. It shows that the average has remained broadly stable, despite the increase in the number of people given determinate sentences of 20 years or more, over the same period. This suggests that the increase in sentences of 20 years or more has grown in line with sentences of 10 years or more – rather than as a result of an increase in the severity of sentences within this category.

Figure 1

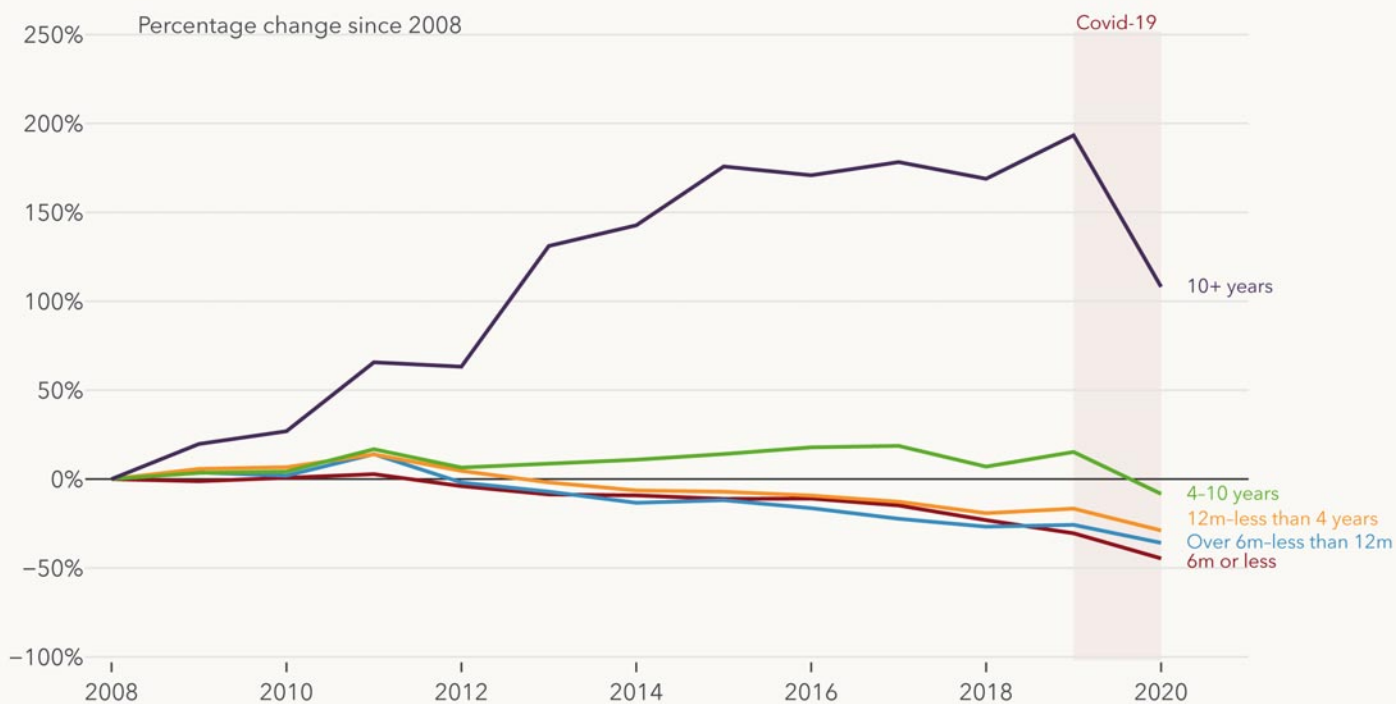
Short prison sentences have fallen sharply



Source: Ministry of Justice, Criminal Justice Statistics

Figure 2

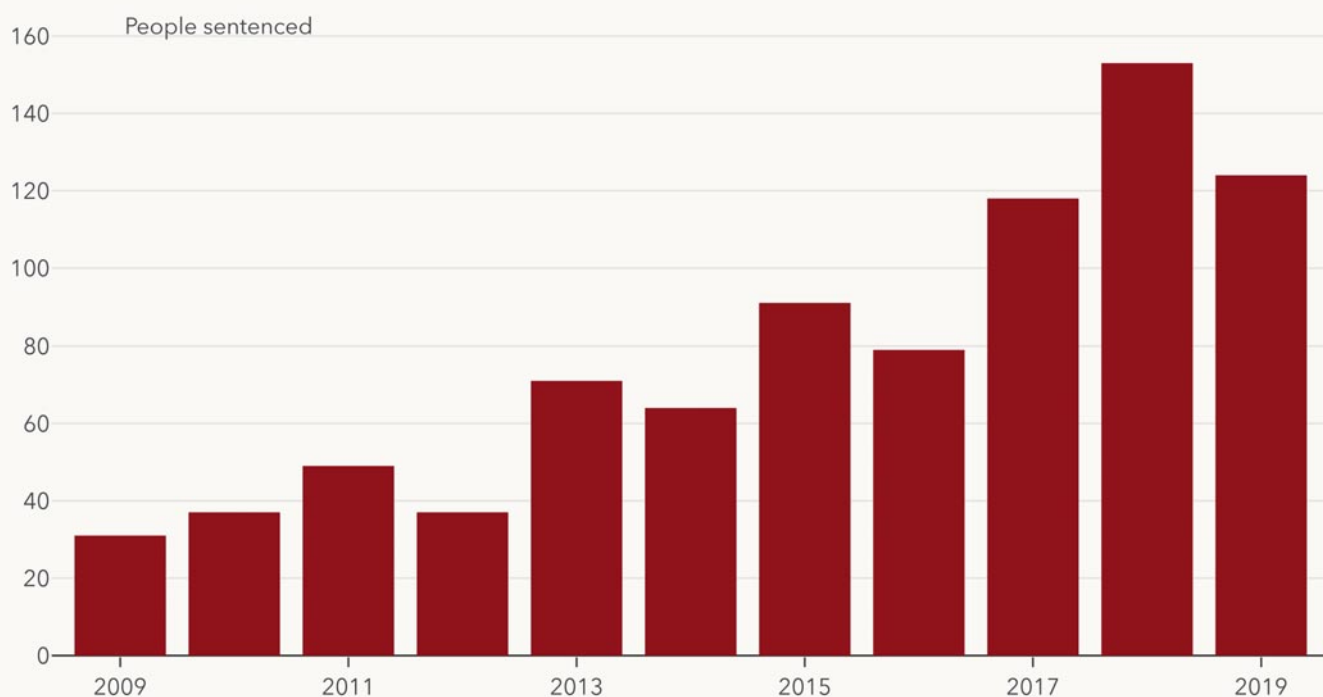
Almost three times as many adults were sentenced to over 10 years in 2019 than in 2008



Source: Ministry of Justice, Criminal Justice Statistics

Figure 3

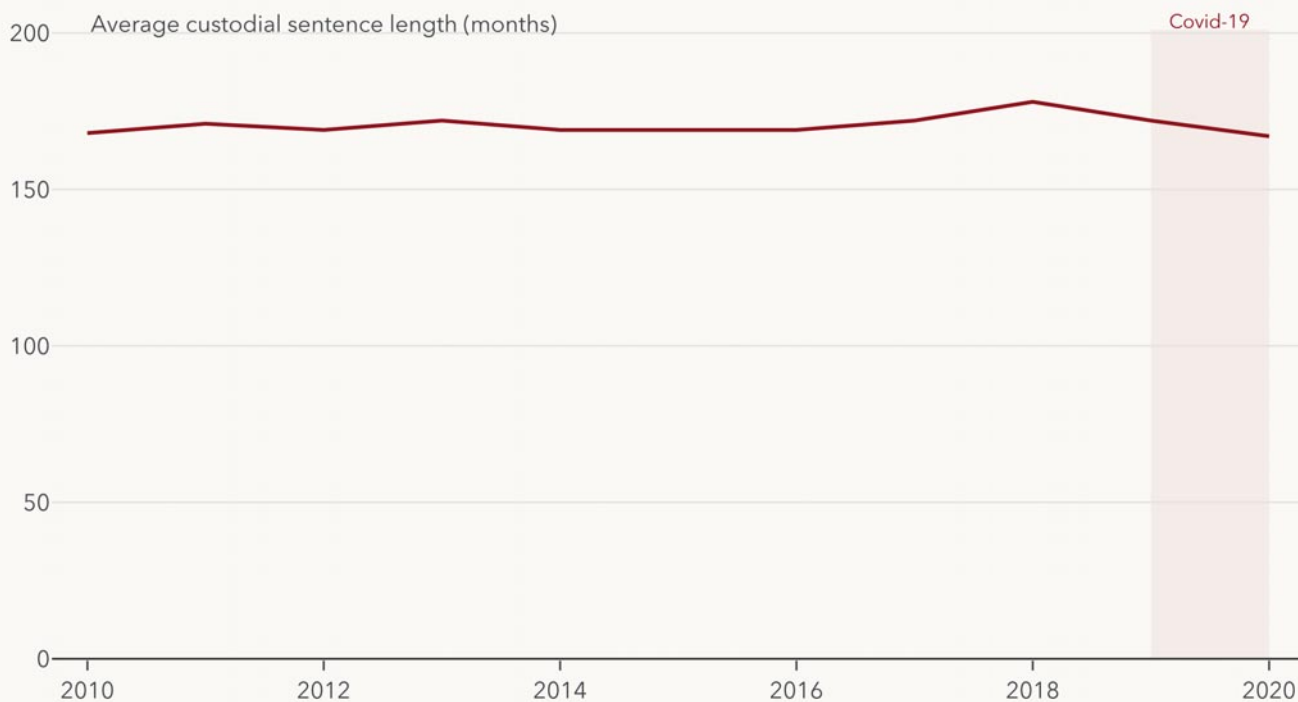
The number of people sentenced to 20 years or more has quadrupled in the last decade



Source: House of Lords Parliamentary Question UIN HL14482

Figure 4

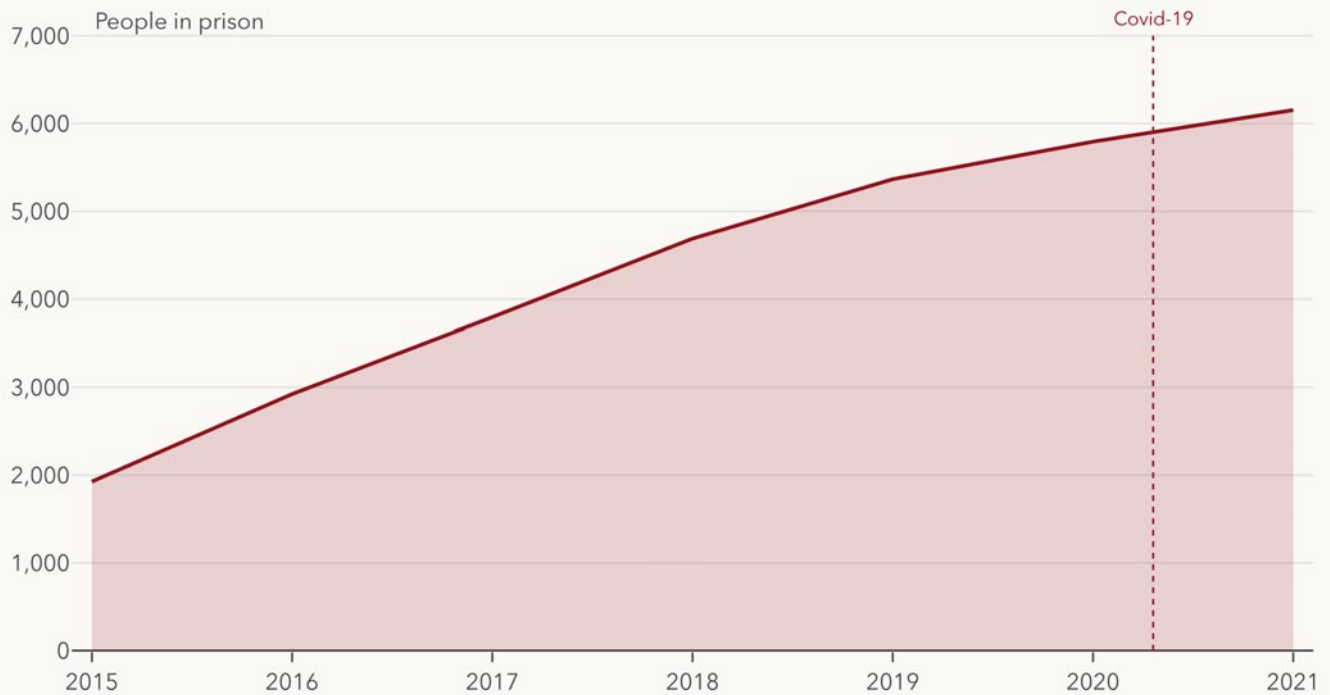
Average lengths for custodial sentences of more than 10 years



Source: Ministry of Justice, Criminal Justice Statistics

Figure 5

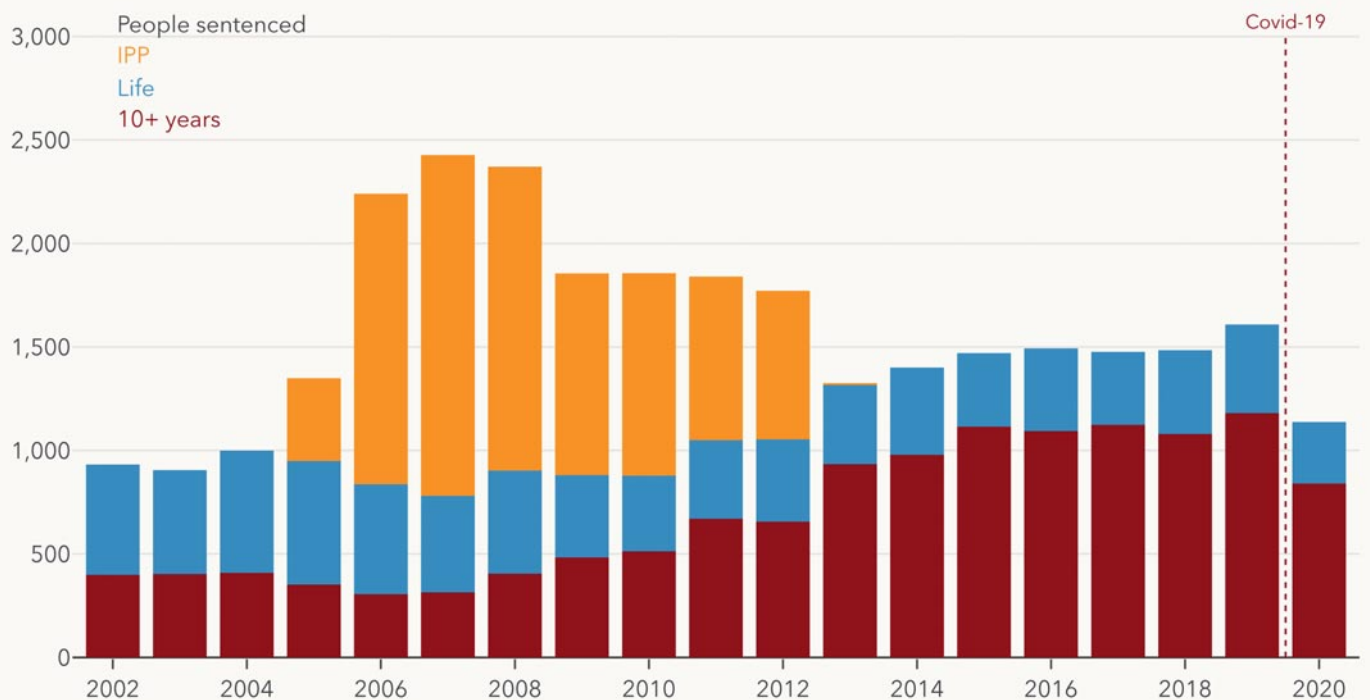
The number of adults serving an Extended Determinate Sentence has trebled in just six years



Source: Ministry of Justice, Offender Management Statistics

Figure 6

The use of long and indeterminate sentences



Source: Ministry of Justice, Criminal Justice Statistics

Note: A small number of children may be included in 2002 and 2003 figures

Extended determinate sentences

30 Figure 5 shows the number of people in prison serving an Extended Determinate Sentence (EDS) between 2015 and 2021. As of 30 June 2021 there were 6,153 adults in prison serving an EDS. This is up 6% on the number a year before (5,793) and up 15% from 2019.⁸ Between 2015 and 2018 there was a 15% increase in the number of receptions into prison for people sentenced to an EDS sentence, with 698 adults entering prison in 2018. Since then, there was a small decline in 2019 to 677 adults, followed by a much larger decline to 472 adults in 2020 reflecting the impact of the coronavirus pandemic on the court system.⁹

Indeterminate sentences

IPP sentence

31 Introduced in 2005 under the provisions of the 2003 Criminal Justice Act, the IPP sentence was abolished in 2012 and is no longer an option available to the courts for offences committed after its abolition. However, a significant number of people sentenced to an IPP prior to its abolition remain in prison, the vast majority of whom have served their minimum custodial term and are held post tariff (see below).

32 Figure 6 shows the number of people sentenced to a determinate sentence of 10 years or over, an IPP and a life sentence since 2002. It reveals a rapid rise in the number of people sentenced to an IPP between 2005 – when the sentence was introduced – and 2008.¹⁰ Reforms introduced in 2009 to limit the scope of the sentence coincide with a levelling off and slow decline in the use of the sentence up until its abolition in 2012.

33 Figure 7 shows the number of people in prison serving an indeterminate sentence (either an IPP or life sentence) in each year from 2002 to 2020. It highlights how the history of the IPP sentence has impacted on the overall numbers of indeterminate sentenced prisoners. Numbers of indeterminate sentenced prisoners started to climb markedly from 2005 when the IPP was introduced and peaked at nearly 14,000 in 2012. From 2013, the year after the IPP sentence was abolished, numbers of indeterminate sentenced prisoners steadily declined and then stabilised at just under 11,000. Of these, 1,722 were unreleased IPP prisoners, 1,332 were recalled IPP prisoners, 6,963 were unreleased life sentenced prisoners and 608 were recalled life sentenced prisoners.¹¹

Life sentences

34 While the overall number of life sentenced prisoners has fallen in recent years, a higher proportion are serving sentences with tariffs of more than 20 years. In 2011 just over one in 10 people (12%) in prison serving a life sentence had a tariff of more than 20 years, but by 2020 this had more than doubled to nearly three in 10 (29%).¹² In 2003 the average tariff length of mandatory life sentences was 12.5 years. By 2016 it had risen to over 21 years.

35 Figure 8 shows the number of life sentenced prisoners by tariff length in December 2021. Of the 7,024 life sentenced prisoners yet to be released from custody, nearly a third (32%) had a tariff of over 20 years.¹³

36 In his oral evidence to the Commission, Professor Ben Crewe highlighted how use of the life sentence had evolved over the past five decades. In 1968, the longest continuous period served by a ‘lifer’ who had been released since 1950 was 21 years. Only two serving prisoners had been in custody for a continuous term of over 15 years. Furthermore, fewer than 500 individuals were serving life sentences or detained ‘at her Majesty’s Pleasure’.¹⁴

37 Figure 9 shows the average time spent in custody by life sentenced prisoners since 1979. In 1979 the average time spent in custody was nine years. By 2019 that figure had doubled to an average of 18 years.¹⁵

Post-tariff detention

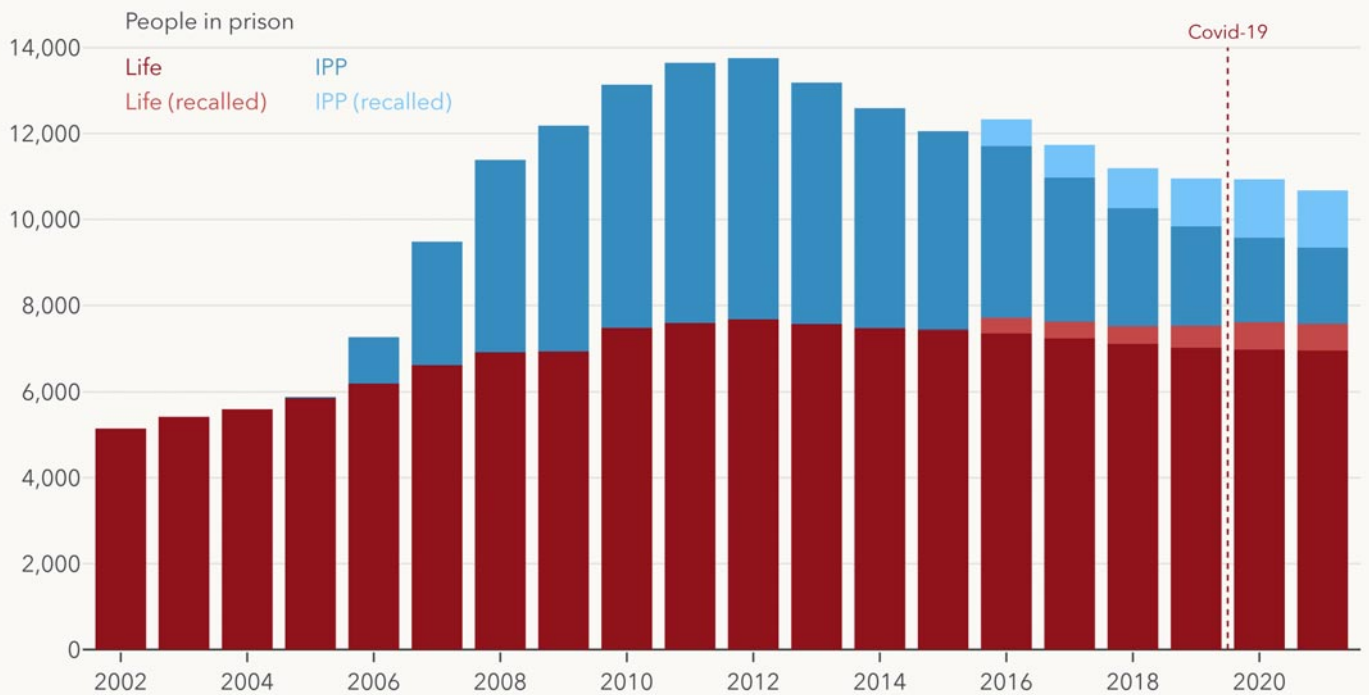
38 The introduction of the IPP in 2005 resulted in a significant expansion of post-tariff or preventative detention, whereby the decision to release a prisoner after their minimum term is dependent on them demonstrating that they no longer present a significant risk to the public. Previously, the only sentence where detention could potentially be indefinite was the life sentence.

39 Figure 10 shows the tariff-expired IPP prisoner population by original tariff length and time over tariff as of 31 December 2021. There are 1,539 people currently in prison serving an IPP sentence who have served their tariff period and have yet to be released. This represents 96% of the total unreleased IPP prisoner population. Of these, more than four in five (81%) had spent five years or more over tariff; and more than half (57%) had spent eight years or more in prison beyond their tariff date. Just over one in eight (13%) post-tariff IPP prisoners continue to be held in prison 10 years or more after their tariff expired, having been originally sentenced to a tariff of less than two years.¹⁶

40 A significant number of life sentenced prisoners are also detained for a substantial period after the expiry of their minimum term. Out of a total population of over 7,000 lifers in prison, currently just under a quarter (23%) continue to be held there having served their minimum tariff period.¹⁷ A response to a Parliamentary Question in December 2020 revealed that 1,674 life-sentenced prisoners were in prison after their tariff date. Of these, more than two in five (41%) were ten years or more over-tariff, and nearly one in 10 (8%) were 20 years or more over-tariff.¹⁸

Figure 7

The growth of indeterminate sentences

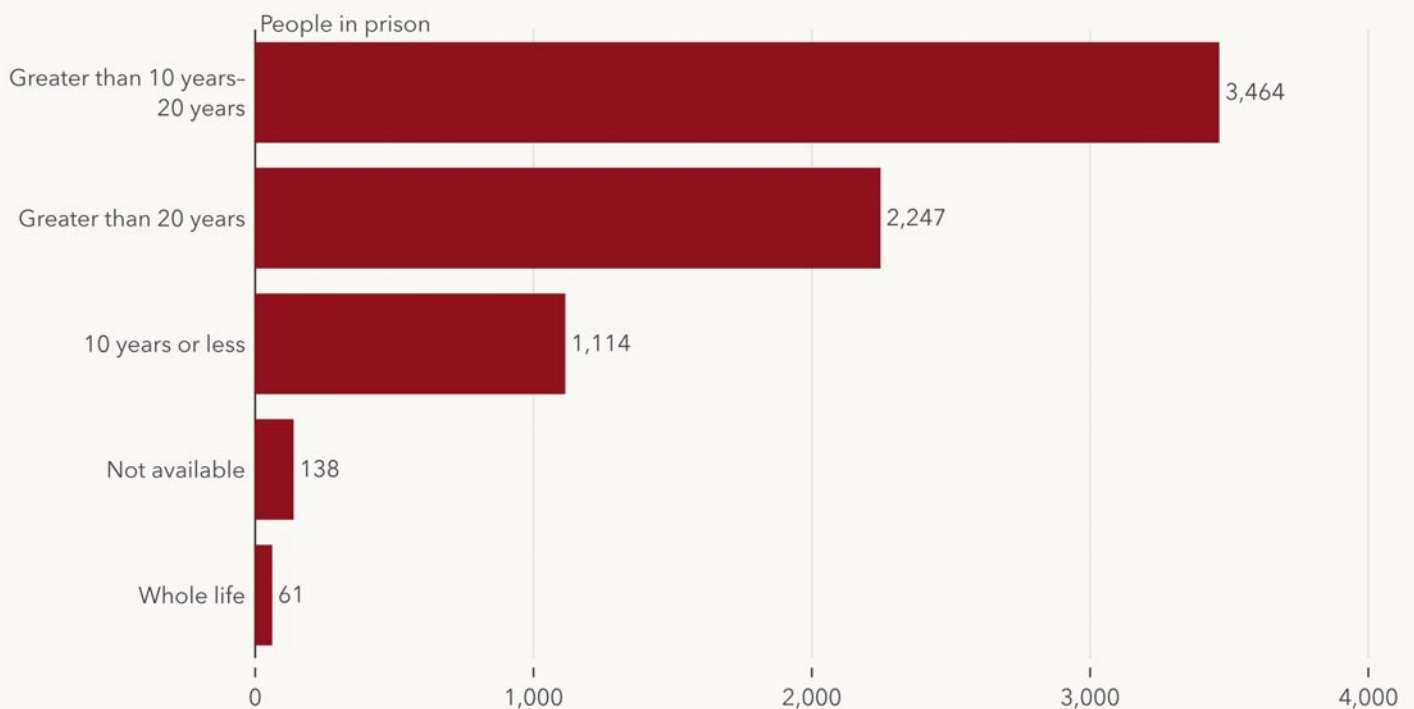


Source: Ministry of Justice, Offender Management Statistics

Note: These figures may include a small number of children as disaggregation by age was not available

Figure 8

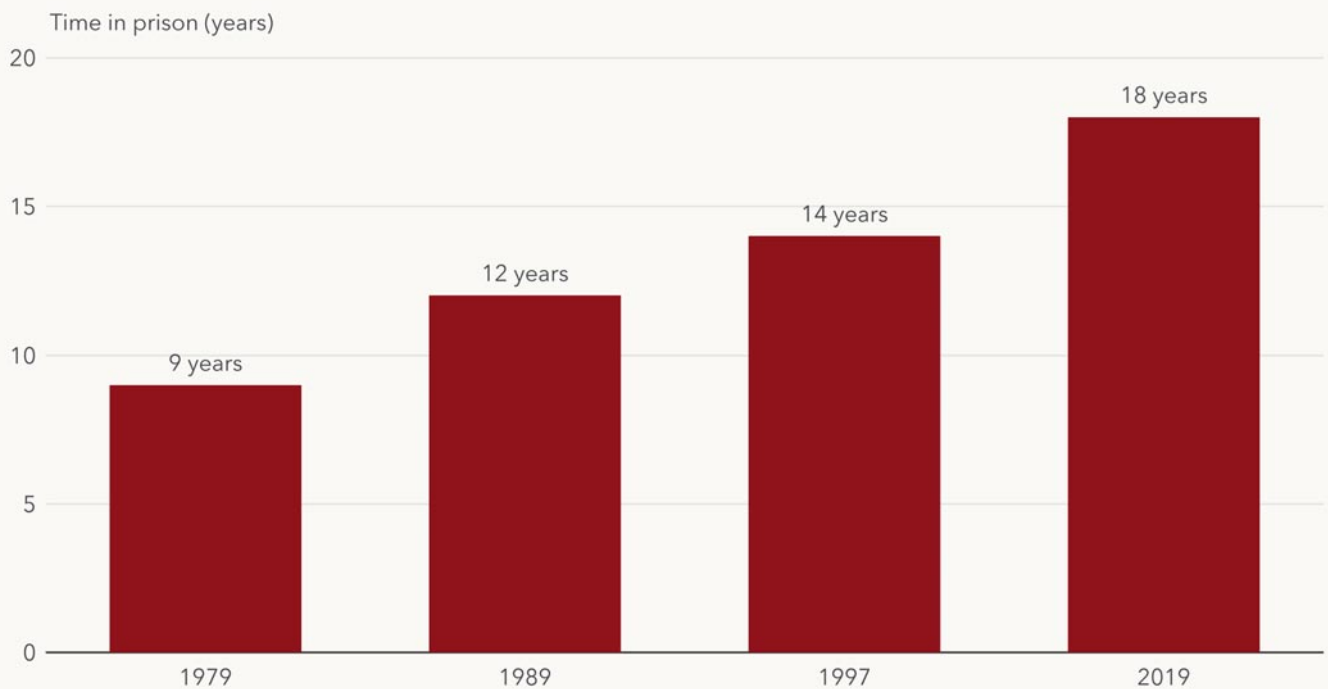
The majority of lifers have a minimum term of over 10 years, for many it's substantially longer



Source: Ministry of Justice, Offender Management Statistics

Figure 9

The average time a life sentenced prisoner will spend in custody has risen significantly



Source: Cullen, E. and Newell, T. (2003). *Murderers and Life Imprisonment: Containment, treatment, safety and risk*

Figure 10

Tariff-expired unreleased Imprisonment for Public Protection (IPP) prisoner population by original tariff length and time over tariff 31 December 2021

Time over tariff	Original tariff length					Total
	Less than 2 years	2 years to less than or equal to 4 years	Greater than 4 years to less than or equal to 6 years	Greater than 6 years to less than or equal to 10 years	Greater than 10 years	
Less than 1 year	0	0	0	20	10	30
From 1 year to less than 2 years	0	0	1	29	4	34
From 2 years to less than 3 years	0	0	1	50	2	53
From 3 years to less than 4 years	0	0	19	60	0	79
From 4 years to less than 5 years	0	0	44	48	1	93
From 5 years to less than 6 years	0	18	58	37	0	113
From 6 years to less than 7 years	0	53	43	22	0	118
From 7 years to less than 8 years	13	73	39	14	0	139
From 8 years to less than 9 years	25	83	49	7	0	164
From 9 years to less than 10 years	16	78	36	3	0	133
10 years or more	196	335	51	1	0	583
Total	250	640	341	291	17	1,539

Source: Table 1.9a and 1.9b. Ministry of Justice. (2022). *Offender management statistics quarterly: July to September 2021*

What are the drivers behind the trends in the use of long sentences?

41 Long sentences can be the result both of decisions taken by courts ('front door' sentencing), and decisions taken by prison and probation officials and the Parole Board ('back door' sentencing).¹⁹ Sentencing decisions by courts at the 'front door' are partly designed to reflect the culpability of the offence. Hence the legal justification for this element of their decision-making is essentially retributive and punitive. Courts, aided by assessments provided by the probation service and psychologists, also determine "dangerousness". Therefore, in deciding whether or not to impose an extended or indeterminate sentence based on an assessment of dangerousness, they also determine the extent to which decisions by prison and probation officials and the Parole Board at the 'back door' will have an influence. Decisions at the 'back door' are designed to manage risk, and hence their legal justification relates first and foremost to public protection.

42 Although the decision-makers and the legal rationales in both cases differ, both kinds of sentencing decision have been sensitive to legislative and policy changes since the mid-1990s,²⁰ with the result that long periods of imprisonment have become more likely at both ends of the sentencing process. Submissions to the Commission's inquiry highlighted a number of relevant factors, which we organise below according to which 'end' of the sentencing process they affect.

Punitive sentencing increases

43 Changes to legislation at the 'front' end of the sentencing process have been introduced which have resulted in longer sentences being imposed, usually with the aim of punishing or deterring more effectively.^{xi}

Increases in minimum and maximum sentences

44 Legislative and policy changes since the late 1990s have resulted in a more serious range of offences coming before the courts (as a proportion of all crime), with offences of violence against the person, drug offences and sexual offences all increasing in volume as a proportion of the total court caseload during this period.²¹

45 However, this increase in volume has been matched by an increase in the length of sentences imposed to punish these offences, partly as a result of mandatory minimum sentences and partly as a result of increased maximum sentences. The Sentencing Academy pointed to the importance in this context of the 2003 Criminal Justice Act, which increased minimum and maximum terms of imprisonment for murder:^{xii}

"Previously, the higher starting point for murder was a minimum term of 16 years. At a stroke, in December 2003, this became either 30 years or whole life depending on the circumstances of the offence... The average length of a minimum term for murder increased from 12.5 years in 2003 to 21.3 years in 2016, an increase of 70 per cent."²²

46 Although the mandatory sentence for murder (life imprisonment) has remained constant, new longer starting points for a range of murders with particular characteristics have been added via amendments since the 2003 Act, with a range of minimum starting points being introduced. A 2010 increase in the starting point of the sentence from 15 to 25 years for murders involving a knife was one such example, building on a range of mandatory minimums introduced in 2008 which aimed to deter the possession of knives more generally.²³ There were also increasing numbers of offences that could result in automatic life sentences as a consequence of the 2012 Legal Aid, Sentencing and Punishment of Offenders Act, one example of a range of further mandatory sentences introduced in a legislative climate marked by the political imperative to send strong deterrent and punitive messages to the public.

47 The Sentencing Academy further pointed out that the increase in sentence severity for murder had had a knock-on effect on sentence severity for other closely associated offences – manslaughter and attempted murder – which increased in line with each other.

"Such offences are now sentenced more severely than they would have been prior to 2003."²⁴

Increases in punitive sentencing for sexual offending

48 A number of changes, largely introduced by the 2003 Sexual Offences Act, have resulted in the clarification and modernisation of the criminal law around sexual offending. These changes have both increased the proportion of people convicted of sexual offences who go to prison, and increased the average prison sentences they serve, with the latter change being driven particularly by very substantial increases in the sentences imposed for the most serious offences.²⁵

49 In her evidence to the Commission, Dr Alice levins said:

"Over the last forty years, the number and proportion of men in prison for sex offences has drastically increased. In 1980 they represented 4 per cent of the prison population; by 2000 they were 10 per cent and by 2020 they were 18 per cent."²⁶

^{xi} The 'aim' or 'intention' of a sentencing change is hard to state authoritatively, but it is revealing that most of these sentencing changes have been introduced in a political climate marked by 'tough on crime' messaging.

^{xii} Previously lower punitive tariffs for murder had been imposed, but the state had retained the power to imprison murderers indefinitely (including for the whole of their lives) on public protection grounds.

