

## Systems shift:

# A ten-point plan to reform our criminal justice system

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## Summary

Whoever forms the new Government is going to be faced with difficult dilemmas about public service reform, not least in crime and justice. There are tens of thousands of unprosecuted serious crimes awaiting Crown Court trial in the highest backlog on record. Our prisons are so close to capacity that the system is running the risk of a prison riot and the risk that the day will arrive soon when the courts are told they can't send any more people to prison.

This paper, *Systems Shift*, sets out our plan to, first, stop the system from overloading, and then fundamentally shifting how our criminal justice system operates, putting it on a path toward long-term recovery. Given the urgency of the issues facing both the prison system and the Crown Courts, we recommend that a new Government consider:

- Shortening the amount of time people sentenced to four years or less serve in prison, excluding those who are assessed as posing a high risk of serious harm to the public, using secondary legislation as soon as possible.;
- Legislating to reduce the flow of people into prison on short sentences and remand while also tackling the long standing injustice of Imprisonment for Public Protection sentenced prisoners.;
- Once the acute crisis has abated, taking immediate action to reduce the Crown Court backlog, setting a clear ambition to speed up Crown Court cases, creating streamlined processes to siphon off the least serious not guilty cases, and fast-tracking rape cases.

Once the system is stabilised, they can then shift the system to focus its limited resources on the highest harm crime. This includes working towards a future in which every victim of sexual violence or domestic abuse has their case heard in a specialist court, whether that be in criminal, private family law or public family law courts. We argue that such a shift can occur by implementing smarter ways of tackling 'quality of life' crime and anti-social behaviour, not least in strengthening our community justice services and investing in earlier intervention. We call for some incremental reforms building on existing evidence of what we know works, and more radical changes, not least in reforming our courts and opening up public discussion on drugs policy.

Lastly, we need to build a more strategic centre within national Government. This should include an independent Institute for Justice to provide annual, independent forecasts of criminal justice capacity and demand (like an Office for Budget Responsibility for justice). These forecasts would help open up the public debate to help us make long term choices about what kind of prison system we want, what type of prisons we need and where those prisons need to be.

We need to be clear-eyed about what the criminal justice system can achieve, and a new Government needs to be honest with the public that the justice system can't fix all the problems that our communities face overnight. But, in our view, we cannot delay any longer. We urge whoever forms the next Government to take the opportunity presented by a new Parliament to deliver the fundamental 'systems shift' we need, in order to create a fairer and more effective justice system that holds the confidence of all our people.

# Our ten-point plan

## First three months

1. **Emergency measures to reduce prison population pressures**, including considering re-setting the automatic release point for most prisoners sentenced to four years or less, releasing them after they have served 40% of their sentence in prison, rather than 50%; and
2. Once adequate prison capacity is realised, **immediate action to reduce the Crown Court backlog**, setting a clear ambition in partnership with the senior judiciary to speed up Crown Court cases to pre-pandemic averages by the end of the Parliament, in part by introducing temporary measures to start eating into outstanding cases.

## Tackle the highest harms

3. **Improve our end to end response to sexual violence and domestic abuse**, by rolling out effective police and prosecutor joint working, expanding the use of specialist sexual violence and domestic abuse specialisation across our courts, and fast-tracking Crown Court rape cases;
4. **Drive down violent crime**, including by deploying proven 'precision' policing strategies like hot-spots policing, investing in evidence-led prevention and diversion to keep children away from crime and gang involvement, and legislating to tackle the sale of zombie knives, machetes and swords;
5. **Slow the revolving door of prolific offending** by investing in high-quality drug treatment, spreading intensive community supervision for prolific offenders including repeat shoplifters, and diverting women away from short prison sentences.

## Act smarter

6. **Prioritise early intervention**, including swiftly resolving more 'quality of life' and anti-social behaviour cases out of court, providing improved alternatives to remand, and by piloting intensive supervision courts for children;
7. **Rethink our courts**, keeping more serious cases in our magistrates' courts in line with other common law countries and deploying magistrates to hear quality of life cases in their communities, all to help reserve Crown Courts for the most serious cases;
8. **Strengthen community justice**, by commissioning the voluntary sector to deliver rapid, standalone unpaid work for 'quality of life' crimes, expanding and professionalising the probation workforce and, once the probation system is stable, working towards its devolution;
9. **Set up an independent commission into drugs policy**, using insights from citizens' juries to make recommendations to Government by the middle of the next Parliament.

## National focus

10. **Build a new strategic centre**, including by creating an independent Institute for Justice to provide annual, independent forecasts of criminal justice capacity and demand (like an Office for Budget Responsibility for justice), and open up the public debate on long-term prison population and capacity options.

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# System overload

Serious recorded crime is rising. Victims wait years for their trials. Our prisons are overcrowded and violent. Our frontline practitioners are exhausted, overworked, and burnt out. The result is a public that feels less safe and is increasingly losing confidence in the criminal justice system's ability to protect them. At the root of these problems is a system that is overloaded— an excessive amount of work surges into a system that has become increasingly fractured and fragile over the past decade.

## 1. Growing, complex demand

Since 2010, while surveyed crime has fallen,<sup>1</sup> serious crime reported to the police is rising— knife crime is 43% higher,<sup>2</sup> sexual offences over 250% higher,<sup>3</sup> and there has been a tripling of rapes.<sup>4</sup> These high-harm crimes are deeply damaging to victims and our communities, and they also present acute challenges for the justice system. As the Police Foundation's Strategic Review of Policing concluded, high-harm crimes are harder to detect and convict people for, because they require more complicated investigations and legal cases.<sup>5</sup>

Added to that, further recruitment of extra police officers, on top of the uplift started in 2020, is likely to increase the number and complexity of cases going into the courts, and, in turn, into our prisons and our probation services. That will be in addition to already anticipated sentencing and parole changes which form part of the current forecasts of the prison population, which suggest we will have 105,800 people in prison by March 2028,<sup>6</sup> well in excess of the extra 18,000 prison places promised to be delivered by 2027.

## 2. The revolving door of persistent offending

For decades, we know that there is a significant group of individuals facing multiple disadvantages such as homelessness, offending and substance use<sup>7</sup> who revolve through the justice system<sup>8</sup> (as well as other services such as health). This multiple disadvantage tends to be associated with persistent and lower-level offending such as shoplifting and theft, which can lead to repeated court hearings, and repeated short prison sentences.<sup>9</sup> Failures to address the root causes of these issues means the justice systems spends a disproportionate amount of resources simply processing these cases, often further worsening their situations.

Yet the evidence suggests that we know what the effective responses to these issues is<sup>10</sup>— and yet, too often over the past decade, the multi-agency, inter-disciplinary work that can help people address their multiple and complex needs has been fractured through budget cuts.<sup>11</sup> In addition, many of the key services that can make a difference to crime reduction for this group, such as drug treatment<sup>12</sup> and supported accommodation,<sup>13</sup> have been underfunded for years.

## 3. Faltering justice services and institutions

Since 2010, the institutions that make up the criminal justice system have faced difficult budget pressures and staffing shortages. The Chief Inspector of Prisons' latest Annual Report found that major staff shortfalls is having a devastating effect on the delivery of good outcomes for prisoners, reporting that increased levels of violence and self-harm in prison was often linked to a lack of support and activity.<sup>14</sup> Despite record low levels of children in prison, our youth custody arrangements do not keep them safe or rehabilitate them effectively.<sup>15</sup> The Chief Inspector of Probation's latest Annual Report noted the probation service's "chronic under-staffing at many practitioner grades and its knock-on impact on workloads and their perceived manageability."<sup>16</sup> The Lady Chief Justice, Dame Sue Carr, has warned of a lack of judges to hear cases,<sup>17</sup> and a lack of lawyers to prosecute and defend them.<sup>18</sup> Even police resources, where officer numbers have recovered from serious falls in the mid-2010s, continue to be stretched by the combination of increasing crime complexity and growing non-crime demands.<sup>20</sup> It is hard not to conclude that the basic fabric and institutions of our justice system are weaker now than they have been for years.

