

OCTOBER 2023
HARVEY REDGRAVE
MADELINE ROLFE



A Plan to Reform the Criminal-Justice System

Contents

- 3 Executive Summary
- 5 Introduction: The Criminal-Justice System
- 12 Understanding Each Stage of the Offender Journey
- 25 Approach to Reform: A CJS That Is Swift and Certain
- 31 Recommendations for Reform
- 36 Conclusion

01

Executive Summary

The criminal-justice system in England and Wales is locked in a cycle of decline. Despite charge rates that have fallen to record lows, the court system is struggling to cope and prisons are effectively at operational capacity. An improvement in the charge rate is a necessity if the police are to start to rebuild public confidence. But, as things stand, such a development would tip the rest of the justice system into chaos, so much so that officials in the Ministry of Justice are left wondering how they would cope if charge rates were to rise.

The current crisis, while clearly exacerbated by the Covid-19 pandemic, has been years in the making. The process of investigating a crime and charging a suspect has become more complex, leading to longer delays, which in turn has led to a rise in victims withdrawing from the process; judges have become more reliant on prison to punish offenders because they lack confidence in the alternatives and prisons have become steadily more overcrowded and violent. It is true that the justice system bore the brunt of spending cuts imposed earlier in the decade – but it is also the case that money alone cannot fix the problems the system now faces.

To escape the current crisis, new approaches will be required. The system must become capable of intelligent segmentation: not every offender is the same, but the system continues to treat them as if they were. And it is time to elevate the principle of “swiftness and certainty”. Swift justice will be more likely to keep victims engaged and deter repeat offending, preventing the need for harsher punishments later on.

The recommendations in this report fall into five broad categories:

1. An enhanced system response for managing prolific offenders, with mandatory drug testing on arrest, diversion into treatment, multi-agency support and the use of electronic tags to enforce compliance.
2. Streamlining the charging process, freeing up capacity to deal with the most serious and complex crimes.
3. Improving the victim experience by using technology to create an end-

to-end service for victims, with a single case officer assigned from the moment a crime is recorded.

4. A new national timeliness target and greater use of technology to drive efficiency across the whole criminal-justice system and reduce long waiting times.
5. Tougher and more intensive community sentences and the use of next-generation tags as alternatives to custody to help manage overcrowded prisons.

Government must now take the necessary steps to reform the justice system and put it on a path to recovery.

02

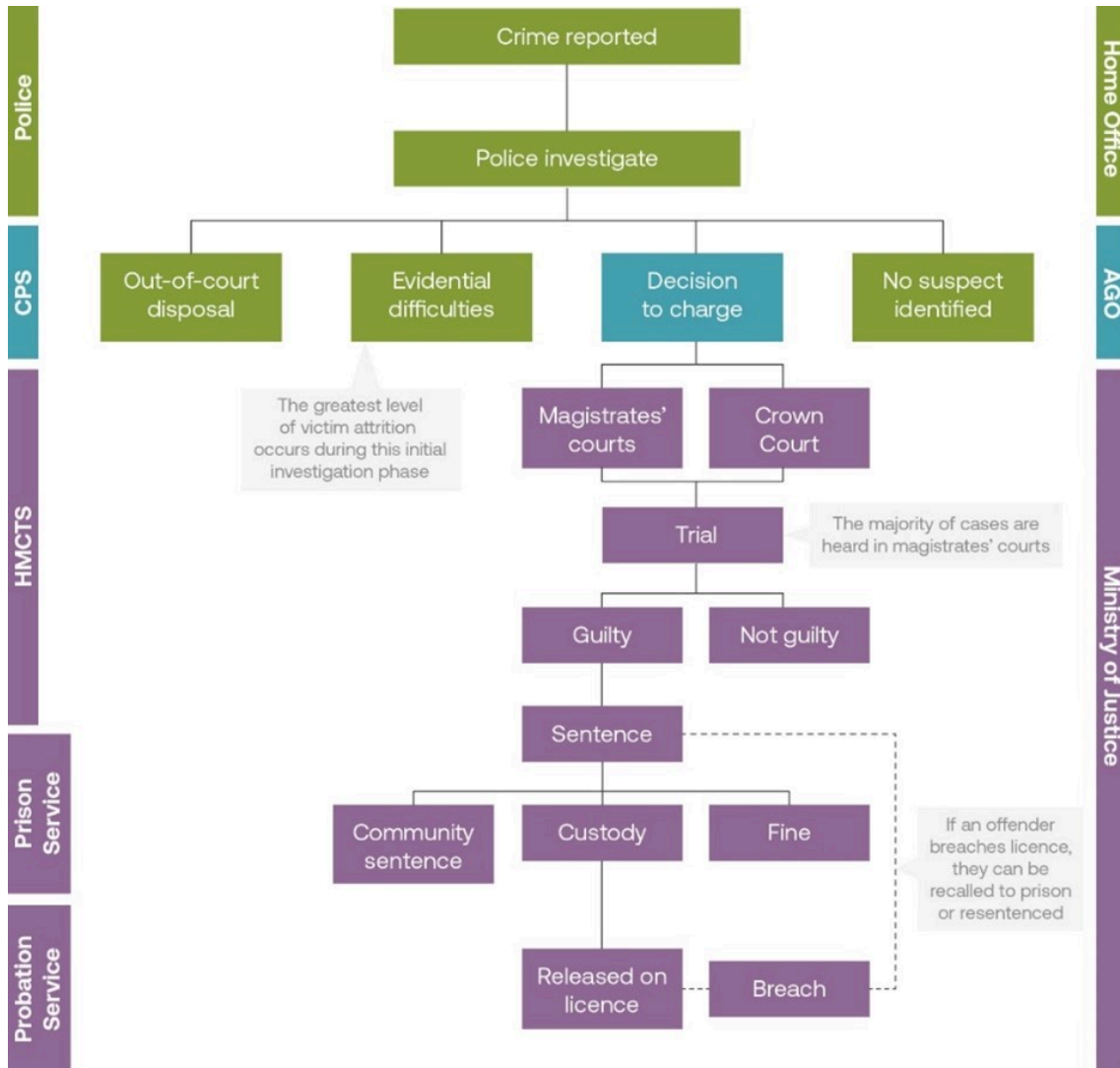
Introduction: The Criminal-Justice System

The criminal-justice system (CJS) is a set of government institutions and processes that aim to apprehend, prosecute, punish and rehabilitate offenders. Responsibilities for different elements of this work lie across several agencies, chiefly the police, Crown Prosecution Service (CPS), courts, prisons and probation services.

This interconnectivity means that policy decisions affecting one part of the system can have effects elsewhere, often in ways that weren't necessarily foreseen or intended. For example, decisions to increase police-officer numbers may put pressure on the courts, which are already struggling with record backlogs. Similarly, reducing the availability of mental-health treatment within prisons may impact the ability of the probation service to rehabilitate offenders once they are released from custody.