Figure 11

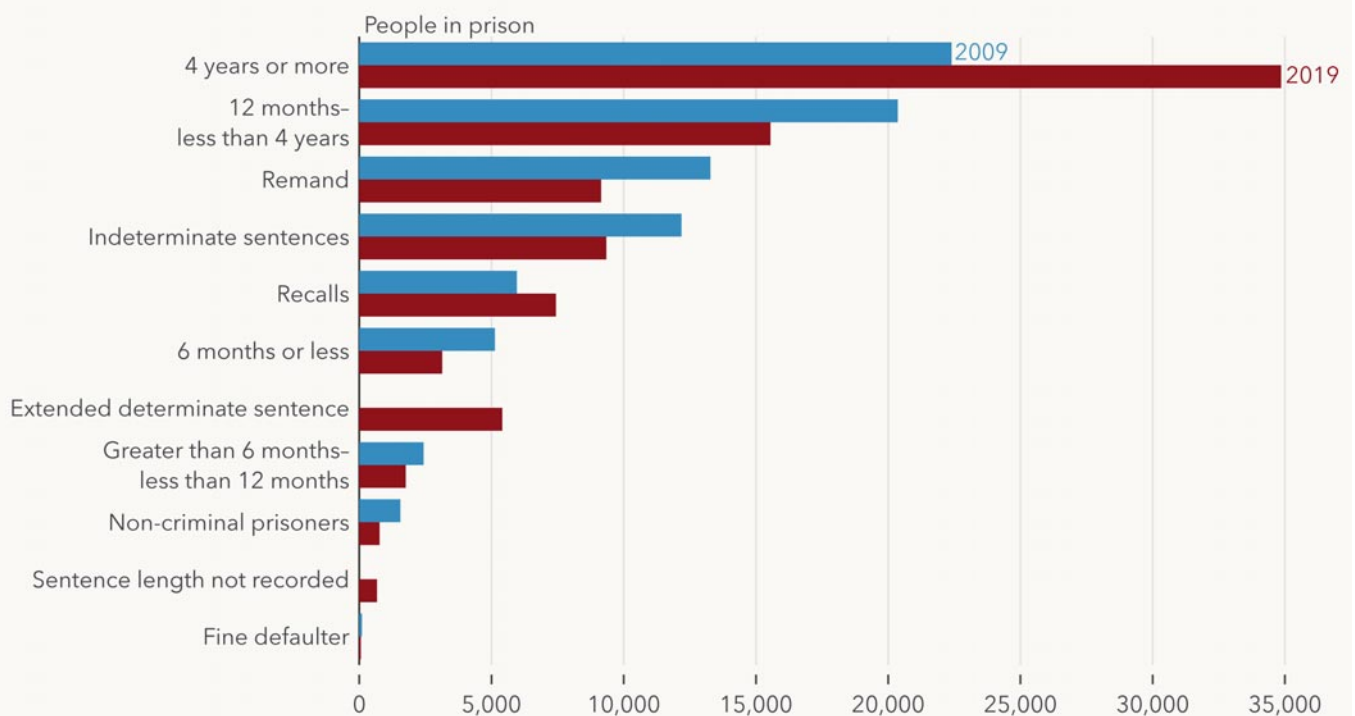
Prison population in England and Wales



Source: Ministry of Justice, Offender Management Statistics

Figure 12

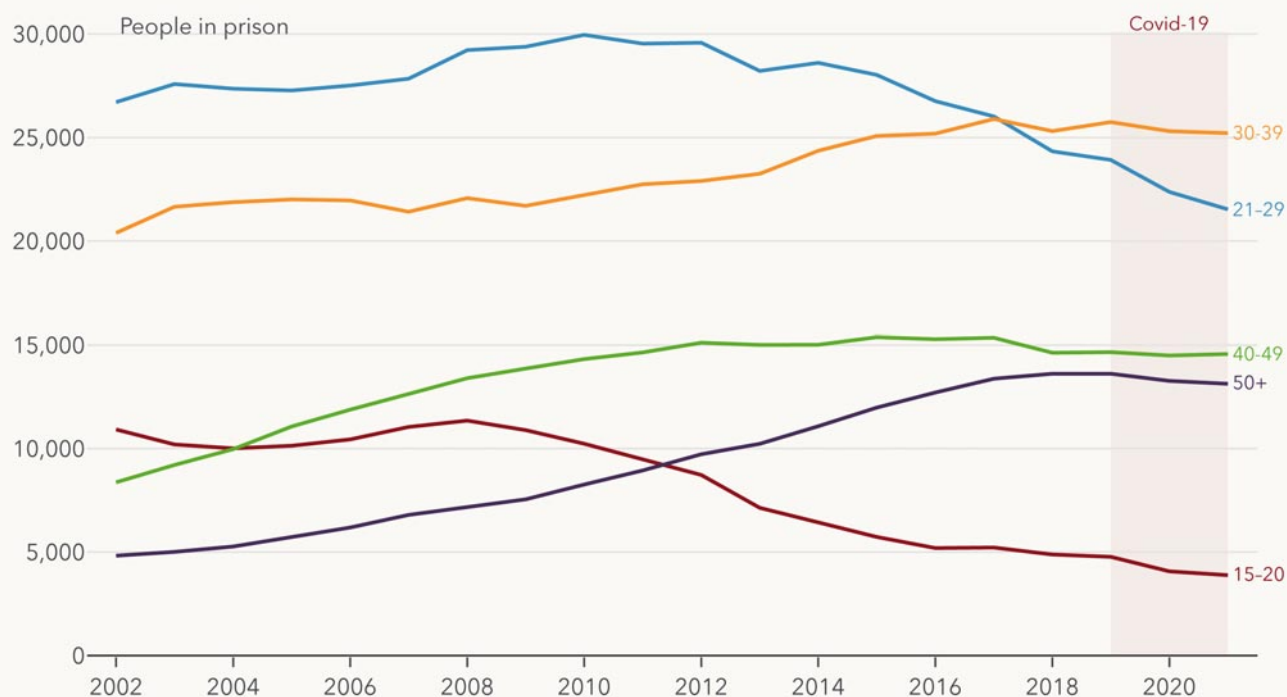
There are now over 12,000 more people in prison serving 4 years + than a decade ago



Source: Ministry of Justice, Criminal Justice Statistics

Figure 13

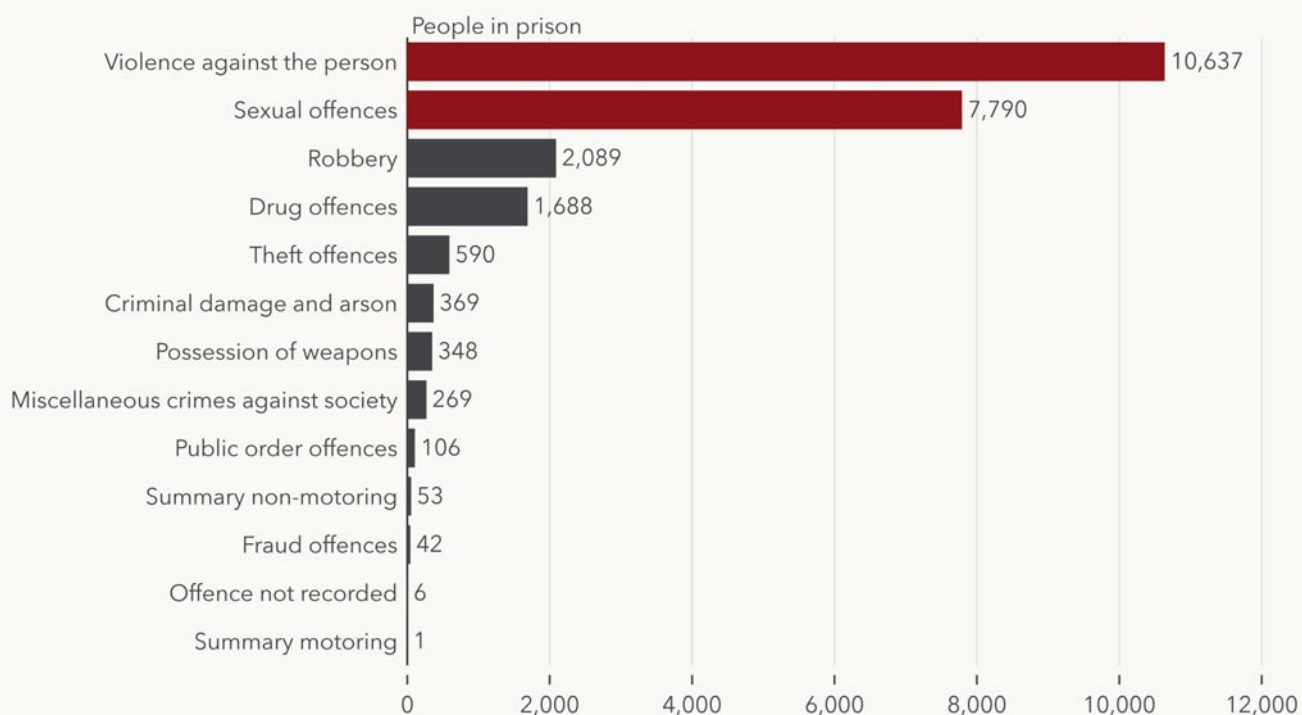
Prison population by age



Source: Ministry of Justice, Offender Management Statistics

Figure 14

The majority of people in prison serving long or indeterminate sentences are there for committing violent and sexual offences



Source: Ministry of Justice, Offender Management Statistics

50 Dr levins suggested a range of reasons sentencing for this increase besides sentencing itself, including increased reporting of offences by victims and recording by police; and changes to simplify and expedite prosecutions. As Dr levins told the Commission:

“It is possible to interpret the increase in the number of men being prosecuted for sexual offending, and the severity of the punishment they receive, as a sign of society taking sexual violence more seriously.”

51 The Sentencing Academy further highlighted the potential impact of Court of Appeal determinations in further expanding the scope for the courts to pass extremely long sentences in cases of the most serious sexual offending.

“In December 2020, the Court of Appeal imposed life sentences with minimum terms of 40 years on two offenders convicted of a series of very serious sexual offences. Whilst the gravity of offending by these two individuals truly was exceptional, we believe that the previous longest sentence for sexual offending was a life sentence with a minimum term of 25 years. In raising that ceiling to a minimum term of 40 years there is now clearly scope for longer sentences for other very serious sexual offending to fill up the range of sentences below a minimum term of 40 years (which is currently the equivalent of an 80 year determinate sentence).”²⁷

Preventative sentencing increases

52 Changes to legislation and policy at the ‘back’ end of the sentencing process have also resulted in longer sentences, not explicitly with the aim of punishing crime, but instead with the explicit aim of protecting the public and effectively reducing or managing risk.

The growth of preventative detention

53 The first and foremost driver of longer sentences in this regard was the very substantial increase in the use of indeterminate sentences, which all produce a period of preventative detention after the expiry of the punitive minimum term. Although now abolished, the IPP sentence was the most substantial driver of this increase, but a further driver was the introduction of automatic life sentences for a second serious sexual or violent offence in the Crime (Sentences) Act 1997. The proportion of the sentenced prison population serving an indeterminate sentence therefore increased from 9% in 1993 to 19% in 2012 (although there has been a slight decline since then, dampened by an increase in indeterminate recall rates).²⁸

54 Of similar impact, although not strictly indeterminate sentences, are the EPP and EDS sentences introduced respectively by the Criminal Justice Act 2003 and the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Although release decisions under these sentences differ, they both create extended licence periods during which the person sentenced is at liberty in the community only

conditionally, backed by prison recall if they reoffend or if their risk is determined by probation staff to be unmanageable. In addition, release under the EDS sentence is determined by the Parole Board on the basis of a risk assessment, and prison recalls are reviewed by the Board for both sentences. The effect of both (and of the increases in preventative detention more generally) has been to increase the overall scope for released prisoners to be in breach of their licence conditions, with the consequence that many return to prison. The recalled prison population overall increased by a factor of 55 between 1993 and 2008, and although it stabilised thereafter, it remains true that “changes to the law have meant that more offenders are liable to be recalled, and to spend longer in custody having been recalled.”²⁹

55 The effect of more indeterminate and extended sentences has been to expand the scope of recall and increase the number of prisoners whose release is subject to approval by the Parole Board, rather than automatic. Increasingly stringent preventative detention has grown in parallel with increases in very severe punitive sentencing. The overall effect is a very substantial increase in the length of imprisonment, at both ‘ends’ of the sentencing process.

56 Evidence from Ben Jarman argued that the changes in preventative detention has very substantially altered the nature of sentencing decisions overall, such that:

“Many very significant and consequential sentencing decisions now effectively lie not with judges, but in the hands of HMPPS staff and Parole Board members, who are all concerned in some way with the assessment of risk.”³⁰

57 In respect to the Parole Board, as Jarman points out, this is a significant evolution of the Board’s original role:

“The Parole Board, which at its outset in 1967 was charged with deciding whether to grant early release to determinately-sentenced prisoners, now increasingly makes decisions about whether to continue the sentences of indeterminately-sentenced prisoners whose minimum terms have expired, but who are deemed unmanageably risky in the community. [... From the prisoner’s perspective] the Parole Board increasingly dispenses punishment, as well as granting release.”

58 This evolution in function is not always clearly represented in the media or political coverage of ‘early’ release from prison. The government’s recently published Root and Branch Review of the Parole System³¹ is likely to result in a further evolution of the Parole Board and its role. The Commission notes that the review’s proposals for a more prescriptive release test and the designation of a number of “top tier” cases where the Secretary of State will be able to intervene directly are likely to result in a more risk averse and less independent Board.

Planned and recent changes to legislation

59 Looking ahead to the future, it seems likely that recent legislative proposals will increase the potential for people convicted of serious offences to spend longer periods in custody, because current policy emphasises both increases in retributive punishment, and more stringent measures of risk management and the prolongation of preventative detention. Measures contained in Police, Crime, Sentencing and Courts Act 2022 are estimated to increase the prison population by 700.³² Proposals include:

- i** A new power to prevent automatic early release for offenders who become of significant public protection concern
- ii** Powers to allow judges the discretion to impose whole life orders on offenders aged 18 to 20 in exceptional cases
- iii** Provision to make a whole life order the starting point for the offence of premeditated murder of a child
- iv** Abolishing halfway release for certain serious offenders serving custodial sentences of four to seven years
- v** For certain sexual offenders who receive a Sentence for Offenders of Particular Concern (SOPC), proposals to ensure the earliest point at which they can come before the Parole Board for consideration for release is two-thirds through their custodial term.

60 In addition, the government has recently passed and enacted the following legislative measures:

- i** Abolished halfway release for certain serious offenders serving custodial sentences of seven years and above³³
- ii** Prisoners convicted of terrorist or terrorist-connected offences cannot be released before the end of their custodial term or sentence without Parole Board approval³⁴
- iii** A new Serious Terrorism Sentence (STS) with a minimum 14-year custodial term and licence period set at the point of sentencing of a minimum of seven years and a maximum of 25 years³⁵
- iv** Certain serious terrorist offenders who receive an extended determinate sentence (EDS) must serve the whole of the custodial term in prison with no prospect of earlier release by the Parole Board.³⁶

61 Longer and indeterminate sentences pose different challenges for the prison service both in terms of how an individual is treated, and in terms of how the prison system copes with a higher proportion of people serving such sentences. The experience of prisoners serving long sentences will be the subject of Chapter 3. Before that, our next chapter considers the experience of victims of serious crime.

¹ 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/offender-management-statistics-quarterly-january-to-march-2021>
These figures include anyone aged 18 or older. We have aggregated the “adult” group and the “18-20” group to calculate the total.

² 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
This figure does not include those sentenced to exactly 10 years and may include a small number of children.

³ House of Lords. (2020). *Written Question UIN HL 10575*. <https://questions-statements.parliament.uk/written-questions/detail/2020-11-23/hl10575>
These figures are for all people serving an Extended Determinate Sentence and include children.
No one is currently recorded as currently serving a Serious Terrorism Sentence.

⁴ Table 1.9a. Ministry of Justice. (2022). *Offender management statistics quarterly: July to September 2021*. <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-july-to-september-2021>

⁵ Table 1.9a and 1.1. Ministry of Justice. (2022). *Offender management statistics quarterly: July to September 2021*. <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-july-to-september-2021>
This includes 23 boys, however no further breakdown about their tariff or status is available.

⁶ Table 1.9a. Ibid.

⁷ 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

⁸ 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/offender-management-statistics-quarterly-january-to-march-2021>

⁹ Table A2.7. Ministry of Justice. (2021). *Offender management statistics quarterly: October to December 2020, Prison Receptions: 2020*. <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-october-to-december-2020>

¹⁰ Ministry of Justice. (2021). *Criminal justice system statistics quarterly: December 2020, Sentencing data tool*. <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2020> and Table A5.8 and A5.14.
Ministry of Justice. (2013). *Criminal justice statistics quarterly - December 2012*. <https://www.gov.uk/government/statistics/criminal-justice-statistics-quarterly-update-to-december-2012>

¹¹ Table 1.9a and A1.14. Ministry of Justice. (2021). *Offender management statistics quarterly: January to March 2021*. <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-january-to-march-2021>
These figures may include a small number of children as further disaggregation by age was not available.

¹² Table A1.14. Ministry of Justice. (2021). *Offender management statistics quarterly: January to March 2021, Annual Prison Population: 2021*.

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

These figures may include a small number of children as further disaggregation by age was not available.

¹³ Table 1.9a. Ministry of Justice. (2022). *Offender management statistics quarterly: July to September 2021*.

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

¹⁴ Home Office. (1968). *The Regime for Long-term Prisoners in Conditions of Maximum Security. Report of the Advisory Council on the Penal System. HM Stationery Office*.

<https://archive.org/details/op1269625-1001/>

¹⁵ 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-december-2020>

¹⁶ Table 1.9a and 1.9b. Ministry of Justice. (2022). *Offender management statistics quarterly: July to September 2021*.

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

¹⁷ Table 1.9a. Ibid.

¹⁸ House of Lords. (2020). *Written Question UIN HL10576*.

<https://questions-statements.parliament.uk/written-questions/detail/2020-11-23/HL10576/>

¹⁹ Padfield, N. (2014). Front door and backdoor sentencing. In G. Bruinsma & D. Weisburd (Eds.) *Encyclopedia of Criminology and Criminal Justice* (pp. 1846). Springer.

https://doi.org/10.1007/978-1-4614-5690-2_492

²⁰ Ministry of Justice. (2013). *Story of the Prison Population: 1993–2012 England and Wales*.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/218185/story-prison-population.pdf

²¹ Ibid.

²² Written evidence by the Sentencing Academy.

²³ Ministry of Justice. (2013). *Story of the Prison Population: 1993–2012 England and Wales*.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/218185/story-prison-population.pdf

²⁴ Written evidence by the Sentencing Academy.

²⁵ Ministry of Justice. (2013). *Story of the Prison Population: 1993–2012 England and Wales*.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/218185/story-prison-population.pdf

²⁶ Written evidence by Dr Alice levins.

²⁷ Written evidence by the Sentencing Academy.

²⁸ Ministry of Justice. (2013). *Story of the Prison Population: 1993–2012 England and Wales*.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/218185/story-prison-population.pdf

²⁹ Ibid.

³⁰ Written evidence by Ben Jarman.

³¹ Ministry of Justice. (2022). *Root and Branch Review of the Parole System: the Future of the Parole System in England and Wales*.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1064480/root-branch-review-parole-system.pdf

³² Ministry of Justice. (2021). Impact assessment: Police, Crime, Sentencing and Courts Bill: Sentencing, release, probation and youth justice measures.

<https://bills.parliament.uk/publications/42223/documents/547>

³³ Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2019.

³⁴ Terrorist Offenders (Restriction on Early Release) Act 2020.

³⁵ Counter-terrorism and Sentencing Act 2020.

³⁶ Ibid.

Chapter 2: The experience of victims and their families

Introduction

1 As a Commission, we have listened carefully to victims and their families. Their contributions are compelling and their voice adds fresh power to what the available evidence suggests.

2 Victims and their families really do want the sentence to fit the crime, to reflect fully the fact that their own lives will be changed forever with no opportunity for parole or remission. But they want the criminal justice system, not just the offender, to acknowledge the impact on them and they want to be treated with at least the same respect the offender is given throughout the investigation and prosecution processes and beyond.

3 Providing ever longer sentences does not compensate victims for a failure in professional practice to consistently treat them and their families with respect and comply with existing policies and legislation.

4 We have been struck by the fact that victims and their families do not possess unrealistic expectations and are not seeking the unusual or the unreasonable. Often they point to a failure to be provided with the simplest courtesies (being kept informed and updated) and afforded their entitlements as outlined by statutory agency policies and existing Codes.

5 We are also struck by the extent to which victims and their families want to have some reason to believe that what has happened to them will not be repeated. As Bishop James points out in his Foreword, implicit and sometimes explicit in their testimony is the desire that the content of the sentence should lead the offender to recognise and take responsibility for what they have done and to reform.

6 The first part of this chapter outlines some of the available research and how that considers the experience of victims and families.

7 In the second part, we show how the participants, in the Commission's Listening Days, have provided honest, heartfelt and thought provoking testimony. Their contributions have illuminated the realities they face and provide insights into how their experiences could have been improved.

8 The Commission believes that a more effective process for ensuring victims receive their entitlements and, in some instances, their rights, could relieve some of their understandable frustration and anguish. It is the failure to relieve that frustration and anguish which leaves ever lengthening sentences as the default public policy. Now is the time to listen more carefully to what

victims and their families have to say, given their essential role in a criminal justice process that relies upon their co-operation and engagement for it to function effectively.

9 As noted in our Foreword, for many, referring to them as victims is offensive and disempowering. In her moving testimony to the Commission, one woman said:

"I know I am a victim of attempted murder, but I ran away from that world many, many years ago, and when I woke up in life support in intensive care the next day after having open heart life-saving surgery, I knew and something clicked in my brain and the line that stuck in my brain was that I am a victor, not a victim." And further: "If you are going to call me your victim, you need to own my scars, my PTSD, my insomnia and don't you dare disempower me. It is the most disrespectful thing."

10 Where we use the term 'victim' in this Report, we do so remembering these words. We recognise that for others their experience has not left them feeling victors. In the absence of terminology which works for all, in this chapter, the term 'victim' will predominantly be used. It is the term the majority of agencies use and understand when referring to someone who has experienced victimisation, and is the term officially used in policies and legislation. However, it is also acknowledged that many non-statutory agencies prefer to use the word 'survivor', believing that it returns some autonomy, power and a sense of control to the person harmed, but it is not a term accepted by everyone.¹ People should not assume that those who have been offended against feel respected by being referred to as 'victims', in a way that, whilst often unintentional, can frequently feel patronising, condescending and glib.

What the available research tells us

11 There already exists a significant body of evidence, drawn from research and reports published by academics, third sector organisations and government departments, identifying the needs and concerns of victims. The findings from our four Listening Days reiterated that what victims and their families require is to be recognised as valid participants of the criminal justice process, to be respected and treated with courtesy, and for the relevant agencies to be held accountable for ensuring their responsibilities towards victims and their families (as outlined in existing policies and legislation) are fulfilled. Despite three decades of political rhetoric and a plethora of reforms, the work of this Commission found that the concept of victims' rights remains an aspiration rather than a reality.

12 There is no doubt that significant progress has been made to improve the experiences of victims of crime in England and Wales during the last three decades. However, since commentators first started to document the failure of the criminal justice system to respond appropriately to victims of crime, describing them as the ‘forgotten figures’ in the administration of justice² and the ‘poor relation’ of the criminal justice system,³ the role of victims in the criminal justice process has continued to fuel often controversial debates. These debates have focused on the needs and rights of victims, and raised questions about how the role of the victim can be accommodated within the existing criminal justice process. This has been of particular significance in jurisdictions that practice the adversarial system, for example, England and Wales, the United States, Canada, Australia and New Zealand.

13 In an adversarial system the relationship between the state and the defendant takes precedence, as the two-party contest requires legal safeguards to ensure those accused of offences have their liberty protected by the state and, if found guilty, continue to have the protection of the state and the opportunity of rehabilitation. This emphasis on the defendant and the state subsumes the victims’ interests and denies their participation in the process, despite the criminal justice system depending almost entirely upon their cooperation for its effective functioning, especially if required as a prosecution witness. As a ‘complainant’ and prosecution witness (if required), victims within an adversarial criminal justice process are afforded no status as a participant, with no one appointed to act on their behalf and protect their best interests. As a consequence, research has found victims and victims’ families being exposed to insensitive treatment, resulting in what has become commonly termed as ‘secondary victimisation’, leaving them with an ongoing sense of injustice and lack of confidence in the criminal justice process. As outlined by Walklate, since the late 1990s there have been attempts to introduce a ‘rebalancing’ agenda by subsequent governments, what she has referred to as ‘tinkering with adversarialism’.⁴ However, despite the introduction of victim-centred reforms, research continues to demonstrate an implementation gap, whereby policies are not being implemented as intended and the delivery remains patchy and inconsistent.⁵

14 This Commission has found evidence of inconsistencies in the way victims are initially contacted and supported following a serious crime. These cases are historical to some extent, and it is possible that responsibilities outlined in the revised Code of Practice for Victims of Crime in England and Wales⁶ may be sufficient to address some of these inconsistencies (referred to hereafter as the Code). However, previous versions of the Code also sought to outline victims’ entitlements and appear to have failed many of the people we heard from, in some form or another.

15 Since the publication by the Home Office of the first Victim’s Charter in 1990, there have been a number of reiterations outlining the responsibilities of mainly criminal justice agencies towards victims of crime. Of greatest significance perhaps has been the shift in terminology used when it comes to referring to the support and services victims should receive. The first Victim’s Charter was entitled ‘A statement of victims’ rights’ although it did not contain any legally enforceable rights. The revised Victim’s Charter published in 1996 referred instead to ‘A statement of service standards’, reducing victims to consumers of services, rather than citizens with legislative rights.⁷ The Victim’s Charter was replaced in 2006 by the Code of Practice for Victims of Crime, introduced by Section 33(7) of the Domestic Violence, Crime and Victims Act 2004. The terminology used in the Code and subsequent revisions referred to victims’ services and key entitlements, until the most recent revision, which has returned boldly to the terminology of victims’ rights, although these remain unsupported by legislation, despite the promise of a Victim’s Law since 2015.⁸ This leaves victims and victims’ families with little recourse when the response and services provided fall short of what should be expected, as evidenced in a review undertaken by the Independent Victims’ Commissioner for London.⁹

16 Research has repeatedly shown that one of the key failings is making victims and victims’ families aware of their entitlements, as many are seldom informed of their entitlements under the Code.¹⁰ It has been officially acknowledged that compliance with the Code is a serious problem and that victims’ entitlements are not being implemented consistently. As evidenced above, whilst the rhetoric of victims’ rights continues to be used, the Code does not contain legally enforceable rights.¹¹ It is difficult, therefore, to hold the relevant agencies accountable, especially when many of the entitlements remain discretionary. This lack of accountability helps to put into context the role of victims within an adversarial criminal justice system, whereby their lack of status as statutory participants renders them passive bystanders in their own case.

17 For example, Right 4 under the Code states ‘you have the Right to be offered a referral to specialist support services and to be told about additional support available at court, for example special measures’.¹² However, victims first need to be identified as vulnerable or intimidated by the police and CPS in order to be eligible, and whilst an application may be made by the CPS, being eligible for special measures does not mean that the court will automatically grant them as, ‘The court has to satisfy itself that the special measure or combination of special measures is likely to maximise the quality of the witness’s evidence before granting an application’,¹³ therefore, the awarding of special measures is not a victim’s ‘right’, but instead remains at the discretion of the courts.

18 There are also examples of where policies currently exist, but are not indicated or referred to in the Code. For example, in 2001 direct communication between the CPS and victims and witnesses was first introduced, following recommendations from the Glidewell Report that it would be more appropriate for the CPS to explain its decisions to victims, rather than the police to relay them on their behalf.¹⁴ This was further extended in 2016 with the introduction of the CPS policy 'Speaking to Witnesses at Court CPS Guidance',¹⁵ which outlines the responsibilities of prosecutors towards victims and witnesses very clearly, but this is not highlighted in the Code. Instead, Right 8, 'To be given information about the trial, trial process and your role as a witness', states under 8.3 that, 'Where possible, if the court allows, the prosecutor will meet you before you go into court to explain what will happen and answer any questions you may have.'¹⁶ The Commission notes that the terminology used, 'where possible, if the court allows' does not reflect current CPS policy and does not support the statement that this is a 'right', but instead indicates that the services victims receive remain at the discretion of criminal justice professionals and the court.

What the Commission has heard directly from victims and their families

19 As part of its bi-focal approach, the Commission has held four Listening Days and heard directly, candidly and in detail from 11 victims of very serious crime or members of their families. These Listening Days were made possible by the help provided by Through Unity, Why me?, and Victim Support.

20 These Listening Days have provided clear evidence that whatever the length of the sentence given, victims are left disenchanted by their experience of the criminal justice system. Victims and their families have described their experiences of dealing with the criminal justice system and their contact with statutory and non-statutory professionals at different stages of the process, including the initial response, information sharing, communication methods, support in the run up to, during and following trial, Victim Personal Statements (VPS), the broader support networks on offer, engaging with criminal justice professionals, such as the police, the Crown Prosecution Service, the probation service, parole board, coroners and the Criminal Injuries Compensation Scheme, and their experiences of third sector organisations that create space to engage with restorative justice (Why me?) and mutual support (Through Unity and the Victim Support Homicide Service).

21 The participants in these Listening Days provided honest, heartfelt and thought-provoking testimony, which has illuminated the realities facing victims of serious crime as they attempt to navigate and make sense of the criminal justice system. They have also provided valuable insight into how their experiences could have been improved, thus pointing the way towards a system that

better reflects the needs of individual victims of crime and their families.

22 We have not heard calls for shorter sentences:

"To have a knife plunged into your heart, while you are pregnant with your other baby there, and to know the trauma that he caused me, to come out in 7 years is not okay."

"Sentencing is not right, it is not proportionate."

But if it was felt that the lengthening of sentences outlined in Chapter 1 might placate victims and their families, the evidence we have heard is that this is wholly wrong. To imagine that punishment or payback rehabilitates victims is a delusion.

The readiness to acknowledge good practice makes the criticisms we have heard even more striking. Victims' experiences often fall short of the expectations laid out in the various revisions of the Code, including in the following four ways:

- i** being kept informed and updated;
- ii** being advised of specialist services and support;
- iii** receiving information about the sentence; and
- iv** the provision of information post-sentence.

Initial contact and knowledge of the criminal justice system

23 Victims told us that following the initial response, there was no consistent communication and, in some cases, this became an on-going problem throughout the criminal justice process, with a repeated lack of accurate information and timely updates.

24 Victims described varying levels of sensitivity, empathy, respect, compassion and courtesy displayed by responding officers during their initial contact. The part played by some police officers and others is generously reported in some cases:

"The FLO were fantastic, they contacted us by phone, text, and in all forms, and kept us in contact as much as they could."

"My experience with the police officer was very positive."

25 When the initial response was good, the victims felt in control, however, when it was poor, an already traumatic experience felt worse.

"The police officer that dealt with me, I think was fresh out of university and didn't have any kind of people skills, literally it was a shambles."

26 In two examples, victims expressed dissatisfaction with apparent assumptions being made about the victim by the attending officers, who appeared to cast doubt

upon the credibility of the victim. In one case, the officers suggested race had played a part in the incident and in another, they had implied the victim had themselves been an offender.

“When he died, Police were talking about his number, and cross him off the list like they don’t have to worry about him anymore. Even dogs are treated better than these boys. They spoke about him like he was a statistic.”

“My son was killed because of mistaken identity; but the police thought it was gang related and said, ‘It’s so sad, the parents are always the last to know’.”

27 These assumptions reveal underlying factors that determine ‘who’ and ‘how’ someone attains the legitimate label of ‘victim’, which can be a far more complex and problematic process than is often assumed and remains a highly contested area.¹⁷ How victimisation is framed and understood is impacted by cultural influences and involves a process that often prioritises certain types of offences and victims, whilst marginalising the experiences of others. This creates a distinction between those individuals and groups easily able to attain the label of victim (‘deserving’ victims) and those who are denied the legitimate label of victim (‘undeserving’ victims), creating a ‘hierarchy of victimisation’ whereby a dichotomy exists between those ‘deserving’ of our sympathy and those considered undeserving victims.¹⁸

28 The concept of the ‘ideal victim’, defined as ‘a person or a category of individuals who – when hit by crime – are most readily given the complete and legitimate status of being a victim’ remains a powerful influence on how victims of crime are perceived by professionals, politicians, the media and the public.¹⁹ This is evidenced in the work of Charman, who offers an insightful analysis of the perceptions and attitudes of police officers in England as they transformed from new recruits to established officers over a period of four years.²⁰ Whilst not the intentional focus of the research, an unexpected part of the interviews with the recruits focused upon their views of the population they were policing and the regularity in which the expression ‘genuine victims’ was used. Charman examines the power and discretion held by the recruits in their primary role as response and patrol officers and the differential treatment individuals and groups received based upon their classification as either ‘genuine’ or ‘ingenuine’ victims.²¹

29 The examples provided by the victims’ families in the work of the Commission illustrate a continuum of inconsistencies in the responses received, some based upon insensitive assumptions made by the professionals they had contact with. One mother of a murdered son was left with an impression of the police officer in the case as being disrespectful and rude:

“With the FLOs it was a rocky start, because their deliverance was disgusting, they turned up at my door dressed as police officers, so I was panicking... I asked if he is dead and they just said, ‘Yeah’.”

30 In another example, the victim could not praise the police officer highly enough for his approach.

“My experience with the police officer was very positive.”

31 The disparity in experiences evidenced does not provide a picture of a criminal justice system responsive to the needs of victims’ families and will not encourage victims to remain engaged with the process. Such negative experiences also have a detrimental impact on wider public confidence in the criminal justice system. The victims we heard from had, in the main, no previous contact with the CJS and as such, had little or no knowledge or understanding about the process following a serious crime. As a result, they had no point of reference (other than what they had seen on television) as to what to expect from those they assumed were tasked with supporting and protecting them.

32 A number of participants highlighted the confusion caused by ‘technical’ language and the use of jargon. This was most keenly felt due to the prevalence of acronyms, the use of different terms to describe the same role or job, and the use of similar words for people undertaking different roles in different agencies. One person was unaware that the person they were dealing with was from the Victim Contact Scheme administered by the probation service, while others were unaware of what a FLO (Family Liaison Officer) meant:

“Even like a FLO, I didn’t know what that was, they suddenly started saying a FLO and what’s the flow, and they kept saying the F, L, O; FLO. I understand because it’s a big mouthful, but you know, if you’re not in that world, you don’t know.”

“I also didn’t know what a FLO was, especially because English is not my first language.”

33 This emphasises the need for effective communication and to ensure victims receive information in a format and language that is easy to understand, with details of who to contact if they would have any questions. As observed by Ashworth, greater attention needs to be devoted to the techniques of communication, as ‘being told is not the same as being made to understand’.²²

34 The initial contact with criminal justice professionals, usually the police as first responders to an incident, is crucially important because it establishes victims’ initial perceptions of the criminal justice system, setting the tone for future interactions. This provides the police with an opportunity to build a rapport with victims and/or

their families based upon trust and engenders a relationship that is supportive and respectful. Many studies have found that victim satisfaction with the initial contact is quite high, with over two thirds of victims initially satisfied. However, a common trend is that this level of satisfaction continues to fall as the case progresses through the system, due to failures in keeping victims updated and informed, and levels of communication declining following the initial investigation stage and pending a trial, if an offender has been arrested and charged.²³

Communication and Information

35 As found by previous studies and advocated by past and present Victims' Commissioners,²⁴ victims want a single point of contact allied to a consistent procedure for laying out the process of investigation, charging suspects, trials etc.

*"One of the fundamental problems regarding crime victims is that there is no one agency taking responsibility for them, instead the journey of the victim involves varying degrees of contact from a range of agencies at different stages of the process, often based upon the type of crime they have suffered and the level of risk they are perceived to be of further harm. At some stages, contact from the different agencies may overlap, but often between stages there may be long periods of time where no contact is being made and victims are left to wonder in a seemingly endless vacuum. Overwhelming evidence from the literature examined above indicates that the majority of victims were most dissatisfied with the perceived lack of information and communication from the relevant agencies. Evidence has also indicated that a common barrier to accessing appropriate support services is not being aware of the services that exist and what they can offer."*²⁵

36 Research over the last thirty years has consistently found that what victims and victims' families want is information relating to three key areas:²⁶

- i** information about the criminal justice process at all stages of the case
- ii** timely and accurate updates about the progress of their case
- iii** information about the types of support services available and what they can offer them.

37 Confusion as to who is responsible for keeping victims updated at each stage of the process and a lack of consistency in how information is communicated, compounds victims' dissatisfaction. Whilst it is outlined to some extent in the Code which agency is responsible for keeping victims informed as their case passes through the criminal justice system, there are still stages where information is missing and it remains unclear, thereby allowing victims to fall through the cracks when crucial information is not provided.

38 In some cases, victims told us that they had to seek out their own information, relying on websites and other sources to establish what would happen next:

"I called the Citizen's Advice Bureau and asked if they could help me, because I didn't know what else to do."

39 In other cases, victims were provided with regular updates, with the police having established the preferred method of communication with the victims and families. For example, email, letters, phone calls, text messages and WhatsApp had been employed. However, despite these examples of good practice, other victims were left without information and were not consulted as to what form of communication worked best for them, as required by the Code.

40 Information and knowledge creates a level of control and provides an element of choice; an opportunity to independently make decisions about what works best for the individual involved. For some of the participants this was about where to go for support, for others it was about procedural matters, such as when they could see the body of their loved one, registering the death and contact with probation following sentencing and before parole hearings. There was frustration expressed regarding expectations in the run up to, during and after the trial, future arrangements about the perpetrators' release and personal safety, and crucially, confusion over what the sentencing meant. Some of these concerns will be expanded on later in this chapter.

41 Some of those we heard from were victims of domestic abuse and sexual violence and were not provided with the names of agencies or organisations that specialised in supporting victims of these crimes.

"Apart from the police telling me what was going to happen I had to seek out my own independent Domestic Violence advocate. I had to refer myself, do the research, refer myself to an organisation and say this is what I need."

42 Previous iterations of the Code make reference to 'enhanced entitlements', (referred to as 'enhanced rights' in the most recent publication)²⁷ for victims of the most serious crimes who are assessed as vulnerable and intimidated. Families of homicide victims fall within this definition and should be receiving the enhanced services outlined in the Code, but it should be happening as a matter of course, to a consistently high standard, and taking into consideration the range of services available, thus enabling victims to make 'informed choices'.²⁸ Additionally the existence of specialist services is widely acknowledged as remaining a 'postcode lottery', despite responsibility for the commissioning of the majority of victims' services being devolved to local Police and Crime Commissioners (PCCs).²⁹

43 Evidence from participants and previous research indicates that very few victims were made aware of the Victims Code of Practice. Victims described the lack of clear communication and the absence of choice as traumatic, placing them in a situation of powerlessness, which amplified the emotional trauma of the original crime.