## 4. Misaligned and uncoordinated systems

Despite the squeeze on budgets and increasingly overburdened workforces, any practitioner familiar with the criminal justice system will not struggle to identify ways in which the system wastes their time and the time of others, especially victims, witnesses and defendants. A recent cross-criminal justice inspection found that criminal justice agencies often fail to keep victims informed and deliver the services they need due to a lack of “joined-up digital systems.”<sup>21</sup> Our courts spend considerable resources churning through high-volume, lower-harm cases,<sup>22</sup> like speeding offences, absorbing resources that are badly needed in tackling high-harm cases.

Across our criminal justice system, there are multiple examples where we waste precious resources, especially where short-term policy and operational decisions in one part of the system lead to knock-on consequences and costs in another. Similarly, demand created in one part of the system, like passing new laws to raise sentences for particular offences, impact other parts. The crisis of capacity in our adult male prisons is perhaps the most glaring example of many, showing that short-term decision-making has long-term consequences. Moreover, strategic decision making in the Ministry of Justice is constantly undermined by the need to survive each week’s crisis.

### Summary

In short, increasing flows of complex cases are rolling into a criminal justice system that over the past decade has become increasingly fractured and less resilient. Moreover, it could get worse, if recent Office for Budget Responsibility forecasts for public expenditure are to be believed.<sup>23</sup> The implications of this are clear and sobering: a new Government will inherit a criminal justice system that, in too many places and in too many ways, is overloaded. Calls to turn back the clock and simply reverse spending cuts, without the necessary reform of what we are asking the system to do, ignores fundamental changes in crime. If we want safer communities and swifter justice in a time of limited resources, we need a systems shift.

## Systems shift

We urge a new Government to, first, protect the system from overloading and then fundamentally shift how our criminal justice system operates, putting it on a path towards long-term recovery. Our ten-point plan is split into four sections:

- **First three months:** Following the next General Election, a new Government has to take emergency measures to alleviate the prison capacity crisis, and, once adequate capacity is realised, start making a large dent in the Crown Court backlog, in order to stabilise the justice system;
- **Tackle the highest harms:** In a world of limited resources and the growth of complex cases, we need to marshal our resources and shift them into tackling the highest harm crimes, like rape and knife crime, as well as tackling the sheer volume of crime caused by people trapped in the revolving door of prolific offending;
- **Act smarter:** To shift the system into tackling the highest harms, we have to ask our criminal justice system to do less in other areas. Yet we believe, that, by acting smarter, there are ways our criminal justice institutions can negotiate this shift down and do less while delivering better outcomes;
- **National focus:** Demand created in one part of the system, like passing new laws to raise sentences for particular offences, impact other parts. There is little in the way of mechanisms at the centre to manage this. If we are to shift the criminal justice system away from crisis management into stability and then towards long-term planning for public safety, we need a more strategic centre.

## First three months

### 1. Take emergency measures to reduce prison population pressures

Our prisons are full and increasingly dangerous, squalid and violent. Proper rehabilitation in prisons and well-managed release planning are impossible in a system close to breaking point. We are asking prison staff and prisoner escort services to take on unsustainable demands. Figures from 7th June 2024 show that prisons are at 98% capacity and that many of the prisons in the adult make estate are overcrowded. This runs several risks, not least a serious prison riot, and also that, at some point, the courts will no longer be able to send people into prison. It is also a very expensive way of running a system, requiring, as it does, the purchase of expensive police cells and other capacity to cope day to day. There are likely to be danger points in the short term in both the autumn and in the period immediately after Christmas 2024.

To cope with the crisis already, the Government has already been forced into releasing hundreds of prisoners early under the End of Custody Supervised Licence scheme<sup>24</sup> (though they have not publicly shared data on how many). Since announcing the scheme in October, the Ministry of Justice has had to chop and change the release points to keep their heads above water. These constant changes have made the probation service's job of release planning and public protection doubly hard, putting victims and communities at unnecessary risk. In order to increase prison spaces, the Government has already decided to re-role a youth offender institution to bring on new prison capacity<sup>25</sup> and has purchased extra capacity (though often at very high cost per place) by adding pre-fab blocks to existing prisons.

But these measures are not enough. The reality is that, because of past failures to tackle the sources of demand on our prisons and failure to build sufficient prison capacity, there are no good options left on the table. Given the urgency of the issues, we recommend that a new Government consider **shortening the amount of time people sentenced to four years or less serve in prison**, using secondary legislation as soon as possible. This will involve resetting the release point for all determinate sentence prisoners sentenced to four years or less (excluding those who are assessed as posing a high risk of serious harm to the public).<sup>26</sup> At present, these prisoners serve 50% of their sentence in

prison, after which they are released to serve the rest of their sentence on supervised licence. If this is reset to 40% of their sentence, our internal rough estimates suggest this would potentially save thousands of prison beds a year and provide the headroom to help the system move out of crisis mode. Assuming such a large bounty can be realised, it may allow a new Government to bring the difficult to administer End of Custody Supervised Licence scheme to an end.

In recommending this, we acknowledge what this recommendation means: that people imprisoned for shoplifting, possession and supply of drugs, and burglary (to take some of the most common offences) are released earlier than they would have been. It means releasing some people who would have served 24 months in prison after only 19 months, some who would have served 12 months serving only 10. It means the victims of the crimes those people have committed will receive less by way of retributive punishment.

But we see no alternative. The system is already unable to deliver what it says it will, through the various early release schemes. The system is already letting down victims and our communities by not properly addressing the root causes of people's offending. And we are letting down prisoners who, with the right support, could go on to lead productive lives but who are failed by a system that is unsafe, violent and unstable. Meanwhile, while automatic release is the most straightforward single measure they can take to address the prison population pressure swiftly, at the same time, we suggest that a new Government consider the following legislative options:

- **Reduce the flow of people into prison.** The current Government's legislation (now dropped) to introduce a presumption against short prison sentences of less than 12 months would have been likely to reduce prison 'churn',<sup>27</sup> even though the introduction of a similar presumption in Scotland has indicated that it is no silver bullet to reducing prison demand overall.<sup>28</sup> A new Government could re-introduce the presumption (or a version of it, looking at very short sentences of three months or less initially).;
- **Reduce the use of remand:** The Government could also consider actions to reduce the number of people on remand. This could include temporarily amending the Bail Act to restrict custodial remand to only those people accused of violent or sexual offences. More radically, a swift review of the remand population could consider whether there are individuals whose time on remand is likely to have already matched or exceeded the period they would likely serve in prison if convicted and consider offering time-served and immediate release with no supervision in return for a guilty plea.;
- **Re-examine recall and release options:** The Government can change the existing fixed term recall period (used for prisoners serving determinate sentences of over 12 months who breach their licence conditions) from 28 days to 14 days, and extend the use of the Home Detention Curfew<sup>29</sup> by allowing it to apply for risk-assessed prisoners serving a sentence of four years or more.;
- **Re-sentence Imprisonment for Public Protection (IPP) sentenced prisoners:** IPPs were a type of indeterminate sentence that courts imposed between 2005 and 2012, ultimately abolished as they were widely seen as unjust, including by the very same Home Secretary, Lord Blunkett, who introduced them. Although new IPP sentences can no longer be imposed, the abolition did not apply retrospectively to people who had already received such a sentence. In March 2023, there were 1,355 offenders serving an IPP sentence who had never been released from prison, 98% of whom have served their tariff and nearly 50% of whom have been in prison for more than ten years longer than their tariff. A new Government should legislate to enable a re-sentencing exercise in relation to all IPP-sentenced individuals (except for those who have successfully had their licence terminated) to correct this long standing injustice.