FIGURE 1

Structure of the criminal-justice system



Source: TBI/Note: AGO is the Attorney General's Office.

The CJS is a complex system with multiple objectives, not all of which cohere. At any one time, the CJS is responsible for:

- punishing, while also rehabilitating offenders

- upholding suspects' rights, while delivering justice for victims
- protecting the public from harm, while adhering to human-rights law

Successive governments have often struggled to find a balance between these competing objectives. For example, attempts to ensure offenders are sufficiently punished for committing an offence have focused almost exclusively on the use of prison, with “rehabilitation” left as the sole domain of the probation service. As a result, we have a prison system that punishes but fails to rehabilitate, and a set of community sentences that rehabilitate but aren't punitive enough to command the confidence of judges. One of the outcomes of this has been an overreliance on the use of short prison sentences as a means of punishing low-level, repeat offenders – despite the fact that such sentences are expensive and largely ineffective in reducing reoffending.¹

Similarly, safeguards designed to protect the accused from miscarriages of justice – such as the rules around disclosure – can inadvertently create injustice in the opposite direction, whereby the threshold for charging offenders is raised so high that it becomes difficult to progress an investigation towards a charge and ultimately a conviction. This has been cited by the police and other stakeholders as one of the reasons why prosecutions for rape are so low, with only 2.1 per cent of reported offences leading to a charge and even fewer prosecuted.²

Finding a more satisfactory balance between the aims of the criminal-justice system should be a central objective for future governments.

RISING DEMAND, SQUEEZED BUDGETS

The volume and complexity of demand facing the CJS have increased over the past decade, with a 67 per cent rise in recorded crime since 2014 (from 4.03 million to 6.73 million offences).³

The proportion of serious violence and sexual offences has also increased over the past ten years, representing a third of all crime today compared with just over a tenth in 2010. There has been a 350 per cent increase in rape since 2010, and the number of homicides, knife and gun crimes, all grew from the mid-2010s until the pandemic (and have recently returned to an upward trajectory). In the case of the latter offences, it is likely these were real

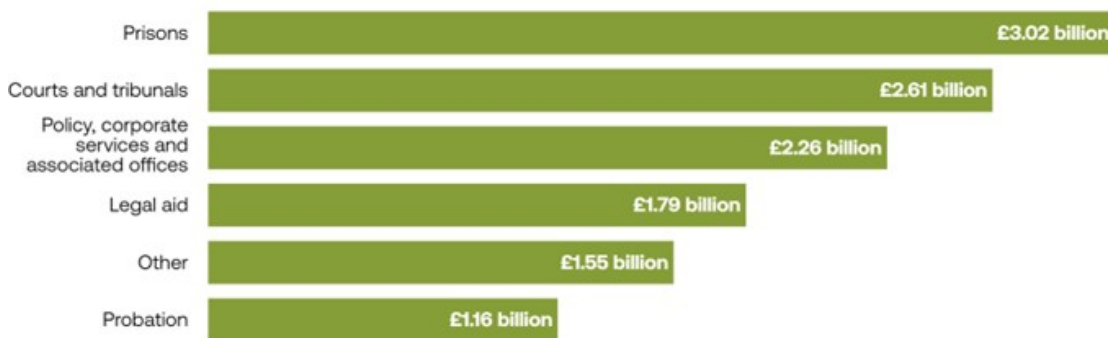
increases linked to structural changes in the drugs market.⁴ These offences are more complex, time-consuming and therefore costly to investigate and prosecute, hence the pressure on demand.

Based on Ministry of Justice (MoJ) statistics, it is possible to deduce that just under a tenth (9 per cent) of offenders are responsible for around half of total crime. Prolific offenders commit around eight times as many crimes per offender than average lawbreakers, typically starting with theft and anti-social behaviour (ASB) before progressing to more violent and serious offences. And they were responsible for around half the total number of convictions processed by the CJS between 2001 and 2021.⁵

Over the same period, spending on the CJS has not kept pace. Taken as a whole, the past decade represented a decline in real-terms spending of around 16 per cent, though there has recently been an uplift in resources post-Covid, particularly capital expenditure, reflecting the planned increase in prison spaces. As can be viewed in Figure 2, prisons represent the lion’s share of the MoJ’s budget, followed by HM Courts and Tribunals Service (HMCTS).

FIGURE 2

MoJ expenditure, 2021 to 2022



Source: [MoJ Departmental Overview 2021-22](#)

Despite rising demand, throughput has actually decreased, with prosecutions and convictions having declined by 19 per cent since 2012. The number of defendants being formally dealt with by the CJS and prosecuted (1.157 million in 2022) has reached the lowest level since records began in 1970, leaving aside the two years impacted by the Covid-19 pandemic.

FIGURE 3

Number of individuals proceeded against at magistrates' courts, 2012–2022



Source: [Criminal Justice System statistics quarterly: September 2022](#)

The explanation for falling throughput is likely to be a combination of changes to the mix of crimes (meaning a higher proportion of complex cases), less capacity in terms of both buildings and staff, and a rise in various administrative inefficiencies, related to the management of the courts. Understanding the relative weight of these different factors is a key question for policymakers.

THE IMPORTANCE OF SWIFTNES AND CERTAINTY

The principles of “swiftness and certainty” are important drivers of system

effectiveness. With regard to the deterrence effects of punishment, there is a considerable body of evidence that “certainty” (the likelihood of being caught) matters more than “severity” (the harshness of the sentence). This is partly attributable to human nature; future consequences, even if severe, such as a long prison sentence, are often given less weight than immediate consequences. But it is particularly relevant for prolific offenders, who tend to be more impulsive, reckless and short-term orientated than the general population. The potential consequences of punishment at some unspecified future time, and with unpredictable severity, will be unlikely to weigh heavily on an offender’s mind.

In addition to deterrence, there are other reasons why swiftness and certainty are important:

- **Victim satisfaction:** Victims of crime tend to want cases to be resolved as rapidly as possible so that they can move on with their lives.
- **The effectiveness of the court system:** The Centre for Justice Innovation found that “delays between the offence and the completion of a case undermine the effectiveness of the sentence in the eyes of both victims and offenders. When courts respond swiftly to non-compliance with court orders, the evidence suggests they are more effective”.⁶
- **Behavioural change:** An academic study in 2019 found that increasing the probability of punishment had a bigger impact on behaviour than increasing the penalty. In one scheme in Denmark, offenders added to a DNA database were found to have reduced recidivism by 42 per cent, with the effect persisting after three years and at its strongest for those charged with violent offences.⁷

However, timeliness has not been given sufficient attention or weight within criminal-justice policy. Since the 1990s there has been a raft of government legislation aimed at toughening prison sentences, including the recent Crime and Policing Act, which introduced mandatory minimum sentences for serious sexual offenders. The speed and certainty of sanctions have been largely neglected as a focus of policy. The average time taken to bring an offender to justice has increased by 46 per cent since 2010, yet there has not been a single white paper or bill brought forward to address this problem.