44 We also heard that a 'one size fits all' approach simply does not work. How victims and families respond to victimisation is highly individualised and their personal and structural circumstances will influence what informal resources of support they already have access to and what professional services they may need. Acknowledging that everyone experiences victimisation differently emphasises the need for a range of support services that offer accessible and flexible services, so that the right interventions can be offered to those who want them at a time when they need them most.

"As a victim I realised my voice has no power, my voice had no meaning. When you look up victim, it doesn't say they have no intelligence, I am traumatised, but I still know what I need and what I want. No-one knows me better than me so how can you tell me what I need. We are experts by experience, and we shine a light on the issues and we are drivers of real change and that is something I'll always put forward."

45 Individual approaches designed to meet individual needs must be a priority for supporting victims of serious crime. This requires victims to be asked and their responses listened to, not decisions being made on their behalf with no consultation.

46 Some victims we heard from suggested a leaflet outlining the process following a serious crime would have been helpful:

"When I look back now, something given on paper would have been extremely useful."

47 Whilst others indicated that just being provided with leaflets or websites to refer to was not what they needed:

"The Police were not bothered; on the day he died they gave us a handbook, that was it!"

"I've always said that leaflets are not helpful, I feel like it is a cop out. For everyone that has gone through a high level of trauma it is debilitating, it is overwhelming and the last thing I am going to do is read a leaflet."

"I am a talker and a listener, and I need information to be explained to me so I can talk and ask questions."

48 Whilst it is important to have information provided in person, with an opportunity to ask questions and gain clarification, victims also wanted information they could refer back to, as it was difficult to retain the often complex information provided. Some of those we heard from had a significantly more positive experience:

"The FLOs were fantastic, they contacted us by phone, text, and in all forms, and kept us in contact as much as they could."

49 A preferred approach would be to find out what victims want regarding regularity and style of communication and to apply that in each individual case, tailoring the approach to what works best for the individual involved, and always leaving the offer of information and support open for those who may initially refuse support, but who then change their mind.

Powerlessness in the absence of a defined 'role'

50 Powerlessness within a traumatic experience was a continual theme across all the listening sessions convened for the Commission. Following a serious crime the participants described a number of scenarios where they were left feeling helpless and alone. The absence of information, or its inconsistent availability, meant on-going uncertainty at a time when those we heard from required something concrete and dependable to hold onto.

51 There were examples of professionals within the criminal justice system who went above and beyond their remit to work alongside the victims in an effort to provide an exceptional service, but these examples were not the norm and simply highlighted inconsistencies within a system that claims to value and provide defined, specialist roles and high expectations of service delivery. When things went very badly, victims often described feeling patronised. One participant related their experience of a Victim Support staff member who, when addressing a conference, referred repeatedly to 'my victims'.

The trial

52 The Commission heard from some victims who had support in the run up to the trial and were given information as to what to expect and what would happen, but also from others did not receive the same level of support. It is the responsibility of the officer in the case to keep victims updated during the investigation, and for the police Witness Care Unit to keep victims updated during the pre-trial period, especially if an offender has been charged and the victim may be required as a prosecution witness. In theory, any decisions made by the CPS regarding changes to the charge or a decision not to prosecute are to be communicated directly with the victim or victims' family and in the most serious cases, an interview offered; and families of homicide victims allocated a police Family Liaison Officer (FLO). As the family members of homicide victims may not be required as a witness, they have to rely on the FLO to keep them updated with details regarding court hearings and the trial. The CPS is also required to offer bereaved families meetings at key stages of the prosecution process,³⁰ but no families we heard from indicated that such an offer was received.

53 An example of where victims can fall through the cracks is in relation to contact with the Witness Service, which now operates in all courts and offers all witnesses a pre-trial familiarisation visit. Take-up rates, however, remain low. This may in part be due to Witness Care Units not being able to automatically refer witnesses to the Witness Service because of data protection rules, but in the case of bereaved families, who may not be required as a witness, the FLO is directed to explain each stage of the process, including a familiarisation visit to the court. However, evidence from our conversations with family members indicated they were ill-prepared for attending court. Many had not been offered a pre-trial visit and they were not aware of the Witness Service. Whilst the Witness Service offers witnesses a separate room to wait in before giving their evidence, although victims' families may not be required as witnesses, the courtesy of a separate waiting room should still be afforded to them, given their vulnerability as victims during a trial and this could be arranged by the FLO. However, we heard that some bereaved families had to share corridor space with the perpetrators' families, which was described as "insensitive", "intimidating" and "frightening".

"I was shocked, the only person who told us anything was the detective who filtered things through our FLO. Other than that, we had no support. Nobody told us what the court room would be like, we went to the Old Bailey, no-one told us what to expect, I was frightened to be quite honest. This happened in 2001, but I know people are going through the same things now."

"The witness protection room is a joke – we were sitting there for three or four days and in walks this boy who is part of the gang and he is in the room with us."

54 An explanation for the above is that the Witness Service is required to provide support to both prosecution and defence witnesses. Sensitivity and common sense would dictate that arrangements are made for them to wait in separate rooms. Whilst space in court buildings is a premium, we were concerned to hear of occasions where both defence and prosecution witnesses, and/or bereaved families were expected to use the same room.

55 In addition to the above, we heard evidence that no designated space was allocated for bereaved families to sit in the court. Participants reported having to sit quite close to the defendants' families, and others felt they were 'tucked away' in a corner where they could barely see or hear the proceedings. Many felt they should be formally acknowledged (out of courtesy and respect) during the court proceedings as the victims or victims' family. Instead, victims and families felt the whole trial was centred upon the needs and rights of the defendant, with no recognition accorded to them. This was especially true of the experiences of bereaved families who the Commission spoke to attending the Old Bailey:

"We were not included, and I was shocked that nobody was telling us anything."

"To have been acknowledged that we are there in the court would have been fantastic, but instead we felt like we were a nuisance, in the way... but we're not bystanders and if they could have kept in touch with us at the end of it, explained things that would have been so much better for us"

56 Victims wanted privacy, support and respect and in two specific examples, the victims described the disrespectful demeanour of lawyers, which could have been avoided if they had an opportunity to sit somewhere private rather than in a space in which criminal justice professionals, wholly familiar with the court environment, were seen either openly discussing aspects of the case or joking with colleagues and opposition counsel before the trial, discussing holidays, etc. These professionals appear unaware, ignorant or immune to the distress this may cause to victims, witnesses and members of the public.

"We didn't understand what was going on most of the time and what they were saying in that courtroom was awful."

"It is just a game to the barristers, like a football match, they just don't care in these courts!"

"Do you know how long our solicitor [CPS?] spoke to us in six weeks – 10 minutes."

57 The above examples provide clear evidence that victims and victims' families had not received the appropriate support and protection promised in the Victims Code of Practice or CPS policy guidelines.

Victim Personal Statements

58 Guidance on the Victim Personal Statement (VPS) scheme is outlined in the Code and in the CPS guidance for bereaved families,³¹ but further inconsistencies were exposed when listening to participants' experiences of being informed of the VPS scheme, advice and support offered about writing one, and how the VPS is taken into account following conviction, including their 'right' to read it out themselves, although, as outlined under Right 7:³²

"[7.3] If you decide to make a personal statement, you will be asked for your preference about whether you would like to read your statement aloud in court or to have it read on your behalf. [7.4] If the defendant pleads guilty, or is found guilty, and you have asked that your statement is read aloud (or played) in court, the judge or magistrate will decide whether and what sections of your personal statement should be read aloud (or played), and who should read it. The judge or magistrate will always take your preference into account when making their decision, unless there is good reason not to do so. The Witness Care Unit will let you know the judge's or magistrates' decision."

59 The above makes clear that instead of being a 'right', as described in the Code, decisions regarding the VPS are at the discretion of the judiciary, who are even allowed to edit the contents.

60 One participant who, having only written her VPS at the last minute because no-one had told her about its significance, explained it wasn't even read out in full, but simply referred to by the judge at the end of the court proceedings:

"When the judge asked for my Victim Impact [sic] Statement, there hadn't been one written and the court had to be adjourned so that we could pop out quickly and write one sort of in a store cupboard. I just pray to God that other people are having a better experience than I did."

61 In the above case the participant was not advised that she could read her VPS out (if the judge allowed) and evidence of such judicial discretion was exercised in another case when the judge made a decision that the VPS should not be read out in court, but instead in his office, thereby overriding any preference expressed by the victim.

62 The intended purpose of the VPS is to give 'victims a voice' through a two-stage process. Victims are meant to be given an opportunity to make a VPS shortly following the offence and to update the VPS shortly before the trial. If the defendant is found guilty, the VPS should be taken into consideration by the sentencing judge, after the conviction and before the sentence is passed. However, there is substantial evidence to demonstrate that implementation of the VPS scheme is at best inconsistent and at its worst, not being implemented at all.³³

63 Those we heard from were unsure what weight these statements carried regarding sentencing and were unhappy that there were constraints placed on what they could say. This felt, to one person in particular, like a missed opportunity for the jury to really hear what a dreadful impact the crime had on the victim's family.

"The victim impact [sic] statement is not about your impact, because your impact is how you feel, and you are restricted in what you can say in the statement."

64 Another participant described taking the decision not to read her statement out in front of the accused because she was simply too angry to face him.

65 The fact that some participants referred to the Victim Personal Statement (VPS) as an impact statement also raises concerns, as it indicates they may have been misinformed and, as a consequence, misunderstood its purpose. This mistake is not uncommon though, as you frequently here professionals, including government Ministers, insist on referring to 'victim impact statements'

which we do not have in England and Wales. Other jurisdictions introduced Victim Impact Statements first, including the US, Australia and New Zealand, but England and Wales introduced the VPS scheme in 2001 and there are subtle differences between the two, including their purpose and content.

66 Individuals who were given information and advice on how to write a VPS and had its purpose carefully explained, appeared to derive greater satisfaction from their experience. One participant was informed by their barrister and another by a supportive police officer, and they were permitted the option of either reading it themselves or having it read by someone else. It meant a lot to victims' families to be able to express their emotions, as they felt it was honouring their loved one and taking back a degree of control from the perpetrators.

"When something like this happens to you, you literally lose control of your life, everything is stripped away, you have to sit in a court room and listen to the most awful stuff and you have to stay silent, the defendant seems to have a lot more control ... for me it was really important to read the impact statement, look the defendant in the eye and take back control."

"For people in the courtroom this is their job, but for us this is our life, and we will never have this opportunity again (to read the impact statement) to take back a little bit of control, so I think we should be encouraged to do that, and so what if we cry?"

67 Victims should be told about the VPS at the earliest appropriate opportunity, have the option of how they wish to write and deliver their statement and have the VPS' impact and weight within the trial clearly outlined. Clear, accurate and timely information about the VPS will enable victims to have a better understanding of the purpose of the VPS and to make an informed choice, whilst managing expectations.

Summing up and sentencing

68 From the experiences of those we listened to, this was the most confusing and complex aspect of the whole process. Whilst significant prominence is given to procedural justice (how victims are treated throughout the whole process and how this influences overall satisfaction), a great deal of faith in what victims believe constitutes justice rests on the sentence. Although in some cases substantial sentences were given, there were in other cases, a belief that sentences were too lenient, should be extended and, in a country like England and Wales, justice should be done as well as seen to be done.

69 In part, some of the sense of mystery was caused by confusion over what the sentence given actually meant and entailed. It is a requirement that the Judge outlines clearly in court what the sentence given entails, but this is not always provided and on many occasions victims are

not present for the sentencing hearing. Few people we heard from had the sentence and its implications explained to them, what it meant and what conditions were attached to the Judge's decision making.

"I had no recollection of anyone explaining it to me apart from he got three life sentences and I didn't know what that meant there was all this jargon, concurrent this, IPP that, but he's still in prison now and I still don't understand the sentence."

70 Additionally, it was clear very few were given an explanation as to the role of precedent and government of established sentencing guidelines.

71 Sentencing is complex and although the judge may sum up regarding length and type, this is not laid out in lay person's terms. Victims and their families wanted explanatory information, with one person suggesting a written report outlining what the sentence means, and a clear timeline highlighting key stages of the sentence, be made available to victims and their families.

"A report would have been helpful (to understand the sentencing) something that I could have read if I wanted to because of the trauma you don't remember, and there is so much information and everything you have been told is so outside of your everyday life and experience that it doesn't go in. I would say a simplified and bullet point report to help understanding and get clarity."

72 A lack of information simply creates further trauma and anxiety further down the line:

"He got this sentence that I didn't know what it meant and that his legal team gave me a brief explanation of what that was all about. That it was a life sentence, depending on how he behaved and then there you go, you're off in the big wide world absolutely none the wiser and just left going out of your mind."

73 Right 9 of the Code states that:³⁴

"(9.1) At the end of the case, you have the Right to be told the outcome, including where available, a brief summary of reasons for the decision by the Witness Care Unit, within 1 working day of them receiving the information from the court, which will be within 5 working days of the outcome of the case."

(9.2) If the defendant is convicted (found guilty), you have the Right to be told the sentence they received, including a short explanation about the meaning and effect of the sentence, by the Witness Care Unit, within 1 working day of them receiving the information from the court, which will be within 5 working days of the outcome of the case. If you have any questions about the sentence which the Witness Care Unit are unable to answer, you have the Right to be referred to the Crown Prosecution

Service, who will answer any questions which the Witness Care Unit is not able to answer.

If you are a bereaved close relative, you have the Right to be offered a meeting with the Crown Prosecution Service:

i *following conviction, but before the sentencing hearing of the defendant, to confirm that a Victim Personal Statement has been made or to confirm that it is up to date (this meeting will usually take place at court)*

ii *following the sentencing hearing to explain the sentence given (this meeting will usually take place at court)*

iii *in cases where the defendant is found not guilty or is convicted of a less serious charge the offer of a meeting will be made a few weeks after the case has concluded, unless the Crown Prosecution Service decide that this is inappropriate. On the rare occasions where they decide that a meeting is not appropriate, this decision will be explained to you*

iv *in a murder case where all defendants are found not guilty of all charges, the police and Crown Prosecution Service will follow the process set out in the National Standards of Support for bereaved families."*

74 A further example of where victims may fall through the cracks relates to who is responsible for informing victims of the service that provides information post-sentence. In some areas it may be the Witness Care Unit, for serious crimes it may be the specialist police officers or the FLO. Under Right 11 of the Code,³⁵ if a perpetrator is convicted for a violent or sexual offence and given a custodial sentence of at least 12 months, victims:

"Have the Right to be automatically referred to the Victim Contact Scheme, which will provide you with information about the offender and their progress in prison, and if/when they become eligible for consideration of parole or release. Where applicable, you also have the Right to make a new Victim Personal Statement, in which you can say how the crime continues to affect you."

75 However, the Code does not make it clear who is responsible for 'automatically' referring victims to the scheme. There was some confusion among those the Commission heard from regarding the Victim Contact Scheme. Some victims were unsure who provided this service and whether they had received any contact or not. This highlighted some of the difficulties victims face in a world of acronyms and multi-agency service delivery, with many of the roles responsible for having contact with victims possessing very similar titles.

76 We heard from one family who made a link between their frustration and anger created by their overall dissatisfaction with the CJS, being duly transferred onto the perpetrators and sentencing policy.

“Probation made mistake after mistake, things like that turn you against the offender and it’s not their fault.”

77 This illustrates the need for procedural justice, as referred to above,³⁶ whereby the frustration accrued over months of experiencing secondary victimisation by the criminal justice process itself, is fuelled even further by perceptions of an inappropriate sentence, or one that cannot be easily understood or explained.

78 This does not leave victims with a feeling that the harm caused has been acknowledged and that justice has been done.

Post-trial and parole hearings

79 In keeping with other themes raised by the Listening Days, victims’ experience of post-trial support was inconsistent. Where things went well, victims felt listened to and informed, but for many, there was an abrupt sense of abandonment after the conclusion of the trial, at a time when some said they most needed information and support. These included cases where the outcome necessitated ongoing engagement as they dealt with appeals, Serious Case Reviews, further trials involving other defendants, and the inevitable parole process.

“I was very lucky with the person that was supporting me because she had a lot of empathy, she didn’t judge me, because I felt I was being judged quite a lot, so that was brilliant because at the time I could just be myself with her, but literally as soon as the trial was over, that was it – we were left to get on with it.”

80 For those that experienced ongoing engagement the experience remained traumatic, but there was energy and determination involved in pursuing further justice, or improvements in the aspects of the system that had failed to prevent the initial crime. In one case, this involved seeking clarification on mistakes that had been made by the agencies tasked with monitoring a serious repeat offender who was known to the police and probation. The voluntary acceptance of a campaigning role (engaging with the CJS agencies, attending meetings, engaging with policy and law makers, assisting and supporting other victims and families) was a common feature of those who we spoke to. A key motivation here was the genuine desire that other victims and families should not have to suffer the same experiences as them, a desire to put things right. As we shall hear later in this report, engagement with restorative justice and talking to groups of young people addressing the impact of serious crime, was seen as hugely beneficial with regard to retaking power and control in a situation which has the potential to strip it away.

81 As referred to above, experiences of the Victim Contact Scheme were mixed, with further engagement

with the Probation Service was required if victims wanted to be kept informed about the parole process, but the quality of this contact remained as inconsistent and stressful for the victims as the other ‘official’ processes they had encountered. This included insensitivities caused by professionals not taking the time to familiarise themselves sufficiently with the case in advance, including contacting families on significant anniversary dates, using incorrect names, and requiring victims to repeat matters relating to the case that should be known.

“They’re [probation] so far behind what’s really happening, but when your life is in danger from somebody you want to know all the information as soon as its available, they’re so flippant with it.”

“I asked Probation why nobody contact me whatsoever, they looked at me and apologised, but they then disappeared again and not heard back until I sued them.”

“The whole thing [probation] was absolutely absurd. These guys don’t want to take any responsibility and I just feel one disappointment after another.”

“Communication was not good enough, specifically in my case between police, social services and probation”

82 The evidence provided by participants suggests the system re-enforces trauma, is seen to be unsympathetic to victims of serious crime, and creates anxiety in the lead up to each parole hearing the victims and families attended.

“Even if the attack happened all those years ago, in my situation 21 years ago, or the last nine years now I have been dealing with Parole hearings, so for that amount of time, I am retraumatised every time.”

83 In some cases, where the perpetrators of these serious crimes have served long sentences, the victims found themselves facing repeated requests for input and multiple hearings, all of which resulted in the desire for involvement, an acknowledged role, but heavily conflicts with the reality and toll caused by repeatedly reliving the trauma and the detrimental effect on victims’ well-being and health.

“There are so many organisations that you deal with, and I am quite an intelligent lady, but I have to tell you that at times it completely and utterly overwhelmed me. I just feel there needs to be a greater coordination and continuity between organisation and a serious understanding that the victims that are going through this are going through a tremendously traumatic experience.”

“I don’t want a single person to go through what I have gone through, but I know it is still happening every day.”

“We never got involved with Parole – thank goodness. I am appalled at the system, which made us feel as if we are not wanted, we are a nuisance and it’s always done that.”

84 For some who had experienced repeated parole hearings, the process proved dispiriting, exhausting and emotionally traumatic. One victim described her frustration of having to constantly submit statements for the hearing and, having expressed her frustration, had the probation officer 'scream' at her stating 'when are you going to realise this is not your day', but that of her attacker.

"I have worked with the Parole Board, and what I would say, in a nutshell, in my experience, and I know I am not alone in this, is that it is a barbaric system where victims are concerned. They get dragged through the process alongside the offender, but they don't have the offender's rights – the victim doesn't get a legal team, but the offender has a legal team and whole bunch of people supporting them. All I had was my rage – and my PTSD was triggered every single time."

"Of all the things I have been through, the Parole process is the one that nearly finished me off."

85 In some cases, the victims had simply decided to give up participating and felt it was simply better to leave it to the professionals, due to the toll it took on them.

"So for me, as much as it effects my mental health, with him being out and having set up camp a couple of miles up the road from me and probation being awful and victim support being useless and me being in fear of my own life, that's a completely different kettle of fish. I wanted to leave it down to the professionals, down to him, take that responsibility away from me, I couldn't cope with it anymore."

"I have been completely let down by the system, I feel like a sitting duck and the system just keeps on failing me."

86 Whilst there have since been revisions made to the Parole process, this situation demonstrates an inherent problem with much of the relationship between victims of crime and the criminal justice system. Initially victims require information, advice, and support, and are told their input matters, especially when the criminal justice system requires them to support an investigation and a trial, but once their participation is no longer required, the system fails them. This appears to be down to a lack of education and training for criminal justice professionals in two areas – a) the impact and trauma of victimisation and b) the policies and guidelines that govern their responsibilities towards victims and their families. Lack of accurate information, timely communication and the delivery of professional support services, represents the reality of their experiences, in contrast to the political rhetoric of 'victims rights' outlined in the Code and other guidelines.

87 In particular, victims place importance on attention to detail at a time of trauma. However, examples we heard highlighted a system where the priority is not victims.

Examples we heard included parents being contacted to discuss the case on the anniversary of the death of a son, an incorrect post code being provided for an exclusion zone (resulting in a high risk offender reporting to a probation office close to where the victim lived), one victim being informed of their attacker's release after the victim had been told by a friend that her attacker was out of prison, a coroner twice getting the date of birth wrong on a death certificate, and the mispronunciation of a name during the trial. Whilst these may appear like small, unintentional errors and indiscretions, to the individuals involved each was treated as a personal slight, reflecting a lack of preparation, consideration and professionalism, and further evidence of a system that failed to support and respect each individual within it, especially those it relies upon.

88 There were some examples where those we heard from commended the relevant agencies. In some cases the support came from 'official' sources, including the role of individual Victim Contact Officers, who as part of the Victim Contact Scheme, supported victims long after the trial concluded, and Victim Support who were mentioned by a number of people.

89 However, what also became clear was the way in which victims were required to proactively seek out support for themselves, rather than being informed of the services available, as is their 'right' in accordance with Right 4 of the Code.³⁷ Victims found sources of support either through informal networks or through charitable organisations such as Why me? and Through Unity. Whilst these support networks are crucial for some, they are discovered as much by chance as by design. This does not serve victims fairly as it relies on personal and cultural resources, geography and availability. The absence of suitable support was starkly identified in the cases involving sexual assault and domestic violence, whereby victims are entitled to 'enhanced rights' and to be identified as vulnerable and intimidated.³⁸

Restorative justice and regaining autonomy

90 With the involvement of Why me? we heard from five people who had participated in restorative justice. They told us about their initial attempts to engage with the process, the preparation required to make it work and how it had impacted on both them and, in some cases, the perpetrators. Much of what was described focussed on regaining control, empowerment and for their first time since engaging with the criminal justice system, having choice and options. This is in stark contrast to what had gone before, with one woman stating it was the first time anyone had asked her what she wanted from the process.

91 However accessing restorative justice appears to be a lottery based on availability, geography and ultimately resources, despite this being listed as part of Right 3 in the Code,³⁹ whereby victims are 'to be provided with

information about the criminal justice process and to be told about programmes or services for victims. This might include services where you can meet with the suspect or offender, which is known as restorative justice'. But this also comes with the proviso that this depends on whether it is available in the victims' area and where offenders are under the age of 18, it becomes the remit of the local youth offending team.

92 Despite this, one issue that stood out in particular, was that victims had to struggle and fight for access to restorative justice.

"We didn't know about restorative justice, nobody told us – we could have done this 11 years before...and all of those years were wasted."

93 In some cases, criminal justice professionals were actively obstructive, taking it upon themselves to decide that restorative justice was not appropriate for the victims and families, due to the seriousness of the offences.

"I was shocked to my core that the professional's anger was aimed at me for wanting to do what I knew I needed to do to heal."

"Every time we tried to do restorative justice – the professionals got in the way."

"Not only they didn't tell me about restorative justice; they tried to block me from getting it."

94 This denies victims the autonomy of making their own choices. In one case the victims' family initially pursued the process of restorative justice themselves before meetings which were carried out formally. In all the cases we heard, significant time had elapsed between the offence and taking part in the restorative justice process, in one case 14 years. Once access to the process had been gained, those we heard from praised the attention to detail and the preparation and advice they received before taking part. Whilst some had grown impatient by the amount of detail and preparation required at the beginning of the restorative justice process, when the time came for the meeting they realised the importance of certain details and appreciated the level of care taken. For one family the restorative justice process was significant because it placed them at the core of the process, where their needs were discussed:

"They both said, 'What can we do for you, what are your needs'? In all eleven years no-one had ever asked us. I started to cry, I said can you say that again, 'What are our needs' and I was pouring out and she said, 'Whoa, slow down need to write a few things down'."

95 The people who spoke about restorative justice described wanting different things from the process but all described a significant impact for them personally or for their extended families or for the perpetrators (and their

families). It was pointed out that whilst their bereavement following an attack made them victims, the same was also true of the family of one of the perpetrators.

"We're in the basement of (the) community hall and as he came down the stairs and walked around, I stood up, he ran over to me grabbed hold of me and cried on my shoulder, 'I'm sorry. I'm sorry. I'm sorry'. ...He'd waited 11 years to tell the truth, you know, he was hurt too and that wasn't right was it? We should have been told a long time ago. But we weren't."

96 The same couple described their surprise at realising the young men involved were not the animals they had imagined them to be, instead viewing them as human beings.

"The night (our son) died we said these boys are animals, they're not human, these are monsters that's how I saw them right up to the time. But during that process of talking I started to see them, hear from them that they were actually human beings who wanted to respond, they were remorseful and that took me quite by surprise and then actually going in that room and seeing the human beings changed the way I thought, definitely."

97 They used terms such as remorse, forgiveness and peace to describe the experience. They felt it had given them and their other son back their lives. A weight had been lifted from their shoulders as one of the perpetrators expressed his sorrow and remorse for what he had done. They get regular updates on how the perpetrators are doing now and were pleased to know they were staying out of trouble.

"I think it enormously changed the way we thought and telling them we forgive them and all of that, it was so, it felt healthy, it felt right. The most peace came that day, the most peace in my life and we get a little feedback on them and they're doing well. It gave us back our lives and it gave (our second son) back his life too."

98 Another woman outlined the impact restorative justice had on her, saying she didn't go there with the intention to be kind, warm or forgiving towards her attacker (her ex-partner), but that's what happened and, as a result, she felt 'free' and suggested she, her daughter and her ex-partner could now move on and live the next part of their lives.

"The restorative justice effect on both of us had more of an impact on us, he's a repeat offender but this is the longest he's been out of prison I think without trying to kill anyone so it must have had some sort of impact on him and that's really what I wanted to see. I wanted to see his face to see if he could actually acknowledge what had happened and I think in all the prison time he had done, that hour or so, in that room with me, was pivotal."

“My daughter’s whole life has changed direction since I did restorative justice.”

99 She believes restorative justice provided that opportunity and she would not have found it elsewhere.

100 For others, the process was more about regaining power and proving that the crimes that had been perpetrated against them had not broken them.

“I was the one walking out the room, leaving him there, having done everything I needed to do with my dignity intact, my power and control for myself, everything given back to myself and there’s no price you can put on that.”

101 They too witnessed remorse but recognised that no amount of forgiveness or emotion could ever change what had happened. One described wanting to change the narrative from “victim to victor”, and the forgiveness experienced was for herself, forgiving herself for grieving the future she’d never have and the pain her children had experienced.

102 One woman met with her attacker for three hours, a man who was a stranger to her. Although witnessing what she believed to be real remorse, the man subsequently refused to sign an agreement drawn up during the session in which he was committing to leaving her and her family alone. However, the process did provide solace in that she experienced control for the first time since the attack took place.

103 These sessions demonstrate the power of restorative justice. All those we spoke to who took part in a restorative justice process believe it should form a part of any sentence handed down for a serious crime, if victims are fully informed, given the choice, and are professionally supported throughout the process.

“We have seen lives change and I think the justice system should make every man do an Impact Victims Awareness course. It should be compulsory before they do restorative justice, it should be the minute they go to prison.”

104 The restorative justice process was the one aspect of the criminal justice system that was described as ‘mind-blowing’. However, it is crucial to acknowledge that all participants in restorative justice processes must be willing to take part and that their decision is based upon well-informed advice by an experienced restorative justice professional and that sufficient time and support is given in both the preparation and support following the outcome. This was reiterated by a participant:

“The timing is everything, and the time wasn’t right. I still would have done it, but it didn’t happen to me until a year later and I found that excruciating at the

time. But I do believe timing is everything so the preparation really got me to a place where I knew that I was ready to do this.”

105 The Commission believes that restorative justice requires significant investment if it is to be made available more systematically. At present the evidence suggests that it is almost by accident that victims and their families become aware of the possibility, and provision in prisons is patchy at best.

“I was never told about restorative justice until I went digging and looking for it really.”

“Every time we tried to do restorative justice – the professionals got in the way.”

106 The evidence we have heard points to the positive difference restorative justice made to victims and families. One parent said:

“For a long time, it felt like that they had taken not only [our son], but all of our lives, and it felt like that for a long time... But the most peace came that day talking to them and it gave us back our life.”

107 It will remain to be seen whether the revised Code of Practice for Victims of Crime,⁴⁰ by setting out a list of twelve victims’ rights, will have an impact on victims’ experiences. This will depend on how compliance is monitored and how the relevant agencies will be held accountable for non-compliance. The responsibility for this has been passed to the local Police and Crime Commissioners, but no specific guidance has been provided. However, there is evidence, stretching back over 30 years, that suggests reinvention is just about tweaking the Code for a new generation and does not necessarily translate into adherence and delivery. Victims remain an addition to the existing priorities and responsibilities of various statutory agencies but the priority of none. The evidence we have received demonstrated a patchy network of systems that do not communicate with each other or with victims effectively.

108 Victims and their families need to know that the offender has come to understand the impact of their crime. Seeing the adversarial system played out in court leaves them with the lasting impression that the offender is denying responsibility for any such impact or minimising their role. Many victims want to know that the offender has sought to change and, for some, knowing that the risk of reoffending is reduced will also help. Clearly, not every family will want to know what has happened to the offender. But for those who do, there is currently a gap and there needs to be a review of how some information might be provided. This might draw upon the prisoner’s sentence plan and might involve asking whether they wish to say anything to the victims or their family.

109 Reflecting on the available research and drawing upon our Listening Days, we have identified four specific recommendations set out in full in Chapter 5 of this Report. These recommendations would achieve:

- i** Better communication with, and information for, victims of serious crime
- ii** An entitlement for victims to have a summary of the prisoner's sentence plan and progress in the sentence
- iii** Better enforcement of existing victim entitlements
- iv** Better access to restorative justice for victims and prisoners.

¹ Jordon, J. (2013). From Victim to Survivor – and from Survivor to Victim: Reconceptualising the Survivor Journey. *Sexual Abuse in Australia and New Zealand* 5(2), 48-56.

² Shapland, J. et al. (1985). Cited in Tapley, J. Confidence in Criminal Justice: Achieving Community Justice for Victims and Witnesses. (2005). *Community Justice: Issues for Probation and Criminal Justice*, 241.
<https://researchportal.port.ac.uk/en/publications/improving-confidence-in-criminal-justice-achieving-community-just>

³ Casey. (2010). Cited by Walklate, S. (2012). Courting Compassion: Victims, Policy, and the Question of Justice. *The Howard Journal of Criminal Justice* 51(2), 109.
<https://onlinelibrary.wiley.com/doi/10.1111/j.1468-2311.2011.00698.x>

⁴ Walklate, S. (2012). Courting Compassion: Victims, Policy, and the Question of Justice. *The Howard Journal of Criminal Justice* 51(2), 109. <https://onlinelibrary.wiley.com/doi/10.1111/j.1468-2311.2011.00698.x>

⁵ Wedlock, E. and Tapley, J. (2016). What Works in Supporting Victims of Crime: A Rapid Evidence Assessment.
<https://victimscommissioner.org.uk/published-reviews/what-works-in-supporting-victims-of-crime-a-rapid-evidence-assessment>

⁶ Ministry of Justice. (2020). *Code of Practice for Victims of Crime in England and Wales*.
<https://www.gov.uk/government/publications/the-code-of-practice-for-victims-of-crime>

⁷ Tapley, J. Confidence in Criminal Justice: Achieving Community Justice for Victims and Witnesses. (2005). *Community Justice: Issues for Probation and Criminal Justice*, 241.
<https://researchportal.port.ac.uk/en/publications/improving-confidence-in-criminal-justice-achieving-community-just>

⁸ Strickland, P. (2016). *A New Victims' Law in England and Wales?* House of Commons Library.
<https://commonslibrary.parliament.uk/research-briefings/sn07139/>

⁹ Waxman, C. (2019). *Review of Compliance with the Victims' Code of Practice (VCOP): Findings, recommendations and next steps*.
https://www.london.gov.uk/sites/default/files/vcop_final_pages.pdf

¹⁰ Rossetti, P., Mayes, A. & Moroz, A. (2017). Victim of the system: The experiences, interests and rights of victims of crime in the criminal justice process.
https://www.researchgate.net/publication/316787674_Victim_of_the_system_The_experiences_interests_and_rights_of_victims_of_crime_in_the_criminal_justice_process

¹¹ Gordan, J. & Gordan, A. (2020). *The Role and Rights of Victims of Crime in Adversarial Criminal Justice Systems: Recommendations for Reform in England & Wales*.

¹² Ministry of Justice. *Code of Practice for Victims of Crime in England and Wales*.
<https://www.gov.uk/government/publications/the-code-of-practice-for-victims-of-crime>

¹³ Crown Prosecution Service. *CPS Direct Communication with Victims - CPS/ACPO National Framework for Local Protocols*. The Crown Prosecution Service. Accessed 26 August 2021:
<https://www.cps.gov.uk/publication/cps-direct-communication-victims-cpsacpo-national-framework-local-protocols>

- 14 Glidewell Report. (1998). Cited in Tapley, J. (2020) Politics, Policies and Professional Cultures: Creating Space for a Victim Perspective in the Crown Prosecution Service. *Victimology: Research, Policy and Activism*, 223. https://doi.org/10.1007/978-3-030-42288-2_9
- 15 Crown Prosecution Service. (2018). *Speaking to Witnesses at Court: CPS Guidance*. <https://www.cps.gov.uk/sites/default/files/documents/publications/speaking-to-witnesses-at-court-guidance-feb-2018.pdf>
- 16 Ministry of Justice. Code of Practice for Victims of Crime in England and Wales. <https://www.gov.uk/government/publications/the-code-of-practice-for-victims-of-crime>
- 17 Walklate, S. Defining Victims and Victimisation. In P. Davies, P. Francis, & C. Greer (Eds.) *Victims, Crime and Society: An Introduction*, pp30. SAGE.
- 18 Ibid. pp34.
- 19 Christie, N. (1986). The Ideal Victim. In E. A. Fattah (Ed.) *From Crime Policy to Victim Policy: Reorienting the Justice System*. Macmillan.
- 20 Charman, S. (2020). Making Sense of Policing Identities: The "Deserving" and the "Undeserving" in Policing Accounts of Victimisation. *Policing And Society* 30(1), 81–97. <https://doi.org/10/gmk8qs>
- 21 Ibid.
- 22 Ashworth, A. (1998). Cited in Wedlock, E. and Tapley, J. (2016). *What Works in Supporting Victims of Crime: A Rapid Evidence Assessment*. pp15. <https://victimscommissioner.org.uk/published-reviews/what-works-in-supporting-victims-of-crime-a-rapid-evidence-assessment>
- 23 Wedlock, E. and Tapley, J. (2016). *What Works in Supporting Victims of Crime: A Rapid Evidence Assessment*. <https://victimscommissioner.org.uk/published-reviews/what-works-in-supporting-victims-of-crime-a-rapid-evidence-assessment>
- 24 Tapley, J., Stark, A., and Watkins, M. (2014). Cited in *Victim Advocates: A Rapid Evidence Assessment*. (2019). Victims Commissioner for England and Wales. <https://victimscommissioner.org.uk/published-reviews/victim-advocates-a-rapid-evidence-assessment>
- 25 Wedlock, E. and Tapley, J. (2016). *What Works in Supporting Victims of Crime: A Rapid Evidence Assessment*. <https://victimscommissioner.org.uk/published-reviews/what-works-in-supporting-victims-of-crime-a-rapid-evidence-assessment>
- 26 Ibid.
- 27 Ministry of Justice. *Code of Practice for Victims of Crime in England and Wales*. <https://www.gov.uk/government/publications/the-code-of-practice-for-victims-of-crime>
- 28 Wedlock, E. and Tapley, J. (2016). *What Works in Supporting Victims of Crime: A Rapid Evidence Assessment*. <https://victimscommissioner.org.uk/published-reviews/what-works-in-supporting-victims-of-crime-a-rapid-evidence-assessment>
- 29 Hall, M. (2020). Police and Crime Commissioners and Victim Service Commissioning: From Activism to Marketisation? In J. Tapley & P. Davies (Eds.) *Victimology: Research, Policy and Activism*. Palgrave.
- 30 Crown Prosecution Service, (2015). *Crown Prosecution Service to Bereaved Families*. https://www.cps.gov.uk/sites/default/files/documents/victims_witnesses/bereaved_families_leaflet.pdf
- 31 Ibid.
- 32 Ministry of Justice. *Code of Practice for Victims of Crime in England and Wales*. <https://www.gov.uk/government/publications/the-code-of-practice-for-victims-of-crime>
- 33 Victims Commissioner for England and Wales. (2019). *Analysis of the offer and take-up of Victim Personal Statements 2018 to 2019*. <https://victimscommissioner.org.uk/published-reviews/analysis-of-the-offer-and-take-up-of-victim-personal-statements-2018-to-2019>
- 34 Ministry of Justice. *Code of Practice for Victims of Crime in England and Wales*. <https://www.gov.uk/government/publications/the-code-of-practice-for-victims-of-crime>
- 35 Ibid.
- 36 Wedlock, E. and Tapley, J. (2016). *What Works in Supporting Victims of Crime: A Rapid Evidence Assessment*. <https://victimscommissioner.org.uk/published-reviews/what-works-in-supporting-victims-of-crime-a-rapid-evidence-assessment>
- 37 Ministry of Justice. *Code of Practice for Victims of Crime in England and Wales*. <https://www.gov.uk/government/publications/the-code-of-practice-for-victims-of-crime>
- 38 Ibid.
- 39 Ibid.
- 40 Ibid.