## 2. Take immediate action to reduce the Crown Court backlog

The scale of the Crown Court backlog is daunting—latest data suggests there were 67,573 outstanding cases<sup>30</sup> at the end of 2023, the largest ever on record. The volume of outstanding cases that had been open for a year or more rose to 18,045 (28% of all outstanding cases).<sup>31</sup> The backlog will likely only be exacerbated by the increasing complexity of cases entering the system<sup>32</sup> while a historically low number of defendants pleading not guilty (26%) means even more cases are headed for trial. The



number of ineffective trials – listed trials that do not go ahead on the day scheduled – has been increasing, which lengthens case times and contributes to an increase in the backlog. The proportion of ineffective trials has increased from 16% in 2019 to 27% in 2023. The principal reasons for ineffective trials were witness and defendant unavailability, poor case preparation, over-listing of cases and unavailability of barristers.

We believe the backlog represents a fundamental problem within the criminal justice system and, like the prison capacity crisis, it needs to be alleviated by taking immediate action. Once sufficient prison capacity has been freed up, we suggest a new Government consider the following options:

- **Set a clear ambition to speed up Crown Court cases**, in partnership with the senior judiciary, to (i) bring the average time from receipt of a case into Crown Court to completion down from 247 days<sup>33</sup> to 165 days (the annual average of the five years prior to the Covid-19 pandemic) by the end of the next Parliament; and (ii) reduce the proportion of all outstanding Crown Court cases not resolved within six months from 48%<sup>34</sup> to under 40% (the pre-pandemic level in 2019) by the end of the next Parliament.;
- **Introduce a temporary streamlined ‘Crown Court’ process for the least serious not guilty cases**, siphoning off cases to be heard by District Judges (currently sitting in the magistrates’ court) and by recruiting retired Circuit Judges or Crown Court recorders. Limited to cases where the defendant is facing between six months and two years in prison (and especially where the defendant is on remand), this temporary process could offer a sentencing discount of 25% in exchange for the offer of an expedited but non-jury trial. We estimate this could deliver a reduction in workload for the Crown Courts proper of between 15,000 to 20,000 cases (around 21% of the existing receipts in Crown Courts).;<sup>35</sup>
- **Fast-track rape cases:** As Lord Justice Edis recently said, the age of some rape cases is a “serious stain on our system,” especially given the additional trauma that rape victims experience from delays in having their cases heard.<sup>36</sup> We recommend that the estimated 2,700 outstanding rape cases<sup>37</sup> are prioritised and fast tracked.<sup>38</sup> This will require the CPS and the police to prioritise getting these cases ready for trial and the Ministry of Justice and HMCTS working with the senior judiciary to review each step of the current process to identify and resolve blockages, which may lead to new practice directions.<sup>39</sup> The ambition should be to decrease the average case completion time for rape cases at Crown Court from 369 days to 250 days (the average pre-pandemic).<sup>40</sup>
- **Explore ways to incentivise solicitors and barristers to strengthen capacity.** According to the National Audit Office (NAO), the Government has increased the number of courts, removed the cap on the number of sitting days and increased the number of judges, to boost Crown Court capacity to hear cases.<sup>41</sup> Issues remain however to do regarding the availability of counsel to start cases on time and a new Government should consider how to improve the working conditions for all of the legal profession to ensure that progress can be made.

Failure to take early action on both the prison population crisis and the court backlog early into a new Government will, in our view, hamper any efforts during the rest of the Parliament to make the necessary system shifts. And, of course, these twin crises are heavily interlinked. The prison population is high, in part, because people are being remanded for longer while awaiting trial because they can’t get an early court date— 31% of ineffective trials in 2023 occur due to witness and defendant unavailability, which is partly caused by “prisoner transport services failing to get prisoners to court in time for their trial, in part due to a shortage of prison staff, meaning some prisoners cannot be held in prisons close to the courts and have further to travel.”<sup>42</sup>

Our view is that these emergency measures need to be initiated very early into a new Government and be done openly and honestly. It will require a clear articulation of the need for it and the risks of acting and the risks of not acting, and with transparency about the impact of these measures over time. Without it, we will not be able to drive forward the systems shift we need.



# Tackle the highest harms

## 3. An end to end response to sexual violence and domestic abuse

The Crime Survey for England and Wales estimated that 1.1 million adults aged 16 years and over experienced sexual assault in 2022. According to the National Police Chiefs Council, there were 447,431 domestic abuse flagged offences recorded in a six-month period in 2023 across England and Wales. Domestic abuse is a key driver for stalking and harassment, and crime data identifies that 32.4% of all stalking and harassment offences are domestic abuse related.

Yet, as we have already noted, victims of sexual violence and domestic abuse are poorly served by the current justice system—far too often prosecutions do not proceed,<sup>43</sup> trials are not listed quickly<sup>44</sup> and victims either withdraw or go through the court system and are traumatized by the process.<sup>45</sup> We need shift to a justice system whose response is specialised and victim focused. We recommend:

- **Transform the approach to sexual violence investigations**, with the continued roll-out of Operation Soteria,<sup>46</sup> which brings together police forces and prosecutors to change the way rape and sexual offences are dealt with. Once this is rolled out, the lessons learned should be applied to a wider range of crimes, including domestic abuse, stalking and harassment;
- **Expand the use of specialist sexual violence and domestic abuse courts across criminal and family justice**, building on existing initiatives spanning criminal justice (especially Specialist Domestic Abuse Courts),<sup>47</sup> private family law (the ‘pathfinder pilots’)<sup>48</sup> and public family law cases (Family Drug and Alcohol Courts).<sup>49</sup> All these innovations involve cases being heard in specialist settings, with specialist judges, practitioners and services on hand to respond to the unique dynamics of domestic abuse and sexual violence. A new Government should urgently review the operation of all these pilots and develop a more comprehensive, cross-jurisdictional plan to roll out these models so that whenever and wherever victim-survivors of domestic abuse and sexual violence have to appear in court, their case is heard in a specialist setting. The Government’s goal should be to work towards a future in which every victim of sexual violence or domestic abuse has their case heard in a specialist court, whether that be in criminal, private family law or public family law courts.

## 4. Drive down violent crime

Since 2019, initiatives to tackle violence have centred on taking public health approaches to violence. These initiatives have highlighted that law enforcement alone can’t reduce violence. Preventative work, and work to develop richer pictures of where violence occurs, who commits it and how to tackle it systemically, are all just as vital to reducing violence as law enforcement. But efforts to reduce violent crime need to not forget law enforcement’s vital role and not see prevention and intelligence-led law enforcement as in opposition to each other but as hand in glove.