The following chapters set out the key problems and drivers of reform at different stages of the “offender journey”, from the initial response to a crime through to sentencing and beyond.

03

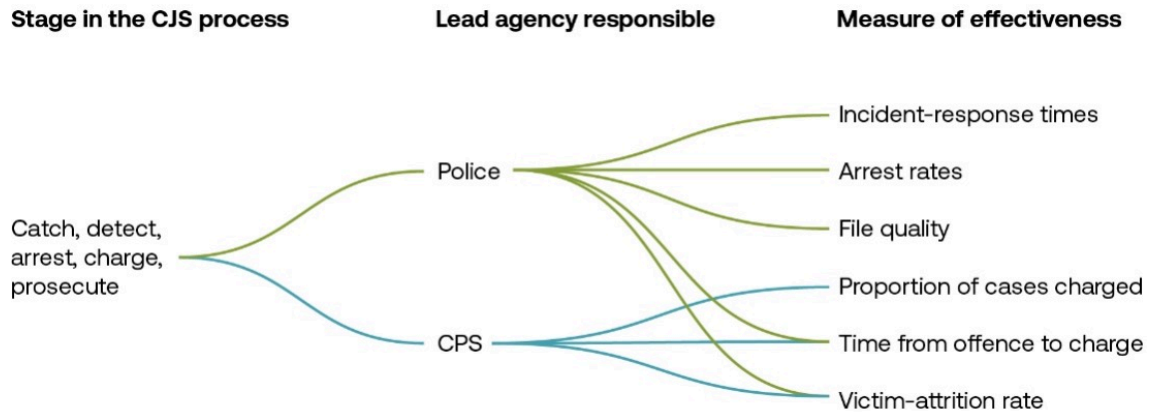
Understanding Each Stage of the Offender Journey

Detect, Arrest, Charge

The police and the CPS have joint responsibility for ensuring criminals are charged and prosecuted.

FIGURE 4

Responsibilities and effectiveness of the criminal-justice process



Source: TBI

Over the past decade, there has been a collapse in the rate at which offences are charged, significantly reducing the certainty of detection. The average charge rate for all offences is now 5.7 per cent.⁸ For some offences, it is even lower, such as rape (2.1 per cent) and fraud (less than 1 per cent).⁹¹⁰

FIGURE 5

The charging process for criminal cases in England and Wales



Source: TBI

Despite charging being a responsibility shared between the police and the CPS, neither agency is incentivised to work together. The police claim that

prosecutors regularly undercharge defendants in order to boost their conviction rates while CPS lawyers complain about the poor quality of files they receive from the police.

The Initial Police Response to a Crime

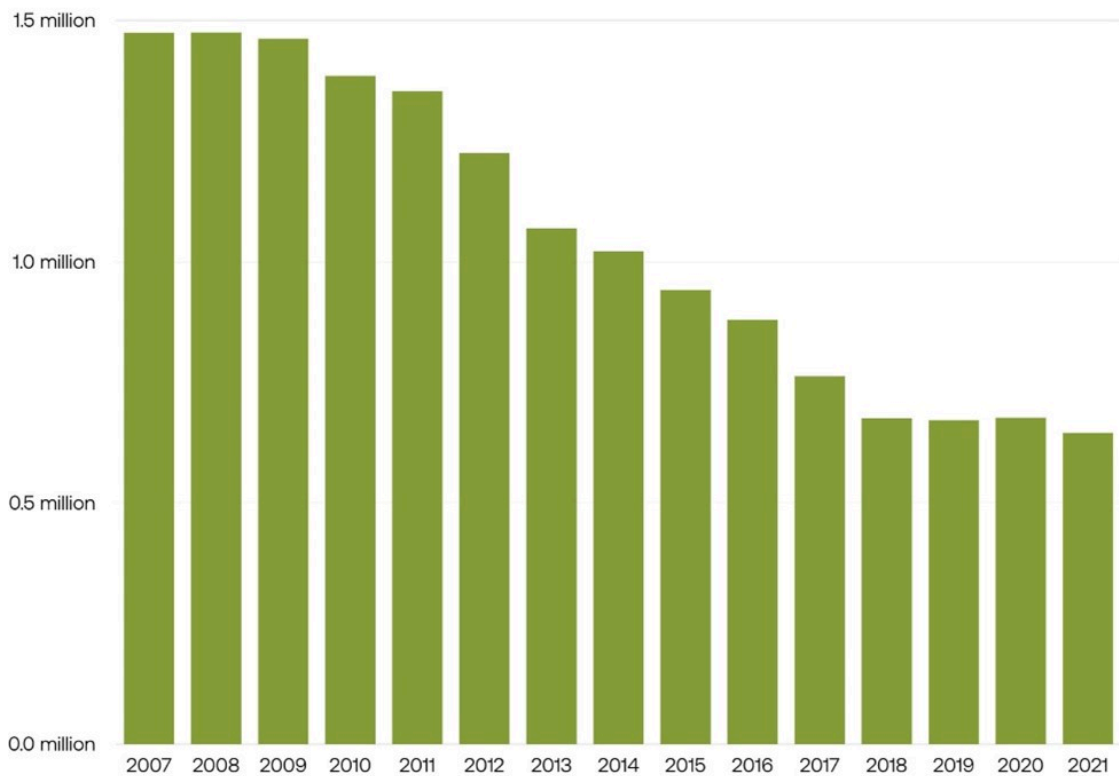
While police response times are not recorded nationally, freedom-of-information (FOI) requests to police forces suggest they have increased and that the police are deploying fewer officers to the scenes of crimes.¹¹ In London, the Metropolitan Police's average incident response time was 59 minutes in 2021, compared with 25 minutes in 2011.

Academic studies have shown that a slower police response has a material impact on the likelihood of detecting a crime.¹² The "golden hour" for evidence collection is missed and opportunities to engage with victims and witnesses are lost. This is particularly important for offences occurring in the home, such as domestic abuse, which now accounts for 17 per cent of all crime. The longer it takes for the police to respond, the less likely victims are to want to pursue their complaint and the more likely they are to withdraw.

The impact of slower response times can be seen in the data on arrests. As Figure 6 shows, the police are arresting around half as many offenders as they were a decade ago.