Chapter 3: The experience of prisoners

Introduction

1 This chapter examines the experience of prisoners serving long sentences. It seeks to answer the question in the Commission's terms of reference of how long sentences are being served, including the arrangements for contact between the prisoner, the prison authorities and the victim and their families.

2 The first part of the chapter provides a brief overview of the available research on the impact of long-term imprisonment.

3 The second part draws on the direct testimony that the Commission received from people serving long prison sentences as well as evidence received in written submissions. Respondents gave honest and often painful testimony on the reality of serving a long prison sentence. They described their experience of the criminal justice system from the point of sentencing, including:

- i** their entry into prison
- ii** the challenges of coping with a long sentence
- iii** sentence progression (including risk reduction work and the parole process)
- iv** personal progression (self-improvement, reflection and making amends)
- v** release.

4 In total the Commission spoke directly to nine people serving long sentences and a further 15 provided written evidence. They were serving a range of different types of long sentences, in several different prisons, and were at various stages in the course of the sentence. Similarly, the expert evidence received by the Commission was drawn from a range of different sources and perspectives.

5 It is artificial to describe *the 'typical' experience* of a long sentence when it is received from such diverse sources. Nonetheless, it is possible to identify common themes in these testimonies, as well as in the expert evidence heard by the Commission. These themes were consistent with what we were told in written submissions on the impact of long-term imprisonment; we quote both from those submissions and from the expert evidence we heard in this chapter. The following should be read as an *illustration* of the experiences of people serving long sentences.

What the available research tells us

6 There is a significant body of research into the effects of long-term imprisonment. Not all of it relates to the United Kingdom, and the findings of research in general are equivocal, in part because there are significant difficulties in conceptualising and measuring the 'effects'

of something which itself varies, which affects different people with different characteristics, and which takes places over years or decades. Arriving at a general answer is therefore difficult, but a number of research results are significant.

7 Conditions of confinement vary very widely from country to country and from prison to prison,¹ and people serving time in prison also vary substantially in their 'backgrounds, pre-existing problems or vulnerabilities'.² The effects on different people may therefore be different, and what may be catastrophically harmful for one person may be routine and unremarkable for another. Nevertheless, around the world 'most prisoners, including those serving life terms, come from socially and economically disadvantaged groups, and have often experienced significant trauma during childhood and adolescence' of a kind that can 'render them less able to cope effectively with, or indeed survive, the turmoil of prison life'.³

8 Early research on long-term imprisonment often focused on themes of mental deterioration, and this has been shown to be a deep fear of people serving long sentences.⁴ However, a series of empirical studies did not support the idea that deterioration was *consistent* among *all* long-term prisoners. The fact that some people *did* adapt suggested that it was not the prison experience in itself that caused deterioration,⁵ and some research also suggested that for prisoners who had lived violent or otherwise risky lives in the community, imprisonment may well represent an experience of stability or reduced risk.⁶ The capacity of prisons to cause harm is therefore clear, but they are not uniformly harmful, and some may find them, temporarily or over the long term, beneficial.⁷ This depends in large measure on what skills and resources they bring to the experience, or acquire while they are imprisoned. But it also depends on the prison environment(s) to which the individual has been subject, with a strong body of evidence from the UK that prison regimes which are more morally coherent, predictable and legitimate (in prisoners' eyes) produce significantly better aggregate outcomes, including reduced suicide rates, reduced reoffending rates, and reduced distress.⁸

9 Regardless of whether there is overall deterioration, there is a great deal of evidence that imprisonment involves a range of other negative effects, including chronic stress responses, health problems, premature aging, psychological distress, deterioration in family relationships over time, feelings of dependency and learned helplessness arising from lacking control over key fundamentals in life, hypervigilance, and increased hostility to others.⁹ This has led some US researchers to

argue that epidemiologically speaking, 'post-incarceration syndrome' is a serious enough condition affecting a large enough number of released life-sentenced prisoners to be classified as a treatable psychiatric condition.¹⁰ Whether or not it *causes* permanent individual deterioration, prison is indisputably a *painful* experience, involving separation from loved ones and a variety of deprivations; a range of 'pains of imprisonment' have been identified and researched.¹¹ This is nevertheless an experience to which many adjust more or less successfully over time,¹² adapting to the prison environment despite this complicating their ability to live viable lives after release, even if they can avoid committing further crimes.¹³

10 A key way in which long-term imprisonment in the UK is currently 'painful' relates to how prisons use power over prisoners. Whereas in the 1960s, 1970s and 1980s (when much of the research described above was conducted), UK prisons often secured prisoners' compliance through brutalisation and staff violence, in a legal context where prisoners' rights were almost completely suspended, this came at the cost of widespread and repeated disorder, reform efforts, and human rights litigation. Efforts to deliver both prison regimes and rehabilitative interventions on a more systematic, cost-effective and managerially efficient basis followed.¹⁴ While it would be complacent to argue that staff violence has disappeared, many of the pains of long-term relevant today relate to the use of soft power and not hard power by prisons – incentives or 'carrot and stick' rather than violence and segregation – as the default means by which to secure compliance. This has also been facilitated by the digital revolution, facilitating increasing degrees of record-keeping, assessment and classification. The result has been that many long-term prisoners (and particularly those serving indeterminate sentences) experience pains of uncertainty and indeterminacy, of constant assessment, and of constantly having to be mindful of how their behaviour will be viewed, such that any slip in their behaviour may result in the reimposition on them of more restrictive conditions.¹⁵ The result is that many feel 'so tightly entangled in the administration of their sentence that it became virtually impossible to wriggle free'.¹⁶ This prompted, for many, feelings of immense anger relating to the perception that they were mistrusted, trapped and hopeless.¹⁷

11 Under fiscal austerity after the 2008 financial crisis (which coincided with a substantial increase in the number of indeterminately sentenced prisoners, as we show in Chapter 1), the pressure for cost-efficiency has caused scarce rehabilitative resources to be targeted more rigorously at those believed to pose the greatest risk of harming others.¹⁸ An 'emphasis on performance targets has become stronger, while the resources allocated to meet these targets have reduced, and the operational conception of the prisoner and his or her

moral agency has also been diminished.'¹⁹ This has had several consequences including making access to rehabilitative opportunities and the identification of unmet needs a key issue in political advocacy on behalf of various custodial groups.²⁰ This has also coincided with a growing realisation that many of the offending behaviour programmes currently used have questionable or weak evidence of their effectiveness in reducing reoffending, with some now-withdrawn programmes having been shown to slightly *increase* the risk of reoffending.²¹

12 The long-sentenced population as currently composed therefore encounters a variety of problems arising from the nature of the long-term prison experience. First, they must come to terms with the experience of time, which in prison is abundant, empty and unreal, and outside prison is precious, finite and real. Second, and relatedly, surviving the sentence involves finding meaning and purpose despite the deprivations of the prison environment: they must find ways to reassure themselves that their experiences are meaningful and that their sentences are worth living through. Combined with the common belief that 'real' life happens outside the prison, this often means that hope is fixated on the possibility, however, distant, of eventual release, and of restoration to life outside prison in some form. Third, coping with experiences of shame and remorse is very important to the experience. Regardless of their feelings about their convictions, most long-term prisoners are aware that their current and future status will be deeply marked by the judgement that society has passed on them; moreover, the sentence has a variety of collateral impacts on their loved ones, which may cause them pain even without believing that this pain was self-inflicted by the offence. Finding ways to think of prison experiences as redemptive is often strongly connected to the search for meaning. Finally, many construct narratives of personal change, in part because risk assessments and sentence reviews of different kinds impel them to do so – without such a narrative, the release of indeterminately sentenced prisoners in particular may never happen. For those who are younger, narratives of change may well be a way of accounting for the developments that occur as a result of increasing physical and psychological maturity. But older prisoners apparently sometimes cling to 'markers of decency and achievement' from their lives before prison, in part because narratives of personal change are less meaningful and socially plausible.²²

13 The key insights to be gained from this brief review of research are as follows:

i Context matters. Imprisonment is not uniformly harmful and not all people are equally likely to be harmed by it. Conversely, the benefits it may entail for some people will not be experienced by all, and the general tendency for prisons to inflict harm means that those benefits are tenuous and may be temporary. Both

of these insights point to the importance of individual assessment.

ii Their crimes may arouse powerful public emotions and demands for retribution, but people who commit very serious crimes have also often experienced violence and trauma and tend to come from economically and socially disadvantaged backgrounds.

iii Prisons, especially those which are low-performing or feature morally incoherent regimes, replicate these conditions and exacerbate prisoners' existing vulnerabilities. They cause a range of primary and secondary harms, to those serving the sentence and to their dependents and social relationships outside prison, many of which are associated with an increasing social and relational distance between them. Coping with the prison environment may involve prisoners developing traits which may not readily suit them for life in the community.

iv Long-term imprisonment therefore benefits some but damages many over the long-term. Its success is in part determined not by what happens during the sentence but also by what happens after it, with life after custody very challenging for some.

v Most people serving a long sentence are highly aware of the strong emotions associated with their convictions, and many also feel shame and remorse because of their offence. Many are strongly motivated to change, at least initially, but their motivation may be quite dependent on how realistic the prospect of a viable, desirable life after custody may seem.

vi Regimes and interventions seeking to help them do so are currently provided on a rationed, managed, basis, and are not equally available to all at different times or in different prisons throughout the sentence. Long prison sentences, even for those prioritised for rehabilitative interventions, therefore still involve substantial periods of 'treading water', in which the challenge is to sustain a sense of meaning and purpose.

14 Whatever benefits the wider public derives from incapacitating people who have committed serious offences and who may still be dangerous, prisons remain 'powerful and potentially damaging situations' with 'negative psychological effects [which] must be taken seriously, carefully evaluated, purposefully regulated and controlled, and, when appropriate, changed or eliminated'.²³ The long-term effects of being exposed to these environments can be very harmful and as a whole, the best available evidence suggests that prisons may even increase rates of crime overall.²⁴

What the Commission heard directly from prisoners and from consultees

Entry into the sentence

15 Most adult male prisoners serving long sentences for serious offences will spend the early years of the sentence in prisons in the long-term and high-security estate (LTHSE). Arrangements differ for the smaller number of women serving long sentences. Unlike men's

prisons, women's prisons are not divided up into separate security categories. Therefore, women serving long sentences will spend the early part of their sentence in a closed women's prison, in conditions deemed appropriate to their level of risk.

16 The early stages of a long sentence pose particular challenges. Evidence from Professor Ben Crewe described how the initial impact of a long sentence created 'ruptures' in prisoners' lives:

i From their existing social relationships (eg family, friends, wider social networks);

ii From their sense of self (coherent biography, moral self-understanding); and

iii From their expectations of the future (ie the life I thought I would have).²⁵

17 These 'ruptures' were evident in responses the Commission received from people serving long sentences. When asked to describe the very early stages of the sentence, respondents recounted feelings of shock, grief, madness, emotionally shutting down, and a sense of alienation from their previous life and relationships and expectations of the future.

"I found I had to go through a grieving process. No-one had died but it was the only way to accept that my old life was over and the people in it lost to me, this was not just on first coming into custody but also on losing touch with the few family members I had originally maintained ties with."

18 The reference in this quote to a 'grieving process' suggests twin difficulties: learning to live in a new and unfamiliar environment; and losing access to most of the meaningful features of the world before prison. People generally only learn to cope with these challenges after some time, and often find themselves unable to think very far into the future. This can make the sentence feel like a shattering outcome, prompting distress for those who feel guilt, and defiant anger among those who believe they do not deserve to be in this situation.

Coping with the sentence

19 In this section, we describe the challenges respondents experienced when adapting to and coping with a long sentence. These include the impact of lengthy or indefinite detention; the loss of autonomy and control; poor treatment and conditions; and the impact on families.

The impact of lengthy or indefinite detention

20 Confronting the reality of a lengthy or indeterminate sentence was a common theme in both written submissions and the responses received from prisoners. Professor Crewe highlighted how young adults experienced a form of "temporal vertigo" during the very early sentence stages, in part because the sentence was often longer than the period they had been alive.²⁶

Written evidence from Ben Jarman described how the passing of time was a very common theme in interviews with life-sentenced prisoners of all ages. This meant that life was largely lived day by day, with prisoners finding it difficult to think of their prison sentence as meaningful or constructive. One prisoner said:

“I survive by taking one day at a time, I try not to think too far ahead.”

21 For those later in the sentence, there were more references to “passing time”, “using time”, and “treading water”,²⁷ metaphors suggesting that some prison experiences that feel useful, but others feel like time has to be whiled away, and is ultimately being wasted.

“I suppose the main impact the sentence has had on me is the lack of hope that I wake up with daily and feelings of bitterness I have to live with. I feel that over the years prison has taken my shine away from me and I’ve grown to mistrust all those in authority.”

22 Respondents commonly related this feeling of time being wasted to the idea that ‘real’ life was occurring elsewhere. Their experience of prison time was flat, undifferentiated, and monotonous. Many described a growing awareness that the world was changing, leaving them with:

“A feeling that you no longer matter to the world outside and that it is moving on without you – in addition to that being the concern over how you will cope with the changed world on release, the speed technology advances at can leave prisoners left behind.”

23 Regretful and painful thoughts of the outside world were a preoccupation for many. Despite the intense and close nature of prison life, these experiences appeared lonely, leaving prisoners feeling like a community of isolated individuals confined in prison while the outside world moved along without them:

“You know, like sometimes you want to be on your own and there’s nowhere you can find where you can be on your own. There’s always going to be someone outside the door, or you can hear somebody... You can’t just go for a walk in the woods. You know there’s just so many things that you take for granted when you’re outside.”

24 Many said the experience of serving a long sentence provoked negative emotions which they expressed through violent and anti-social behaviour as well as self-harm and suicide.

“The sense of hopelessness is great. Longer sentences just make individuals resent/hate the system, cause violent outbursts, and increase self-harm and suicide.”

25 Written submissions highlighted how these negative responses often reflected how prisoners felt about the fairness of their conviction, or the length of the sentence itself. They were especially likely among those who saw the sentence as unfair, excessive, unjustified, or illegitimate. Evidence from both Dr Alice levins and Ben Jarman highlighted the difficulties in coping among people who felt they did not deserve to be in the situation that they were in, often because they disputed their culpability. Even some prisoners who acknowledged guilt, however, said the sheer length of the sentence destroyed their motivation, because life felt pointless. This disincentivised compliance with prison rules:

“Long sentences can give cause to anti-social and violent behaviour since prisoners often feel like they have little or nothing to lose. If serving 10 years or more, then a further month or two added to one’s sentence [for being adjudicated against] makes little difference.”

26 These experiences are, of course, part of what punishment aims for (see Chapter 4), as a means to communicate that someone has done wrong. However, the difference between what we were told by prisoners who accepted their guilt, versus those who disputed it, was striking. Illegitimacy, and indeterminacy or extremity in the length of the sentence, appeared particularly difficult to come to terms with.

27 It was clear to the Commission that the sentence, to be survivable, must in some way be *productive* for the person serving it, rather than *destructive* or *stagnant*. Changes in the world outside prison and changes in the individual themselves during a long sentence can cause long-sentenced prisoners to re-evaluate the way they lived before prison. Some respondents described how family relationships changed over time, relating this to a heightened awareness of their mortality and their regrets over past choices. For some, coping involved better understanding the past, particularly in relation to how their conviction came about and the ways in which they were responsible for these consequences on others. By contrast, others suggested that it was thoughts of the *future*, not the *past*, which made the sentence meaningful. For them, coping meant trying to secure themselves a better future by working on themselves.

28 Particular concerns were raised in this context about people serving the IPP sentence, whose experiences included ongoing uncertainty about the time they would remain in custody (or on recall). Combined with the abolition of the sentence itself, this created a toxic mix of injustice and hopelessness whose end could never reliably be predicted. Written evidence from UNGRIPP, based on the findings of a survey of the family members of people serving IPP sentences, highlighted the indefinite nature of the IPP as the most painful aspect of the sentence:

“It causes a range of emotions from acute stress/anxiety to hopelessness and despair. It leaves families in a strained limbo where they find it impossible to anticipate a meaningful future. Three respondents had lost their loved one to suicide, and some had contemplated suicide themselves.”²⁸

Loss of autonomy and control

29 The loss of autonomy and control over one’s life posed particular difficulties, especially in the early sentence stages. Professor Crewe described how early-stage prisoners found the power prison officers held over them, and the corresponding loss of influence over decisions affecting them.²⁹ This was reflected in a number of the responses the Commission received from people serving long sentences:

“... in prison you can’t do anything by yourself. You have to depend on officers, you have to depend on a very slow routine, a service, you have to do everything by paper. It’s a very slow lifestyle – it really reduces you, it really, really takes it out of you. I think that if there’s any ambition, it really comes out of you within the first few years.”

30 Although for the most part prisoners learn to cope with and accept this situation, a sense of dependency (which can become entrenched) could undermine respondents’ ability to formulate and pursue their own objectives. One person linked this difficulty with being redefined, not as a person with strengths but as a risky, dehumanised ‘number’:

“You’re treated like statistics, you’re treated like a number, not like a human being. No-one takes into consideration whether you have anything about you. You’re just a common criminal: that’s it, you know.”

31 The loss of agency and autonomy and the corresponding fear of becoming dependent posed significant challenges to mental health and wellbeing. One prisoner described this as a kind of struggle for self-preservation, in which the challenge was to ‘keep out’ the influence of the prison environment, and to protect the self against contamination:

“You see people who [be]come insane, they’re talking normal, and then you see them a few years down the line, and they’ve lost all sanity, they’ve lost themselves. You think to yourself: I don’t want to become like that. You always say to yourself: how am I going to do what I need to do to stop myself becoming like that? ... I always had to fight for staying alive.”

Poor treatment and conditions

32 Poor treatment and conditions were also highlighted as making it difficult to cope. Concerns about conditions in the long-term and high security estate (LTHSE) were raised in the written evidence submitted by the

Independent Monitoring Boards (IMBs). Their submission highlighted problems of violence, self-harm, overuse of segregation, a lack of appropriate purposeful activity and adaptations for elderly prisoners, and insufficient workshops, education provision and offending behaviour programmes for long-sentenced prisoners.³⁰

33 One prisoner highlighted the impact of poor treatment and conditions on prospects for rehabilitation:

“Courses, sentence plans, rehabilitation can never work if you lock people up in a cupboard-toilet-cell.”

34 Some prisoners highlighted environments in particular prisons that could be volatile and dangerous. This could result in a lasting psychological impact.

“I was starred upⁱ to Cat A conditions aged 19 surrounded by violent volatile grown men. To which I quickly learnt to show aggression in order of self-preservation. I’ve seen prisoners seriously assaulted and even killed [but] I’ve never received any form of counselling for or support. These experiences along with the countless kickings via prison staff when under C&R (control and restraint) and in segregation units, have left me emotionless and cold and I’ve buried the childhood happiness I once felt, so deep I fear if I will ever get those feelings and emotions back. Or am even capable of feeling those emotions again.”

Impact on families

35 Family contact for prisoners has been shown to reduce the risk that prisoners will reoffend.³¹ It is also important for mental wellbeing and reducing the risk of suicide and self-harm.³² Some respondents described family support as a factor without which they could not have coped with their sentence. One said:

“Without [my wife’s] love and support I would find my sentence intolerable and my life futile with no purpose.”

36 For others, attitudes to family were more complex, with family being at once a “lifelines” and a “painful reminder” of life on the outside:

“Nothing is real, family and friends on the out, they are not real, they are lifelines. They are painful reminders of life.”

37 The impact of the sentence on families was a recurring theme in evidence from prisoners. In part this was prompted by awareness that the family were serving the sentence alongside them, but had not committed the crime:

ⁱ The term “starred up” refers to a procedure by which a young offender is moved into an adult prison before they are 18 years old. This can be because of a change in their risk level or particularly disruptive behaviour.

“The sentence has had a tremendous impact on me, but more so has been detrimental to my family.”

38 Some respondents described feelings of guilt relating not to the conviction and the offence, but instead to their responsibility for having inflicted the sentence on their families:

“My family have been ripped apart because of my actions and decisions in life. I hurt every day for them and myself.”

39 Prisoners felt separated from their families by experiential and bureaucratic (and not simply physical and geographic) distance. Those serving indeterminate sentences, for example, found it difficult to explain the procedures which governed their release and progression, and therefore also found it difficult to account for their progress (or lack of progress) to family members:

“My family miss me a lot and it’s upsetting that I can never give them any clear answers about how much longer I might be here, as I always seem to be waiting on reports.”

40 Some prisoners expressed the view that those who could cope with prison life had a relatively simple existence compared to their families. It was a life with few attractions but also few responsibilities. They were keenly aware that family members continued to live in the ‘real’ world and to struggle with real-world responsibilities. They concluded that in fact they suffered less than their loved ones:

“Prisoners just get on with it, it is a dropped stitch in the rich tapestry of life... Our families on the other hand are the ones that suffer.

41 The stresses placed on families by visiting loved ones in prison also preoccupied many respondents:

“Sometimes I was transferred to other prisons further down the country, [my parents] having to travel... which they did religiously, thank God, do you know what I mean? So yeah it’s been so hard on them, it really has.”

42 Several respondents highlighted obstacles to maintaining contact, including family living abroad, the cost of phone calls, being held a long distance from home, and the costs of visiting:

“Very difficult as my family live abroad. Thus phone calls are expensive and no visits. Very distressing for my family and friends.”

“Haven’t seen blood relatives in over 14 years due to being held too far from home.”

“When you first go to prison everyone wants to come

and see you [...] And then the novelty wears off and people stop coming. In the last two and a half years of my sentence I didn’t have a visit. It costs money.”

43 Some respondents reported no contact with family or friends on the outside:

“Most long-termers have no or very few supporters, families or friends.”

44 In some cases, the cessation of family contact was rationalised as a better option than feeling like a burden upon family members. Attitudes such as these suggest that family relationships should not be taken for granted when it comes to the rehabilitation and resettlement of long-term prisoners:

“When the sentence is anything over 15/20 years then there is no point in maintaining relationships with the outside.”

45 Bereavement was another challenge described by respondents. Prisoners’ requests to visit dying relatives and attend funerals are considered on a case-by-case basis, with the decision dependent on the nature of the relationship between the loved one and the prisoner, and the prisoner’s risk level:

“It’s sadly a well-known fact that the more years you age, the more people around you (be they relatives or friends or acquaintances) you lose. For a great many people, being able to attend that person’s funeral service is a way of saying goodbye. A way to seek closure etc. And a prisoner won’t be able to attend that funeral service in a way or manner they would like. I’m originally from [country], and when my stepfather passed away in [year], there was no way I could possibly attend, even though I was at the time on remand.”

46 For some, experiences of bereavement threatened the basis of the life they envisaged for themselves after release, because connections lost could never be replaced:

“I was unfortunate to see the death of my parents just prior to entering custody and the death of my remaining family since being sentenced. This has had a massive impact on me.”

47 For those with feelings of guilt, helplessness and disempowerment relating to the conviction, bereavement whilst in custody exacerbated these. They forced a confrontation with aspects of the prison experience that prisoners themselves generally preferred not to think about:

“If someone’s dying the least that you can do is to be with them, assure them and let them know that you are there. [But in prison] you feel helpless. These helpless

moments kind of remind you of the situation that you are in. And of course I knew that I was given a sentence, I knew that I was being punished, but constantly being reminded and constantly having to make my family go through this as well, was not appreciated at all.”

Sentence progression, risk reduction work and the parole process

Relevant policy

48 Long-term prisoners’ progression is managed under a policy entitled Offender Management in Custody (OMiC). OMiC was introduced in 2018 but builds on and in many ways resembles the Offender Management model in place since the mid-2000s. OMiC or a substantially similar model has been in place for the last decade and a half. This policy is the context for the evidence we received from prisoners about sentence progression, and so we briefly describe it here.

49 OMiC covers a range of provision and space does not permit a full summary here, but how it balances the purposes of the sentence is relevant to the Commission’s terms of reference. It makes prison and probation services “responsible for delivering the sentence of the court” (para. 4.1). However, it also states that “public protection is prioritised” (para. 3.2) among these purposes. This means that OMiC makes public protection the overriding aim, whereas the courts (in sentencing ‘dangerous’ offenders) are required to prioritise both punishment and public protection. (see chapter 4). In other words, the court, in allocating the sentence, is required to consider the need for punishment, but all that matters is that there is a punishment (currently a lengthy prison sentence for all very serious offences). The *content* of the punishment is guided more by other aims, with public protection overriding among them.

50 The stated purpose of the OMiC policy is that: Every prisoner should have the opportunity to transform their lives by using their time in custody constructively to reduce their risk of harm and reoffending; to plan their resettlement; and to improve their prospects of becoming a safe, law-abiding and valuable member of society.³³

51 Prisoners are to *become* ‘safe, law-abiding and valuable member[s] of society’; implicitly, they are not these things already, at least not for the purposes of the policy. Other aims of the sentence are means to the paramount end of public protection: for example, resources are “effectively targeted to reduce reoffending and support rehabilitation”, and rehabilitation itself “reduce[s] the risk of harm to other [sic] and the likelihood of reoffending”.³⁴

52 OMiC also covers how the sentence is to be delivered with regard to prisoners themselves. First, OMiC requires that long-term prisoners should have a sentence plan, which must be reviewed at significant points in the

sentence, and which “needs to be commensurate with risk, need and must involve the individual as an active participant”. Second, prisoners must be “referred [...] to interventions and other services” where relevant. Third, offender management processes must be “communicated to prisoners and the reasons for decisions explained”.³⁵

Prisoners’ views

53 Responses to our question about progression through the sentence were extremely negative. They suggested prisoners were often confused about decisions relating to them, and on occasion also confused about what the prison expected from them. Concerns centred on:

- i sentence planning
- ii the rehabilitative opportunities available to them
- iii communication with them about these matters.

54 Many of these criticisms were expressed as complaints that long sentences did too little to prepare prisoners for the future after the sentence, but instead held them in stagnant, non-progressive conditions:

“The system is damaged beyond repair and is unfit for purpose. There is no such thing as rehabilitation, we are just warehoused with no organisation whatsoever.”

55 Respondents expressed a wide range of contradictory views about the thinking behind efforts to deliver ‘rehabilitation’ to them, and what improved provision might involve. This confusion appeared to influence the criticisms they expressed very significantly. The criticisms varied, but some respondents went as far as to say rehabilitative provision met neither the needs of the prisoner nor those of victims, but served the interests and needs of professionals.

56 One prisoner described the experience of progression for life and IPP sentenced prisoners as jumping through a series of smaller and smaller “hoops” with the system moving the goal posts in terms of what prisoners were expected to do:

“No, not all inmates/people have equal access to these opportunities, lifers/IPP’s are forced to jump through hoops that get smaller and smaller with each hoop presented, and [...] they move the goal posts so as to delay progression of people.”

57 Respondents also suggested that what secured progression was often unpredictable, and that good behaviour was disincentivised by staff not taking a firm line with other prisoners whose conduct was ‘difficult’:

“... people who normally cause trouble normally get progressive moves... And people who work hard and are enhanced are not progressed and they have little incentives for progression.”

Sentence planning

58 Most respondents did not feel clear about what the prison expected from them. This is supposed to be evident in the sentence plan. Some did feel like an “active participant in their rehabilitation”,³⁶ though not always because they had been steered towards official provision:

“I personally got involved in completing my sentence plan targets, from the start of my sentence, and [these] are set and reviewed annually via [the] sentence plan board.”

“I have pretty much been left to my own devices with little (if any) support from prison officials. The few offender programmes I’ve completed are tick box exercises and common-sense practices and I’ve changes and bettered my behaviour because I’ve chosen to not because ‘a course did it for me’.”

59 Some respondents expressed the view that indeterminately sentenced prisoners were a low priority for progression, with the needs of those serving shorter and often determinate sentences overriding theirs:

“No one seems to be accountable for lifers and ethnic minority prisoners or even collating or monitoring peoples’ needs, as all prisoners are not treated equally, but treated with long-term pound signs from the people and departments that should be helping them to move forward and get their freedoms and pay their dues to the victims and taxpayers.”

60 Others explained that active participation in sentence planning was largely dependent on the existing knowledge, skill, and motivation of the individual, implying that those without these attributes often fared less well:

“You can’t put somebody in prison and just expect them to be rehabilitated. You have to rehabilitate yourself by accessing what the prison offers, and you’ve got to be intelligent enough to work that out. The downside is that there’s different levels of IQ in prison. There’s people with different levels of people skills, people who’ve been dragged up and suffered horrendous trauma, and they’ve got mental health issues and poor coping skills. They’re the people that the system doesn’t work for.”

61 Respondents expressed different views about the timing of their sentence plan objectives, and thus about the construction of the plan. Some felt the greatest benefits from offence-focused work stood to be gained in the early stages of the sentence, when their relevance to the behaviour involved in the offence was clearest:

“In general the crisis with long-term prisoners is that they get a large chunk of their sentence before engaging with offender behaviour programmes.”

62 However, where the tariff was long, risk-reducing ‘skills’ gained from courses could lack credibility, since some respondents anticipated being at a completely different stage in their life by the time of their release:

“You might do the course at the beginning of your sentence say within the first 3-4 years and then you serve another 17 years before you get out which then has no benefit.”

63 Respondents differed on whether it was for the prison or the individual to shape the contents of the sentence plan. This does not suggest that “active participation” in rehabilitation is a consistent norm, but instead that some felt dictated to or disengaged. Evidence we received in written submissions suggested that such matters largely depended on the prisoner’s existing evaluation of their own guilt, with those who felt moral guilt seeing the offence as a stain on their character (and therefore something demanding efforts to change); while those who felt merely legal guilt (or who maintained innocence) tending to rationalise or justify the offence, and to see the requirements of their sentence plan as more of an external imposition.³⁷

64 One respondent suggested that engaging prison officers in more rehabilitative work would make the work more effective and improve the accuracy of information feeding into risk assessment decisions. The same respondent also highlighted a role for former prisoners in rehabilitative work:

“More resources and time need to be given to grassroot officers and S.O. offending supervisors. And why not use, under supervision, prisoners who have adapted and made honest changes?”

65 Some respondents said that sentence plan objectives were non-specific and lacked detail, especially after offending behaviour programme requirements had been met. This left the impression that for long stretches of the sentence the prison expected little more than that they should simply stay out of trouble. For a few, this resulted in the feeling that attempts to participate actively in sentence planning and in addressing their offending behaviour would be rebuffed:

“I will have done four years this year and to date I’ve not had any interaction with anyone about addressing any issues about [offending] behaviour although I have tried on more than five occasions to do this and to take part to see if there is anything I can do to better myself as a person, but I’ve had no help.”

66 Some respondents believed that progression depended not on their own efforts, but on the prison’s terms, which were beyond their control:

“I am currently halfway through a Kaizen course [...] but it took me three years to get on this. The system no longer prioritises those who need to do the courses, as they once did when I first started this sentence.ⁱⁱ When I had just been sentenced and received a ‘sentence plan’ my courses were coming up one after the other automatically when one finished, no need to keep applying, IPPs had priority, [but] now they are not really bothered with us.”

67 Responses from IPP prisoners often expressed doubt that there was any link between their own efforts and their chances of progression. Some believed this was the result of deliberate design:

“The offender management unit will use courses to prevent progression. A long-term prisoner will be told he doesn’t need to do any courses. He will apply over and over again, only to be refused. Then, on the eve of his parole, or recategorisation review; he will be told he has to do a course next year.”

68 Some made a more positive evaluation of sentence planning, however, including saying that changes introduced by OMiC had raised standards and improved the quality of contact in the long-term and high security estate (LTHSE) prisons specifically:

“Since the introduction of internal probation and individual POM [prison offender manager] workers progression has improved dramatically, before it was all but non-existent within the LTHSE prison estate. There is also good access to a range of intervention courses for people to address their offence and the causes of it.”

69 The wide variety of opinions expressed above – and the confusion over the ‘true’ purposes of sentence planning and OMiC – point to how important it is that prisons communicate well with prisoners about what is required of them and why. Further evidence of the importance of communication can be found in the evidence received about rehabilitative opportunities available to long-term prisoners.

Rehabilitative opportunities

70 Respondents’ views of rehabilitative provision tended to distinguish between offending behaviour programmes (which seek to correct attitudes and thinking believed to elevate the risk of harm), and wider opportunities such as education and vocational training (which are less directly concerned with risk, and are often linked to employment skills).

71 Respondents expressed concerns over the accessibility and effectiveness of offending behaviour courses, though most recognised that these courses were the main avenue to demonstrate reduced risk and therefore to earn progression. Many said they had applied but been turned down for such courses.ⁱⁱⁱ The perception that participation was necessary but opportunities were scarce prompted considerable frustration. Accessing offending behaviour programmes was of particular concern for indeterminately sentenced prisoners, because they believed they would not be released at all if they could not access courses:

“As us indeterminates will never be released without completing courses I don’t see why we shouldn’t be prioritised for any and all offending behaviour courses that we apply for.”

72 Some respondents implied that disputes over access had delayed their progression:

“Received no form of rehabilitation and completed no courses – this a direct result of prison staff in psychology refusing me access to courses. Even the Parole Board have become very concerned with this and set targets for assessments to be done.”

73 Descriptions of offending behaviour programmes in themselves were mixed. Some were very negative, perceiving a ‘lowest common denominator’ approach and a lack of individualised provision:

“There are very few opportunities for people serving long sentences to address their behaviour... The programmes department runs a variety of behaviour change courses, which are all exactly the same, the same tutor, but a different title for the course.”

74 Yet it was also evident that many prisoners recognised the difficulty of accurately assessing risk and rehabilitation. They believed that decisions about their progression, by prison staff and the Parole Board, turned in practice on the completion of targets:

“The fact there isn’t any opportunities for prisoners in prison to show they’ve actually learned their lessons, or they’ve actually overcome whatever it was that led them to offend in the first place, there’s no opportunity to do that, so how do you judge that? How do you know who has learned their lessons and all that? It’s all down to that same one size fits all type of rule that the probation service has, which is offending behaviour courses.”

ⁱⁱ Perceptions about who needs to participate on a course, and what priority they are given, are addressed further below.

ⁱⁱⁱ This may be a consequence of courses having specific eligibility criteria (in which case assessing a person as not suitable would be a defensible decision). However, it was often interpreted by prisoners as a rejection of their intentions to demonstrate reform.

75 Offending behaviour courses in general were questioned on the basis that specific courses had been withdrawn after evidence emerged of their ineffectiveness.^{iv} One respondent argued this meant provision should be rebalanced, away from psychological interventions and in favour of broader educational and vocational opportunities:

“Courses are regularly proven not to work and often lead to an increase in repeat offending... ‘Group work’ should be abandoned entirely.”

76 Other descriptions were more positive. Offending behaviour courses were described as having some potential to address risky attitudes and thinking:

“These courses equip individuals with skills to avoid reoffending.”

“I myself have participated in the ‘Thinking Skills Programme’ and ‘Foundation’ programme offered by the establishment I was in, I found both to be very well delivered and to have a positive impact on me.”

77 Written submissions suggested that those who felt morally (rather than simply legally) guilty about their offences often found courses a means to come to terms with their guilt, engaging willingly on this basis. Those who acknowledged legal but not moral guilt saw courses as the way to earn release, engaging cautiously but pragmatically and gleaning what they could. Those who maintained innocence often perceived offending behaviour work as a burdensome external requirement they preferred not to engage with.³⁸

78 There was some evidence that recent developments in offending behaviour programmes had made it easier for those who maintained innocence to engage with offending behaviour work, to demonstrate reduced risk, and to progress:³⁹

“Once in custody, for many long-term or indeterminate sentenced prisoners, it is vital to address offending behaviour in order to progress through the prison system. One way this was made possible was through the release of the Kaizen and Horizon offending behaviour programmes which allowed those maintaining innocence of their crimes to finally participate in some form of rehabilitative programme.”

79 The Commission is unable to evaluate the effectiveness of offending behaviour programmes in reducing reoffending or risk. However, prisoners’

frustrations over the availability and emphasis in rehabilitative provision may reflect disagreements about the meaning of the term ‘rehabilitation’ to them, and therefore differences about what forms of rehabilitation are appropriate for those who are serving long sentences.