The question is how do we capitalise on that new understanding, of combining prevention and law enforcement, in the most effective way possible and shift toward a system that has a relentless focus on preventing violence. To do this, we need to:

- **Deploy proven ‘precision’ policing strategies**, including hot-spots policing and problem-solving policing approaches.<sup>50</sup> We’ve known for decades that these techniques work but the challenge is how to use limited police resources to maintain these proactive and intensive approaches, when balanced against other vital calls on police time, such as re-prioritising community policing. A new Government should use the Strategic Policing Requirement to focus police resources on precision strategies and emphasise the importance of data and intelligence sharing between the police and other services, especially in relation to on ‘at risk’ children, while minimising the over-targeting of children from minoritised communities.;
- **Invest in evidence-based prevention and diversion.** In the past, efforts to do this have been clouded by a lack of evidence about what specifically works to reduce crime, and has led to well-meaning siphoning of funding into unfocused activity. In the last decade, however, our knowledge has come on leaps and bounds. According to the Youth Endowment Fund, the evidence calls for diverting people into social skills training, relationship violence prevention, and cognitive

behavioural therapy.<sup>51</sup> This is especially vital for children, as we know that providing them with access to support helps them see a different future, keeping them away from crime and criminal gangs, and from depending involvement in the system.<sup>52</sup> We need to ensure that early prevention and diversion is stably and consistently resourced,<sup>53</sup> and that all children have equal access to the opportunities offered by diversion;<sup>54</sup>

- **Tackle the sale of zombie knives, machetes and swords**, by changing the legislative framework to ensure that these weapons are not available for sale, except to those people who use them in the course of their work. This will require collaboration with the devolved governments to ensure these bans apply consistently across the UK.;
- **Reform our response to the violence associated with serious and organised crime**, by brigading our existing specialist capabilities into regional units of the National Crime Agency, creating a national serious and organised crime network comparable to that which exists for counter-terrorism policing.

## 5. Slow the revolving door

'Prolific offenders'<sup>55</sup> make up roughly one tenth (0.5 million) of the overall offending cohort (5.89 million), but they are responsible for nearly half of all sentencing outcomes (10.5 million).<sup>56</sup> While the majority of this cohort are men, there are especially vulnerable women too, whose lives are marked by domestic abuse and contact with the care system. Many of the offences they commit are not serious sexual or violent offences, but the sheer volume of the crime they cause heaps misery on hard-pressed communities. Often our response is to send prolific offenders to short prison sentences, even though we know that prison often makes their offending worse when they are released.

We have to do better. We recommend the following:

- **Commit to long-term, ring-fenced funding of high-quality drug treatment for justice**: The current Government's response to Dame Carol Black's independent review of drugs provided additional investment in drug treatment, following years of falling spending.<sup>57</sup> A new Government should commit to provide this funding on a three-year basis, allowing services to better plan ahead. Furthermore, it should require local authorities to ring-fence treatment funding for justice allocated under the public health grant and set realistic goals to expand treatment available for those on community supervision;
- **Introduce intensive community supervision for prolific offenders**, including for shoplifters with substance misuse issues, modelled on the Enhanced Combination Order (ECO) delivered in Northern Ireland, which shown promising results in reducing re-offending<sup>58</sup> and in delivering savings.<sup>59</sup> Under the ECO, people facing up to a year in prison are offered a package of support by a dedicated multi-disciplinary team to rehabilitate them in the community instead.;
- **Tackle trauma and multiple complex needs experienced by prolific female offenders**, by yoking together more stably funded women's centres, which provide a 'one-stop shop' of individually tailored support,<sup>60</sup> to dedicated problem-solving courts, like in Birmingham, where a single judge provides regular oversight of a woman's progress through her community sentence.

## Act smarter

### 6. Prioritise early intervention

In order to free up resources to tackle the highest harm cases, we have to ask the criminal justice system to do less. But this does not mean we should have no response to quality of life crime and anti-social behaviour. What it does mean is investing the limited time and money we do have into things that work. In fact, at various points, the evidence suggests there are ways we can both do less and produce better outcomes. This includes:

- **Resolve quality of life and anti-social behaviour cases swiftly via out of court resolutions**, which have been shown to be more effective than taking people to court to be fined.<sup>61</sup> However, the use of out of court resolutions has fallen<sup>62</sup> -in 2010, they constituted 26% of all disposals; in 2022 they amounted to only 17% of disposals.<sup>63</sup> A new Government could commit to raising the

proportion of cases that receive an out of court resolution back to their 2010 levels by 2027, removing 25,500 cases annually<sup>64</sup> from an overburdened court system. Such a push should have a special focus on increasing the use of non-statutory out of court resolutions that help people's employment opportunities in the future through the avoidance of criminal records.<sup>65</sup> A new Government could also free up police resources by inviting youth justice services to pilot tailored 'young adult' out of court resolutions for 18 to 21 year olds;

- **Deliver better solutions for people who come to court who have complex needs<sup>66</sup>** by using deferred sentences, which are used successfully in Scotland<sup>67</sup> and New Zealand where people participate in interventions in exchange for a lesser or even no sentence.<sup>68</sup> In partnership with Police and Crime Commissioners and mayors, a new Government could work with existing liaison and diversion services and an expanded range of community advice services to develop deferred sentence packages for individuals with complex needs, while encouraging greater use of restorative justice;
- **Provide alternatives to remand**, especially for the large number of people being remanded for non-violent offences. Despite Government investment in alternatives like electronic monitoring and supported accommodation,<sup>69</sup> we need to build confidence of judges and magistrates in them.<sup>70</sup> Targeted work around reducing the use of remand for children and women in particular has the potential of further reducing the youth and female custodial populations, potentially freeing up more establishments for re-rolling into the adult male estate. More radically, a swift review of the remand population could consider whether there are individuals whose time on remand is likely to have already matched or exceeded the period they would likely serve in prison if convicted and consider offering time-served and immediate release with no supervision in return for a guilty plea. A new Government should explore how to unlock resources from the current prison estate to fund more comprehensive bail assessment and supervision programmes, as well as assessing the feasibility of providing judges with better assessments of individual's likelihood of re-appearing in court using artificial intelligence (AI) enabled pre-trial risk assessment tools;<sup>71</sup>
- **Pilot intensive supervision courts for children at risk of custody.** The Carlile Review, the Lammy review, and the Taylor review<sup>72</sup> all highlighted that youth courts were originally designed to deal with volume—and not to deal with the much smaller but much more complex caseload of children we now see in court. This caseload is marked by children whose lives are already tragically scarred by trauma, involvement in violence and deprivation. A new Government should pilot intensive supervision courts for children who are at risk of custody due to the volume of their offending, with a special focus on children from minoritised communities and with care experience who are so over-represented in youth custody. Children would be encouraged to comply through a process of judicial monitoring, in which specially trained judges assess their progress throughout their community sentence, and dynamically respond to changes in their compliance.

## 7. Rethink our courts

As part of our systems shift, we believe the time has come to rethink how our criminal courts are structured. This is not proposed as a response to the hopefully short term issues arising from the Crown Court backlog but about long-term planning for the future. Comparing how our courts are structured with those in other common law countries begs the question of whether the current boundary between those cases that remain in our lowest criminal court, the magistrates court, and those we reserve for the most serious court, the Crown Court, is fit for the future. In particular, in comparison to Scotland, Australia and New Zealand,<sup>73</sup> we send much less serious offences to our most serious court, with all the attendant costs that full jury trials entails. For example, in New Zealand, people only have a right to a jury trial in cases where people are charged with an offence punishable by a maximum sentence of two years' imprisonment or more.