FIGURE 6

Number of arrests, England and Wales, 2007–2021



Source: [Police powers and procedures: Stop and search and arrests, England and Wales, year ending 31 March 2021 second edition](#)

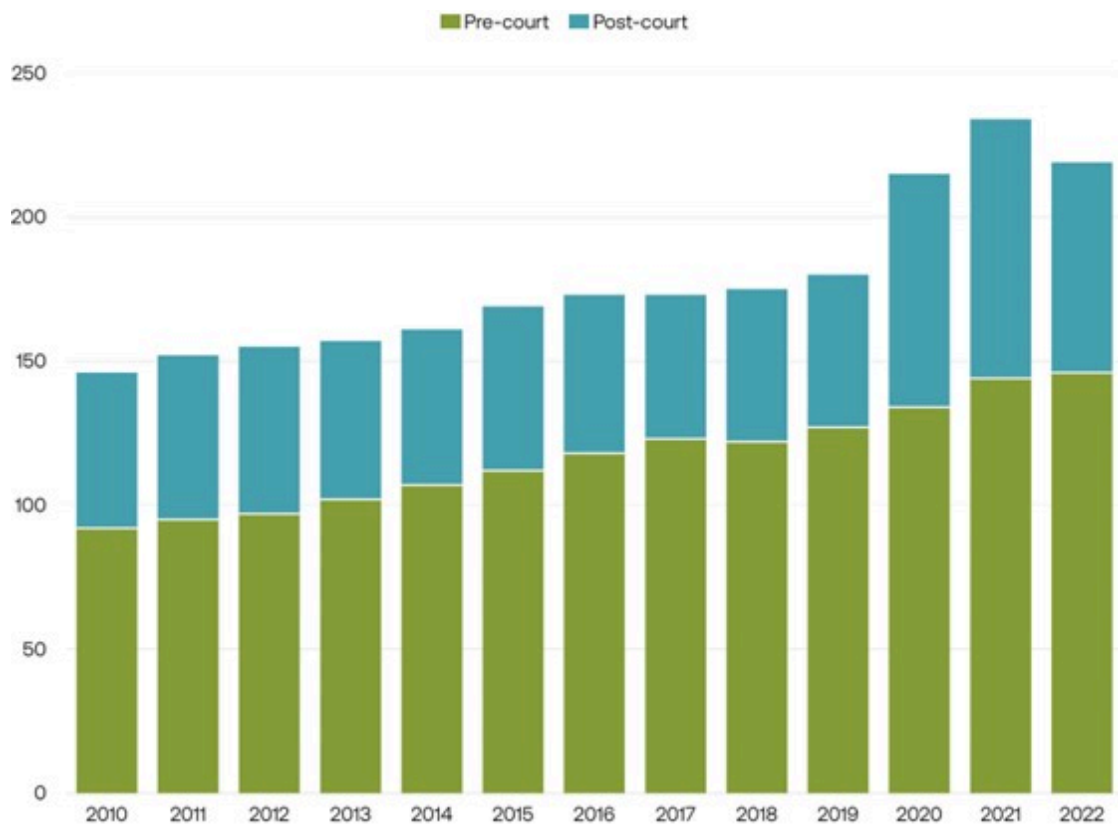
At the same time, there is evidence that the quality of investigations has declined. A 2021 report by HM Inspectorate for Constabulary (HMICFRS) into the police and CPS response to rape found a decline in the quality of files being referred to the CPS by the police.

The Impact of a Lengthier Charging Process

The length of time between an offence being committed and a charge being brought has increased by 63 per cent since 2010, driving the overall increase in offence-to-completion figures.¹³

FIGURE 7

Average number of days from offence to completion at magistrates' courts in England and Wales (2010–2022)



Source: [Criminal court statistics quarterly: October to December 2022](#) Note: "Pre-court" indicates all criminal cases dealt with in magistrates' courts, pre-court (offence to charge or laying of information, mean). "Post-court" indicates all criminal cases dealt with in magistrates' courts, all (offence to completion, mean).

For both victims and offenders, the delay between offence and charge has negative impacts. For offenders, the lack of association between their offending behaviour and the consequence reduces deterrence effects. For victims, delays are just as damaging, leading to them withdrawing from the process and the case collapsing. Most of this delay is front-loaded: when asked in a 2019 survey at what point in the prosecution process a victim was most likely to withdraw, police officers said it was most common pre-charge.

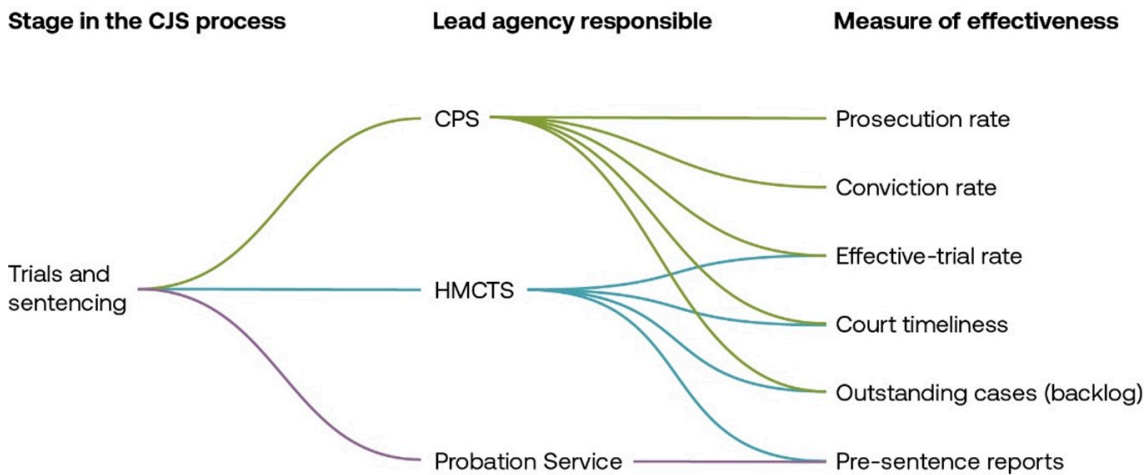
In 2022 around a quarter (26.5 per cent) of offences did not proceed owing to the victim not supporting action – an increase of 17.8 per cent since 2015.¹⁴

TRIALS AND SENTENCING

The CPS, HMCTS and the probation service have joint responsibility for effective trials and sentencing.

FIGURE 8

Responsibilities of different agencies during the trial and sentencing process



Source: TBI

The number of defendants being proceeded against by the CPS is lower than a decade ago. Although the significant decrease during the pandemic was entirely understandable, by 2022 the number of defendants proceeded against was still well below pre-pandemic levels at 1.107 million – down from 1.5 million in 2015.¹⁵

Trial Effectiveness

Trial effectiveness is declining. After a period of stability between 2006 and 2019, the proportion of trials that are deemed ineffective (by not going ahead on the day) has begun to shoot up. In 2022, over a fifth (22 per cent) of trials

were deemed to be ineffective, the highest level in almost two decades. There are multiple points of failure during the trial process, many of which relate to CPS inefficiency, such as the prosecution not being ready in time or a key witness being absent.