80 Those who wanted to use the sentence and not simply to ‘tread water’ or ‘kill time’ often saw education and vocational skills as important, situating these within a broader notion of ‘rehabilitation’ than simply reducing risk:^v

“Access to education within the LTHSE is poor. The government needs to fund further education instead of leaving it all up to charities like PET [Prisoners Education Trust]. They can only do so much and education is fundamental to rehabilitation. The access to purposeful work and activities within the LTHSE is also poor.”

Communication about the purpose of rehabilitative provision

81 The varied nature of these responses suggest confusion about the aims of the sentence. Evidence received by the Commission about rehabilitative courses and opportunities may reflect a deeper and more substantial difference regarding what rehabilitation ought to involve, such that prisoners and prison staff may in many cases be communicating unsuccessfully, effectively by ‘talking past’ one another.

82 OMIC prioritises public protection, making rehabilitation and reform subordinate to this aim, a means to achieve it. Its aim is that people who have served long prison sentences should become *not risky* or *less risky* by the time they are released.

83 Evidence from prisoners pointed to a different way of thinking about ‘rehabilitation’, one that de-emphasised risk arising from the offence, and instead aimed to equip the prisoner to live a different kind of life following release:

“The money would be better spent expanding opportunities for long-term prisoners to develop education (particularly higher education) and real-world employment qualifications.”

84 Respondents often described ‘risk’ and its reduction as confusing abstractions. For some, the term ‘risk’ identified attitudes and thinking they recognised had

^{iv} See for example recent controversy over the effectiveness of a long-running programme aiming to reduce the risk of sexual reoffending – ‘Press Association (2017, 30 June). Sex Offender Treatment Scheme Led to Increase in Reoffending. *The Guardian* (online edition). <http://www.theguardian.com/uk->

[news/2017/jun/30/sex-offenders-on-group-treatment-programme-more-likely-to-reoffend](http://www.theguardian.com/news/2017/jun/30/sex-offenders-on-group-treatment-programme-more-likely-to-reoffend)

^v Responses relating to experiences of personal progression during the sentence are discussed in paragraphs 111–127.

been relevant in their lives before prison. But they anticipated (or had actually experienced) completely different challenges following release from prison. The relationship between risk-reducing rehabilitative work and the challenges they believed they would actually encounter in the future was tenuous and uncertain, and the gap between the two was demotivating:

“You go on an offending behaviour programme, and you’re told how to get on a lifeboat. Once you jump overboard and get released there’ll be a lifeboat for you. So you start and believe in this way of being and you learn how to row the lifeboat. So the day comes, and you jump off the ship and there’s no lifeboat. You’ve got to swim. That’s what offending behaviour programmes are to me... I spoke to a forensic psychologist about this and said I felt that the system is pretty much dishonest. And she said – yes but if we tell people there’s no lifeboat that’s not helpful. They won’t jump. I kind of think ok, well I wish that I knew more about what life after prison was like before I left prison. I spent sixteen years in prison thinking it was going to be a certain way, and it’s not.”

85 Some responses questioned the purpose of participating in rehabilitative interventions at all when the sheer length of the sentence guaranteed that other changes would intervene and render the course contents irrelevant.

“You might do the course at the beginning of your sentence say within the first 3-4 years and then you serve another 17 years before you get out which then has no benefit.”

86 Prisoners often said they were unclear about what was expected from them, and that they received different messages from different staff members. Prisons, correspondingly, often seemed to prisoners to be unresponsive or indifferent when they made their own efforts to demonstrate change:

“An individual’s Offender Manager or the Parole Board will want them to complete a specific course, but when the programmes department in a prison assess them they find they do not fit the criteria or their risk level is too low. How then can they evidence risk reduction? There should be a greater variety of programmes tailored to different risk levels, and the opportunity to do more one on one or small group (2 or 3) interventions aimed at a specific individual’s needs so they can achieve progression. There also needs to be open discussion from the start – “you can’t do this, but these are your options”. The programmes should be actively (and positively by past participants) promoted, on many occasions individuals have to push and fight to get them rather than being offered.”

87 Those who said they *had* tried to ‘use’ time and keep busy by taking up other opportunities on offer in the

prison believed that they received inadequate credit for doing so. This suggests miscommunication about the basis of progression: with prisoners expecting it as a reward for motivated, good conduct, and prisons progressing them on the basis of their risk or their sentence stage:

“I have done courses on Mindfulness, Emotional Management and other topics and am doing a degree, none of which counts to progression as they are not ‘accredited prison delivered interventions’.”

Sentence length

88 A common belief among respondents was that very long sentences were destructive, from the point of view of motivating progression and positive change.

“For a lot of people serving long sentences, the length often has no effect, and a much shorter term of say five years would do the job just as well. For many men who commit murder, it happens as a one-off fit of rage and has never happened before, nor will it happen again, so very little benefit arises from a long sentence. Yes, there are some exceptions, but five years plus suitable licence conditions would solve the prisons being overcrowded.”

89 Long sentences usually involved lengthy periods of ‘treading water’, with years often remaining to serve after sentence plan objectives had been completed:

“Everything a person needs to rehabilitate, reform, change attitude, see other points of view, have sympathy and empathy, can be achieved within a five-year programme... Hope withers and can die, it dies in stages.”

“For a lot of people serving a long sentence, the time is wasted time. (I would be more useful if I was in the community doing something positive!).”

90 Two respondents referenced dividing the sentence into temporal ‘chunks’, and said that they could only begin to see “a light at the end of the tunnel” after the halfway point.

“With these long times, and the way the prison system is, and lack of money and lack of this, that and the other, there’s such a long time of nothingness. Like for me it was seven years before I could even say I’m halfway and start counting down to another seven years, and it seemed endless.”

91 Such methods of dividing and compartmentalising the sentence were more difficult for those serving indeterminate sentences or who were over-tariff:

“I don’t think people really have any idea how hard it is for us IPPs in that we need certainty in our lives. Clear objectives and definite dates for our paroles, however far off, because when we can’t see the next step time can feel like forever.”

92 Some respondents saw delays or difficulties as the result of prejudiced attitudes towards them:

“I also think some people of ethnic backgrounds have less opportunities or chances, to progress, no matter the charge, it should be based on genuine change and the willingness to engage to genuinely work to act on that good change.”

“Inmates from ethnic backgrounds stagnate in the system. Those with learning difficulties are just abandoned and float around unnoticed.”

“If you’re a Muslim and you happen to be around a group of extremist prisoners because they are on the same wing as you, all of a sudden you start getting write-ups, negative reports and all sorts of stuff going on. And that links in and feeds back to offender supervisors and psychologists. And then the psychologists are asking you to address something that shouldn’t be addressed.”

Improving long sentences

93 Prisoners who submitted evidence to the Commission made a number of suggestions about what they would like to see improved about the content and management of their sentences. The difficulty of securing and sustaining progression during extremely long sentences was a common theme. Largely, responses related the complexity of navigating the sentence, confusion over how to progress, and the belief that more one-to-one contact with staff would individualise the sentence and make it easier to navigate.

94 Respondents suggested a range of improvements to long sentences, including earlier sentence planning, and longer, more regular review interviews:

“Allowing more time on a regular basis for interviews to take place. A thirty-minute review on an annual basis by a disinterested person is not adequate.”

“Reviewing tariff lengths and point of release would be a huge incentive for better behaviour, encouraging effort in achieving good results in education and programmes and a determination in becoming a better person.”

95 Some prisoners perceived a mismatch between the lengths of their sentences and the activities made available to them based on risk. They hoped to see a rethinking by HMPPS of what their ‘progression’ could mean, with a more individualised approach:

“Before there could be any changes to sentences there would have to be an overhaul of the programmes and courses available and a re-consideration of what constitutes progress, this would have to be on a case-by-case basis.”

“While achieving level 2 maths would be a huge step for some, for others it would not. Also a rigorous level of supervision to ensure individuals were not just ‘ticking boxes’ but were making genuine progress.”

96 Some respondents recognised that changes of this kind would have to be acceptable to the public to obtain political support:

“There would also have to be a level of explanation given to the public, media and victims around why the changes were right to make. This could link into changes in sentence structure and guidelines.”

97 Most were in favour of incentivising progression more strongly, usually by adjusting various aspects of the sentence. One suggestion was to design a procedure to review the minimum term of indeterminate sentences. Some argued that release/parole eligibility should be returned to half-way (for determinate sentences), or (in the case of lifers) to two-thirds of the tariff. There was broad support for earlier progression to open conditions or even to the community (under appropriate supervision) ahead of the tariff date, as an incentive for good behaviour and positive action during the sentence.

“If time comes off for engaging and good behaviour it could allow an earlier chance for that person to build a new family or rebuild the relationships lost.”

“We need to establish a process by which prisoners can ‘earn’ days off their sentence through testing. [This could include measures] such as progression to less secure conditions, completing a successful ROTL, partaking in restorative justice, going above and beyond in their daily prison conduct and completing an offending behaviour programme ...A similar process should exist to periodically review the minimum tariffs of all life/IPP prisoners at key points such as on progression to the open estate or upon completion of an offending behaviour programme.”

“For people serving life sentences, the pre-tariff review should be brought forward to the two-thirds point of the tariff given, instead of the current three years. This will give lifers longer time in open conditions to earn and save a good amount of money to set themselves up in the community, once released. This will also give lifers longer time to transition into the community. All prisoners serving over 10 years should be allowed to earn time off of their sentences by completing things like a degree or learning a trade.”

98 There was less support for such incentivised and conditional paths to progression among respondents serving IPP sentences, who were mostly many years past their tariff date. They tended to emphasise the importance of a clear, predictable and prioritised path to progression:

“Reviewing tariff lengths is all well and fine, but with the IPPs this does not really do us much good, there are people still sat in prison who have an 18-month tariff and yet have already served 10 years.”

99 Evidence from a written submission by Ben Jarman suggested that life-sentenced prisoners who were far

over-tariff also 'struggled to see how further interventions would improve their situation',⁴⁰ leading them to emphasise clearer routes towards progression and release.

100 Some respondents argued, nevertheless, that sentence reductions would not appear legitimate to victims and the public. One suggested that the difficulties created by very long minimum terms would be better addressed by reducing minimum terms at the sentencing stage, rather than by doing so conditionally as an incentive for prisoners while still in custody:

"In terms of resetting tariffs: I think it could potentially be really difficult for victims of crime if someone gets a tariff which is then reset on the basis of your behaviour [...] So for me I would reduce tariffs overall, but I wouldn't have an incentive of having a tariff reduced. Tariffs are far too long and I don't like the idea of carrot and stick, because it won't be fair for everyone. It'll be disproportionately applied to certain groups."

101 Another suggested that if a victim wanted to participate in restorative justice conferencing, the prisoner's response should become a condition of parole:

"There should be a caveat in the parole process that states if a request is made for RJ by the victim of a crime, then participation should be required in order to secure release on parole. This will give peace of mind to victims that they are still being considered throughout."

102 Some respondents suggested that their obligations to victims could be addressed through restorative justice where appropriate or alternatively through victim awareness or empathy programmes. One regretted that these had become more difficult to access in recent years:

"The empathy awareness courses in prisons have been discontinued [...] because they have been rolled into the Horizon-Kaizen courses."

One written expert submission to the Commission suggested that the persistence of victim empathy work through the VAW mentioned in the quote above was puzzling, given that empathy training has been shown to have 'no effect or a detrimental effect on reoffending'. Dr Alice levins' submission remarked that this suggested an unclear rationale for empathy training: was it persisted in as a punitive practice, since it was not clearly a rehabilitative one? She also questioned whether restorative justice conferences, where requested by a victim and consented to by a prisoner, could induce a more meaningful form of empathy and remorse, than an in-cell training pack for prisoners using generic material about the effects of offending on victims. Dr levins also pointed out that prison staff using victims' stories for

either rehabilitative or punitive purposes without the consent, knowledge or input of those victims could be criticised on ethical grounds.

103 Several respondents argued that there should be a change to the way that open prisons are used. They suggested that open prisons should house more long-term prisoners for longer, and should have focus on preparing them for release for longer and in more imaginative ways than at present:

"Allowing those prisoners who have done everything asked of them to be eligible for D-cat much earlier, since [their] sentences are far longer. Someone sentenced to a 25-year minimum term should have the chance for D-cat five to seven years before tariff."

"Open conditions should be exclusively for life/IPP/EDS and sentences over ten years, as this would ensure that the support and limited resources of the open prisons are directed at those who need it."

"Instead of sending all prisoners to open conditions, why [not] decide if this is really necessary? Can he be GPS tagged for three years instead?"

Parole

104 Few of the responses sent to the Commission by serving prisoners were from people with direct personal experience of the parole system. Expectations were low, with very little optimism about opportunities for parole. There was a widespread perception that the parole system was subject to long waits, frequent delays, and significant uncertainty. Prisoners understood that progression and parole were centred around risk and understood that they were required to present themselves in these terms, but the responses described it as a kind of external imposition.

"Waste of time. Risk, risk, risk. The reality is risk is made from anything. Now sometimes the risk was a once in a lifetime situation/event that was there for that moment and wouldn't ever exist again. How do you prove this risk has gone when it was never really present?"

"At the very least people should always have a date to look forward to as the hearing that I should have had in June last year was deferred for reports (P.N.A.), so I spent 14 months without a clue when my parole date would be. That was hell!! When I finally did get a date for September I was over the moon and rang my family only to let them down again with vague explanations."

105 Those with direct personal experience of the parole process strongly favoured oral hearings over those conducted 'on the papers'. They tended to believe the latter were driven by the need to reduce costs and did not offer prisoners a fair hearing or a realistic chance of release.

"The bone of contention that I have with them is mainly their willingness to do what's easy for them, which

is ‘paper reviews’, which is a byword for knockback. These hearings leave the prisoner completely muzzled and they then go ahead with probation’s recommendations. I believe all hearings for those over tariff should be ‘oral’ and yearly (when somebody’s more than five years over tariff they should be reviewed yearly) in the interests of fairness.”

106 Several respondents explained how the parole process took a toll. Several themes recurred in these responses. First, the perception that delays were common. Second, the perception that the process was complex, difficult to understand, remote, and beyond the prisoner’s capacity to influence. Third, that this made it very difficult to explain parole decisions (particularly those which were not what the prisoner hoped for) to friends and family members, with family sometimes blaming the prisoner for not gaining parole. Fourth, the perception that the process favoured prisoners with higher levels of literacy who were more articulate and disadvantaged those who were not. Finally, the perception that recent high-profile cases had resulted in the Parole Board becoming more risk-averse and more subject to political interference.

107 A few respondents expressed concerns that the parole process did not adequately cater to the needs of victims. One commented that the parole process misled victims into believing that their representations could influence the Board’s decisions when in fact this was unlikely. This respondent argued that victims deserved closure but were instead invited to contribute Victim Personal Statements which were of no relevance to the judgement the Board actually had to reach on the basis of risk.^{vi}

“It is important to bring some form of closure for these victims/families, which the Parole process doesn’t. In fact it opens old wounds and the victim impact statement is nothing more than a token gesture – it carries no weight for a Parole Board as they are assessing ‘risk’... This process looks good on paper, lots of buzz words for victim, media and politicians, but no substance. A new approach is needed.”

How the parole process could be improved

108 Respondents made a range of suggestions to improve the parole process. Some focused on the issue of risk assessment and, suggesting a reversal of its burden of proof:

“I think that the Parole Board could do with thinking about things in a completely different way [...] rather than someone having to demonstrate that their risk could be managed, a different emphasis on the release test would be

useful, so that when someone’s got to the end of the punishment period that the default changes round. So the default is to be released with a risk management plan rather than not be released.”

109 Further suggestions focused on reducing delays and making reviews more frequent. One response also suggested that HMPPS did not always comply with the Parole Board’s directions in a case, suggesting that the Board ought to have greater powers in this situation:

“Parole Boards need to have more power to hold the Prison Service and Probation Service to account for not complying with directions.”

110 One point several respondents raised concerned the evidence the Parole Board considered in its risk assessments and its decision-making. They felt that long-sentenced prisoners had often changed beyond their own recognition by the end of their sentence, while the risk assessment process was overly focused on risk factors relating to the distant past. Instead, they suggested there should be more focus on the present, and on what the person had been doing in prison to change themselves, with more of a focus on factors other than offending behaviour courses. As one respondent commented:

“People feel they are being tried twice.”

Personal progression (self-improvement, reflection and making amends)

111 A long sentence was also described by some respondents as an opportunity for personal improvement they felt went beyond risk. This might include work or education, reflection on the impact of the individual’s actions on themselves and others, as well as opportunities to make amends to victims.

112 Some respondents wanted a greater range of factors to ‘count’ and be visible to those making decisions about their progression (including the Parole Board). They described a wide range of activities and pursuits that they had followed in prison which they associated with positive changes in themselves, but which appeared not to count when it came to progress through the sentence.

113 Several respondents said the sentence had offered time in which to come to terms with their offence and its impact on them and others. One described having the opportunity to study and gain qualifications. Another was able to get clean from drugs and come to terms with the death of his father, something he said he had not been able to do in the community. Another said that the longer sentence meant he could address behavioural and personality issues.

^{vi} This echoed some concerns expressed to the Commission by victims that participating in the parole process took a severe toll on

them without making them feel central to or looked after by the process. See paragraphs 79-89 of Chapter 2.

114 However, it was also clear that a long sentence could exert a significant cost on personal development. This was especially true for those who had entered prison at a young age and effectively grown up in prison. In his written evidence to the Commission, Professor Crewe described the developmental deficit resulting from the experience of growing up in custody with limited experience of the outside world as one of “emotional blunting”. As one respondent said:

“Bad boys come to prison and grow to be big, bad boys, no men are bred in prisons (exactly the same for women).”

115 Another respondent described how lengthy imprisonment had alienated him from societal norms. He felt this made him less likely to be able to live a ‘normal’ life:

“Once you’ve been away from society and social norms it changes you as an individual and things that should shock and leave in awe ‘normal’ members of society, to us serving in excess of 15 years this is normal living and seeing someone seriously assaulted or even murdered becomes normal.”

Education

116 One issue on which views expressed to the Commission were very consistent was prison education.

117 Learning Together surveyed prison and university-based students to inform its written submission. Its students suggested that current standards of education in prisons are inadequate and that providing educational opportunities beyond a level 2 qualification would offer released prisoners further opportunities upon release, as well as improving prisoners’ wellbeing and self-esteem in custody.⁴¹

118 One respondent highlighted the inadequate provision of education in the LTHSE and called for greater investment:

“Access to education within the LTHSE is poor. The government needs to fund further education instead of leaving it all up to charities like PET [Prisoners Education Trust]. They can only do so much, and education is fundamental to rehabilitation. The access to purposeful work and activities within the LTHSE is also poor.”

119 Others said the access to education and other forms of purposeful activity should be made more generally available:

“Education is key and should be readily available.”

“People should actually start working, and people should start doing things that they enjoy doing, things that can make them productive in society.”

“If somebody wants to study, allow them to study. If somebody wants to work, and what they want to do is to write songs, because they fancy their chance of having a multi-million pound record deal, allow them... the Prison Service are missing a trick ... there’s a lot of talent that’s not being taken advantage of, in prisons. So if you give the platform like I was given, I’m sure you’d get better outcomes.”

Making amends

120 Several written submissions highlighted restorative justice and face-to-face victim awareness courses to promote greater understanding among prisoners about the impact of their offence, and as a means to offer victims a greater chance of closure than had been achieved by the prison sentence. They recognised that ‘making amends’ may not be possible in all cases, but called for more and more systematic provision of restorative justice for long-sentenced prisoners. Submissions which made this argument included those from the Prison Officers Association, the Parole Board, Dr Alice levins, Leaning Together, and the Criminal Justice Alliance.

121 Only one prisoner that spoke to the Commission had taken part in any comparable programme. This was not with their own victim, but with someone who had been a victim of others. One prisoner had agreed to take part in restorative justice, at his victim’s request, but this had not yet taken place. Another respondent who mentioned restorative justice said they had indicated to the prison a wish to participate, but as far as they were aware the request had not been taken forward.

“An elderly lady came to talk about how she had been targeted several times by burglars. This experience was a real eye-opener as I’d never looked at how my actions could have affected the other person or even the ‘ripple effects’ it had on the wider community as a whole and I was embarrassed of my actions, so have spent many years on the path to change and self-improvement which has been hard to say the least, especially to accept my core beliefs are all wrong and misplaced, and that no matter my upbringing this did not give me a right to act and behave as I have. This course was an eye opener I needed.”

“I agreed to partake in RJ (as requested by the victim of my crime) in January 2020 but, in November 2020 I still have no news on if/when this will occur [...] Covid-19 should not have impacted on RJ in any circumstances other than face-to-face meetings.”

“I don’t feel that I have [any] right to approach them and say look do you want to come and talk to me? But I’m open to them coming to me, and I will answer any questions they want to ask. But it’s never been done.”

“I have made it clear to my victim’s family that if they wanted to take part in this then I would too. I am hoping that over time they will want to.”

“I am aware that some prisons run ‘Restorative Justice’ programmes and five years ago when I was at [HMP X] I expressed an interest in doing this, but I never heard back.”

122 A number of respondents had concerns about how restorative justice would work in practice, particularly the possibility that a restorative justice process could be open to manipulation or could retraumatise victims. But many respondents believed that restorative justice and victim awareness courses should be more proactively promoted. One respondent recognised the need for safeguards including an admission of responsibility by the prisoner: those maintaining innocence were unlikely to want to participate, and a victim engaging in these circumstances would be unlikely to obtain closure.

123 Another respondent had reservations about restorative justice taking place a long time after an offence:

“I’m not the person that I was, you know? You still feel like you’re being judged for something that you was.”

124 Despite the generally positive views of restorative justice that most respondents held, few had seen concrete instances of it while in custody.

“I have seen no examples of amends made to victims.”

“In the 12 years that I’ve been in I don’t think I’ve met anyone who’s been involved in this.”

“I would happily take part in any restorative programmes or initiatives, but the reality is I have never seen or heard anything about these in the six years I have been inside.”

“I’m told that nothing exists, so we have no opportunity. If it did exist, I would avail myself of it. If it did exist it would be massive. It used to be done back home in relation to the Troubles and you could see the good coming from it.”

Victim awareness and empathy programmes

125 Other opportunities to understand the impact of crime on victims include victim awareness or victim empathy programmes. However, one prisoner explained that:

“The empathy awareness courses in prisons have been discontinued along with many of the other courses because they have been rolled into the Horizon-Kaizen courses.”^{vii}

126 One respondent noted that victim awareness courses did not directly benefit victims, noting that supporting victims financially, or with improved victim services for the duration of the prisoner’s sentence, would be a preferable use of resources. Another noted that the substantial overlap between victims and offenders ought to be considered in rehabilitative provision:

“I think victim awareness should be pushed stronger during the sentence. However, I am of the understanding that a majority of offenders are victims themselves and there is grievant thinking that has to be addressed of their circumstance or difficult situation before they can learn empathy or understanding of how offending in any way can impact others.”

127 Another suggestion to improve awareness of victims was for prisoners to mentor their peers:

“For example, a long-term prisoner giving a presentation to others to discourage them from re-offending or more ex-offenders being given the chance to address organisations or groups to build trust and knowledge.”

“I didn’t have a particular victim... But what I did do, out of my own conscience, was to try and mentor people who couldn’t see what they’d done wrong... being able to use lived experience in the real world, in the work that you do, can be the best form of restorative justice.”

Release

128 The three main issues raised with the Commission in terms of release, were how the sentence itself prepares the prisoner for release; how well the prison and probation systems supported released prisoners; and managing family relationships post-release.

129 One of the most common points raised by the prisoners was how futile long prison sentences were, both because the people serving them usually come out unprepared for the world outside, and because of the wasted life while they are inside. Most accepted the need for people who do wrong – including themselves – to go to prison for punishment, but were frustrated by the prison system’s inability to effectively prepare them for release:

“At the end of a long sentence, what benefit or use will these people be to society. They could well be unfit, suffering from a variety of ill health issues due to the regime they have lived under, the poor diet and quality of food they have endured. Completely out of date with the technology and a multitude of daily tasks others take for

^{vii} Written evidence by Dr Alice levins explained that empathy training is no longer covered in interventions with people convicted of sexual offences, as it was found to have no positive effect on reoffending. She suggested that this raised questions about the purpose of such an intervention: was it a rehabilitative practice (ie

seeking to reduce risk), or a punishment practice (ie seeking to induce remorse irrespective of a future effect), and about whether there were more effective ways to induce remorse while also reducing risk.

granted. They may be reformed characters and after a period of adjustment, become useful members of society. However they might well be a bigger burden than before they ever went to prison, their years of contribution to society lost forever.”

130 A number of respondents the Commission spoke to after their release referenced their fear of the stigma of being a former prisoner, and the complications it would pose to their lives after release.

“Support isn’t the problem. It’s opportunity to gain employment, views by society, the continued punishment after release.”

“A person rejected by society will eventually feel they have no worth or hope. For a former long-term prisoner this is a recipe for disaster.”

“You don’t know how bad it is until you’ve finished that sentence. I mean I’ve just been released in the last year – it’s not even twelve calendar months since I got out. I’ve never felt like taking my life until I actually got out... But [I’m] thinking about it much more [...] It’s just coming into focus for me. I’m beginning to see what I lost, you know. It’s ok to imagine it when you’re away but when you actually come out and it’s real, you’re dealing with your kids, you’re having conversations with family members and with friends, and you just feel, you know, like despondent. You feel you can’t ever get it back again, and it’s very, very difficult for anybody who’s done a sentence. Mentally, most people are destroyed.”

131 Most respondents found information on how to prepare for release hard to come by until the very late stages of their sentence. Given the time available during their long sentences, they saw what was available as too little, too late. Respondents described a lack of access to housing, benefits, and employment opportunities. Many discussed seeing people return to prison because of the problems they had faced in the community, sometimes committing a crime to intentionally end up back inside.

“Not all people would get support properly, sometimes it would just be a hostel then not providing them with houses to live in, which would just end up with homelessness or that person horrifically committing another crime just to get accommodation.”

132 There were a few good examples given:

“Two instances of good practice can be seen at HMP Ashfield in Bristol: a resettlement savings scheme [...] [and] a ‘resettlement fair’ bringing in 27 outside agencies from a range of sectors.”

“Some prisons have good provisions for arranging employment interviews for those being released and again, this is not replicated across the estate.”

133 Almost all responses agreed that resettlement support needed to be improved during the sentence,

and that life after release should be a focus throughout. Several also highlighted the importance of the support continuing with probation.

“Support in the community needs to start at the beginning of an individual’s custodial journey. [Everyone] who comes into prison should have a plan or a ‘pathway document’ which is received annually. This would set clear guidelines around future restrictions on work, new qualifications and development required so individuals can make the most of their time and plan for release from the beginning.”

“[A] resettlement plan should exist for all long-term and indeterminate sentenced prisoners that is produced at sentencing and added to as the sentence progresses. This will enable these sometimes-forgotten prisoners to be in the best possible situation when their release finally comes.”

“Basic provisions such as the opening of a bank account should be done as part of the induction process shortly following a prisoner entering custody.”

134 The difficulty of offering resettlement services from within the custodial environment was recognised by a number of prisoners, who noted the tendency for staff to focus on the life of the institution rather than the far-distant prospects awaiting them after release. Some suggested better multi-agency work and a realignment of incentives for organisations working with long-term prisoners as a possible way of responding to this problem. Others emphasised the importance of offering interventions that would engage a wider range of people, re-directing funding from custody to resettlement, and re-emphasising support for the individual in probation policies.

135 As well as resettlement, a number of respondents highlighted the impact of long sentences on family life, pointing out that navigating relationships that may have entirely changed during the sentence can be difficult or impossible.

“A lot of the damage is still just coming out now, especially with regards to my son. Because he was seven at the time. I’ve been out a couple of years now, he’s twenty-four. And a lot of the damage that’s been done, it’s affecting him in some ways now more than it did when I first went away.”

136 Drawing on the existing research on the impact of long-term imprisonment and the testimony of prisoners and consultees who provided oral and written evidence to the Commission, this chapter has sought to provide an illustration of the experience of people serving long sentences and to identify key themes arising from these experiences. Reflecting on this evidence, we have identified five specific recommendations set out in full in Chapter 5 of this report:

- i** A national debate on sentencing, including
 - a** A Law Commission review of the sentencing framework for serious offences
 - b** A Citizens' Assembly on sentencing policy
 - c** Strengthening the role for the Sentencing Council in promoting public confidence in and understanding of sentencing
- ii** Improve the content of long sentences, including better opportunities for education and other purposeful activity
- iii** Greater external scrutiny of arrangements for sentence progression
- iv** Improve the effectiveness of the parole system
- v** Address the injustice faced by IPP prisoners.

¹ Liebling, A. (2005). *Prisons and Their Moral Performance: A Study of Values, Quality, and Prison Life*. Oxford University Press; Hemmens, C. & Marquart, J. (1999). *Straight Time: Inmate's Perceptions of Violence and Victimization in the Prison Environment*. *Journal of Offender Rehabilitation*, 28, 1-21. <https://doi.org/10/bg9xm2> ; Gullone, E., Jones, T. & Cummins, R. (2000). Coping Styles and Prison Experience as Predictors of Psychological Well-Being in Male Prisoners. *Psychiatry, Psychology and Law*, 7, 170-81, <https://doi.org/10/dkq28q> ; Haney, C. (2012). Prison Effects in the Era of Mass Incarceration. *The Prison Journal*. <https://doi.org/10/gmn36w>

² van Zyl Smit, D. & Appleton, C. (2019). *Life Imprisonment: A Global Human Rights Analysis*. Harvard University Press.

³ Ibid, pp165; see also, for example, Altintas, M. & Bilici, M. (2018). Evaluation of Childhood Trauma with Respect to Criminal Behavior, Dissociative Experiences, Adverse Family Experiences and Psychiatric Backgrounds among Prison Inmates. *Comprehensive Psychiatry*, 82, 100-107. <https://doi.org/10/gc9d7r> ; Maschi, T., Gibson, S., Zgoba, K., & Morgen, K. (2011). Trauma and Life Event Stressors Among Young and Older Adult Prisoners. *Journal of correctional health care*, 17, 160-72. <https://doi.org/10/bjt26f> ; Maschi, T., Morgen, K., Zgoba, K., Courtney, D., & Ristow J. (2011). Age, cumulative trauma and stressful life events, and post-traumatic stress symptoms among older adults in prison: do subjective impressions matter? *Gerontologist*, 51(5), 675-86. <https://doi.org/10/fpbsvn> ; Facer-Irwin, E., Karatzias, T., Bird, A., Blackwood, N., & MacManus, D. (2021). PTSD and complex PTSD in sentenced male prisoners in the UK: prevalence, trauma antecedents, and psychiatric comorbidities. *Psychological medicine*, 1-11. <https://doi.org/10/ghw8kr> ; Dudeck, M., Drenkhahn, K., Spitzer, C., Barnow, S., Kopp, D., Kuwert, P., Freyberger, H. J., & Dünkel, F. (2011). Traumatization and mental distress in long-term prisoners in Europe. *Punishment & Society*, 13(4), 403-423. <https://doi.org/10.1177/1462474511414782>

⁴ Cohen, S. & Laurie Taylor, T. (1972). *Psychological Survival: The Experience of Long-Term Imprisonment*. Penguin.

⁵ Banister, P.A., Smith, F.V., Heskin, K., & Bolton, N. (1973). Psychological correlates of long-term imprisonment: I Cognitive variables. *British Journal of Criminology*, 13, 312-323. <https://doi.org/10/gfkdp9> ; Heskin, K. J., Smith, F. V., Banister, P. A., & Bolton, N. (1973). Psychological Correlates of Long-Term Imprisonment: II. Personality Variables. *The British Journal of Criminology* 13(4), 323-30. <https://doi.org/10/gfkddb> ; Heskin, K. J., Bolton, N., Smith, F. V., & Banister, P. A. (1974). Psychological correlates of long-term imprisonment: III. Attitudinal variables. *British Journal of Criminology*, 14(2), 150-157. <https://doi.org/10/gfkdp7> ; Bolton, N., Smith, F. V., Heskin, K. J., & Banister, P. A. (1976). Psychological Correlates of Long-Term Imprisonment: IV. A Longitudinal Analysis. *The British Journal of Criminology*, 16(1), 38-47. <https://doi.org/10/gfkdp6> ; Sapsford, R. J. (1978). Life-Sentence Prisoners: Psychological Changes during Sentence. *The British Journal of Criminology*, 18(2), 128-45. <https://doi.org/10/gfkdp4> ; Sapsford, R. J. (1979). Life-Sentence Prisoners: Deterioration and Coping; Rasch, W. (1981) The Effects of Indeterminate Detention: A Study of Men Sentenced to Life Imprisonment. *International Journal of Law and Psychiatry*, 4(3-4), 417-31. <https://doi.org/10/cvk3n2> ; Bukstel, L. & Kilmann, P. (1980). Psychological Effects of Imprisonment on Confined Individuals. *Psychological Bulletin*, 88, 469-49. <https://doi.org/10/bt86jd> ; Wormith, J. S. (1984). The Controversy over the Effects of Long-Term Incarceration. *Canadian Journal of Criminology*, 26, 423-38; Zamble, E. & Porporino, E. J. (1990). Coping, Imprisonment and Rehabilitation: Some Data and Their Implications. *Criminal Justice and Behavior*, 17(1), 53-70. <https://doi.org/10/br49cv>