Moreover, especially in light of the pandemic, the use of virtual court hearings (where one, multiple or all parties appears virtual via audio or video links) has become an increasingly common occurrence in our criminal court system. As this technology has been used more and more, the debate has continued as to whether these types of hearings are fair, efficient and accessible. As one of our reports in 2018 indicated, there remains a balancing act to be struck between the at times competing rights

and needs of defendants, victims and witnesses and those of professionals and a future Parliament needs to consider whether the current use of virtual court hearings is correct.<sup>74</sup>

We recommend:

- **Move a number of ‘administrative’ cases into the civil courts**, where they are more appropriately dealt with. This would resolve some existing anomalies like, for example, TV licence evasion being treated as a criminal matter while council tax evasion is a civil matter. Our modelling suggests we could reduce the magistrate court ‘administrative burden’ by approximately 90,000 ‘administrative’ cases<sup>75</sup> freeing up court time. New statutory obligations could be placed on individuals, for example to have a TV licence,<sup>76</sup> which, if not complied with, could result in civil financial penalty, as now happens with parking fines and unpaid congestion charges. These cases, once in the civil courts, may be especially suitable for online dispute resolution.;
- **Deploy magistrates into the community**, helping them hear ‘quality of life’ cases and anti-social behaviour in more community-based locations and, where appropriate, using technology for cases involving people who are less able to travel. These community justice panels could hear from community members and victims about the impact of the individual’s behaviour, and hear from the individual themselves, and then set proportionate conditions, with a special focus on rehabilitative and reparative conditions. These panels could also provide an alternative to criminal court fines for many of these offences.<sup>77</sup>
- **Reform and expand the reach of our magistrates’ courts**, reserving all cases where the offence could attract a prison sentence of between 6-24 months exclusively to district judges and keeping them within the jurisdiction of the magistrates’ court. This would mean hiring more district judges (and deputy district judges)<sup>78</sup> to preside over these cases, and would require changes to legislation and guidance. These courts should also all house community advice and support services, to help people coming to court navigate the system and get access to things like debt advice to pay their court fines (for which the current repayment rate is less than 50% within 12 months).<sup>79</sup>
- **Reserve Crown Courts for the most serious cases**, preserving jury trial for all cases that are of sufficient seriousness to warrant over 24 months in prison. We estimate that this is likely to reduce the overall cost of the court system in the long run, removing approximately 30,000 cases from the Crown Court, as well as reducing the number of sentencing cases sent to them by the magistrates’ courts by around 10,000.;
- **Legislate to introduce a presumption in favour of everyone’s right to choose whether to appear in criminal court via a digital hearing or a physical one.** The Ministry of Justice should also evaluate the impact of online and virtual courts on perceptions of the fairness, their impact on outcomes and on efficiency.

We recognise that this broad rethinking is controversial. Part of our proposed reforms would remove the right to a full jury trial for a range of cases which would shift down from Crown Court to a reformed magistrate court. While individuals would retain their automatic right to appeal if found guilty,<sup>80</sup> we acknowledge that changing who has the right to a jury trial and who has a right to a judge-only trial is contentious. Timing these changes would also need careful consideration and there would certainly need to be sufficient headroom in prisons to ensure that any volatility in sentencing patterns that may result from these changes can be accommodated. However, given that the Lady Chief Justice has recently spoken about the idea of changing how jury trials work by,<sup>81</sup> we think the time has come to grasp the nettle and deliver a courts systems shift.

## 8. Strengthen community justice

Nearly 250,000 people are, at any one time, on some form of community supervision, whether that be on a community sentence or supervision on licence following release from prison. Effective supervision of those people is a key element of keeping our communities safe. Yet the latest annual Probation Inspectorate (HMIP) report suggests that despite the most recent ‘reforms’ to the system, probation performance has “if anything, got worse.”<sup>82</sup>



We need a community supervision reboot. We need to focus probation officer time on managing those who pose significant risks of harm to the public. We know that good quality supervision works,<sup>83</sup> but this requires us to lower probation officer caseloads,<sup>84</sup> and give the probation profession the chance to deliver the support and advice that many of them yearn to provide. This is not just an argument about limited resources alone. It is also about being realistic about what community supervision can reasonably achieve, within the window that is proportionate to the original offence. The justice system can't 'fix' everyone and proportionality limits what we ought to seek to achieve within the confines of one sentence. This is especially the case given the evidence suggests that a number of the factors that help people desist from crime (such as strong ties to family and community, employment that fulfils them and a sense of meaning and purpose in their lives)<sup>85</sup> are likely to be established outside of the timescale of a single period of community supervision. Delivering a meaningful systems shift requires the Government committing to improve community justice, taking the following steps:

- **Diversify the provision of unpaid work**, freeing up probation to focus on those who are the highest risk. This could include finding ways of commissioning the voluntary sector to deliver rapid, standalone unpaid work for lower harm, quality of life crimes. This can be underpinned by lowering the minimum period of time people can be sentenced to unpaid work in exchange for unpaid work being delivered more immediately— so the system delivers fewer hours of unpaid work per order but helps people complete them in a matter of days rather than months. This could also provide an alternative to criminal court fines for those too poor to pay them.;<sup>86</sup>
- **Focus community supervision** by agreeing with sentencers a new set of standard, and less resource intensive, packages of community sentences (for example, a sobriety tagging package for people convicted of alcohol related disorder connected to the night time economy). These packages would reduce the burden on probation officer time in both writing pre-sentence reports and in supervision. We should also explore how to use AI to analyse probation case management data to better predict non-compliance or serious further offending. A new Government could develop a short and light-touch 'virtual' community sentence for people who are low risk of re-offending, where people 'check-in' to an automated kiosk for some or all of their supervision.;<sup>87</sup>
- **Strengthen community supervision**, so it is able to deliver high quality strengths-based supervision. Simply, this requires caseloads to be manageable.<sup>88</sup> The probation workforce needs to be expanded<sup>89</sup> and professionalised, placing probation on a professional footing, like nursing, including investment in continuous professional development<sup>90</sup> and clinical supervision to help improve retention rates and reduce sickness.

Despite probation teams already being organised into local probation delivery units,<sup>91</sup> its decision making and leadership are all locked in a national and regional structure which is itself primarily focused on prison. We believe that, in time, we need to localise community supervision, because what helps people desist from crime (personalised support, positive relationships and networks of support in local communities, encouraging agency) are all better delivered at a local level.<sup>92</sup> Probation work needs to be pushed back into a structure in which power and decision-making are kept as close as possible to communities, most likely down to a local authority level, akin to how community justice services are provided in the youth justice system.<sup>93</sup>

However, we can't recommend such a big reform within the timescales of the next Parliament. At a time when the prison system is close to bursting, and the probation workforce is so fragile, another re-organisation may cause the service to implode. However, we do recommend that a new Government build the resilience of local probation teams, with a view to their devolution into a local community justice system in the future.

## 9. Independent commission into drugs policy

Current efforts to prohibit the use of illegal drugs, to reduce their supply into the country through tough enforcement action, and to deter people from drug use through criminal sanctions, is not keeping us safe. Many of the problems that blight our communities, like gang crime and county lines, stem from the violent competition that revolves around the trade in illegal drugs, an industry increasingly drawing in vulnerable groups susceptible to exploitation,<sup>94</sup> and which impacts particular communities more than others, especially our minoritised communities. Moreover, leaving the drug trade to

criminal gangs has encouraged them to create and sell more potent and more portable drugs.<sup>95</sup> The misery caused by these criminal markets contributed to 4,907 drug deaths in 2022, the highest level on record.<sup>96</sup> There are serious concerns that, due to reductions in the supply of opium from Afghanistan, international drug gangs may seek to find introduce synthetic drugs like fentanyl into Europe over the next few years— drugs that are killing people in North America at frightening rates.<sup>97</sup>

There are few easy answers here. Attempts to de-criminalise and legalise cannabis across the world have shown varied and mixed success on a range of public policy variables— whether it has led to safer use and less potent supply; whether it has squeezed out black markets; how the benefits of a new legal trade have been dispersed; whether it has retained public support.<sup>98</sup> Portugal's more radical, and now well established, policy of de-criminalising of the personal possession of all drugs has shown modest but encouraging results— fewer drug deaths, reductions in new HIV infections due to drug use, and reductions in the proportion of people sentenced to prison for drug offences. But the policy has also been part of a much wider public health-led approach, and has not been without controversy.<sup>99</sup> There is relatively consistent evidence that most of these approaches have led to less demand on the criminal justice system (the focus of this report), which, we acknowledge, is only one of many social policy questions.<sup>100</sup>

Therefore, we suggest that a new Government needs to rethink our current prohibitionist stance and that it does so via an **independent commission into current drugs policy**. This should use insights from citizens' juries as has recently happened in Ireland,<sup>101</sup> and should make recommendations to Government by the middle of the next Parliament.