Ineffective trials are doubly damaging: they reduce deterrence in the system and discourage victims and witnesses from giving evidence.

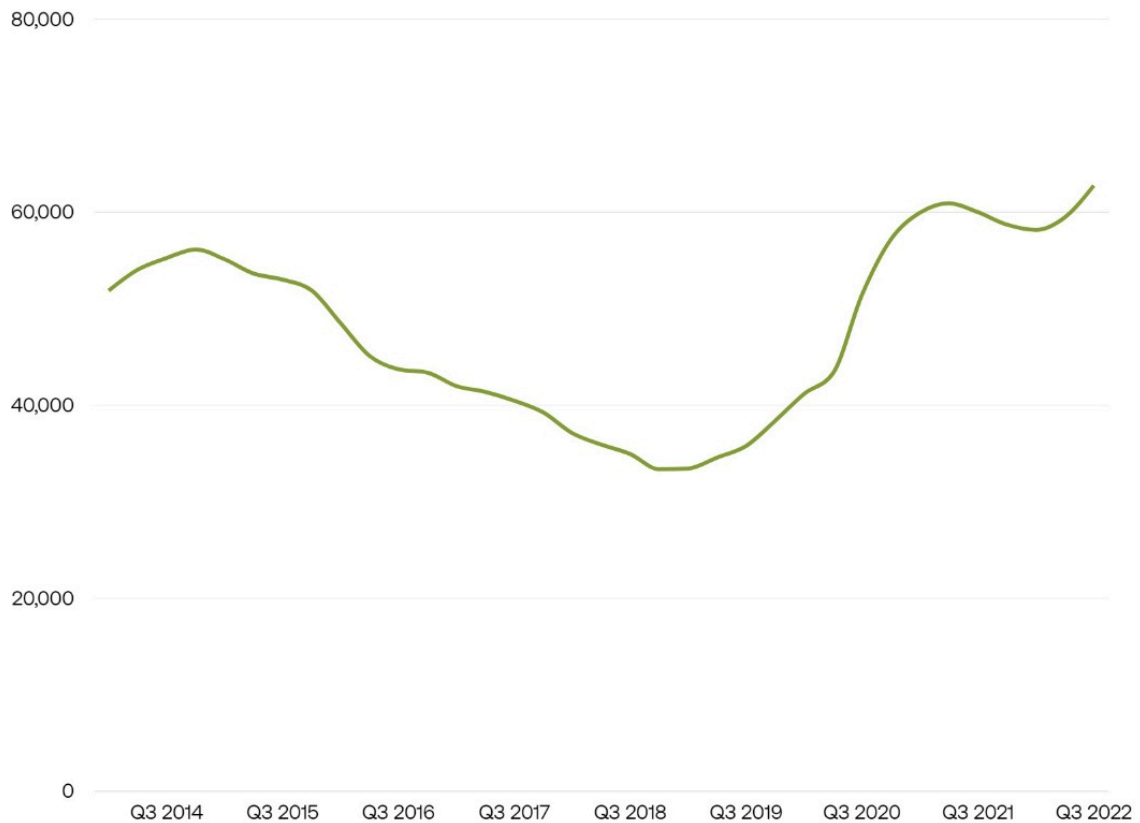
Delays and the Backlog

The courts are struggling to process cases, even though fewer charges are being made. In 2022, the average timeliness from receipt to completion in the Crown Court was 349 days – an increase of 96 days compared with pre-pandemic levels (253 days in Q1 2020).

Before the pandemic the backlog of Crown Court cases was more than 40,000. Post-pandemic it has reached a record high of 62,000. Over a quarter (28 per cent) of cases have been waiting more than a year, up from 5 per cent in 2014.

FIGURE 9

Crown Court outstanding cases, Q1 2014 to Q3 2022



Source: [Criminal court statistics quarterly: July to September 2022](#)

Longer delays become self-reinforcing, with defendants incentivised to plead not guilty in the hope that the case takes so long to get to trial that it ends up collapsing.

Conviction Rates

By contrast, conviction rates in both the magistrates' courts and the Crown Court have remained high. However, these figures should be interpreted carefully. While a high conviction rate could indicate that cases brought to court are evidently strong, it could also indicate that more complex cases,

where a trial outcome is less certain, are being screened out. For instance, there have been suggestions that the CPS has internally raised the threshold for taking on rape cases, where it is often especially difficult to secure a conviction due to a desire to keep conviction rates high, although the CPS has denied this.¹⁶

Sentencing

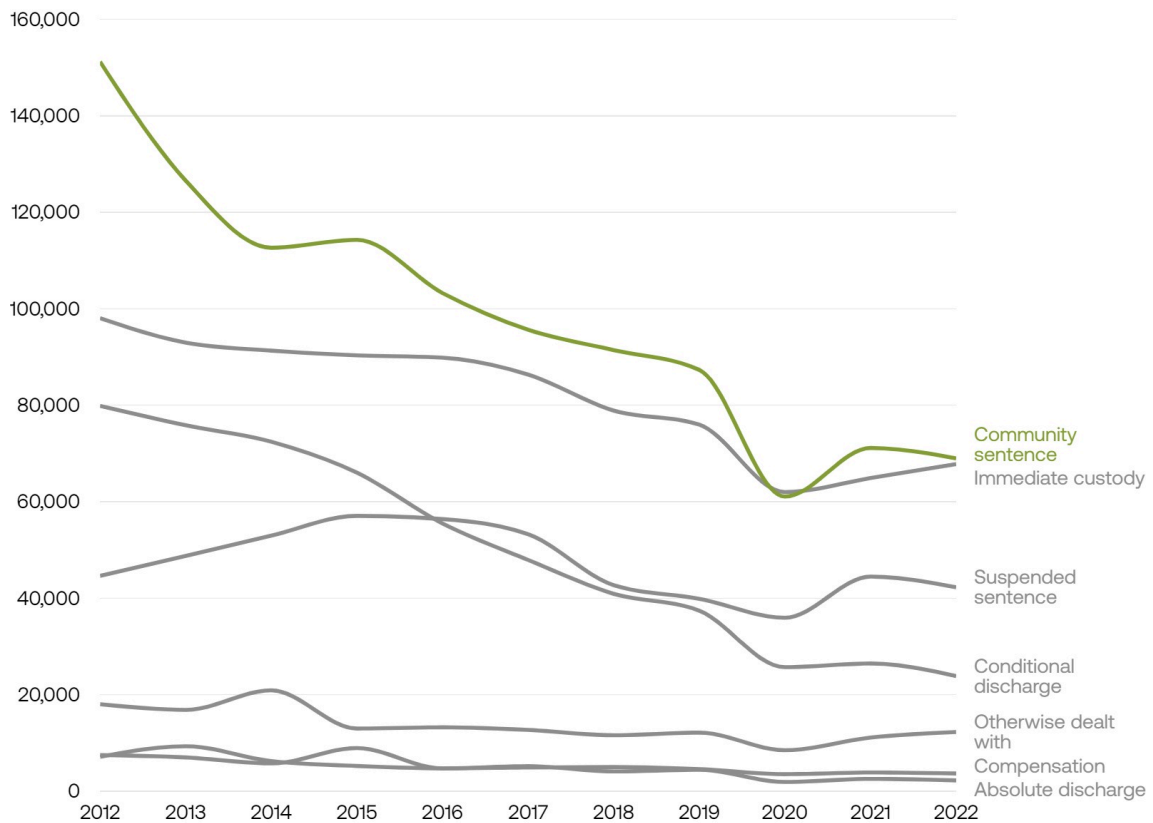
Over the past decade, there has been a shift in the composition of sentencing. While the use of custodial sentences has remained relatively stable, the average prison sentence has increased, from 14.5 months in 2012 to 22.6 months in 2022.¹⁷ The majority of this inflation has occurred at the more serious end of the offending spectrum; for the most serious crimes, the average sentence is two years longer now than it was in 2008.¹⁸