- ⁶ Bonta, J. and Gendreau, P. (1990). 'Reexamining the Cruel and Unusual Punishment of Prison Life. *Law and Human Behavior* 14(4), 347-72. <https://doi.org/10/drvfkr>
- ⁷ Porporino, F. (1990). Differences in Response to Long-Term Imprisonment: Implications for the Management of Long-Term Offenders. *Prison Journal*, 80, 35-36 <https://doi.org/10/d8bvrX>
- ⁸ Liebling, A. (2005). *Prisons and Their Moral Performance: A Study of Values, Quality, and Prison Life*; Auty, K. M. and Liebling, A. (2019). Exploring the Relationship between Prison Social Climate and Reoffending. *Justice Quarterly*, 37(2), 358-381. <https://doi.org/10/gfthxd>; Liebling, A., Hulley, S., & Crewe, B. (2012). Conceptualising and Measuring the Quality of Prison Life. In D. Gadd, S. Karstedt & S. Messner (Eds) *The SAGE Handbook of Criminological Research Method*. <https://doi.org/10.4135/9781446268285>
- ⁹ For example Bonta, J., & Gendreau, P. (1990). Reexamining the cruel and unusual punishment of prison life. *Law and Human Behavior*, 14(4), 347-372. <https://doi.org/10.1007/BF01068161>; Haney, C. (2006). *Reforming Punishment: Psychological Limits to the Pains of Imprisonment*. American Psychological Association; Liebling, A. (2011). Moral Performance, Inhuman and Degrading Treatment and Prison Pain. *Punishment & Society*, 13(5), 530-50. <https://doi.org/10/fzxtg6>; Leigey, M. E. & Michael A. Ryder, M. A. (2015). The Pains of Permanent Imprisonment: Examining Perceptions of Confinement Among Older Life Without Parole Inmates. *International Journal of Offender Therapy and Comparative Criminology*, 59(7), 726-42. <https://doi.org/10/f7ch3k>.
- ¹⁰ Liem, M. & Kunst, M. (2013). Is There a Recognizable Post-Incarceration Syndrome among Released "Lifers"? *International Journal of Law and Psychiatry* 36(3-4), 333-37. <https://doi.org/10/gfkdpd>
- ¹¹ Haggerty, K. D. & Bucerius, S. (2020). The Proliferating Pains of Imprisonment. *Incarceration*, 1(1). <https://doi.org/10/gg5v6k> It should be noted that most accounts of the aims of punishment (see Chapter 4) agree that some measure of painfulness is intentional and justifiable. If this is correct then to say the prison experience is 'painful' is not to criticise it, but there may still be ways in which it can be seen as gratuitously, excessively, or unnecessarily painful. These questions depend largely on an evaluation of prisoners as a class of people, and the judgement about what they deserve.
- ¹² For example MacKenzie, D. L., & Goodstein, L. (1985). Long-Term Incarceration Impacts and Characteristics of Long-Term Offenders: An Empirical Analysis. *Criminal Justice and Behavior*, 12(4), 395-414. <https://doi.org/10.1177/0093854885012004001>; Zamble, E. & Porporino, F. J. (2013). *Coping, Behavior, and Adaptation in Prison Inmates*. Springer; Zamble, E. & Porporino, F. J. (1990). Coping, Imprisonment and Rehabilitation: Some Data and Their Implications. *Criminal Justice and Behavior*, 17(1), 53-70. <https://doi.org/10.1177/0093854890017001005>; Crewe, B., Hulley, S., & Wright, S. (2020). *Life Imprisonment from Young Adulthood: Adaptation, Identity, Time*. Palgrave Macmillan; Toch, H. & Adams, K. (1991). *Coping: Maladaptation in Prisons*. Transaction.
- ¹³ Appleton, C. (2010). *Life after Life Imprisonment*, Clarendon Studies in Criminology. Oxford University Press. <https://doi.org/10/c678>; Liem, M. (2016). *After Life Imprisonment: Reentry in the Era of Mass Incarceration*. New York University Press; Miller, R. J. (2021). *Halfway Home: Race, Punishment, and the Afterlife of Mass Incarceration*. Little, Brown and Company; Aresti, A., Eatough, V., & Brooks-Gordon, B. (2010). Doing Time after Time: An Interpretative Phenomenological Analysis of Reformed Ex-Prisoners' Experiences of Self-Change, Identity and Career Opportunities. *Psychology, Crime & Law* 16(3), 169-190. <https://doi.org/10/dc6pq9>
- ¹⁴ Liebling, A. (2005). *Prisons and Their Moral Performance: A Study of Values, Quality, and Prison Life*; Woolf, W. & Tumim, S. (1991). *Prison Disturbances April 1990*; Liebling, A. & Crewe, B. (2012). Prisons beyond the New Penology: The Shifting Moral Foundations of Prison Management. In J. Simon & R. Sparks (Eds.) *The Sage Handbook of Punishment and Society*. SAGE. pp 283-308; Padfield, N. (2002). *Beyond the Tariff: Human Rights and the Release of Life Sentence Prisoners*. 2002; Thomas, J. E. & Pooley, R. (1980). *The Exploding Prison: Prison Riots and the Case of Hull*. Junction; Carrabine, E. (2004). *Power, Discourse, and Resistance: A Genealogy of the Strangeways Prison Riot*. Ashgate.
- ¹⁵ Crewe, B. (2011). Depth, Weight, Tightness: Revisiting the Pains of Imprisonment. *Punishment & Society*, 13(5), 509-29. <https://doi.org/10/fzgcjz>
- ¹⁶ van Zyl Smit, D. & Appleton, C. (2019). *Life Imprisonment: A Global Human Rights Analysis*. Harvard University Press. pp170
- ¹⁷ Liebling, A., Arnold, H., & Straub, C. (2011). *An Exploration of Staff-Prisoner Relationships at HMP Whitemoor: 12 Years On*. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/217381/staff-prisoner-relations-whitemoor.pdf
- ¹⁸ Liebling, A. & Crewe, B. (2012). Prisons beyond the New Penology: The Shifting Moral Foundations of Prison Management. In J. Simon & R. Sparks (Eds.) *The Sage Handbook of Punishment and Society*. SAGE. pp 283-308
- ¹⁹ Ibid.
- ²⁰ For example, Harris, M., Edgar, K. & Webster, R. (2020). "I'm Always Walking on Eggshells, and There's No Chance of Me Ever Being Free": The Mental Health Implications of Imprisonment for Public Protection in the Community and Post-Recall. *Criminal Behaviour and Mental Health*, 30(6), 331-40. <https://doi.org/10/gjxgbp>; UNGRIPP *The UNGRIPP Campaign*. Accessed 2 September 2021: <https://www.ungripp.com/campaign>; Annison, H. (2015). *Dangerous Politics: Risk, Political Vulnerability, and Penal Policy*. Oxford University Press. <https://doi.org/10.1093/acprof:oso/9780198728603.001.0001>
- ²¹ Beaudry, G., Yu, R., Perry, A. E., & Fazel, S. (2021). Effectiveness of psychological interventions in prison to reduce recidivism: a systematic review and meta-analysis of randomised controlled trials. *Lancet Psychiatry*, 8(9), 759-773. <https://ora.ox.ac.uk/objects/uid:79b87451-4f30-46b8-ba0e-cbfcaa89af07>; Prins, S. J. & Reich, A. (2021). Criminogenic Risk Assessment: A Meta-Review and Critical Analysis. *Punishment & Society*. <https://doi.org/10/gmcpjt>; Mews, A., Di Bella, L. & Purver, M. (2017). *Impact Evaluation of the Prison-Based Core Sex Offender Treatment Programme*. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/623876/sotp-report-web-.pdf
- ²² The description in this paragraph of the subjective challenges long-term prisoners encounter owes much to account in Crewe, B., Hulley, S., & Wright, S. (2020). *Life Imprisonment from Young Adulthood: Adaptation, Identity, Time*. pp13-15; See also Jarman, B. (2020). Only One Way to Swim? The Offence and the Life Course in Accounts of Adaptation to Life Imprisonment. *The British Journal of Criminology* 60(6), 1460-79. <https://doi.org/10/ggs23w>
- ²³ Haney, C. (2005). The Contextual Revolution in Psychology and the Question of Prison Effects', in A. Liebling & S. Maruna (Eds.) *The Effects of Imprisonment*. Willan. pp78-79

- ²⁴ Cullen, F. T., Jonson, C. L., & Nagin, D. S. (2011). Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science. *The Prison Journal*, 91(3_suppl), 48S-65S. <https://doi.org/10.1177/0032885511415224>
- ²⁵ Oral evidence by Professor Ben Crewe.
- ²⁶ Ibid.
- ²⁷ Written evidence by Ben Jarman.
- ²⁸ Written evidence by UNGRIPP.
- ²⁹ Oral evidence by Professor Ben Crewe.
- ³⁰ Written evidence by IMBs.
- ³¹ See, for example, Ministry of Justice. (2013). *Transforming Rehabilitation: A Summary of Evidence on Reducing Reoffending*. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/243718/evidence-reduce-reoffending.pdf ; Ian Brunton-Smith, I. & McCarthy, D, J. (2016). The Effects of Prisoner Attachment to Family on Re-Entry Outcomes: A Longitudinal Assessment. *The British Journal of Criminology*. <https://doi.org/10/gf6jnn>
- ³² De Claire, K & Dixon, L. (2015). The Effects of Prison Visits From Family Members on Prisoners' Well-Being, Prison Rule Breaking, and Recidivism: A Review of Research Since 1991. *Trauma, Violence, and Abuse* 1-15. <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.846.8926&rep=rep1&type=pdf>
- ³³ Ministry of Justice and HM Prison & Probation Service. (2018). *Manage the Custodial Sentence: Policy Framework para. 1.2*. Ministry of Justice. <https://www.gov.uk/government/publications/manage-the-custodial-sentence>
- ³⁴ Ibid., para 3.2.
- ³⁵ Ibid.
- ³⁶ Ibid.
- ³⁷ Written evidence by Dr Alice levins.
- ³⁸ Written evidence by Dr Alice levins and Ben Jarman.
- ³⁹ Written evidence by Ben Jarman described these changes in more detail.
- ⁴⁰ Written evidence by Ben Jarman.
- ⁴¹ Written evidence by Learning Together.
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Chapter 4: Do long sentences achieve the purposes of sentencing?

Introduction: Balancing different aims

1 Sentencing serious crimes is a balancing act, bringing different aims and interests into conflict. The purposes of the sentence are set out in s.57 of the Sentencing Act 2020. Judges deciding a sentence are required to 'have regard' to the following aims:ⁱ

- i** the punishment of offenders
- ii** the reduction of crime (including its reduction by deterrence)
- iii** the reform and rehabilitation of offenders
- iv** the protection of the public
- v** the making of reparation by offenders to persons affected by their offences.

2 Not every aim is equally relevant to every case. For example, some people convicted of a serious crime may pose relatively little ongoing risk to the public, and therefore stand in need of relatively little rehabilitative intervention. It can also be difficult to see how some aims can be realised in practice: for example, the harms involved in a very serious offence can be difficult or impossible to put right, making 'reparation' something that can be achieved partially and indirectly at best. Nevertheless, the law requires sentencers to have regard to these aims, and thus the penal system is to some degree responsible for implementing them. If the balance of aims in a particular case is unclear, this can generate confused or contradictory objectives for those charged with implementing the sentence.

3 This raises the question of which aim is to take priority. Except where the person being sentenced is aged under 18, the Sentencing Act does not state explicitly which aim has priority.ⁱⁱ But the aims can appear mutually contradictory, so that careful definition and thought is required to make them compatible in principle (to say nothing of in practice).

Punishment first, other aims afterwards

4 In theory, courts have discretion to balance these

aims. However, their discretion is constrained by rule-of-law principles such as consistency and equal treatment, and therefore in practice they refer to published sentencing guidelines and on occasion to relevant statutes,ⁱⁱⁱ which guide their use of discretion. Sentencing guidelines lay out a generic process. Since the first step in this process is always to determine the deserved punishment, punishment is in effect the principal aim in practice. The scope to achieve all other aims of the sentence is shaped first by what punishment is required. Sentences therefore aim, first and foremost, to be retributive: to punish wrongdoing, proportionately to its seriousness.

5 For offences with mandatory or automatic sentences,^{iv} Parliament has legislated to remove the courts' discretion to balance different sentencing aims. Instead, for some of these offences, the court must impose an extended or indeterminate sentence, with the length of the sentence nominally reflecting the punishment, and the licence period reflecting the requirement of ongoing public protection.^v This again leaves other aims as an afterthought. Murder, for example, carries a mandatory life sentence, with the 'seriousness' of a given offence reflected only by adjusting the length (not the nature) of the minimum term to be served in custody.

6 In sentencing for the most serious crimes, then, it is accurate to say that punishing offenders and protecting the public override the other statutory aims of the sentence. But Her Majesty's Prison and Probation Service (HMPPS), in delivering the sentence, also undertakes a range of activities directed at rehabilitation, and (less systematically) at reparation.

Non-statutory influences on sentencing

7 Serious crimes tend to generate intense media (and public) interest and can provoke intense emotions such as outrage, fear, sympathy, or disgust. Public opinion and media representations of the offence therefore also unavoidably shape the sentencing process, in part

ⁱ These aims were originally enacted by the Criminal Justice Act 2003, but have since been codified, along with other earlier sentencing legislation, into the Sentencing Act 2020.

ⁱⁱ When sentencing under-18s, s.37 of the Crime and Disorder Act 1998 requires sentencers to treat the prevention of offending (or reoffending) by persons under 18 as taking priority over the other aims.

ⁱⁱⁱ For example, Sentencing Council, 'Robbery: Definitive Guideline' (Sentencing Council, 28 January 2016), <https://www.sentencingcouncil.org.uk/publications/item/robbery-definitive-guideline-2/>; or (for statutory guidelines), UK Parliament, 'Sentencing Act 2020', UK 2020 c.17 § (2020), sec. 322,

<https://www.legislation.gov.uk/ukpga/2020/17>

^{iv} For a full list, see ss. 57(3) and 399, Sentencing Act 2020. Sentences under these 'dangerousness' provisions are imposed where the court believes that the offender poses an ongoing danger to the public, and the resulting sentence can be either indeterminate or extended (see Chapter 1, paragraphs 10-20), depending on the offence. In practice, most of the most serious offences which attract the longest and most severe sentences would fall into this category.

^v Public protection is explicitly the overriding aim of the Offender Management in Custody policy, and therefore of HM Prison & Probation Service in implementing the sentence (see Chapter 3, paragraphs 48-52).

because of their prominence in political discourse and the electoral cycle. As a result, they also influence the kinds of statutes governments try to pass relating to punishment.^{vi} We acknowledge the importance of those wider factors and refer to them from time to time in this chapter, but most of what follows clarifies and discusses the five statutory aims of sentencing, since these are what the law says must guide the sentence.

Overview of this chapter

8 In the remainder of this chapter we consider each statutory aim in turn, clarifying its meaning and commenting on how far it appears to us to be achieved by the present trend towards very long-term prison sentences. We comment on how far (and in what circumstances) the aims appear compatible, and argue through doing so that an increased emphasis on restorative approaches in sentencing may enable the aims of the sentence to be better balanced.

The punishment of offenders

9 Punishing those who have committed very serious crimes attracts strong media, political, and public support. It aligns closely with everyday norms about wrongdoing, holding that those responsible deserve to be blamed. Because of this, punishment can appear self-evidently ‘the right thing to do’, and very severe punishment for very serious crimes also seems an obvious course of action. However, while the need to punish crimes can be obvious, what this means in practice is unclear. The term ‘punishment’ therefore needs clarification.

Defining punishment

10 Punishment (or ‘retribution’) means that the state intentionally inflicts an unpleasant or painful consequence on a person who has been found guilty of a criminal offence. This is done *because* they have been found guilty (or culpable – that is, *because they have done wrong*), and not for any other reason (eg because punishing them might bring about a change in their behaviour).

11 Deliberately hurting others is morally problematic in most circumstances, so we tend to seek some other reason to justify doing so.

12 Usually, punishment is understood only to be justifiable where *both* harm and culpability were

attributable to an individual’s actions – for example, if harms were deliberate, reckless, negligent, and so on.

13 Actions that are harmful (even fatally so) but blameless do not tend to result in *punishment*, and instead receive some other response. For instance, someone who lost consciousness while operating a crane, with the crane’s load falling and killing a member of the public, would not automatically be seen as having *done wrong*. Corporate insurers might compensate the victim’s family for the *harms* they suffered. If subsequent investigations found that the crane operator’s loss of consciousness had been caused by an undiagnosed chronic medical condition, the operator might have to retrain and take on alternative duties. They might find these consequences inconvenient or unpleasant and might well experience guilt or remorse, but would not usually be *punished*, especially not by the state, unless the available evidence suggested some *other* reason to find the operator culpable, and a prosecution resulted.^{vii} If a prosecution did result, however, the amount of culpability (and hence the severity of punishment) would depend on the seriousness of the wrongdoing.

Defining blame in state and non-state punishments

14 It is important to distinguish between different *kinds* of blame. Blame in ordinary interpersonal contexts is often *inclusionary*, in that a person is often forgiven and reintegrated if they respond appropriately to being blamed. For example, this is the case if parents insist that a child apologises for something they said or did to another child, or if friends hold one another accountable in a similar fashion. The punishments might be trivial, but they are usually *symbolic* and *expressive*, in the sense that some action by the blamed person (for example an apology) is taken to mean that they have made amends, reaffirming the relationship. The aim in this context is to blame *but then to reintegrate* the person blamed.

15 More public forms of blame differ because there may be no relationship to preserve or repair. Or the wrong may be so dramatic and so harmful that an existing relationship is interrupted, perhaps permanently. Some such forms of blame are done by the state. As highlighted in the evidence from individuals serving long sentences presented in Chapter 3, criminal blame of this kind is damaging and exclusionary, in that it excludes the blamed person from the wider community, removes their rights, coerces them into complying, and calls their entire

^{vi} For example, the current murder sentencing regime was passed by Parliament to ensure ‘tougher’ sentences, after human rights litigation by prisoners effectively ended the Home Secretary’s power to determine minimum prison terms for murder. Media and public discourse represented this as an issue of public safety, and so Parliament legislated to substantially lessen the discretion judges had to balance different aims, instead requiring them to impose substantial minimum prison terms before any other aims were engaged. See UK Parliament, ‘Criminal Justice Act 2003’, Pub. L. No.

2003 c. 44, 476 (2003), sec. 269(5), <https://www.legislation.gov.uk/ukpga/2003/44/contents>.

^{vii} For example, if the crane was found to be not adequately maintained (negligence); or if the operator already knew about the medical condition that caused the loss of consciousness and concealed it from their employer (negligence/recklessness); or if they did not have the correct training to operate the crane (negligence); or if they lost consciousness due to alcohol consumption (recklessness).

character into question. It may be possible to justify all of these as legitimate, particularly where the offence is very serious. However, as we make clear below, excessively severe retribution undermines the kind of reintegration which is the aim of that day-to-day form of blame. It should also be clear that excessive punishment can override and overwhelm the other purposes of sentencing.

16 The stigma arising from public blame *delivered by the state* can be harmful, such that there may appear to be no avenue to re-inclusion.¹ The injustice of applying such drastic consequences on the innocent is why there are comparatively strong protections for those charged with crimes, such as the presumption of innocence and a range of formal safeguards, limits, checks and balances, which (in theory) protect the innocent and ensure that only the guilty are punished.

Defining the 'seriousness' of wrongdoing

17 Sentencing guidelines instruct judges how to assess 'seriousness'. They take two things into account: the *harm* caused by an offence, and the *offender's culpability* in causing it. This means two people convicted of the same crime can receive different punishments, depending on how 'serious' the crime was. In two cases of robbery, for example, 'seriousness' is differentiated both by what was robbed from the victim and how it affected them (harm), and by how culpable the offender was (blame). For example, a robber found guilty of stealing £50 by threatening to punch someone committed a less serious crime than a group of robbers found guilty of using a gun and a knife to rob a commercial premise.

18 Although some aspects of culpability (relating to the actions involved in the offence) are relatively easy to determine as matters of fact, others (relating to the offender's motives or mental state) are less obvious, and are often inferred from other evidence. It is very difficult to be certain about what caused another person's actions, or about their motive. Such judgements are highly and unavoidably subjective, and potentially subject to what can seem like prejudiced or misconceived interpretations.

19 Uncertainty of this kind is particularly likely to be the case where a defendant does not give evidence, whether under legal advice or for some other reason. Their motives may remain difficult or impossible for the court to understand, particularly where the defendant was acting according to behavioural norms which differed from those enshrined in the law, or that differed from the moral norms prevalent among those it holds responsible. For example, someone carrying a knife through fear that others are doing the same might not know that strong mandatory sentences exist to punish those who carry knives. Ignorance of the law is no defence in a trial; they might not be able to explain what

they saw as good reasons because these are irrelevant to what the court has to determine. Where a defendant does not give evidence, their motives may remain difficult or impossible to understand, even where they believed they had some reason for acting as they did but now acknowledge it to have been wrong.

20 All of this means that those who are sentenced for offences sometimes find it difficult to entirely accept the court's decisions about culpability, even where they acknowledge that they caused harm. They can also find it hard to account for actions that they nevertheless regret.

Sentencing in serious crimes: keeping no one happy?

21 In practice, then, different people (victims, offenders, their loved ones, the wider public, etc) may always have widely differing views about how *culpable* a person found guilty of a crime was, and about what punishment they deserve. The *court* may consider an offender's motives in determining the sentence, but there is no reason for *victims* to care about them, especially in very serious crimes: what the person who harmed a victim believed or was thinking at the time may not be their overriding concern, and may be of no interest or even directly provoke anger.

22 Different people might therefore find a particular sentence legitimate, unfair, excessive, lenient, and so on. It is probably unrealistic to expect that all parties can be content with a retributive sentence imposed by the state, since the judge is required to balance different considerations, each of which may be overriding for some person or another. Even the judge's understanding may be imperfect and their discretion constrained, for example they might be required to impose a long prison sentence even if they believe that this will undermine efforts to reform or rehabilitate the offender. In short, the aims of sentencing are complex. There is therefore a substantial difference between abstract principles and concrete (and messy) human realities they pronounce judgment on.

Why do victims often find retributive punishment unsatisfactory?

23 Formal criminal justice procedures, because they have to follow certain rules to test guilt and assign blame, also carry unintended and sometimes extremely negative consequences for victims. Their frustrations are described in Chapter 3. Why does the formal process of establishing blame and assigning punishment leave victims so unhappy?

24 First and foremost, the purpose of the process is to determine guilt, not principally to allow victims to be heard. The law defines offences, tests evidence to establish whether the defendant's actions fall under those definitions, and determines whether the defendant's conduct establishes their guilt.^{viii} Harms

experienced by the victim are of importance mainly to the extent that they fit within this process of classification (assault or robbery, theft or burglary, murder or manslaughter, and so on). Harms to the victim become more important later, in sentencing hearings, if the defendant is found guilty. Defendants, however, who are entitled to be presumed innocent, might receive legal advice to say nothing in evidence, and sometimes make shows of bravado or determination if their own supporters and loved ones are present in court. The trial will usually be the last time a victim or their family hears from the offender. Such displays of silence or bravado will seldom satisfy victims who want those who have harmed them to account for their actions and take responsibility for their behaviour. They will often interpret a defendant's conduct in court as insulting and disrespectful. Some of the evidence we received from prisoners made clear that many had later come to regret their conduct during their trials, and to wish that they could apologise for it.

25 Second, the nature of the criminal justice process can lead both defendants and victims to feel they have been stereotyped, and as though the full complexity and range of their experiences have not been heard. Defendants are strongly incentivised (and often advised by lawyers) not to make full disclosures. Where cases rely on witness evidence from opposing sides, trials can turn on witness credibility, so that lawyers for each side paint a portrait for the jury of the witnesses. The process can appear to be aiming for a particular outcome even as it tries to uphold an open form of justice, and victims and their wishes can feel marginal.

26 For crimes experienced disproportionately by women and children, which typically occur in a private setting, this can be a particularly common experience. Women and children are often apprehensive of the consequences of a prosecution, whatever its outcome.² Victims in such cases might want to see an offender punished; they might want a punishment to involve a prison sentence or something else; they might simply want the defendant to stop behaving as they have been doing; or they might want nothing at all to be done. These wishes may not be consistent with the traditional priorities of the legal process – charging, pleading, trying guilt, and punishing crimes – and they may not be aligned with the rule of law nor the wider public interest, which is the state's responsibility.

27 Third, even outside these circumstances, victims may still perceive that the criminal justice process is uninterested in their case and their needs. Only a small minority of cases go to a trial at all (though this becomes

less true as the seriousness of the offence increases).³ If a defendant pleads guilty then there is no trial, only a sentencing hearing. If there is a trial, victims may have no part at all to play unless they are called as witnesses. Their only formal *right* to involvement is to make a statement concerning the impact of the crime on them, which they are asked to do at a sentencing hearing held *after* guilt has been determined. Judges must take account of this statement, but where sentencing guidelines or statute requires a mandatory minimum sentence, the victim's wishes may have no effect at all – especially where their wish is for some other measure than a prison sentence, or for no action to be taken at all. This is certainly unlikely in the most serious offences, but it cannot be taken for granted that victims' wishes are always identical with the maximum possible punishment for an offender. Victims can take away the impression that the law attends to its own needs and not theirs, and that defendants' rights receive more protection than their own.^{ix} Largely, this is because the criminal justice process aims to identify and punish offenders, not to offer redress to victims.

28 These shortcomings are not easily rectified. Procedurally, the perception that the legal process is focussed only on the offender is not groundless. Without removing defendants' rights to due process, it may only be possible to mitigate rather than eliminate the negative views many victims have of the legal process.

What does punishment try to achieve?

29 Common sense intuitively suggests that wrongdoing deserves punishment, but it offers no guidance on the *content* of punishment – *what it should actually involve*. Once a person is convicted, their conviction declares their blameworthiness, and their sentence (whatever its content) simply is their punishment. All that is required is that a convicted offender does what the sentence requires: the 'debt to society' has to be repaid. On what terms and in what way is unclear.

30 This leaves no obvious upper limit or constraint on retributive punishment. Upper limits have historically been determined by what societies have been willing to tolerate. As the death penalty has been abolished in more and more countries,⁴ life imprisonment has become the *de facto* upper limit used for the most serious offences in many countries. Meanwhile, punishments for other crimes often refer to the penalties imposed for the most serious crimes as a kind of benchmark in less serious cases, adjusting the penalties for less serious offences accordingly. Thus if it gradually becomes the norm that the most serious crimes are

^{viii} This process is unnecessary if the offender admits guilt, which can result in a lighter sentence as an incentive to avoid the full trial process.

^{ix} This last situation appears to have developed because retributive punishment by the state is extremely harmful, meaning that a relatively high standard of proof is required before it may be imposed.

punished using an extremely long prison sentence, the penalties for other somewhat less serious crimes may rise in line with that maximum.

31 As shown in Chapter 1, the growth in sentence and tariff lengths at the top end of sentencing over the past few decades appears to confirm this logic.^x Very rarely during this period has Parliament legislated to *decrease* sentence lengths.

32 All of this makes it very difficult to see how an upper limit can be imposed on retributive punishment that is not arbitrary. Although a principled case can be made that the most serious crimes must receive the most severe punishments available, there is simply no principled way to determine what that most severe punishment must be, nor what offences may fall into this 'most serious' category. Determinations of this kind are unavoidably political, and usually involve citizens whose lives may be affected by serious offences (and severe penalties) involving themselves in activism to change the status quo.

33 For example, since the 1970s there has been a growing recognition that violence by men against women is a serious issue. It has previously been under-policed and features public protection dimensions which have gone under-recognised. Consequently, campaigners have demanded a more serious formal response by the state in such cases, and have challenged a previous tendency to see them as private matters. This has resulted in many changes to the law (for example alterations to the kinds of provocation defence available to men who kill women),⁵ but has also exposed many of the shortcomings of traditional criminal procedure when it comes to prosecuting violence against women, which typically takes place in a private setting, with few or no witnesses, and hence can be difficult to prosecute.⁶ What this example demonstrates is what is punished by the state in some sense represent a community's moral boundaries – the behaviour which it claims not to tolerate in almost all circumstances. Where the law is seen as having been applied in such a way that it left some citizens unprotected, the result can sometimes be a demand that it should be applied more severely against the offending behaviour in question.

34 To summarise, retributive punishment is defined by the imposition of an unpleasant consequence on someone who is found to have done wrong. But this merely raises further questions:

i What degree of punishment is appropriate for a particular crime? What method is appropriate to

compare different cases of the same crime?

ii How much punishment is 'enough'?

iii What makes one sentence more severe than another?

iv How should courts account for the fact that different people might find the same sentence painful or unpleasant in different ways?

v How do we know if punishment has 'succeeded'?

35 None of these questions have obvious answers, and it is very difficult to envisage a retributive punishment that matches or exceeds the gravity of the most serious offences without straying into outright cruelty. Practically, then, there is no upper limit. But as the testimony of some of the families of victims of homicide cited in Chapter 2 suggests, in the worst cases no punishment can ever be 'enough', especially when what has been lost is irreplaceable. Without some upper limit being imposed (equally arbitrarily) sentences for the most serious crimes can only be expected to continue to rise, requiring longer and longer sentences regardless of what changes occur during them.

36 Punishments imposed by the state should therefore aim to define and enforce a community's standards of what behaviour is acceptable, by declaring a clear message to different audiences about the values that ought to apply when one person harms another. Punishment should aim to show the offender(s) that their actions were *wrong*, that they were to *blame*, and that they ought to change their beliefs and/or their behaviour as a result. Punishment should aim to show victim(s) that the wider community stands in *solidarity* with their suffering, *supports* them, and holds the offender *responsible* for harming them. And punishment should aim to show the wider public that certain shared norms (eg those against interpersonal violence) are so fundamental that those guilty of breaking them are culpable whatever the circumstances.^{xi}

37 On these terms, the evidence we have considered suggests the current system punishes serious crimes *severely* without punishing them *effectively*. Prisoners' opportunities to seek to understand the reasons for their conviction and sentence are limited. The consequences of their behaviour for victims may be made clear at sentencing hearings, but there may be no direct input from victims before a parole hearing which may take place decades later. Meanwhile, the sheer length of a prison sentence might make it appear pointless to the prisoner to try to act differently in future. Victims (as we make clear in Chapter 2) often feel unsupported and alienated by the criminal justice process, or believe that prisoners are not held fully accountable for their crimes.

^x We received evidence from the Sentencing Academy that this has been shown to have happened in England and Wales, with upwards adjustments of minimum prison sentences for murder after 2003 being reflected in the more severe sentencing of

lesser offences such as attempted murder and manslaughter (among others).

^{xi} This strongly underlines the importance of due process protections.

And the public demonstrate relatively low levels of confidence in the criminal justice system, believing that many serious crimes continue to go unpunished because they are not punished severely enough, without apparently realising that more severe sentences in recent decades have still left many victims unsatisfied.

The reduction of crime (including its reduction by deterrence)

How could crime be reduced by sentencing?

38 The second statutory aim of sentencing is to reduce overall levels of crime, including by deterrence.

Sentences could conceivably achieve this in four ways:

i showing *the person convicted of a crime* that wrongful actions have negative consequences, so that *they specifically* have reason to think twice before committing further crimes in future ('individual deterrence')

ii showing *the wider public* that wrongful actions have negative consequences, so that *they all* have reason to think twice before committing crimes in future ('general deterrence')

iii preventing *the person convicted of a crime* from harming others by restricting their liberty to commit further crimes in future ('incapacitation')

iv inducing *the person convicted of a crime* to undergo personal changes that make them less likely to commit further crimes in future ('rehabilitation').

39 In this section, we deal with i) and ii) from this list, which are 'pure' theories of deterrence. Items iii) and iv) might also result in a reduction of crime rates overall, but relate more closely to the third and fourth statutory aims of sentencing and so we address them separately below (paragraphs 56-101).

How does deterrence work?

40 Deterrence theories hold that punishment should aim to reduce crime rates overall while inflicting no more harm and using no more resources than is necessary to achieve this. In its purest sense, deterrent punishment involves a cost-benefit analysis. The penalties involved need be no more harsh or painful than would achieve the desired effect; and if the likelihood of a person reoffending is zero, then a penalty may not be justifiable.

41 Those who stand to be deterred could include the person serving the sentence ('individual deterrence'),^{xii} or other people more generally ('general deterrence').

42 Theories of deterrence make a number of assumptions:

i people who commit crimes are rational actors who weigh up the costs and benefits of different courses of

action before they act

ii people thinking of committing a crime know the penalty it might incur, and evaluate the likelihood that they will get caught before they act

iii because punishment is unpleasant, more punishment equals a greater deterrent effect.

43 For many kinds of offending, these assumptions do not hold. Deterrence takes for granted circumstances which do not always exist. For example, much violence is not rationally calculated but carried out in states of high emotional agitation or psychological distress. Moreover, prisoners who gave evidence to the Commission often said they had not been aware of the penalties they faced.^{xiii}

44 The aim of deterring an individual is not well served by extremely long sentences, if the sentence keeps them in prison past the point where they would have been able to lead a successful, law-abiding life outside prison.

45 Deterrence's fundamental assumptions may also take for granted the existence of a kind of social contract: that there are positive consequences for those who abide by the law and negative consequences for those who do not. This may not accord with the lived experience of people in all parts of society, especially at the economic and social margins:

*"Deterrence also assumes – and arguably even requires – that people have hope. It assumes that you have reason to believe that if you do not engage in certain negative actions, you will not suffer the same consequences as people who do. That means not only that you will not go to jail if you do not break the law, but that you will be able to get a good education, get a job, raise your family, live in peace, and not be hurt."*⁷

What is the evidence on deterrence?

46 It is difficult to evaluate whether deterrence 'works'. In part, this is because researching the topic is complicated, and demonstrating causation is difficult. Only a small fraction of crime comes to official attention in the first place, making it difficult to assess outcomes except at the largest scales (eg using national data). Moreover (and particularly in relation to individual deterrence) knowing that deterrence had 'worked' would mean knowing for certain that a person had a) refrained from offending and b) had done so because they calculated that the risk of being caught and punished was too high. Both are hard to know with confidence.

47 Some randomised trials of deterrence have been conducted in the US.⁸ These compare more and less severe police interventions to domestic violence. They

^{xii} In this case, the person being punished is, in theory, punished to persuade them to change their ways.

^{xiii} This offers no defence of their actions, and they may be held responsible nevertheless, but the point remains that they were not deterred by the penalty and indeed did not think about it at all.

emphasise the importance of the individual characteristics of those who are punished. Broadly, domestic abusers who were more socially and economically privileged were more liable to be deterred by punishment, whereas those who were socially and economically marginalised tended to be made more defiant by punishment.⁹ A follow-up study conducted 23 years after the original research showed non-intuitive but very severe negative effects of punishment for the families and loved ones of the abuser, including substantial increases in premature mortality among partners whose abuser had been arrested and jailed (rather than some other intervention).¹⁰ This evidence (based on a randomised controlled trial with a large sample, and therefore of a high quality) strongly underlines the *collateral* harms of punishment, while also suggesting that when it comes to reducing crime, it is important both *who is doing the punishing*, and that those who are punished stand to gain or lose something that *matters to them*.

48 Both factors make credible messengers (and a morally intelligible message) a prerequisite of successful deterrent punishment. They also suggest that in some cases, increasing the severity of punishment will *increase* the likelihood of further crime. None of this makes it easy to adopt the consistent approach that the same crimes must receive consistent punishments, or that different people should be treated equally.

49 Other research compares overall rates of offending before and after the law introduced a mandatory or increased penalty for a specific offence.¹¹ This evidence tends to demonstrate that in particular circumstances (where the assumptions in paragraph 42 above do in fact hold, for example because violence has been used for a purpose and in a calculated way, rather than as an expression of some emotional state or in a loss of control), then increasing the punishment does make for a 'stronger' deterrent.¹²

50 However, where these assumptions do not hold, it is the *certainty* (not the *severity*) of punishment that makes an effective deterrent. There is no evidence *in general* that increased penalties correspondingly increase deterrent effects. In other words, in most cases people are deterred from offending if they believe they will be caught, but they are not *more* deterred if they believe they will get caught *and then* receive a more severe punishment.

How important is deterrence as a rationale for long prison sentences?

51 To succeed, deterrence does not require extremely severe punishment: a deterrent sentence need only be severe *enough* to 'work' and need not in fact involve very much 'hard treatment' for the offender. Provided the aim of the punishment had been achieved, if a 'lenient' punishment could secure the desired outcome, it would

be preferable on the basis that it minimised harm to the person being punished, and it might also use public funds more efficiently. Effective deterrence (if taken as an aim on its own) does not *require* that every crime be punished, nor even that only the guilty should be punished: exemplary harsh punishments of a small number of innocent people could conceivably create a climate of fear around breaking the law, and exert a deterrent effect. However, this would be morally indefensible on the (retributive) grounds that it is unfair to punish the innocent.

52 Very severe sentences for very serious offences, including mandatory minimum sentences and very long terms of imprisonment, are therefore difficult to justify on deterrent grounds.

53 Even so, both individual and general deterrence nevertheless attract strong public support, perhaps because it is intuitive to believe that wrongful acts ought to attract a negative consequence. But this is a retributive rationale, guided by what happened in the past: harm already caused and indignation already provoked. It offers no guidance on how to achieve a desired outcome in the future.

54 At the societal scale, imprisonment harms prisoners by changing their lives and altering the nature of their citizenship; but it can also harm those around them who have not committed crimes, subjecting them to "collateral harms such as lessened psychological wellbeing, financial costs, loss of economic opportunities and intrusion and control over their private lives".¹³ Evidence cited above regarding the negative impacts of punishment for the families of those punished relate only to relatively lenient punishments, but similar research demonstrates these impacts among other groups.¹⁴ It is plausible to assume that longer sentences do greater damage to family and other relationships, something that does not rule out their use but underlines the need for precaution. Imprisonment as a whole has (at best) no overall effect on crime rates, may in some cases increase the risk of reoffending, and becomes more likely to do so the more harshly the sentence is delivered.¹⁵

55 There is therefore little evidence to support the claim that *prison sentences specifically* can reduce crime through deterrence, or that longer and more severe sentences deter it more effectively. Ever-increasing penalties and prison terms might be justified on retributive grounds (ie they are what the offender deserves) or public protection grounds (ie they prevent the offender causing further harm), but there is little evidence to suggest that they reduce crime overall. Crime reduction through deterrence cannot be taken seriously as a rationale for increased penalties.

The reform and rehabilitation of offenders

What do 'reform and rehabilitation' aim to achieve?

56 Reform and rehabilitation make *changing the individual* the aim of the sentence. The sentence need only be as severe as required to induce that change. Indeed, if the sentence had no other aims, and if it could be established with certainty that a person convicted of a crime would not reoffend, no punishment *at all* would be required.

57 For serious crimes, rehabilitation exists alongside other aims, with retributive punishment being first and foremost. It is not clear that rehabilitative aims are compatible with very severe punishment. It is also unlikely that public and political discourse would tolerate purely rehabilitative aims for a sentence following a serious offence. 'Balancing' the aims of the sentence is therefore always likely to be difficult, and how that can be achieved is likely to be contested. This is particularly likely where the sentence is indeterminate. Historically, rehabilitative aims have been strongly associated with indeterminate prison sentences, in which prisoners are released only if parole authorities direct release, and even then, various restrictions on their liberty may remain in the form of supervision requirements and licence conditions.

58 Long prison sentences can helpfully be thought of as having 'hybrid' aims.^{xiv} The initial period served in custody is nominally retributive, but also aims to incentivise and guide prisoners towards various interventions and opportunities, participation in which might secure the prisoner's progression to lower security conditions. After the period in custody has been served, and release (either automatic or discretionary) becomes possible, the prisoner's liberty may be restored partially and with conditions, for example through release under supervision backed with the threat of recall to prison, or through continued preventative detention.

59 Some trade-off between an prisoner's rights and the interests of the wider community is fundamental to rehabilitation. However, the methods of risk assessments used by prisons and parole boards use to take their decisions are fundamentally uncertain. Moreover, most rehabilitative interventions offered in prisons are not fully evaluated meaning that there is no guarantee of their effectiveness in reducing risk. There is therefore much scope for misunderstanding, mistrust and disagreement if what the prison 'prescribes' for rehabilitative purposes is not what a prisoner believes they need to reform themselves.

What does 'rehabilitation' mean and how can it be achieved in practice?

60 The term 'rehabilitation' can be thought about in different ways, and rehabilitative aims have been formulated in different ways by different researchers and practitioners.¹⁶ Space in this report does not permit a full account, but broadly, two main approaches have influenced current practice.

61 The first approach, initially designed by correctional practitioners in Canada but now globally influential, uses actuarial methods to identify the risk factors most strongly associated with reoffending among specific groups of offenders.¹⁷ It then systematically uses structured risk assessment instruments to place individuals into groups associated with low, medium and high levels of risk, and to identify and monitor an individual's 'criminogenic needs'. It then recommends interventions (mostly psychological in nature) to act on these.