## National focus

### 10. Build a strategic centre

The criminal justice system is, like many other public services, a complex adaptive system,<sup>102</sup> which means that policy intentions often have perverse and unintended consequences, that feedback loops and connections between related agencies can be unclear and, at times, volatile. Over the past decade, the intrinsically unpredictable nature of social systems has, however, been exacerbated by the lack of a strategic centre. We have seen, for example, the creation of Police and Crime Commissioners and new metro-Mayors, which democratised and entrenched the local governance of England and Welsh policing, while other services, like our probation services, have been centralised like never before.

Moreover, there is no obvious place where forecasts of demand and supply are made, where Home Office decisions to create new offences, for example, are explicitly, publicly and transparently assessed for the implications they will have on prosecutors, defence lawyers, victim services, probation and prison services. While we do not place great hope that national re-organisations will suddenly produce different results without focus, cultural change and investment, we surely can't go on with a system in which there is no attempt to manage demand across the system. To underpin a systems shift, we recommend building a more strategic centre by:

- **Build an independent Institute for Justice**, to provide annual, independent forecasts of criminal justice capacity and demand (not just prison population projections) so policymakers can make smarter, better informed decisions (like an Office for Budget Responsibility for justice). Over time, it could explore hosting the evidence store of what works and for whom and provide independent scrutiny on the adoption of new technologies into the justice system.<sup>103</sup> This could be built by bringing together existing resources currently in What Works Centres and Ministry of Justice's and justice Inspectorate's research.;
- **Consult on long-term prison population and capacity options** as the first act of the independent Institute for Justice (see above). This should provide an objective analysis of what different prison population scenarios would mean for England and Wales, using similar common law countries as comparators. For example, our rough estimates show that if our imprisonment rate (the number of prisoners per 100,000 population) was to rise to be the same as New Zealand's in ten years'



time, we estimate we would need capacity for 115,840 prison places by 2034. However, if the imprisonment rate was to fall to be similar to the Republic of Ireland's by 2034, we would need only 58,891 places. These scenarios can help us make long term choices about what kind of prison system we want, what type of prisons we need and where those prisons need to be.;

- **Create a national Office for Victims**, as a non-departmental public body, to distribute and oversee all existing Government funding for victims services,<sup>104</sup> to provide focus to the existing arrangements which the Government's own strategy admits is a "confusing patchwork."<sup>105</sup> This new Office for Victims should explore the feasibility of larger scale national projects like the feasibility of a national victim-care hub,<sup>106</sup> and the creation of a Justice Journey Number (like an NHS number) to bring together all the data about the person and not around each individual case.,<sup>107</sup>
- **Review the current national departmental arrangements**, and consider the merger of the Home Office and the Ministry of Justice into a new department bring together policing, prison and probation, while creating a new department for borders and asylum, and exploring new governance arrangements for the courts and the judiciary.;
- As moves toward probation devolution take shape, **create a single community justice executive agency**, a new headquarters body with national oversight and leadership duties for the funding and delivery of youth justice services, and probation and related community justice services. This would help give community supervision a greater voice and a more effective counter balance to the prison service at a national level.

## Conclusion

We are not pretending that shifting the criminal justice system in the way we outline will be easy. In our view, any hope of delivering such a shift depends on alleviating the damage that is being caused by the two most chronic issues facing us— a prison system drastically unable to deal with the demand going into it and Crown Courts unable to give victims swift justice. Our view is that the emergency measures outlined in this report need to be done very early into a new Government and done openly and honestly. They will require a clear public articulation of the need for them, outlining the risks of acting and also the risks of not acting, and with transparency about the impact these measures have over time.

We recognise that implementing our ten-point plan, and delivering the systems shift we call for, involves tough political choices and tough financial ones. In various areas, we call for more— more specialisation around sexual violence and domestic abuse, more work to reduce violence, more probation officers and more judicial capacity in particular. But we also balance our calls for more with calls for the system to act smarter, to do less. In the medium term, we call for more active discussion with the public about the choices before us, not least what kind of journey we want to go on as a country when comes to incarcerating people. We call for some incremental reforms, to build on existing evidence of what we know works, and we call for more radical changes to how we do justice in England and Wales, not least in reforming our courts and opening up public discussion on drugs policy.

We need to be clear-eyed about what the criminal justice system can achieve, and a new Government needs to be honest with the public that the justice system can't fix all the problems that arrive at its front gates. But, in our view, we cannot delay any longer. We urge whoever forms the next Government to take the opportunity presented by a new Parliament to deliver the fundamental 'systems shift' we need, in order to create a fairer and more effective justice system that holds the confidence of all our people.

## Endnotes

1. There has been a 56% fall in the Crime Survey of England and Wales since 2010, if fraud and computer misuse are excluded. The survey has only included these crimes since 2017. Time series date since that inclusion suggests total surveyed crime has fallen by 8%. ONS. (2024). Crime in England and Wales: year ending September 2023
2. ONS. (2024). Crime in England and Wales: year ending September 2023
3. Home Office. (2023). Sexual offences in England and Wales overview: year ending March 2022
4. ONS. (2023). Crime in England and Wales: year ending June 2023. Appendix Table 4.
5. Police Foundation. (2021). The Strategic Review of Policing.
6. Ministry of Justice. (2024). Prison Population Projections 2023 to 2028, England and Wales
7. Data suggests that approximately 58,000 people in England have homelessness, offending and substance use issues. See: Bramley, G and Fitzpatrick, S. (2015) Hard Edges: Mapping Severe and Multiple Disadvantage. Lankelly Chase Foundation.
8. Department for Levelling Up, Housing and Communities. (2020). Understanding the Multiple Vulnerabilities, Support Needs and Experiences of People Who Sleep Rough in England.
9. Data shows that 80% of those on the Fulfilling Lives programme have a history of reoffending when they join and 32% people spend time in prison while with the programme (on average 89 days in first year). Welford, JD. Milner, C. and Moreton, R. (2021) Improving transitions for people experiencing multiple disadvantage: Prison release
10. Ministry of Justice (2013). Transforming Rehabilitation: a summary of evidence on reducing reoffending
11. HM Inspectorate of Probation & HM Inspectorate of Constabulary and Fire & Rescue Services. (2020). A joint thematic inspection of Integrated Offender Management
12. Professor Dame Carol Black. (2021). Independent review of drugs.
13. HM Inspectorate of Probation. (2020). Accommodation and support for adult offenders in the community and on release from prison in England.
14. HM Chief Inspector of Prisons. (2023). Annual report: 2022 to 2023
15. Ibid.
16. HM Inspectorate of Probation. (2023). Annual report: 2022 to 2023
17. Justice Select Committee. (2024). Oral evidence: Work of the Lady Chief Justice.
18. Financial Times. (2024). Head of judiciary warns of risks to England's reputation for legal services.
19. Institute for Government. (2023). Performance Tracker 2023: Criminal courts
20. Police Foundation. (2021). The Strategic Review of Policing.
21. CJ Joint Inspection. (2023). Meeting the needs of victims in the criminal justice system
22. This is due in part to long standing inconsistencies in how we choose to treat some 'administrative' infractions like TV licence evasion as criminal matters while council tax evasion is a civil matter.
23. Office of Budget Responsibility. Economic and fiscal outlook – March 2024. Available at: <https://obr.uk/efo/economic-and-fiscal-outlook-march-2024/>
24. Beard. (2023). What is the Government doing to reduce pressure on prison capacity?. House of Commons Library
25. Simpson. (2024). Cookham Wood Young Offender Institution (YOI) is set to close following years of failure to improve conditions for young people. Children and Young People Now.
26. HMPPS. (2020). Risk of Serious Harm Guidance. Available at: [https://assets.publishing.service.gov.uk/media/652cf8c9697260000dccb834/Risk\\_of\\_Serious\\_Harm\\_Guidance\\_v3.pdf](https://assets.publishing.service.gov.uk/media/652cf8c9697260000dccb834/Risk_of_Serious_Harm_Guidance_v3.pdf)
27. The Ministry of Justice's impact analysis of the presumption against short prison sentences as a prison demand reduction measure assumes, in its central scenario, that the net impact of the policy on prison places will save between 200 to 1000 prison places a year.
28. The experience in Scotland suggests there will remain individuals whose inability to comply with community sentences will continue to be unable to comply with community supervision and go to prison.
29. Home Detention Curfew (HDC) is a scheme which allows some people to be released early from custody if they have a suitable address to go to. Prisoners are normally expected to be at an address for 12 hours from 7pm to 7am, wearing an electronic tag.
30. The count of outstanding cases is simply a snapshot of all cases where one or more offence remains incomplete on the final day of the reporting period, e.g. as at 31st December 2023. It therefore includes cases which are classed as 'outstanding' but were only received the day before the end of the counting period and is therefore not a measure of a 'court backlog' per se.
31. Ministry of Justice. (2024). Criminal court statistics quarterly, England and Wales, October to December 2023
32. Sexual offences represented 5.7% of cases in Q2 2018. Latest data suggest they are now 10.3% in Q2 2023.
33. Average calculated from Crown Court timeliness tool in Criminal court statistics quarterly: October to December 2023.
34. Current level in Q4 2023