At the same time, the use of community sentences has more than halved. This is in part a reflection of the breakdown in trust between the courts and the probation service, which has endured a decade of chaotic reorganisation (having been privatised in 2014, only to be renationalised seven years later).

The fall in community sentences has also coincided with a rise in “fast” pre-sentence reports prepared by the probation service to inform sentencing decisions, with concerns that on-the-day reports may lack a rigorous analysis of offending histories and individual needs, leading to sentencing decisions that are less tailored to the offender.

FIGURE 10

Persons sentenced at all courts by type of sentence, 2012 to 2022, England and Wales



Source: [Criminal Justice System statistics quarterly: December 2022](#)

Punishment and Rehabilitation

In theory, the prison and probation services have joint responsibility for punishing and rehabilitating offenders.

FIGURE 11

Responsibilities of the prison and probation services during the punishment and rehabilitation process



Source: TBI

Effective punishment and rehabilitation of offenders requires a close working relationship between the prison and probation services to support a smooth transition from prison back into the community. However, major upheavals in offender-management structures and a lack of resourcing have made this relationship more difficult. In practice, the two services now operate in silos, with prisons largely outsourcing the job of reducing reoffending to the probation service.¹⁹

Prisons

The paradox of the CJS is that, despite the fall in the number of offenders being charged and prosecuted, and a court system that is struggling to process offenders, the prison system is close to breaking point.

The latest population figures show that there are currently more than 86,500 people in prison, with an operational capacity of 87,710, leaving very little room for manoeuvre. In order to stay within capacity limits, the system already puts up with high levels of overcrowding.²⁰

As a consequence, prisons are now much less safe. Statistics show a rise in violence, both in terms of assaults on staff and prisoner-on-prisoner violence,

as well as self-harm.

FIGURE 12

Assaults on staff per 1,000 prisoners



*Estimate

Source: [Safety in Custody summary tables to March 2023](#)

Overcrowding is also making the job of rehabilitation harder. For prisons to be effective, they need to be able to engage prisoners in purposeful activity, such as education, work or treatment. However, with space at a premium and staff morale at an all-time low, prisoners are increasingly spending more than 22 hours a day in their cells.²¹ Recent inspections by HM Inspectorate of Prisons (HMI Prisons) have found that less than half of prisons in England and Wales are performing competently in providing purposeful activity for prisoners.²²

Looking ahead, these pressures are only likely to grow. The latest MoJ projections forecast an increase in the prison population to around 100,000 by 2027, driven by police-officer uplift and a continuing harshening of sentencing policy. Although the government has committed to providing 13,000 additional prison spaces by then, as of September 2023 only one new prison is being

built. With the time it takes to build new prisons, it seems likely that at some point in the not-too-distant future, demand will outstrip available capacity – a prospect that is likely to trigger emergency measures, such as the use of police cells and even early release.

Probation

Although the official reoffending rate has fallen from 30 per cent to 25 per cent since 2017, this is as likely to be a function of the falling charge rate as it is a genuine reduction in repeat offending.²³ Other proxy measures of reoffending also paint a less positive picture. For instance, only 16 per cent of ex-prisoners are employed six weeks after leaving custody.²⁴ Moreover, breaches of community sentences are not robustly or consistently punished (a study in 2017 found that only around half of such orders were successfully completed).²⁵

As well as reducing the likelihood of reoffending, a key aim of the probation service is to protect the public from serious harm. Here too, the data are not encouraging. There were 529 Serious Further Offence (SFO) notifications in 2021–2022 and only around 40 per cent of them led to convictions. In the past 12 months HMI Prisons has highlighted a series of public-protection failures, which led to serious further offences. In many cases these involved routine failures to share information (meaning inappropriate controls were in place) and in some cases the inability to enforce breaches of licence agreements.

04

Approach to Reform: A CJS That Is Swift and Certain

The drivers of reform set out in the previous chapter point to the need for policy changes in a number of interrelated areas.

Drivers of reform

Policy implications

A small minority of offenders responsible for a large proportion of total crime

An enhanced system response for managing prolific offenders (similar to the Youth Offending Team model for young offenders)

Too few offenders being charged – and those that are charged facing lengthy delays

Free up capacity by streamlining the charging process

Victims losing confidence, meaning they withdraw from the process, allowing offenders to evade justice

An end-to-end service for victims, with a single case officer assigned from the moment a crime is recorded

Declining trial effectiveness and lengthy court backlogs leaving suspects and victims in limbo

A new national timeliness target (similar to the A&E waiting-time target for the NHS) and greater use of technology to drive efficiency

Offender-management system that neither punishes nor

Tougher/more intensive community sentences, and the use of next-generation tags as alternatives to custody

rehabilitates offenders

These reform areas are explored in greater depth in this chapter.

PROLIFIC OFFENDERS

Prolific offenders, who are responsible for a disproportionately large amount of crime, are unlikely to be deterred by traditional criminal-justice responses. Many of them lead disordered lives; according to some estimates, 81 per cent are involved in drug misuse and 40 per cent lack settled accommodation.²⁶

The system is failing to deal with this cohort of offenders. More than 40 per cent of prolific offenders sent to prison for the first time had more than seven previous convictions – an indication that local services are not intervening sufficiently early or robustly enough. And once offenders enter the system, there is a lack of meaningful deterrence: FOI requests have revealed that some burglars have been caught and convicted up to 50 times before they received a custodial sentence.²⁷

There are precedents for a more targeted approach. The last Labour government pioneered a scheme targeted at the most prolific offenders. It sought to bring probation, police and other local services together to provide a combination of intensive and tailored support but, in 2020, HM Inspectorate of Probation (HMIP) concluded that the programme had “lost its way”.