62 Risk is assessed and described using 'static' and 'dynamic' risk factors. 'Dynamic' risk factors are those believed to be capable of changing, including through intervention. For example, a 'dynamic' risk factor might be beliefs and attitudes that an individual believes to justify the use of violence. In this case, a cognitive-behavioural intervention might dislodge these. Another 'dynamic' risk factor might be that the individual will be homeless on release, something that may be addressed by finding them suitable housing.

63 By contrast, 'static' risk factors are associated with past circumstances and events, or with changes that happen without outside intervention or conscious action by the individual. For the purposes of risk reduction, they are treated as intractable and hence 'static'. For instance, having witnessed parental violence in the home in early childhood is associated with an elevated risk of violence in some groups of people, but is a 'static' factor in that this risk factor cannot change. Offenders who have relatively high numbers of 'static' risk factors (and few 'dynamic' factors) may find it difficult to demonstrate reduced risk, because they lack control over what makes them 'risky'. For those whose sentences are prolonged as a result, it may feel as if they are punished for things that happened to them, and not simply for things that they did.

64 In recent years it has become common for practitioners to also identify 'protective factors' – aspects of someone's life that are not amenable to direct penal intervention, but which may also reduce risk. These are often factors in the offender's relationships with others or with society more generally that suggest a lowered level of risk (for example a supportive family, or stable employment, which might reduce the likelihood of reoffending).

65 The second approach to rehabilitation that has influenced recent penal practice is based on research

^{xiv} This is particularly true of indeterminate sentences such as the life sentence and the IPP sentence, but also of any sentence where a portion is served in prison and a portion under supervision in the community.

over the long term into the life courses of people with criminal convictions.¹⁸ It starts from the basic insight that the vast majority begin offending in their teens but cease (or 'desist') between their early 20s and early 30s.

Researchers compare the life experiences of those who *do* turn their lives around with those who *do not*, gaining insights into how the transition to adulthood (most specifically parenthood, changing family roles and responsibilities, and entry into the employment market) can alter offenders' priorities and what they want from the future, especially where conviction and punishment reduce the appeal of returning to a former lifestyle.

Research suggests that usually, those who desist from crime 'are very motivated to change their lives and feel confident that they can turn things around. Those offenders who clearly say they want to stop offending are the most likely to desist'.¹⁹ Feelings of agency and self-confidence, often accompanied by regrets about the past and the wish to seek redemption by living differently in future, all support a successful outcome.

66 Desistance research also makes it clear that the change process can be halting, risky and ambivalent, that it is often highly individual, and that it is not always similar in people convicted of different kinds of offending.^{xv} Especially in the early stages, it is also often marked by false starts and relapses. This implies enabling offenders to access concrete opportunities which may support their efforts to change their lives (something which can only currently be done to a limited extent during a long prison sentence).^{xvi} But it also implies investing a degree of trust in those who are making the effort to desist, and allowing them space to experiment, make mistakes, and fail. Where the individual in question has seriously harmed others in the past, this creates dilemmas for professionals charged with managing risk.

67 The first, risk-focused approach works from the 'top down'. It describes what caused a person to offend, assesses the risk that they might do so again, prescribes what might be done about it, and expects the individual responsible to comply with this prescription.

68 The second, desistance-focused approach works from the 'bottom up', and describes the efforts that offenders make *for themselves*, based on what they want

and what motivates them. Both approaches have influenced prison and probation practice in England and Wales.

69 The risk-focused approach offers greater (though imperfect) predictive power, and a systematic framework with which to assess risk and assign rehabilitative resources.^{xvii} For this reason, it has had strong appeal in a context of financial austerity, because the systematic assessment of risk allows limited resources to be directed at the 'highest-risk' cases.

70 The desistance-focused approach, by contrast, emphasises motivation, hope, and the offender's part in imagining a better future for him/herself. But these are difficult to reconcile with extremely long prison sentences, during which it can be difficult for prisoners to envisage how life will be for them later in their sentences, let alone after their eventual release. Because it emphasises structured and intelligent risk-taking over control, supervision and the elimination of risk, desistance-focused practice relies on strong, mutually accountable relationships between prisoners and staff. Staff must *both* assess and manage risk and simultaneously support an individual's efforts to desist. This is skilled work, and challenging to perform where staff are inexperienced or carry a large caseload.

71 The risk-focused approach probably exerts the greater influence over how prisons and probation services work with people convicted of very serious crimes. This is largely because of the importance of public protection to the aims of the sentence (see paragraphs 89-101), and because of the risks involved in the event of a serious further offence.

Tensions and contradictions in achieving rehabilitation and reform

72 For people serving very long sentences, efforts to bring about reform will generally include measures explicitly aiming to achieve one of the following objectives:

i identifying and remedying 'deficits' in the offender (for example a substance misuse problem, or attitudes and beliefs supporting violence)

^{xv} The factors promoting desistance among people convicted of sexual offences, for example, overlap with but also differ from those connected with other kinds of offending. See McAlinden, A.-M., Farmer, M., & Maruna, S. (2017). Desistance from sexual offending: Do the mainstream theories apply? *Criminology & Criminal Justice*, 17(3), 266-283. <https://doi.org/10.1177/1748895816670201>; de Vries Robbé, M., Mann, R. E., Maruna, S., & Thornton, D. (2015). An Exploration of Protective Factors Supporting Desistance From Sexual Offending. *Sexual Abuse*, 27(1), 16-33. <https://doi.org/10.1177/1079063214547582>

^{xvi} For example, someone released from prison and determined not to return to crime may need to gain vocational qualifications to

secure a job that will hold their interest.

^{xvii} Of particular relevance here is the fact that there is a high and unavoidable rate of 'false positives' involved in predicting some forms of reoffending including violence; moreover, the evidence base for current techniques of risk assessment has become increasingly controversial, since its empirical basis is weak. This means that many offenders who are not in fact dangerous are assessed as though they are. Because risk assessments strongly influence decisions about liberty, this can feel very unfair. See Prins, S. J. & Reich, A. (2021). *Criminogenic Risk Assessment: A Meta-Review and Critical Analysis*. *Punishment & Society*. <https://doi.org/10/gmcptj>

- ii** furnishing prisoners with (and perhaps guiding or directing them towards) opportunities to ‘work on themselves’ (eg education, work, training, pro-social relationships, positive reinforcement)
- iii** designing the prison regime and environment (so far as possible) to minimise and mitigate its inherent harmfulness to those living and working in it (eg by promoting safety, facilitating family contact, etc)
- iv** implementing practices of risk assessment, surveillance, and supervision, to operate before and after release, which classify offenders, monitor their progress, and guide further intervention if necessary.

73 These measures exist in a context of punishment. They carry implicit messages about the offender’s *moral status*: whether they (in the eyes of society) are ‘good’ or ‘bad’; trustworthy or untrustworthy; worthy or unworthy; a dangerous ‘other’ to be feared or a citizen working towards their reintegration; and so on. What individual prisoners perceive to be their needs will depend very substantially on their own social status and background before prison,^{xviii} on how they evaluate their own guilt, and on the quality of their relationships with professionals. The extent to which they agree with what rehabilitation the prison ‘prescribes’ for them, or formulate and pursue other goals of their own, will also vary. This goes some way to explaining the feeling, expressed by many prisoners in Chapter 3, that opportunities they wish to engage with are not available, while opportunities they apply for in prison are assessed as ‘not suitable’ for them.

74 A further source of tension in rehabilitative provision is public perception. Rehabilitation as an aim is not typically aligned with populist views of penal practice, which tend to emphasise the need for punishment to express censure of offenders for their crimes, to express sympathy for victims (albeit without necessarily extending them meaningful forms of support – see Chapter 2), and to express a strong deterrent message to the public (in spite of the weakness of evidence that these work – see paragraphs 38-55 above).

75 Rehabilitative aims can also provoke claims of an overly ‘soft’ response to crime, among those who already hold two beliefs: that offenders *in general* cannot and do not ‘change their ways’;^{xix} and that rehabilitative provision is lenient and rewards wrongdoing.^{xx}

76 These factors can lead politicians to emphasise the benefits of rehabilitation to *the public*, more than the benefits to *offenders themselves*. Rehabilitation is often described as a means of reducing and managing the risk

that offenders (who are implicitly dangerous and ‘other’) go on to harm citizens (who are implicitly orderly and law-abiding). For instance, in an article for the Daily Telegraph on prisoner rehabilitation published on 14 October 2021, the Justice Secretary and Deputy Prime Minister Rt Hon Dominic Raab MP said: “The evidence shows that ex-offenders in work are far less likely to re-offend – so it is crucial for protecting the public.”²⁰ However, as can be seen in the evidence in Chapter 3 this can often lead prisoners to conclude that *only* the needs of the wider public guide the administration of their sentences, with their own needs only featuring to the extent that they are ‘criminogenic’, or likely to result in harm to others.

Dimensions of rehabilitation not currently addressed

77 ‘Rehabilitation’ in the wake of a serious crime might simply imply ‘making the offender less likely to harm someone else’. However, very long prison sentences commonly inflict serious harms on those serving them (eg homelessness, loss of livelihood, stigma, barriers to employment, loss of family connections, traumatic experiences in custody, etc).

78 The evidence received from victims and their families highlighted in Chapter 2 demonstrates that they feel under-served by current rehabilitative provision. That is, they perceive that the state’s response to a serious crime does not address (but rather dictates) their ‘real’ needs, leaving the impression that these are less important than the defendant’s rights. The procedure as currently structured pushes victims into a prolonged series of official interactions which invite them to describe their victimhood and the damage done to them, and offers fewer opportunities for them to describe their recovery or their resilience. Victims frequently express the importance of the criminal justice system making sure that ‘no one else has to go through what we have’, and yet the criminal justice procedure seems to add to what victims have to go through.

79 From these starting points, it can appear that some dimensions of rehabilitation are completely absent from current penal practice. To be fully rehabilitated, in the dictionary sense of ‘restore (someone) to former privileges’,²¹ implies more than simply reducing risk. It implies more than ‘restoring’ prisoners to a former position (especially where that position contributed to their offending in the first place), but rather enabling them to lead a better life than they had before. Seen this way, ‘rehabilitation’ might have at least the following four dimensions:²²

^{xviii} People convicted of serious crimes, for example, are more likely than those convicted of prolific and less serious offending to come from more privileged backgrounds; they may *already* have high levels of education, long employment histories, and so on. If so, a long sentence represents a permanent loss of these forms of status, rather than an opportunity to rebuild and redeem their past

bad choices by forging a better future.

^{xix} As a claim about offenders *in general*, this is empirically untrue.

^{xx} As a claim about sentencing *in general*, this highlights the tension between retributive punishment and efforts to rehabilitate.

- i psychological rehabilitation** – the promotion of positive change in people convicted of crimes
- ii legal or judicial rehabilitation** – facilitating the social reintegration of people convicted of crimes after their punishment is complete – in other words, ‘requalifying’ them as citizens following punishment
- iii moral rehabilitation** – promoting symbolic moral responsibility among those convicted of crimes, by encouraging practices of responsibility and reparation, such that an offender must earn restored status by finding ways to ‘pay back’
- iv social rehabilitation** – promoting more generally in society the recognition that some offenders can and do change and become ‘reformed’ individuals, and thus lessening the lasting stigma of a criminal record.

80 Criminal justice services are currently poorly placed to deliver all four of these aims, and the importance of risk management means they must, to a large extent, focus on the first. The other three ‘forms’ of rehabilitation, meanwhile, have very significant legal and political dimensions, relating to much deeper questions about individual rights and the nature of citizenship.

81 Moreover, prisons make it very difficult to achieve ‘moral’ and ‘social’ rehabilitation, because both imply some role for the outside community in *recognising* and *endorsing* an offender’s claim to have ‘changed’. Prisons seclude prisoners from the world around them, and society more generally knows little about what happens in them. As a result, it is not at all transparent to victims and the wider public how in fact sentences attempt to reform offenders, how difficult a task this is in practice, nor how contradictory some of the other aims of the sentence are.

The relationship of rehabilitation with the other aims of sentencing

82 Against this backdrop, the very varied range of views about rehabilitation heard by the Commission becomes understandable. It is not the Commission’s role to evaluate the *effectiveness* of attempts to realise one or another understanding of rehabilitation, and in any case the Commission is not best placed for that task, which is a matter for systematic evaluation research. However, we do have the task of commenting on whether the statutory aims of sentencing are being achieved overall, and of addressing whether the overall increase in retributive sentencing has affected the delivery of the other aims. It may help in doing so to pose four questions, suggested by criminologist Pat Carlen, as guides to careful thinking about rehabilitation:²³

- i Who** is being rehabilitated?
- ii From** what starting point?
- iii To** what end point?
- iv For** whose benefit?

83 It seems possible to suggest answers to these questions *as things stand now for those serving long*

sentences for serious crimes. These are broadly supported by evidence we have heard from a range of sources:

- i Offenders** stand in need of intervention after a serious offence (and not **anyone else**)
- ii From** the starting point of being ‘dangerous’ (not **from** the starting point of having culpably harmed others)
- iii To** the point where their risk can be managed (not **to** the point where they have taken responsibility and sought to atone for their harmful behaviour)^{xxi}
- iv For the benefit** of an unspecified, abstract ‘future victim’ (the public) (and not **for the benefit** of the actual people who were harmed by the crime).

84 Ever more retributive prison sentences undermine any form of rehabilitation beyond risk reduction and ‘psychological rehabilitation’. Certainly it does not seem possible to fully restore what has been lost by the victim(s) of a serious crime. Similarly, *even if* prisoners experience benefits as a result of the sentence, what they have lost through lengthy imprisonment also cannot be restored, and many wish not to return to the lives they had before they were convicted. Nor, where their offending was at all grounded in circumstances beyond their control (such as poverty, victimisation, and so on), does simply punishing an offender appear to achieve a balanced form of justice.

85 As currently delivered, long sentences, for all that they might succeed in the aim of reducing risk, rule out the achievement of ‘fuller’ forms of rehabilitation. A broader definition of ‘rehabilitation’ might open greater space to emphasise that victims and their families should receive more support and should be listened to outside the formal procedures of the criminal justice process, if that is what they want. The case to do so is especially strong where they want an offender to express accountability or remorse in a way that they failed to do in court.

86 Moreover, rehabilitative provision in its current, risk-focused, form is built around morally thin abstractions (*future* risk to *future* victims). It places little emphasis on incentivising or facilitating acts of accountability, repentance or reparation between those offenders and victims who were actually involved in the actual crimes that resulted in punishment.

87 All of this points to the need for a more restorative emphasis in the delivery of rehabilitative aims. Some of the difficulties and caveats involved in that approach are described further in paragraphs 100-114 below. In closing this section, however, it is worth considering that a broader (or ‘bifocal’) approach to rehabilitation could

xxi The evidence heard by the Commission from victims suggests that this is often what they actually want.

potentially make the sentence *more effective* as a form of retributive censure. Rather than promoting a 'zero-sum' game in which what harms the offender is positioned as of direct benefit to the victim, it could (subject to the caveats discussed more fully below) substitute in its place a fuller set of incentives towards moral accountability and moral rehabilitation (and perhaps to earned incentives of a reduction in the prisoner's minimum term).

88 A broader aim of rehabilitation would not need to displace risk reduction and risk management in arrangements for progression and release; indeed, it could leave those to be determined by the Parole Board without misleading victims into thinking that their impact statements will bear on the outcomes of the parole process. It could signal to all parties that meaningful efforts to take responsibility for past wrongs are just as much a part of an offender's moral rehabilitation as acting to change a complicated and abstract set of risk factors that remain substantially outside their control.

The protection of the public

89 Some people convicted of the most serious offences may go on to harm others again. Preventing this is the single most important aim the sentence could have, but such an outcome is not equally likely in all cases, and it is highly unlikely in many. In general, reoffending rates are far lower among long-sentenced prisoners than among those with shorter sentences.²⁴ Those already convicted of a serious offence should not automatically receive the benefit of the doubt. Even so, violence risk assessment is not an exact science and has many shortcomings when applied to individuals (as opposed to groups) of people, with a particular flaw in this context being the high number of 'false positives' – cases that are assessed as risky, but which in fact are not.^{xxii}

90 Moreover, as a question of public perception, a number of misconceptions can cloud thinking about risk, making sound decisions by professionals appear illegitimate to victims and the public. Clear thinking about how to resolve and address some of these misunderstandings, and the demands for legitimacy they represent, could clarify matters considerably.

Risk and blame

91 First, risk and culpability are easily confused, but are not the same. Past actions should inform risk assessment, but they do not determine future actions. A person's attitudes towards their past actions, and to their responsibility for them, are an unreliable guide to what

they might do in future.²⁵ The punishment a crime deserves, and what measures might successfully *manage risk*, are very distinct questions. Punishment and public protection are not the same. This is clear in the law.^{xxiii}

92 But in specific high-profile instances where decisions relating to long-term prisoners and their risk are the subject of intense public attention, the distinction between punishment and risk management – or moral desert and effective public protection – can become completely unclear in media representations of the decision. The effect is to generate the impression that risk is not being managed, when what may be causing this impression is the feeling that punishment has not been 'enough'.

93 This has most recently been obvious in high-profile Parole Board decisions, where a focus on the seriousness of the offender's original crime can obscure what the Board is required to take into account – risk. This misdirects public debate and potentially misleads observers (and victims) about what they should expect from the Board's decisions. Similarly, discussions of serious offences, whether during initial court proceedings or in the reporting of high-profile parole processes, often centre around whether the prisoner in question has shown remorse.²⁶ Yet very little evidence exists to link public expressions of remorse to future risk.²⁷ An unwillingness to admit responsibility and show remorse can be influenced by a range of factors, including the belief that the offence is shameful (and therefore incompatible with the kind of person the offender wants to be), or the belief that to admit responsibility might cut the lifeline of support from family or friends. Either of these factors – a positive self-image, or a strong support network – can support reintegration after prison, and act as a protective factor, mitigating risk. Counterintuitively, therefore, it may be that in some cases a denial of responsibility offers evidence that risk is manageable.^{xxiv}

Risk reduction and never-ending punishment

94 Second, *because* risk and blame are easily confused, measures intended to manage risk can appear to long-sentenced prisoners to renew and reinforce blame and punishment, including to the point where this becomes highly illegitimate and destroys hope. We heard evidence that both IPP-sentenced prisoners held in prison post-tariff or on recall,²⁸ and life-sentenced prisoners held after the expiry of their tariff,²⁹ can find continued confinement after the tariff to be a symbol of

^{xxii} This is discussed further below.

^{xxiii} For example, in the distinction between the minimum term of punitive imprisonment and the post-tariff phase of a prison sentence, for which the legal rationale differs.

^{xxiv} It is possible, also, that some psychiatric illnesses, as well as

ideologies and beliefs that not only justify but require criminal violence, might inhibit expressions of remorse, or cause remorse to be expressed insincerely. These exceptions are important and underline the importance of risk assessment despite its shortcomings, but they do not justify the extension of exceptional measures to those who do not require them.

permanent exclusion from the wider community. This is true even where continued imprisonment explicitly (in law) aims for public protection. Risk management, however well-founded, can give the impression that a convicted person's efforts will never secure their moral or judicial rehabilitation – that their punishment will *never* end. The effect may be to discredit the rehabilitative aims of the sentence overall, undermining motivation and alienating the prisoner and their family to the point where productive work becomes very difficult.

95 We heard evidence that this has been a serious problem in relation to the now-abolished IPP sentence,³⁰ such that a concern for public protection (and an over-reliance on prison recall to secure it) has caused some prisoners to serve prison terms grossly out of proportion to what was deserved given the seriousness of their original offence, and to experience prison recalls as an unjust renewal of their punishment. Excessiveness, disproportionality, or even simply poor communication can cause public protection measures to undermine other aims of the sentence, including rehabilitation. From the perspective of the prisoner they may signal that others' interests (not their own) are the 'real' aim of the sentence. This may be justifiable on punitive grounds, but it undermines effective rehabilitation, as well as potentially prolonging imprisonment (with its burdens on the public purse) beyond the point where it is necessary. Public protection measures also reinforce the message that punishment can *only* be exclusionary (see paragraphs 15-16 above). This makes the promise of rehabilitation seem false or partial, prioritising the near-elimination of risk at the cost of concrete harms to the prisoner and their family.

96 The fact that so many long-sentenced prisoners remain in prison after their tariffs (or are recalled) does suggest that a different approach towards rehabilitation may be needed in some cases where the prisoner's motivation has collapsed. There are now nearly 3,200 people in prison serving a life or IPP sentence who are being held beyond their tariff.³¹ This risks the length of the sentence served becoming far in excess of the original tariff in more cases. It also risks a misuse of the power to hold people in prison post-tariff to cover for shortcomings and failures in rehabilitative work. The inherent power imbalance makes it easy for slow or non-progression to be attributed to a 'risky' individual (and sanctioned). It is less common to acknowledge that sentencing policies and resourcing decisions delineate the parameters within which these failures occur. Persistent exclusion and hopelessness can become a distorted justification for not living up to moral responsibilities.

^{xxv} The high rate of 'false positives' in violence risk assessment (described above) means that this is inherently likely to be overstated.

^{xxvi} The simple fact that age is one of the most significant risk factors

Who is excluded from 'public protection'?

97 Third, long-term imprisonment can undeniably protect the public by incapacitating the person convicted and keeping them away from those they might go on to harm again. But this statement relies on other assumptions which need to be made clear. First, that the prisoner is truly 'dangerous'.^{xxv} Second, that their dangerousness does not change during the sentence, such that their imprisonment is no longer justifiable or necessary.^{xxvi} Third, that the harms caused by imprisonment itself (to prisoners, their dependents and prison staff) do not 'count', as though those parties are not part of 'the public' requiring protection. There is plentiful evidence that imprisonment itself harms communities over the long term, and that longer and longer sentences (whether aiming for public protection or punishment) merely commit resources to maintaining a long-term prison population. All of this highlights how 'public protection' in its current form trades off different needs, rights and interests. This can obstruct the achievement of other aims of the sentence (such as achieving a fuller form of rehabilitation, or achieving more satisfactory outcomes for victims).

Public protection and uncertainty

98 Fourth, and relatedly, risk assessment is imprecise. Reasonably accurate actuarial estimates can be made of the probability that members of a group of individuals possessing specified characteristics will be convicted of a further offence within a given timeframe. But the risk that *any given individual* within this group will do so cannot be accurately stated, and attempts to do so involve an unavoidably high rate of 'false positives'.³²

99 Risk assessments do not *only* use actuarial methods, but also compare the known behaviour of a given person against their identified risk factors, with practitioners then making a structured professional judgement as to the risk that they might seriously harm others in future. But the methods here still involve a high probability of false positives (because the risk factors are derived from the actuarial methods). There are therefore strong incentives for those who carry professional accountability for managing risk to be extremely cautious in risk assessment – because despite the large number of false positives, the risk of the person going on to cause further harm would have dire professional consequences for them.

100 This has the desirable consequence that serious further offences among those released by the Parole Board are very low – at around 1% of all prisoners previously released or progressed to open conditions by the Board.³³ Proven reoffending rates among long-

for reoffending (ie that most people become less likely to offend simply by growing older) demonstrates the problems with taking this point for granted.

sentenced prisoners generally are also low.³⁴ But subjective interpretations by professionals of prisoners' behaviour remain unavoidable in risk assessment, even though structured professional judgement is consistently less accurate in its predictions than actuarial methods.³⁵ Risk can be read into a wide variety of conduct, including displays of frustration or defiance, which might alternatively be seen as understandable emotional reactions to decisions which affect a prisoner's life.

Protecting the public from imprisonment itself

101 Public protection does not always require the use of imprisonment. It can be secured by effective probation work, stable housing, contact with family, employment, and so on. Victims have a right to expect that risk should be taken seriously, but not that its management must involve prison or the prolonged punishment of prisoners too confused about their progression to navigate their sentence plans.

The making of reparation by offenders to persons affected by their offences

Do long prison sentences enable serious offenders to make reparation?

102 Long prison sentences address the reparation of harms haphazardly and unsystematically in theory, but in practice hardly at all. Some of the evidence we received in written submissions and from prisoners themselves suggested strongly that many prisoners reflect deeply on their offences and undertake practices that they themselves understand to be ways to make amends; but they themselves are the objects of these efforts, and victims have no say in shaping their objectives.

103 Sentences which aim for 'reparation' are generally imposed for much less serious offences and draw on a range of varied approaches known generically as 'restorative justice'.

104 We heard mixed evidence about the availability of restorative justice to those harmed by serious violence, but it was clear that there are no systematic arrangements to offer it to those who want it, and clear also that there are many institutional barriers in serious cases.³⁶ Restorative approaches are currently mostly employed outside prisons and outside the formal criminal justice process, as a diversionary response implemented by the police, and usually aiming to prevent low-level offending (especially by children and young people) from escalating to more formal criminal justice processes, with all the risks for the offender that this involves.

105 A written submission from the Criminal Justice Alliance described several barriers to restorative justice being available to more long-term prisoners and/or their victims. First, that there is a 'postcode lottery' of uneven provision and no national strategy, with access depending largely on whether individual prisons buy into

the idea and make referrals to restorative justice services. Second, restorative justice is funded under victims' services budgets, which are held by Police and Crime Commissioners (PCCs). This can obstruct restorative justice processes initiated by an offender (offender-initiated restorative justice may not always be appropriate or safe. However, according to the Criminal Justice Alliance this is often decided in some areas by blanket exclusions, rather than through the assessment of individual cases). Third, there was a lack of awareness among prisoners and professionals about restorative justice as an option, and although some prisons had nominated teams or staff members responsible for restorative justice, the scope of their work was limited by the budgeting issues described above, with some PCCs reluctant or unwilling to fund requests initiated in prison. Fourth, there was a lack of awareness among victims that this was an option for them, even though the Victims Code entitles victims to receive information about restorative justice and to request a conference if they wish. Only 4.8% of victims in 2018/19 recalled being offered information about the opportunity to meet the person who caused them harm, suggesting that they had not received this entitlement.³⁷ Finally, there are a range of communications issues, with most parties unclear on how to request restorative justice if they wanted it. In general, therefore, the availability of restorative justice to those affected by very serious crime is very patchy, even though victims are entitled to receive information and to request information on its provision.³⁸

The use of restorative approaches in prisons

106 However, restorative approaches are not entirely alien in prisons. Some prisons use restorative justice to respond to conflicts and harms occurring within the establishment, and approaches of this kind have been advocated for some years as a less formal, more culturally constructive response to such conflicts.³⁹ Some prisons have recently been accredited as 'restorative prisons'.⁴⁰ Again, however, the emphasis is on using restorative justice as a discretionary substitute as an alternative to more formal procedures. Prisons do not generally use it to improve the qualitative experiences of the justice process by the various parties to a very serious offence.

Moral reflection by long-sentenced prisoners

107 There is substantial evidence, including that heard by the Commission, that many prisoners convicted of a serious offence undertake substantial moral reflection concerning their offence and the obligations it generates for them.⁴¹ This appears particularly likely where the offence involved direct responsibility for actual harms to identifiable victims (as opposed to offences in which the crime was to prepare or attempt an offence, or where feelings of legal and moral responsibility were unaligned). Most reflections of this kind during the sentence occur in private, often centring on missed opportunities to communicate with victims and/or their families at an earlier stage:

“I was sitting with my barrister and solicitor in a little room before I was brought up to be sentenced, and someone [brought] a letter for me from [the family of the person I killed] [...] they asked me if I had anything to say. And I had no words. And they left. And I’ve kind of always thought, I didn’t even say sorry. I didn’t know what to say. I didn’t feel saying sorry was anywhere close to enough. And ever since then I’ve thought that the only contact I’ve ever had with them was me saying nothing. So how must they feel, when the guy went back and said I gave him the letter and he didn’t say anything? So that, I regret.”

108 Prisoners’ reflections therefore seldom feature direct input from those actually impacted by the offence, even though in some cases there is a clear appetite for communication of this kind. The following description of the role of victims in prisons, from a written submission to the Commission,⁴² appears apt: ‘Victims [are] physically absent from the prison but are nevertheless used as a rhetorical device by prison staff. ... Prison officers sometimes used victims to justify punitive behaviour and attitudes (“what would the victims think if they knew?”). Victims were present as an idea in treatment interventions, but they were used instrumentally and (presumably) without their consent or knowledge.”

How does a formal finding of guilt constrain the scope for restorative justice in a serious offence?

109 A formal finding of guilt by a Crown Court does constrain the restorative justice process in a serious offence, not simply because all parties involved must first consent. Restorative justice follows ‘many routes that cannot easily be separated [and which] emerged as a ‘movement espoused by [...] activists, academics, non-governmental organisations and policy entrepreneurs’.⁴³ These different approaches nonetheless have several features in common:

- i** They are interpersonal, in that they conceive of crime as the violation of one person by another, rather than as a violation of the law and the state’s authority
- ii** They focus at least as much on problem-solving, liabilities and obligations, as on blame, guilt, and punishment
- iii** They tend to foster dialogue and negotiation between offenders and victims,^{xxvii} rather than formal, prescribed, adversarial due process
- iv** They emphasise a victim’s wishes and an offender’s obligations, rather than relying on the state to dispense punishment in a victim’s name regardless of their actual wishes
- v** They emphasise the removal of stigma through repentance and restorative action, rather than the renewal of stigma through exclusionary punishment.

110 Not all of these features are compatible with some of the wider aims of sentencing. An emphasis on negotiation and problem-solving, for example, may be inappropriate where there has been a formal finding of guilt. If any crimes warrant blame and a response from the state, it follows that the most serious crimes should be blamed unequivocally and receive the strongest responses.

111 Although many things which are criminalised are not universally agreed to be wrong, some norms of interpersonal behaviour, particularly those relating to the violation of other people’s bodily integrity or right to life, are subject to wide enough (perhaps near-universal) agreement that they are unacceptable in nearly all circumstances, with very few strictly delineated exceptions. Criminalising and censuring such violations defines moral boundaries. In effect, a formal finding of guilt and a punishment communicates the message that the offender’s views about the circumstances of the offence are *irrelevant*, however closely they might resemble a genuine justification. Criminalising an act means that in the eyes of the law, if the offender believed their actions to have been necessary or justified, then they were wrong: they ought to change their view.

112 Given this context, restorative justice cannot disrupt the requirement for punishment to unambiguously censure serious crimes. Participation in a restorative justice process by those convicted of violence, for example, may need to involve not simply an admission that they ‘did it’ (guilt), but moreover a recognition that ‘it’ was a harmful course of action which the offender chose to take, which the victim did nothing to precipitate (responsibility), because of which the offender is now obligated to undertake some sort of reparative action (accountability), including taking the censure seriously and serving a symbolic punishment. This sets a high standard of moral accountability, but anything less would undermine the censure of serious wrongs and harms.⁴⁴ It is worth noting all the same that the criminalisation and punishment of offences which are not universally or widely seen to be wrong also discredits the institution of punishment itself.

Restorative approaches and effective moral communication

113 To be *effective*, retributive punishment needs to effectively communicate censure *and* hold out a credible opportunity for the censured person to change. Ever-increasing retributive penalties are extremely ill-suited to doing this, since they respond to the offender *not* as a responsible moral agent, but as a dangerous other who deserves to suffer, and who can only redress their wrongs by suffering.

^{xxvii} Not all restorative justice-based approaches bring together an offender and their specific victims; some seek to foster dialogue

between offenders and victims of crimes similar to their own.

114 Seen in this light, there may be some potential for the greater use of restorative justice to make the punishment of serious crimes more *effective* (though not necessarily *more severe*). For restorative approaches to *replace* retributive punishment would be an extremely radical move, unlikely to attract broad public support. Restorative justice on its own is also unlikely to fulfil the censuring aims of punishment – the need to declare that the offence was wrong and that the offender ought to suffer consequences for their part in it. It would be unacceptable if restorative justice were to result in victims having to endure public attempts by offenders to cast doubt on their culpability, or to blame their victims. However, with certain boundaries and caveats in place to define the scope and the limits of a restorative approach, there is much to recommend an increased place for restorative approaches in sentencing serious crimes.

¹ Kelly, E. I. (2021). From Retributive to Restorative Justice. *Criminal Law and Philosophy*. <https://doi.org/10/gjzf8v>; Porro, C. (2021). Criminal Blame, Exclusion and Moral Dialogue. *Criminal Law and Philosophy*. <https://doi.org/10/gh4knz>

² Hudson, B. (2002). Restorative Justice and Gendered Violence: Diversion or Effective Justice? *British Journal of Criminology*, 42(3), 616–634, <https://doi.org/10/cxbtnp>

³ Ministry of Justice. (2021). *Criminal justice system statistics quarterly: June 2021*, <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-june-2021>

⁴ van Zyl Smit, D. & Appleton, C. (2019). *Life Imprisonment: A Global Human Rights Analysis*. Harvard University Press.

⁵ See Wells, C. (2000). Provocation: The Case for Abolition. In A. Ashworth & B. Mitchell (Eds.) *Rethinking English Homicide Law*. Oxford University Press; Williamson, A. (2019). Gender and the Law of Provocation in the Long Twentieth Century. *Women's History Review*. <https://doi.org/10/ggsrpg>; Lacey, N. (2000). Partial Defences to Homicide: Questions of Power and Principle in Imperfect and Less Imperfect Worlds... In A. Ashworth & B. Mitchell (Eds.) *Rethinking English Homicide Law*. Oxford University Press.

⁶ Hudson, B. (2002). Restorative Justice and Gendered Violence: Diversion or Effective Justice? *British Journal of Criminology*, 42(3), 616–634, <https://doi.org/10/cxbtnp>

⁷ Sered, D. (2019). *Until We Reckon: Violence, Mass Incarceration, and a Road to Repair*. The New Press, 2019.

⁸ Most notably, Sherman, L. W., Schmidt, J. D., Rogan, D. P. & Smith, D. A. (1992). The Variable Effects of Arrest on Criminal Careers: The Milwaukee Domestic Violence Experiment. *The Journal of Criminal Law and Criminology Volume*, 83(1), 137–169. <https://doi.org/10/ct2dsj>; Sherman, L. W., Smith, D. A., Schmidt, J. D., & Rogan, D. P. (1992). Crime, punishment, and stake in conformity: Legal and informal control of domestic violence. *American Sociological Review*, 57(5), 680–690. <https://doi.org/10.2307/2095921>

⁹ Sherman, L. W. (1993). Defiance, deterrence, and irrelevance: A theory of the criminal sanction. *Journal of Research in Crime and Delinquency*, 30(4), 445–473. <https://doi.org/10.1177/0022427893030004006>

¹⁰ Sherman, L. W., & Harris, H. M. (2015). Increased death rates of domestic violence victims from arresting vs. warning suspects in the Milwaukee Domestic Violence Experiment (MilDVE). *Journal of Experimental Criminology*, 11(1), 1–20. <https://doi.org/10.1007/s11292-014-9203-x>

¹¹ For example, Drago, F., Galbiati, R., & Vertova, P. (2009). The Deterrent Effects of Prison: Evidence from a Natural Experiment. *Journal of Political Economy*, 117(2), 257–280. <https://doi.org/10.1086/599286>

¹² Nagin, D. S. (2013). Deterrence in the Twenty-First Century. *Crime and Justice*, 42(1), 199–263. <https://doi.org/10.1086/670398>

¹³ Bülow, W. (2014). The Harms Beyond Imprisonment: Do We Have Special Moral Obligations Towards the Families and Children of Prisoners? *Ethical Theory and Moral Practice*, 17(4), 775. <https://doi.org/10/f23msb>

¹⁴ For example, Minson, S. (2019). Direct Harms and Social Consequences: An Analysis of the Impact of Maternal Imprisonment on Dependent Children in England and Wales. *Criminology & Criminal Justice*, 19(5), 519–36. <https://doi.org/10/ggfv3>; Hagan, J. & Dinovitzer, R. (1999). Collateral Consequences of Imprisonment for Children, Communities, and Prisoners. *Crime and Justice*, 26(1999), 121–62. <https://doi.org/10/b82g5h>; Behan, C. (2020). No Longer a “Collateral Consequence”: Imprisonment and the Reframing of Citizenship. *European Journal of Criminology*. <https://doi.org/10/ghfkd4>

¹⁵ See, for example, Cullen, F. T., Jonson, C. L., & Nagin, D. S. (2011). Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science. *The Prison Journal*, 91(3_suppl), 48S–65S. <https://doi.org/10.1177/0032885511415224>; Nagin, D. S., Cullen, F. T., & Jonson, C. L. (2009). Imprisonment and Reoffending. *Crime and Justice*, 38(1), 115–200. <https://doi.org/10.1086/599202>; Cid, J. (2009). Is Imprisonment Criminogenic?: A Comparative Study of Recidivism Rates between Prison and Suspended Prison Sanctions. *European Journal of Criminology*, 6(6), 459–480. <https://doi.org/10.1177/1477370809341128>; Aarten, P. G. M., Denkers, A., Borgers, M. J., & van der Laan, P. H. (2014). Suspending re-offending? Comparing the effects of suspended prison sentences and short-term imprisonment on recidivism in the Netherlands. *European Journal of Criminology*, 11(6), 702–722. <https://doi.org/10.1177/1477370814523402>; Gaes, G. G., & Camp, S. D. (2009) Unintended consequences: experimental evidence for the criminogenic effect of prison security level placement on post-release recidivism. *Journal of Experimental Criminology*, 5, 139–162. <https://doi.org/10.1007/s11292-009-9070-z>; Auty, K. M. and Liebling, A. (2019). Exploring the Relationship between Prison Social Climate and Reoffending. *Justice Quarterly*, 37(2), 358–381. <https://doi.org/10/gfthxd>

¹⁶ McNeill, F. (2012). Four Forms of “Offender” Rehabilitation: Towards an Interdisciplinary Perspective. *Legal and Criminological Psychology*, 17(1), 18–36. <https://doi.org/10/fwxqgc>

¹⁷ Bonta, J. & Andrews, D. A. (2017). *The Psychology of Criminal Conduct* (6th edition). Taylor & Francis.