35. This process should be initially restricted to only triable either way cases and could encompass all the sentencing cases currently transferring from the magistrates' courts to the Crown Court for sentencing. This could be presented as a temporary measure, opening the window for access to the process for a limited period (we suggest three years) and could be presented as a necessary measure for court recovery. Data is limited and we have been unable to find enough granular national data (in the public realm) to accurately estimate how many cases this process could apply for. Moreover, as a novel approach, it is unclear how many cases could be siphoned through the process— many of the either way cases will involve defendants who have specifically elected to have their cases heard in a Crown Court in order to get a jury trial. However, we do know that 42% of all defendants (11,966) in Crown Court in Q3 2023 were received into Crown Courts for either way offences. We also know that 22,000 magistrate court cases were sent to Crown Court for sentencing in 2022. If half of these cases could be placed into this new process for three years between 2025/26 to 2027/28, this could mean a reduction in workload for the Crown Courts proper of between 15,000 to 20,000 cases (around 21% of the existing receipts in Crown Courts).
36. Home Office. (2021). End-to-End Rape Review.
37. Criminal Bar Association analysis of Ministry of Justice. (2024). Criminal court statistics quarterly, England and Wales, October to December 2023
38. Given that sexual offence cases often require complex evidence handling and more sitting days, and have lower guilty plea rates than many other offences, they are more likely to be in the backlog.
39. The direction could specify that the judiciary must be provided with early information about specific needs of victims and witnesses (and defendants) to enable them to fast track and list these cases, placing a burden on the magistrate's court, the CPS and defence advocates to provide this and drive up standards in the information that is available.
40. Figures taken from HMCTS Timeliness measure: arrival in Crown to completion.
41. National Audit Office. (2024). Reducing the backlog in the Crown Court. Ministry of Justice and HM Courts & Tribunals Service
42. Ibid.
43. Ending Violence Against Women and Girls. (2023). Latest CPS data shows a justice system still failing women, with an alarming downward spiral in domestic abuse convictions. Available: <https://www.endviolenceagainstwomen.org.uk/latest-cps-data-justice-system-still-failing-women-domestic-abuse/>
44. Ministry of Justice. (2024). Criminal justice system (CJS) delivery data dashboard-Charge to case completion at court (adult rape cases).
45. Rape Crisis England & Wales. (2023) Breaking Point: the re-traumatisation of rape and sexual abuse survivors in the Crown Court backlog
46. National Police Chiefs Council. Operation Soteria – Transforming the Investigation of Rape. Available at: <https://www.npcc.police.uk/our-work/violence-against-women-and-girls/operation-soteria/>
47. In the criminal courts, the Specialist Domestic Abuse Court (SDAC) model has long been seen as the gold standard, but has been left to wither on the vine due to court closures and cuts. The Government has also only half-heartedly pledged to pilot Specialist Sexual Violence Courts (SSVCs) at Crown Court, an evidence-based specialised court model used widely in other jurisdictions. Jeffrey. (2022). Specialist sexual violence courts: Six considerations for implementation. Centre for Justice Innovation
48. There are early and promising signs from new pathfinder pilots in private family law, which are using an investigative and problem-solving approach, with a particular focus on improving court responses to domestic abuse and enhancing the voice of the child within proceedings.
49. In public family law, the encouraging evaluations of problem-solving court approaches, most notably Family drug and Alcohol Courts (FDACs), show that we can deliver better outcomes, better justice and do so at a lower overall cost.
50. College of Policing. (2024). Knife crime – a problem solving guide
51. Arrested Children: how to keep children safe and reduce reoffending. (2023). Youth Endowment Foundation.
52. Valuing youth diversion: A toolkit for practitioners. (2024). Centre for Justice Innovation.
53. Lugton. (2020). Strengthening youth diversion. Centre for Justice Innovation.
54. Ofori et al. (2021). Equal diversion? Racial disproportionality in youth diversion. Centre for Justice Innovation.
55. Ministry of Justice. (2023). Characteristics of Prolific Offenders, 2000-2021.
56. Ibid.
57. Department of Health and Social Care. (2021). Independent review of drugs by Dame Carol Black
58. Probation Board Northern Ireland. (2019). The enhanced combination order October 2015 to November 2018.
59. A 2019 economic evaluation suggested each ECO cost approximately £15,075, compared to the marginal cost of a short prison sentence of £3,523. However, when including the benefits of the ECO on outcomes, including on future employment, it suggests each ECO produces at least a net saving of £10,051 over a 5-year period.
60. The Ministry of Justice's 'Justice Data Lab' reviewed the data from over 30 women's centres across England and found that the one-year re-offending rate for women who had received this support was 30% in comparison to 35% for a matched control group. This demonstrates a statistically significant reduction in the re-offending rate.
61. Centre for Justice Innovation, (2019). Pre-court diversion for adults: An evidence briefing.
62. Home Office. (2023). Criminal justice disposals
63. Ministry of Justice (2022). Criminal Justice System Statistics Publication: Out of Court Disposals 2011 to 2021: Pivot Table Analytical Tool for England and Wales.