Policy Implications

The CJS should establish a distinctive and enhanced response to prolific offenders, with mandatory drug testing on arrest, diversion into treatment, multi-agency support and the use of electronic tags to enforce compliance.

THE CHARGE RATE

The current system for charging offenders was established in 1986 with the formation of the CPS, in part as a reaction to a series of high-profile miscarriages of justice. However, over the past 35 years, the process of progressing cases to court has become steadily more labour-intensive and inefficient.

A decade ago, CPS lawyers were embedded within police stations so that they were able to shape investigations from the start and take swift decisions. Today, the CPS is resourced too thinly to cope with current demand, and operates increasingly remotely from the police, with even telephone advice suspended since the pandemic. In most cases, the police send the CPS an electronic file for a charging decision and it can take several months to receive a response.

The result is that the police are increasingly forced to release suspects who are under investigation, leaving those suspects in limbo and victims at risk. A major driver of falling charge rates is victim attrition, where the victim, disillusioned by time delays and lack of support, decides to withdraw from the case. This in turn leads to a poverty of ambition among frontline officers when it comes to charging, particularly for more commonplace crimes like shoplifting, burglary and robbery. The reality is that in the vast majority of cases, securing a prosecution is perceived as just not worth the effort.

Policy Implications

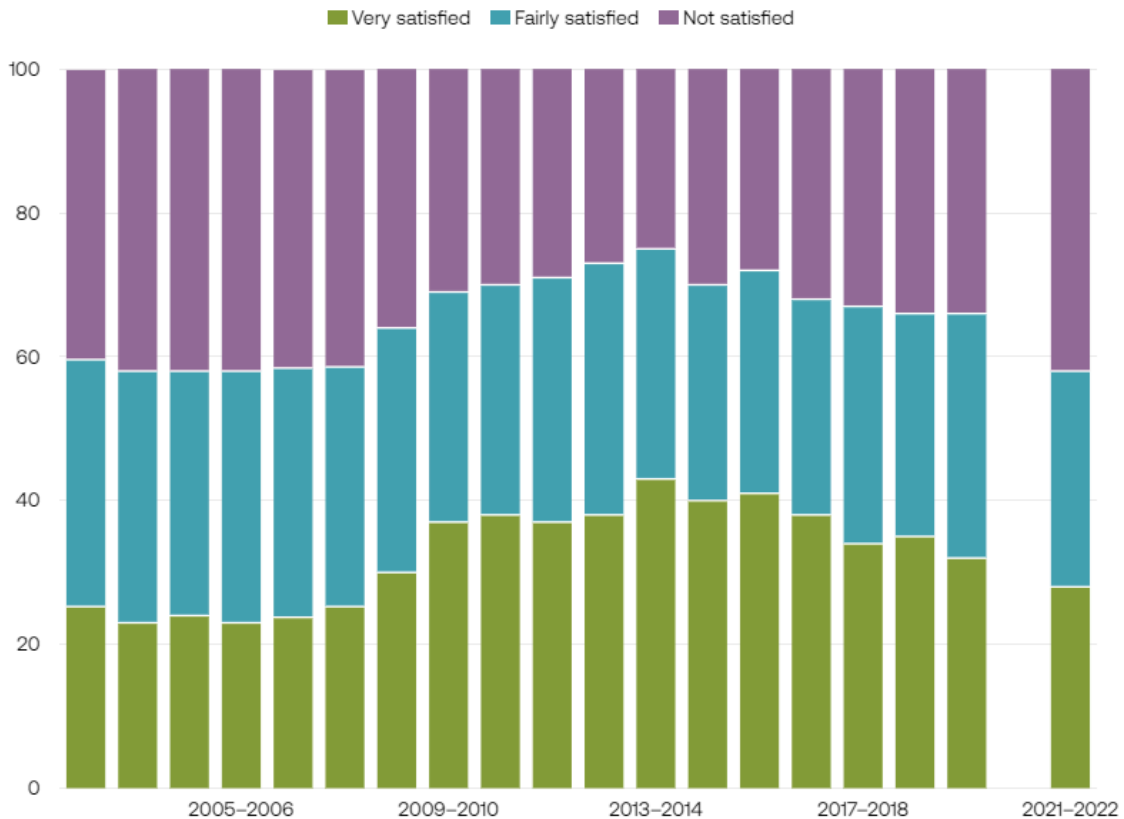
The Home Office and MoJ should jointly examine the case for changing the threshold for involving the CPS in charging decisions. This would likely free up capacity to deal with the most serious and complex crimes and enable the police to speed up the process for lower-level crimes.

VICTIMS

Victim satisfaction has fallen considerably over the past decade, with the proportion saying they were “very satisfied” with the police and the CPS now at 32 per cent, down from 42 per cent in 2014 and lower than the 34 per cent who said they were “not satisfied”.

FIGURE 13

Victim satisfaction with the police and the CPS



Source: [Crime in England and Wales: Annual supplementary tables](#)

Victims do not have unreasonable expectations of the CJS, with surveys suggesting that their core priority is timely and effective communication. In particular, victims want to be informed about the progress of their case and be able to engage with a single point of contact, rather than multiple agencies.²⁸ Currently though, the police, the CPS and HMCTS struggle to fulfil even this relatively basic demand.

For female victims of sexual offences, such as rape, the experience is even worse. Many rape victims interviewed by the Criminal Justice Joint Inspection (CJJI) felt they had been poorly treated, citing “insensitive attitudes”, “disorganisation” and “mishandling of cases”. Interviewees further referenced overly long investigations, delays to reaching an outcome and the

phenomenon of victim-blaming. Similar failings were also documented by Baroness Casey in her review of the Metropolitan Police.²⁹

Policy Implications

Government should be able to use technology to ensure victims can track their cases in real time and receive a continuous end-to-end service throughout the course of their journey through the CJS.

THE COURTS

There is a range of structural barriers to embedding principles of swiftness and certainty within the CJS:

- **Due process:** It is important that defendants in criminal trials be afforded the opportunity to advance a defence and to be properly and fairly tried against a criminal standard of proof. Swiftness must therefore be balanced with fairness.
- **Organisational:** The centralised nature of the CJS in England and Wales (with the vast majority of decisions taken in Whitehall) reduces the scope for local flexibility and the development of innovative approaches to reflect local circumstances and priorities, such as problem-solving courts.
- **Cultural:** Various specialist courts have been piloted in England and Wales, allowing for a greater focus on problem-solving and behavioural change, but they remain pockets of isolated practice. The majority of magistrates' courts continue to operate in the same way as they always have, with delays not just tolerated but hardwired.