¹⁸ For example, Sampson, R. J. & Laub, J. H. (1993). *Crime in the Making: Pathways and Turning Points through Life*. Harvard University Press; Laub, J. H. & Sampson, R. J. (2003). *Shared Beginnings, Divergent Lives: Delinquent Boys to Age 70*. Harvard University Press; Moffitt, T. E. (1993). Adolescence-Limited and Life-Course-Persistent Antisocial Behavior: A Developmental Taxonomy. *Psychological Review*, 100(4), 674–701.

- <https://doi.org/10.1037/0033-295X.100.4.674> ; Farrington, D. P., Coid, J. W., Harnett, L. M., Jolliffe, D., Soteriou, N., Turner, R. E. & West, D. J. (2006). *Criminal Careers up to Age 50 and Life Success up to Age 48: New Findings from the Cambridge Study in Delinquent Development*.
- ¹⁹ Maruna, S. (2010). *Understanding Desistance from Crime*. Ministry of Justice. <http://www.safeground.org.uk/wp-content/uploads/Desistance-Fact-Sheet.pdf>; for a recent overview of relevant research, see Bersani, B. E. & Doherty, E. E. (2018). Desistance from Offending in the Twenty-First Century. *Annual Review of Criminology*, 1(1), 311–334. <https://doi.org/10/gfv855>
- ²⁰ Raab, D. (2021, 14 October). Technology is making our prisons safer. *The Daily Telegraph*.
- ²¹ Lexico. Definition: Rehabilitation. Accessed 15 December 2021: <https://www.lexico.com/definition/rehabilitate>
- ²² McNeill, F. (2012). Four Forms of “Offender” Rehabilitation: Towards an Interdisciplinary Perspective. *Legal and Criminological Psychology*, 17(1), 18–36. <https://doi.org/10/fxwqgc>
- ²³ Carlen, P. (2012, 6 November). *22nd Eve Saville Memorial Lecture: Against Rehabilitation: For Reparative Justice*. Centre for Crime and Justice Studies. <https://www.crimeandjustice.org.uk/resources/against-rehabilitation-reparative-justice>
- ²⁴ Table C2a. Ministry of Justice. (2021). *Proven Reoffending Statistics: July to September 2019*. <https://www.gov.uk/government/statistics/proven-reoffending-statistics-july-to-september-2019/proven-reoffending-statistics-july-to-september-2019>
- ²⁵ For example, Maruna, S. & Mann, R.E. (2006). A fundamental attribution error? Rethinking cognitive distortions. *Legal and Criminological Psychology*, 11, 155–177. <https://doi.org/10.1348/135532506X114608>
- ²⁶ For one recent example of both issues, see Campbell, L. (2020, 5 February). Helen McCourt Killer's Release Confirmed as Mother Loses Legal Bid. *The Guardian* (online edition). <http://www.theguardian.com/uk-news/2020/feb/05/helen-mccourt-killer-ian-simms-prison-release-confirmed-as-mother-loses-legal-bid>
- ²⁷ See Dandawate, A., Kalebic, N., Padfield, N., Craissati, J. & Taylor, P. (2019). Remorse in psychotic violent offenders: An overvalued idea? *Behavioral Sciences and the Law*, 37, 579– 588. <https://doi.org/10.1002/bsl.2428> The lack of evidence for a link need not prevent partial or total expressions of accountability being made by offenders in more private contexts, such as in restorative justice conferences if these are adequately protected by confidentiality agreements.
- ²⁸ Written evidence by UNGRIPP.
- ²⁹ Written evidence by Ben Jarman.
- ³⁰ Written evidence by UNGRIPP.
- ³¹ 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>
- ³² See, for example, Prins, S. J. & Reich, A. (2021). Criminogenic Risk Assessment: A Meta-Review and Critical Analysis. *Punishment & Society*. <https://doi.org/10/gmcpjt> ; Prins, S. J., & Reich, A. (2018). Can we avoid reductionism in risk reduction?. *Theoretical criminology*, 22(2), 258–278. <https://doi.org/10.1177/1362480617707948> ; Silva E. (2020). The HCR-20 and violence risk assessment - will a peak of inflated expectations turn to a trough of disillusionment?. *BJPsych bulletin*, 44(6), 269–271. <https://doi.org/10.1192/bjb.2020.14> ; Judges, R., Egan, V. & Broad, G. (2016). A Critique of the Historical Clinical Risk-20, Version 3, Risk Assessment Instrument. *Journal of Forensic Psychology Practice*, 16(4), 304–20, <https://doi.org/10/gjm5fj> ; Eckhouse, L., Lum, K., Conti-Cook, C., & Ciccolini, J. (2018). Layers of Bias: A Unified Approach for Understanding Problems With Risk Assessment. *Criminal Justice and Behavior*, 46(1). https://www.researchgate.net/publication/329154361_Layers_of_Bias_as_A_Unified_Approach_for_Understanding_Problems_With_Risk_Assessment
- ³³ Written evidence by the Parole Board.
- ³⁴ Ministry of Justice. (2021). *Proven Reoffending Statistics: July to September 2019*. <https://www.gov.uk/government/statistics/proven-reoffending-statistics-july-to-september-2019/proven-reoffending-statistics-july-to-september-2019>
- ³⁵ See, for example, Garrington, C. & Boer, D. P. (2020). Structured Professional Judgement in Violence Risk Assessment. In Wormith, J. S., Craig, L. A. & Hogue, T. E. (Eds.) *The Wiley Handbook of What Works in Violence Risk Management*, 145–162. <https://doi.org/10.1002/9781119315933.ch7> ; Hanson, R. K., & Morton-Bourgon, K. E. (2009). The accuracy of recidivism risk assessments for sexual offenders: a meta-analysis of 118 prediction studies. *Psychological assessment*, 21(1), 1–21. <https://doi.apa.org/doiLanding?doi=10.1037%2Fa0014421>
- ³⁶ Written evidence by Criminal Justice Alliance.
- ³⁷ Ibid.
- ³⁸ Ibid.
- ³⁹ Edgar, K. & Newell, T. (2006). *Restorative Justice in Prisons a Guide to Making It Happen*. Waterside.
- ⁴⁰ Walker, T. (2018). The Restorative Prison. *Inside Time* (online edition). <https://insidetime.org/the-restorative-prison>
- ⁴¹ See, for example, Schinkel, M. (2014). Punishment as moral communication: The experiences of long-term prisoners. *Punishment & Society*, 16(5), 578–597. <https://doi.org/10.1177/1462474514548789> ; Crewe, B., Hulley, S., & Wright, S. (2020). *Life Imprisonment from Young Adulthood: Adaptation, Identity, Time*. Palgrave Macmillan; Herbert, S. K. (2019). *Too Easy to Keep: Life-Sentenced Prisoners and the Future of Mass Incarceration*. University of California Press; Kazemian, L. (2019). *Positive Growth and Redemption in Prison: Finding Light Behind Bars and Beyond*. Routledge. <https://doi.org/10.4324/9780429458149>
- ⁴² Written evidence by Dr Alice Ievins.
- ⁴³ McLaughlin, E., Fergusson, R., Hughes, G. & Westermarland, L. (2003). Introduction: Theorizing Restorative Justice. In *Restorative Justice: Critical Issues*. SAGE.
- ⁴⁴ Hudson, B. (2002). Restorative Justice and Gendered Violence: Diversion or Effective Justice? *British Journal of Criminology*, 42(3), 616–634, <https://doi.org/10/cxbtnp>

Chapter 5: Recommendations

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.

Other recommendations

A national debate on how the most serious crime is punished, underpinned by these three specific proposals, is the principal recommendation of the Commission. In addition, based on its findings and deliberations, the Commission makes the following recommendations for improving the ways in which long sentences are administered for victims and prisoners:

Recommendation 2: Better communication with, and information for, victims of serious crime

Individual approaches designed to meet individual needs must be a priority for supporting victims of serious crime. This requires victims to be asked and their responses listened to, not decisions being made on their behalf with no consultation.

i A preferred approach would be to find out what victims want regarding regularity and style of communication and to apply that in each individual case, tailoring the approach to what works best for the individual involved.

ii Victims should be told about the Victim Personal Statement (VPS) at the earliest appropriate opportunity, have the option of how they wish to write and deliver their statement, and have the VPS' impact and weight within the trial clearly outlined. Clear, accurate and timely information about the VPS will enable victims to have a better understanding of the purpose of the VPS and to make an informed choice, whilst managing expectations.

iii A written report outlining what the sentence means and a clear timeline highlighting key stages of the sentence should be made available to victims and their families.

iv As part of assisting victims in understanding the sentence, it is important that they are not misled into believing they have a greater role in determining the course of a sentence than is possible. In particular, recent changes to the parole process have left some victims and their families believing they have a greater role in determining the decision on progress and release when in fact the Parole Board is bound in statute to base its decision on the assessment of risk alone. Honesty in sentencing requires a clear explanation of what the process does not include, as

well as what it does, and any material made available to victims, whether in ministerial statements or day to day communications with individuals, should meet that standard.

Recommendation 3: An entitlement for victims to have a summary of the prisoner's sentence plan and progress in the sentence

In the evidence we have received it has become apparent that what happens after the point of sentencing is largely a mystery to both victims and the public. We have concluded that this represents a disservice to both. It means that the length of any given sentence bears too much of the weight of expectation about how the statutory purposes of sentencing will be met. For both victims and those serving these sentences, the manner in which they are served should play a more significant role in meeting those statutory purposes.

It is entirely understandable that some and perhaps many victims would want to understand what activity a prisoner is undertaking to address their offending behaviour and the progress they are making in their sentence. Under the current system, however, there is little opportunity for them to be informed, should they wish to be, about what happens in prison. We believe there are lessons to be learnt from the Parole Board, which has recently taken an important step to improving the openness and transparency of its decision making by publishing summary decisions. These summary decisions can be made available to interested parties and provide a succinct explanation of how a panel reached its decision to release or not release a prisoner.

Similarly, victims could be given an entitlement to request a summary of the prisoner's sentence plan one year after sentencing, and an entitlement to request a summary of progress at the mid-point of the custodial term or tariff. Such a summary would need to take account of safeguarding and privacy concerns, particularly relating to the disclosure of private information about the prisoner or information that could put the safety of individuals at risk. Nonetheless, the experience of the Parole Board in publishing its summary decisions suggests that such an entitlement may be possible and worth investigating further.

Recommendation 4: Better enforcement of existing victim entitlements

Victims have a number of entitlements under the Victims' Code. The code has recently been revised in order to simplify it and improve the support available to some victims. The government has announced its intention to introduce a new victims law to enshrine these entitlements under the Code in statute. Despite these developments, it was clear from the testimony the Commission received from victims that too often they were unable to claim their entitlements under the Code.

Sometimes this was a result of a failure of criminal justice agencies to properly communicate these entitlements. Sometimes it was a consequence of an unnecessarily complex process for accessing entitlements or a failure of agencies to communicate and coordinate with each other. We welcome the intention of the government to place victims' entitlements under the Code on a statutory basis, but the resourcing and oversight of how the Code is implemented are what will make any difference for victims in the future.

Recommendation 5: Better access to restorative justice for victims and prisoners

The Commission has seen that restorative justice can be helpful to victims and their families. However, few of the prisoners the Commission spoke to had had the opportunity to participate in a restorative justice programme and much of the evidence the Commission received suggested that the provision of restorative justice was patchy and under-resourced. We believe that restorative justice approaches, properly defined and designed, ought to be more prominent in the delivery of the sentence. They can promote victim participation and satisfaction, while signalling to long-sentenced prisoners that their harmful past conduct generates corresponding moral obligations.

Recommendation 6: Improve the content of long sentences

The Commission believes that more could be done to improve the content of long sentences, including through better provision of education and other forms of purposeful activity. These activities are necessary to restore a sense of hope and purpose, which desistance research shows is vital to reducing the risk of reoffending and serious harm. Many of the prisoners the Commission spoke to expressed concern about the lack of opportunities available to them for personal progression. Education was one issue on which the Commission received a number of responses. Learning Together said that current standards of education in prisons are inadequate and recommended that educational opportunities should be offered to prisoners beyond a level two qualification. This would provide "further opportunities upon release, as well as improving prisoners' wellbeing and self-esteem in custody".¹ The Commission agrees with Learning Together that more attention should be given to ensuring effective education provision for long-sentenced prisoners, including by increasing the availability of higher-level qualifications and improving coordination between establishments to aid continuous and progressive learning. Specifically, reforms should be made to ensure that prisoners can gain financial assistance to enable them to participate in further and higher education at any stage in the sentence. In addition, greater effort should be made to ensure a full range of purposeful activities are available

to this group, including vocational learning and opportunities in sport, music and the arts.

Recommendation 7: Greater external scrutiny of arrangements for sentence progression

The Commission believes that much greater external scrutiny is needed of the arrangements which exist to enable prisoners to progress during their sentences. The stated purpose of the offender management in custody (OMiC) policy is that: "Every prisoner should have the opportunity to transform their lives by using their time in custody constructively to reduce their risk of harm and reoffending; to plan their resettlement; and to improve their prospects of becoming a safe, law-abiding and valuable member of society."² However, many of the prisoners the Commission spoke to expressed concern that their sentences offered too few opportunities to prepare for the future after custody, but instead held them in stagnant, non-progressive conditions. One prisoner expressed a commonly held view that: "The system is damaged beyond repair and is unfit for purpose. There is no such thing as rehabilitation, we are just warehoused with no organisation whatsoever."

Effective arrangements for sentence progression are particularly important for people serving indeterminate and extended sentences, whose release depends upon them being able to satisfy the Parole Board that they no longer pose such a risk that their imprisonment must continue. For them, it is all the more important that HM Prison and Probation Service (HMPPS) does everything it can to enable them to progress in their sentences ahead of their first parole hearing, so they are not detained any longer than is necessary beyond their tariff expiry date (or eligibility date for first parole hearing in the case of extended sentenced prisoners). Fundamentally, and especially given the recent history of sentence inflation outlined in Chapter 1, there should be an expectation that HMPPS will not prevent prisoners achieving safe release by the Parole Board on the expiry of their tariff (or at the first opportunity in an extended sentence).

One option for promoting better scrutiny would be for the Ministry of Justice to collect, collate and publish more data facilitating more effective scrutiny of sentence progression. Currently, the available data is patchy and facilitates only a fragmentary glimpse of progression through the system, as well as whether and how problems develop. This can leave HMPPS open to challenges over the legitimacy of progression arrangements, as recent political controversies over the availability of offending behaviour course places to people serving the abolished IPP sentence demonstrate. The precise means by which progression could be better monitored (and the distribution of responsibilities for doing so) should be subject to wider

discussion by statutory and independent organisations working in this field, but we would suggest the following as a starting point:

- i the proportion of prisoners subject to parole-authorised release who are released at the first, second, third and subsequent times of asking
- ii the waiting times experienced by prisoners who are assessed as suitable for offending behaviour interventions but then cannot begin them immediately
- iii the timeliness and regularity of Offender Risk System (OASys) assessments and sentence plans, and the quality of the progression objectives they contain
- iv the proportion of prisoners who have new objectives added to their sentence plans after their parole eligibility date, or between then and the pre-tariff sift (for those subject to one)
- v the availability of offending behaviour interventions in prisons of different types and in different locations
- vi the timeliness of reports, assessments, and other documents which play an important role in progression decisions.

Where possible and appropriate, these figures should be broken down by sentence type, gender and age, but also by the prisoner's assessed level of risk, to facilitate scrutiny.

Another possible option for reform would be to promote greater Parole Board oversight of sentence progression for extended and indeterminate-sentenced prisoners. This could help to contribute to greater scrutiny of arrangements for sentence progression and help ensure that prisoners are being given sufficient opportunities to reduce their risk ahead of their first parole hearing. In England and Wales, there are only limited opportunities for the Parole Board to oversee sentence progression ahead of the parole eligibility date. Most prisoners serving an indeterminate sentence with a tariff of over three years are entitled to a pre-tariff sift three years before they become eligible to be considered for parole. The sift is conducted by the Public Protection Casework Section of HMPPS. The purpose of the sift is to decide whether prisoners have made sufficient progress in their sentence to be put forward to the Parole Board for a pre-tariff review. The purpose of the review is to decide whether a prisoner should be transferred to open conditions ahead of their tariff expiry date. However, only a minority of prisoners are put forward for a Parole Board review from the sift, meaning that most indeterminate prisoners do not have an opportunity to see the Parole Board until the full length of their tariff has been served.

By contrast, in Northern Ireland, most prisoners serving life sentences are referred to the Parole Commissioners (the equivalent of the Parole Board) for a pre-tariff review three years before the tariff expiry date.³ Prisoners serving indeterminate custodial sentences (ICS)ⁱ can also be referred to the Parole Commissioners at an appropriate point in the sentence depending on the length of the tariff set. The purpose of the review is to enable the Parole Commissioners to monitor progress and provide the prisoner with a clear indication of what areas of work they will need to complete before they can be considered for release. It should be noted that Northern Ireland is a much smaller jurisdiction than England and Wales with far fewer prisoners subject to parole authorised release. Introducing a similar process of pre-tariff review in England and Wales would have significant resource implications for the work of the Parole Board and may have unintended consequences which are not readily apparent. Therefore, we would recommend careful piloting and testing of any such arrangements before they are rolled out on a national basis.

It may also be worth exploring the idea of introducing a new power for the Chief Inspector of Prisons to issue a formal notification to the Justice Secretary if they have concerns about the availability and quality of opportunities for sentence progression in a particular prison. We would also encourage greater scrutiny of arrangements for sentence progression by monitoring and scrutiny bodies such as HM Inspectorate of Prisons, Independent Monitoring Boards and the Parliamentary Justice Committee. Currently, for example, the Inspectorate covers progression through occasional thematic reviews, and by taking a 'snapshot' of offender management processes at individual establishments. These snapshots could become more detailed (for example by making it routine to ask prisoners about the quality and quantity of their interactions with offender management staff, or by adopting a more longitudinal perspective on offender management processes, so that the sentence trajectories of different groups was the issue under investigation). In addition, HMPPS should develop key performance indicators for sentence progression and use these in prisons holding substantial numbers of long sentenced prisoners.

Recommendation 8: Improve the efficiency and effectiveness of the parole system

The Commission would support the introduction of reforms to improve the efficiency and effectiveness of the parole system, to ensure that individuals whose release is determined by the Parole Board are not

ⁱ The indeterminate custodial sentence (ICS) can be used for the most serious sexual and violent offences, those which carry a penalty of 10 years or more, and means that the prisoner can,

potentially, be imprisoned for life. It is similar in design to the IPP sentence.

subject to unnecessary delays in the consideration of their cases. Few of the responses sent to the Commission by serving prisoners were from people with direct personal experience of the parole system. Expectations among this group were low, with very little optimism about opportunities for parole. There was a widespread perception that the parole system was subject to long waits, frequent delays, and significant uncertainty.

We are grateful to the Parole Board for its positive engagement with our work and the quality of the evidence it submitted. The government's recent tailored review of the Parole Board highlighted its strong track record in public protection, and its positive response to legal challenges and increasing demand. These points were echoed in the Board's own evidence to the Commission. Nonetheless, the tailored review identified several issues which continue to impact Parole Board performance, and which prevent the wider system from being more efficient. Echoing the evidence the Commission received from prisoners, the review highlighted that "the level of delay within the parole process remains stubbornly high and consequently many cases which require a full oral hearing are not heard in a reasonable time or resolved first time. This leads to delays to offender progression, pressure on prison places, additional work for report writers and causes wasted costs in terms of duplicated work."⁴

The review noted that "the Parole Board is dependent on the effectiveness and efficiency of other parts of the parole system to deliver its objectives, with many of the consequences of these issues often being seen as failings of the Parole Board (even where it does not have the ability to resolve them unilaterally)." It makes a number of recommendations to improve the Parole Board's effectiveness and efficiency, including making sure that the wider parole system operates cohesively, works as a single system and is better held to account for delay and underperformance.

In response to the tailored review, the government established a Root and Branch Review of the Parole System.⁵ The Commission notes that the report of the review has committed to the establishment of a new Parole System Oversight Group and the strengthening of independent third-party scrutiny arrangements. We hope that these proposals will lead to the creation of a more efficient and effective parole process which begins from the day a prisoner starts their sentence.

Recommendation 9: Addressing the injustice faced by IPP prisoners

The Commission has avoided making recommendations for reform relating to specific types of sentences. We believe this would be the appropriate task of a properly

appointed and expert Law Commission review. Nonetheless, the Commission could not ignore the weight of evidence and testimony it received regarding the specific difficulties faced by individuals serving IPP sentences. We share growing concerns across the political spectrum regarding the unfairness of a situation where individuals remain subject to indeterminate detention and supervision under a sentence which Parliament has since seen fit to abolish. It epitomises the way in which sentencing policy has lost its way in this century. We note that the Justice Committee is conducting an inquiry on the IPP sentence. We hope that its recommendations will be given careful consideration by the government.

¹ Written evidence by Learning Together.

² Ministry of Justice and HMPPS. (2018). *Manage the Custodial Sentence: Policy Framework*, para. 1.2. Ministry of Justice. <https://www.gov.uk/government/publications/manage-the-custodial-sentence>

³ Parole Commissioners for Northern Ireland. (2012). *The pre-tariff review process: A step-by-step guide for prisoners serving a Life or Indeterminate Custodial Sentence (ICS)*. https://www.insidetime.org/wp-content/uploads/resources/Info-Prisoners/Parole-Proces_NI-Indet-Cust-Sent.pdf

⁴ Ministry of Justice. (2020). *The Parole Board for England and Wales: Tailored Review*. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/927385/parole-board-tailored-review.pdf

⁵ Ministry of Justice. (2020). *Root and Branch Review of the Parole System: the Future of the Parole System in England and Wales*. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1064480/root-branch-review-parole-system.pdf

The Independent Commission – Members

Bishop James Jones KBE (Chair)

The Right Reverend James Jones KBE was the Bishop of Liverpool between 1998 and 2013 and the Bishop of Hull from 1994 to 1998. Bishop James served as Bishop to Prisons from 2006 to 2013. The Bishop was a member of the House of Lords from 2003 to 2013 speaking on criminal and restorative justice issues, the environment, and urban regeneration.

In 2009, the Bishop was appointed by the Home Secretary to chair the Hillsborough Independent Panel examining all the documentation concerning the death of 96 Liverpool football fans at the 1989 FA Cup Semi-final. The Panel reported in September 2012 and this led to the quashing of the original inquests. He then served as Adviser to the Home Secretary on Hillsborough from 2013-2018. He was knighted in 2017.

Bishop James chaired the Panel appointed to look at what had happened at Gosport War Memorial Hospital whose Report in 2018 led to an ongoing police investigation. He also chaired the Panel which looked at the future of forests in England and whose Report in 2012 was instrumental in safeguarding their future.

This experience has led Bishop James to conclude that Panels can shed a light on policy dilemmas as well as inquire into previously disputed events. Key to their success is bringing together people from diverse and relevant range of professional backgrounds and experience in a shared determination to listen and to reach a collective view.

With this in mind, the following served as Members of the Independent Commission:

Marina Cantacuzino MBE

Marina Cantacuzino is an award-winning journalist who in 2004, in response to the invasion of Iraq, founded The Forgiveness Project, a charity that works with the personal narratives of victims and perpetrators to explore peaceful solutions to conflict. Marina's book *The Forgiveness Project: Stories for a Vengeful Age* was published in the US and UK in 2015, and in 2018 she co-authored the illustrated book *Forgiveness is Really Strange*. She has also contributed several essays to anthologies on the subject of forgiveness and justice.

Dr Bill Kirkup CBE

Bill Kirkup worked as a ward orderly, a doctor specialising in obstetrics and gynaecological oncology and Associate Chief Medical Officer for England. He volunteered to work on public health and reconstruction

as a civilian alongside military operations in Kosovo, Baghdad, Iraq and Afghanistan. Since retiring from public health, he works mainly on independent investigations, including into children's heart surgery in Oxford, Jimmy Savile's involvement at Broadmoor Hospital, Morecambe Bay Maternity Services and Liverpool Community Services. He also served as a member of the Hillsborough Independent Panel and the Gosport War Memorial Hospital Panel, and chaired the investigations into East Kent Maternity Services and the death of Elizabeth Dixon.

Michelle Nelson QC

Michelle Nelson took Silk in 2019. She has a mixed practice in serious crime. As Treasury Counsel she has prosecuted in some of the most serious, difficult and high-profile criminal cases, and advised on and represented the Attorney and Solicitor General in sentence appeals. She has worked internationally, defending in a corruption trial, advising on prosecutions, as well as assisting defendants facing death row and/or sentenced to death in Trinidad, Jamaica and the U.S. Michelle was a member of the Westminster Commission on Miscarriages of Justice in the Inquiry into the Criminal Cases Review Commission which reported in March 2021, a Trustee of the Prison Reform Trust and Chair of Ekaya Housing Association. She is a founding member of SHIFT25 working with the East London Business Alliance to improve access and retention of members of minority groups across professions.

Michael Spurr

Michael Spurr worked in prisons and probation for 36 years. He was Governor at HMYOI Aylesbury, HMP Wayland and HMP/YOI Norwich, and CEO of the National Offender Management Service/HM Prison and Probation Service (2010-2019). He was Vice President of the European Prison Association (2012-2018), Board Member of the International Corrections and Prisons Association (2018-2021), and a Visiting Professor in Practice at the London School of Economics (2019-2021). He is currently Chair at the Butler Trust and at Whitechapel Mission, an organisation providing services to the homeless in East London.

Paul Valley CMG

After three decades of award-winning journalism, from over 30 countries, Paul Valley has worked with government, churches, charities and business on projects to strengthen the common good. He was co-author of the report of the Prime Minister's Commission for Africa and an adviser to the Catholic Bishops Conference of England and Wales, writing their report *A Place of Redemption: A Christian approach to Punishment and Prison*. A founding member of the Board of Corporate

Social Responsibility for Waitrose supermarkets, he has also advised the John Lewis Partnership on human rights in the supply chain. He was Visiting Professor in Public Ethics at the University of Chester from 2013-19 and is now a Senior Research Fellow at the Global Development Institute, University of Manchester. He was made a CMG in 2006.

Secretariat and Specialist Advisers

The Independent Commission has been supported by a Secretariat team comprising Amy Brownrigg, Mark Day, Ann Ridley and Ken Sutton. It has benefited from the advice of four specialist advisers:

Christine Gifford, a recognised expert in the fields of access to information and disclosure; **Ben Jarman**, a University of Cambridge PhD student whose work focuses on experiences of imprisonment and ethical thinking among men serving life sentences for murder; **Dr Jacki Tapley**, Principal Lecturer in Victimology and Criminology at the University of Portsmouth, whose expertise includes the role of victims in the criminal justice system; and **Chris Tully**, a training consultant and mediator with expertise in engaging and listening to the voices of those affected by tragedy, and the co-creator (with INQUEST) of the Family Listening Day model.

The Independent Commission's Terms of Reference and how it conducted its work

When Bishop James was approached to consider chairing the Commission, two points struck him as compelling. The first was the need for what the Bishop has termed its bi-focal remit – namely that the issues surrounding the experience of prisoners should not be considered without also considering the experience of victims and their families. The former Victims' Commissioner had highlighted that victims felt left in the dark when sentences were given. This Commission would look at both the experience of victims (and their families) and prisoners as well as at how society can best be served through sentences for the most serious of crimes.

The second point was the realisation that the methodology adopted in the Bishop's post-Hillsborough Report *The Patronising Disposition of Unaccountable Power* would be applicable. That is to say, combining listening to prisoners and to victims and their families, allowing their own words to express their experience authentically; and then drawing out the relevant points of learning to affect the public debate and the development of public policy.

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. 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.

The outbreak of the Covid-19 pandemic at the start of 2020 and the imposition of public health restrictions in England and Wales meant that the Commission had to revise its planned way of working, with listening sessions conducted by video link rather than face to face.

Listening to victims and their families

Between December 2020 and March 2021 the Commission held four listening sessions with participants who were either themselves victims or their close family members. The listening sessions were organised with the help of three charities: Through Unity, Victim Support, and Why me? The sessions were facilitated by Jacki Tapley and Chris Tully, two of the Commission's specialist advisers. Through these sessions, the Commission was able to hear directly from 11 victims or family members.

Listening to prisoners

In March 2021, two listening sessions were held with long-sentenced prisoners now serving their sentences in the community. These sessions were facilitated by Paula Harriott, the Prison Reform Trust's head of prisoner engagement. The first listening session involved three male prisoners speaking together, while the second was two women prisoners who spoke one after the other.

In May 2021, Bishop James, Paul Vallely and three members of the secretariat visited HMP Wakefield, where they met with four long-term prisoners serving sentences of between 20 and 40 years, and held discussions with the Prison Governor and members of his team.

The Commission launched a written consultation with long-term prisoners in October 2020 via the Prison Reform Trust's Prisoner Policy Network. Submissions were received from 15 currently serving prisoners. The majority of the submissions responded directly to the questions asked, but some used the opportunity to talk more generally about their experiences in prison.

Submissions were received from prisoners residing at 12 different named prisons – two were at the same prison, and the final two did not name the current prison in their letter. The prisons were all adult male prisons in England. One was a Cat A High Security prison, three Cat B, one a

Cat D open prison, and the remaining seven were Cat C. Three prisons were for people convicted of sex offences. Three were private prisons (two run by G4S and one by Serco), with the rest run by HMPPS. It should be noted that these are the prisons that the respondents were in at the time they wrote the submission.

Commission meetings

The Commission held ten meetings between December 2019 and November 2021, in order to hear oral evidence, to deliberate on the evidence it had received and to shape the drafting of the final report. During the course of these meetings, the Commission also heard evidence presented by: Martin Jones – Chief Executive, Parole Board for England and Wales; Dr Jonathan Bild – Director of Operations, Sentencing Academy and Professor Julian Roberts – University of Oxford; Dr Ben Crewe – co-author with Dr Susie Hulley and Dr Serena Wright of ‘Life Imprisonment from Young Adulthood: Adaptation, Identity and Time’; and Christina Straub, covering research from her book ‘Love as human virtue and human need and its role in the lives of long term prisoners’.

Written consultation

As part of its evidence gathering, the Commission also conducted a written consultation aimed at key stakeholders on the issues relating to its Terms of Reference. The consultation ran from October 2020 until January 2021 and responses were received from the following individuals and organisations:

Dr Harry Annison, Associate Professor, Southampton Law School, University of Southampton (focused on his work on families of IPP prisoners)

Ben Jarman, PhD student, Institute of Criminology, University of Cambridge

Dr Alice levins, Research Associate, Institute of Criminology, University of Cambridge

Independent Monitoring Boards (IMBs)

Learning Together Programme, University of Cambridge

The Parole Board for England and Wales

POA – The Professional Trades Union for Prison, Correctional and Secure Psychiatric Workers

The Sentencing Academy

UNGRIPP (United Group for Reform of IPP)

Terms of Reference

1 There is legitimate debate about when prison is the right sentence for those convicted of less serious crimes. But for the most serious of crimes there is broad support for the view that lengthy prison sentences should be given to those responsible for the offences which society regards as most damaging and abhorrent.

2 The sentence given in these circumstances, how it is communicated to the families affected and more widely, how the sentence is served and how and when the sentence is concluded, are all essential to delivering the five statutory purposes of sentencing, which are:

- i** the punishment of offenders
- ii** the reduction of crime (including its reduction by deterrence)
- iii** the reform and rehabilitation of offenders
- iv** the protection of the public
- v** the making of reparation by offenders to persons affected by their offences.

3 There is public and political commentary that suggest that the current sentencing framework and practice fails to secure public confidence and fails to meet the expectations of victims and their families. Victims say they feel left in the dark over what the sentence actually implies for the length of time a person will serve in custody rather than in the community, how time in prison is spent and how prisoners are considered for release and then released.

4 At the same time there is also concern that sentences for the most serious of crimes have become disproportionate, exceeding what is required to meet their statutory purposes. Principally as a result of legislation, sentences have lengthened very considerably since the turn of the century. More than three times as many people were sentenced to 10 years or more in the 12 months to June 2018 as in the same period a decade ago. Judges are required to set much longer periods for the minimum time to be served in prison for offences of murder. On average this minimum term imposed rose to 21.3 years in 2016, up from 13 years in 2001. Sentences which remove hope are likely also to remove all incentive to reform, undermining the rehabilitative objective enshrined in law. There are questions to be addressed as to the link between sentencing, reoffending and a safer society.

5 The remit of the Independent Commission will be to hear from victims and their families and from prisoners and their families; and to write a Report reflecting their experiences and perspectives and to identify points of learning. The Independent Commission will also consider the wider public interest in sentencing, and any written submissions which are received.

6 The Independent Commission will therefore examine and assess, for England and Wales:

- i** the pattern of sentences being given for the most serious of crimes and of the time being spent in prison
- ii** how those sentences are being served, including the arrangements for contact between the prisoner, the prison authorities and the victim and their families
- iii** communications with the victims and their families both at the time of the sentencing and through the period of the sentence
- iv** the perspective of both victims and their families and prisoners and their families including of being marginalised by the way sentences are administered
- v** any changes which might help better achieve a restorative purpose for victims and their families as well as delivering all the purposes of sentencing set out by Parliament in these most serious of circumstances.

7 The Independent Commission will gather information and evidence as it sees fit in order to examine and assess the issues involved. Its Terms of Reference will be completed by the publication of a report in mid-2021 designed to inform public and Parliamentary debate and government policy.

8 The Independent Commission will be independently funded and supported by a secretariat which includes staff from the Prison Reform Trust. It will be required to reach its own assessment, conclusions and recommendations and will be solely responsible for delivering its Terms of Reference.

Acknowledgements

Some books and reports start with an inspiration, others with a commission. In our case it was a conversation on a bus.

Peter Dawson has a distinguished record in the prison service including as a Prison Governor and latterly as Director of the Prison Reform Trust. He was familiar with my work on Independent Panels including Hillsborough and had wondered whether the current position on long term sentences might benefit from a similarly independent view. Peter knew Ken Sutton from their time together in the prison service and for Ken's role as Secretary to the Hillsborough Independent Panel. Peter and Ken met by chance on a Number 11 bus in London and the conversation began.

I am grateful to Peter for initiating the conversation leading to this Commission but also for recognising that the essential word was "independent". While we have benefited from the connection, the views we have reached are solely and entirely our own and stem from the evidence we have sought. Adopting a bi-focal approach, we are indebted in particular to the victims and their families and to the prisoners who have shared their stories with us with honesty and a level of detail, often painful, that makes their evidence compelling. They have done so with a clear intention that their own experience might help shape a better future for others and a more informed debate. In turn that has become our aspiration as a Commission.

We would not have been in a position to hear these accounts without the help of the three victims charities with whom we have worked most closely: Through Unity, Victim Support and Why me? We therefore put on record our deep gratitude to Robin Lockhart and Hazel Evans for Through Unity; to Adrian Wright and Ellen Milazzo for Victim Support; and to Linda Millington and Lucy Jaffé for Why me? And to their Ambassadors, and each of the participants in our listening sessions.

Equally we could not have looked through our other lens, that of the prisoner, without the help of Paula Harriott, the Head of Prisoner Engagement and a number of her colleagues at the Prison Reform Trust. And we are indebted to Tom Wheatley and his team at HMP Wakefield, not only for facilitating conversations with prisoners serving long sentences but also for the thoughtful and insightful contributions made in discussions at the prison.

We have drawn upon other written and oral evidence as described in the Appendix to the report and we thank everyone who has taken the trouble to engage with the Commission.

Finally, but also importantly we have benefited from a number of financial contributions made by independent grant making bodies, the AB Charitable Trust, the Rank Foundation and by Edwina Grosvenor.

Each of these contributions has played an essential part in our abilities to produce this report.

The Right Reverend James Jones KBE

The Independent Commission into the Experience of Victims and Long-term Prisoners is chaired by Bishop James Jones KBE, former Bishop of Liverpool and Bishop to Prisons, and former Chair of the Hillsborough Independent Panel. The aim of the Commission is to provide the basis for a more measured and informed public and political debate about how the most serious crime is punished.

The Commission's final report, which draws on evidence received from both victims and prisoners and a range of criminal justice experts, provides a detailed analysis of trends in sentencing for serious crime and the impact of long sentences from the perspective of both victims and prisoners. It concludes that sentencing for serious offences has lost its way and is not working for victims, prisoners, or society as a whole. It calls for a national debate on sentencing backed by a Law Commission review of the sentencing framework for serious offences, a citizens' 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.

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