64. The number of drug possession cases that were charged in court in 2020/21, as estimated by Home Office criminal justice outcomes data.
65. We recommend restructuring the current out of court resolutions framework by restricting the police's use to the conditional caution, the simple caution and a reformed community resolution, which requires no formal admission of guilt and has no criminal record implications. The previous Government legislated to introduce a new two tier system but have not been able to implement it due to ongoing technical issues. We take the view that this framework should simply not be brought into force and eventually repealed.
66. Ministry of Justice. (2013). Transforming Rehabilitation: a summary of evidence on reducing reoffending.
67. In Scotland, Structured Deferred Sentences provide a structured intervention for individuals following conviction but, crucially, prior to final sentencing. The evidence on their use is encouraging, with higher completion rates than standard community sentences and signs that they especially help young adults.
68. Ministry of Justice, New Zealand (2014). Reoffending Analysis for Restorative Justice Cases.
69. In March 2024, the Government announced an additional £53m to expand the Bail Information Service, and a further £22m of additional funding will be available in 2024/25 to fund community accommodation.
70. House of Commons Justice Committee. (2023). The role of adult custodial remand in the criminal justice system.
71. Any piloting of these assessment should consider the potential impact on racial disparities before being rolled out.
72. Independent Parliamentarians' Inquiry into the Operation and Effectiveness of the Youth Court (2014). Chaired by Lord Carlile of Berriew CBE QC; Taylor, C. (2016) Review of the Youth Justice System in England and Wales. London: Ministry of Justice; Lammy, D. (2017) An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System.
73. In Victoria in Australia, their magistrate courts can hear cases that attract up to 24 months in prison, and they use more judge only-trials. In other countries, like Scotland and New Zealand, they have a court model in which 'summary' cases and more serious cases are heard in the same court but under different procedures, with jury trials only for cases likely to attract over 2 years in prison.
74. Bowen & Gibbs. (2018). Just technology: Emergent technologies and the justice system... And what the public thinks about it. Centre for Justice Innovation.
75. We have included the following offences: Use /keep of an HGV on a road when HGV road user levy is unpaid; Vehicle Insurance offences (excluding forgery); Travelling by railway without paying the correct fare
76. This was a switch recently proposed in a Government consultation for TV licence evasion. HM Government. (2020). Consultation on decriminalizing TV licence evasion.
77. Slade et al (2024). "Where the hell am I going to get that money from?": The impact of court fines on people on low-incomes. Centre for Justice Innovation.
78. A solicitor or barrister who sits part-time as a district judge (who may be taking their first steps on the route to becoming a full-time district judge). Retired district judges sometimes sit as deputies.
79. Slade & Whitehead. (2024). "Where the hell am I going to get that money from?": The impact of court fines on people on low incomes. Centre for Justice Innovation.
80. Section 108 of the Magistrates' Court Act 1980 and Criminal Procedure Rule (Crim PR) 34
81. Rosenberg. (2024). Carr considers jury reforms.
82. HM Inspectorate of Probation. (2023). Annual Report 2022/2023
83. HMPPS. (2020). Introducing the Draft Target Operating Model-Probation Reform Programme.
84. Recent HMIP research highlights that where inspectors found that when probation supervision "both engaged the person on probation and supported their desistance, the sentence completion rate was 24 percentage points higher and the reoffending rate was 14 percentage points lower compared to those cases where both judgements were negative." Moore et al. (2023). Examining the links between probation supervision and positive outcomes – completion and proven reoffending. HM Inspectorate of Probation
85. HM Inspectorate of Probation. (2023). Desistance – general practice principles
86. Slade & Whitehead. (2024). "Where the hell am I going to get that money from?": The impact of court fines on people on low incomes. Centre for Justice Innovation.
87. Bauer et al (2016). Kiosk Supervision: A Guidebook for Community Corrections Professionals. National institute of Justice.
88. HMPPS workforce data (Q3 2023) suggests that the current number of probation officers (4,418) is 2,420 below requirement.
89. We estimate that we will need an additional 2,500 probation officers, an additional 2050 probation service officers and an additional 565 senior probation officers by 2027.
90. For example, the Health and Care Professionals Council, which regulates 15 professions including paramedics and physiotherapists, requires every registered individual to re-register every two years and requires documentary evidence that the practitioner has engaged in continuous professional development that demonstrates its relevance to practice, that has contributed to the quality of practice and is of benefit to service users.
91. Through the recent probation reform programme, probation has been organised around regions but also into 108 Probation Delivery Units (PDUs), the boundaries of which have been developed to align with upper tier and unitary local authority boundaries. These PDUs are already, like YJSs, subject to individual inspection by HMIP and are lead, like YJS, by a Head of Service.
92. HM Inspectorate of Probation. (2023). Annual Report 2022/2023. In his valedictory foreword, Justin Russell wrote, "the great majority of the probation caseload, all of the most important relationships for probation staff and the people they work with are local,

with locally run and accountable partners. These include local police services; local authority housing and social service departments; local mental health trusts; and local drug and alcohol services... I think the time has come for an independent review of whether probation should move back to a more local form of governance and control, building on the highly successful lessons of youth justice services."

93. Every local authority (and other agencies) has a statutory duty (under the Crime and Disorder Act 1998) to establish a Youth Offending Team (increasingly known as Youth Justice Services (YJSs)) to provide local youth justice services.
94. Crest Advisory. (2022). County Lines: Breaking the Cycle.
95. Smoked opium has been replaced by "injectable heroin, increasingly now being cut with fentanyl, and cocaine markets have evolved towards smoked or injected crack cocaine. The cannabis market has become increasingly dominated by more potent varieties, as well as synthetic cannabinoids such as Spice." Transform Drug Policy Foundation. (2022). Evidence submitted to Home Affairs Select Committee.
96. ONS. (2023). Deaths related to drug poisoning in England and Wales: 2022 registrations
97. The National Center for Health Statistics (2023). Drug Overdose Death Rates.
98. Stevens, A., Hughes, C. E., Hulme, S., & Cassidy, R. (2022). Depenalization, diversion and decriminalization: A realist review and programme theory of alternatives to criminalization for simple drug possession. *European Journal of Criminology*, 19(1), 29-54. <https://doi.org/10.1177/1477370819887514>
99. For discussion, see: <https://transformdrugs.org/blog/drug-decriminalisation-in-portugal-setting-the-record-straight#:~:text=At%20the%20turn%20of%20the,sharply%20within%20the%20first%20decade>
100. See (i) Stevens, A., Hughes, C. E., Hulme, S., & Cassidy, R. (2022). Depenalization, diversion and decriminalization: A realist review and programme theory of alternatives to criminalization for simple drug possession. *European Journal of Criminology*, 19(1), 29-54. (ii) Hughes, Dr Caitlin et al. "Models for the decriminalisation, depenalisation and diversion of illicit drug possession: An international realist review." (2019).
101. Citizens Assembly. (2023). Citizens' Assembly on Drugs Use publishes summary list of 36 recommendations
102. Complex adaptive systems are complex, in that they are dynamic and non-linear; adaptive, in that individual and/or collective behaviour adapts to the environment; and a system because it is an organic network of interactions between organisations. Health Foundation. (2010). Evidence scan: Complex adaptive systems.
103. This role was recently recommended in report People first, always: Delivering better, cheaper, more accessible public services.
104. This office would be responsible for the funding of victim services, including specialist services, like the National Homicide Service, which are delivered national, and setting national standards that victims services should met, especially in honoring commitments under the Victims Code. Where existing victim funds are currently distributed locally, they would continue to be so but they should be more concentrated—where there are metro Mayors, all existing victim funding funds should be allocated to them and, as far as is possible, in areas without Mayors, they should be distributed by the Police and Crime commissioner. We recognise that this may entail some funds simply moving to be re-distributed to the Departments currently in charge of those funds. In particular, we see that ring fenced funding for accommodation is likely to be best distributed by DHLUC to LAs for ring-fenced use within their existing housing budgets.
105. HM Government. (2022). Victims Funding Strategy.
106. The proposal for a national victim-care hub is to provide a single point of contact, timely updates on case progression, information and advice, referrals to specialist support and oversight to ensure that entitlements under the Victims' Code are being delivered.
107. This issue has been explored in detail by Dr Natalie Byrom, an associate of the Centre.

## Written by:

Phil Bowen

## About the Centre for Justice Innovation

The Centre for Justice Innovation seek to build a justice system which all of its citizens believe is fair and effective. We champion practice innovation and evidence-led policy reform in the UK's justice systems. We are a registered UK charity.

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