Delays have come to be viewed as inevitable within the CJS, but this need not be the case. The last Labour government introduced a four-hour waiting-time target for accident-and-emergency (A&E) departments in order to galvanise effort across the NHS and focus the system on the importance of timeliness. The target became emblematic of New Labour's drive to improve standards and services for patients.³⁰

Policy Implications

The government should consider a national timeliness target to drive improvement across the CJS and explore the potential for greater use of remote hearings to clear the backlog.

PUNISHMENT AND REHABILITATION

Many offenders end up in custody for relatively minor offences because, having already been through the courts several times, prison is perceived as the last remaining tool available for dispensing justice for victims. Nearly a fifth of offenders sentenced to prison are there for theft offences, a large proportion of which are shoplifting and bike theft. Most of these offenders will serve custodial sentences of less than six months, which is not enough time to undertake a course of treatment or to deal with the underlying drivers of their offending. Such sentences are an extremely expensive use of taxpayer money.

One of the reasons that judges rely on prison is that community sentences do not command public confidence. They are often slow to start, commencing weeks after the sentence is passed down, and this reduces the deterrence effect. They are neither intensive nor rigorous enough, involving relatively undemanding work for a few hours a week, rather than full-time. Meanwhile, the government's use of electronic tagging remains beset with problems. In October 2022, the Public Accounts Committee concluded that the system was "reliant on outdated technology" and "at constant risk of failure", which in many cases involved direct and preventable risk to the public.³¹

Policy Implications

In order to command the confidence of judges, community sentences need to be more demanding, rigorous and intensive – beginning immediately after sentence and completed during conventional working hours.

05

Recommendations for Reform

The CJS is at a critical juncture, with every part of the system locked in a cycle of inefficiency and delay. The police and the CPS are failing to detect enough crimes and charge criminals, which in turn is failing to deter would-be offenders. But if there were an increase in the number of people charged, a court system that is already struggling with a backlog would likely become overwhelmed. Similarly, if progress were made to clear the court backlog, the already overcrowded prison system would soon reach capacity, resulting in the need for emergency measures.

In order to operate effectively, the CJS has always relied on the willing cooperation of victims and witnesses, but we are now at the point where we can no longer take that cooperation for granted.

Further tinkering around the edges will simply kick the problem down the road. There is a pressing need for a fundamental reset; we propose the following recommendations for change.

1. AN ENHANCED SYSTEM RESPONSE TO PROLIFIC OFFENDERS

Create a CJS-Wide Prolific-Offenders' Programme

Why? Almost a tenth of offenders drive up to half of total crime, sometimes committing hundreds of offences before they are incarcerated. Such offenders ought to be treated as a distinct cohort, but the CJS focuses on the offence rather than the offender.

How? In 1997 the Labour government created an entirely new system for dealing with young offenders, with multi-agency teams responsible for diverting young offenders away from crime and rehabilitating them post-sentence. This model should be replicated for prolific offenders, with an enhanced, multi-agency prolific-offender team comprising the police, CPS, probation service and local authorities responsible for monitoring such offenders for the entirety of their journey through the CJS. This should be tied to automatic drug-testing on arrest for everyone apprehended for a specified list of trigger offences where substance misuse is a known driver, such as theft or burglary, or where the offender is known to have more than five

previous convictions.

Make Prolific Offenders Subject to a Deferred Prosecution Scheme

Why? Traditional approaches to prosecution and sentencing appear to have little impact in changing the behaviour of prolific offenders, some of whom are subject to multiple short prison sentences over the course of their lives. Judges need to be given the tools to address the underlying cause of offenders' criminality – through the deferral of sentences – and rebuild the link between offence and punishment. Some local areas have piloted such schemes, such as the Choices and Consequences (C2) Programme in Hertfordshire.³²

How? The courts should be given licence to defer sentencing of prolific offenders for up to six months, provided that the offender agrees to undertake an extensive rehabilitation programme, subject to strict conditions, which if breached would lead to an immediate custodial sentence. The rehabilitation activity would be agreed by the judge and be tailored to the individual offender. All offenders participating in the scheme would be constantly monitored by GPS-enabled trackers.

2. STREAMLINE THE PROCESS FOR CHARGING OFFENDERS

Legislate to Change the Threshold for When It Is Appropriate to Involve the CPS in Charging Decisions

Why? The current system for charging offenders was designed for a different age – a time when the majority of crimes were committed locally and before the internet existed. Today, the CPS is spread too thinly to manage the level of demand, particularly with the explosion in violent and sexual offences. Delays in charging suspects are blocking justice, as victims tire of long waits and decide to withdraw, while suspects walk free.

How? The Home Office and Ministry of Justice should work together on legislation to enable the police to charge more non-violent offences, such as theft and burglary, while suspects are still in custody. Charging decisions would continue to be governed by guidance agreed by the Director of Public Prosecutions, and the CPS would remain responsible for charging the most

serious offences.

Re-Establish Joint Police/CPS Teams

Why? Before 2010, CPS teams were coterminous with police force boundaries, so prosecuting lawyers were more likely to be embedded within police investigations from the start. Today, the system has become fragmented, with contact between the police and the CPS increasingly bureaucratic and victims passed from pillar to post. As charge rates have plummeted, both agencies have sought to blame one another.

How? The government should hold the police and the CPS jointly responsible for charge rates through a joint public-service-agreement target and pilot the establishment of joint investigation teams and a single point of contact with victims. These teams would be overseen by a national oversight board made up of policymakers and senior staff from across the police and the CPS.

3. VICTIMS AT THE HEART OF THE SYSTEM

Embed the Principles of “Operation Soteria” Within All Investigations Into Violence Against Women and Girls

Why? For serious sexual offences, such as rape, research has found that investigators continue to put disproportionate effort into testing the credibility of the victim’s account, rather than focusing on the suspect’s offending history. At the same time, different agencies of the CJS, including the police, CPS and probation service, are continuing to operate in the dark when it comes to understanding a suspect’s history of offending. This leads to patterns of repeat offending being missed and inappropriately lenient sentencing decisions by judges. In response to these findings, the Home Office has piloted a new model for the investigation of rape – “Operation Soteria” – which is seeking to embed the principle of “suspect-focused investigations” across all 43 police forces.

How? Operation Soteria should be expanded to include a wider range of offences against women and girls. In parallel, the Home Office and MoJ should work together on the establishment of an integrated intelligence hub to consolidate information about offender histories, currently stored on the police national computer, in a single digital location which is accessible to all parts of

the CJS.

A National Hub for Victim Care

Why? A key driver of victim unhappiness is feeling distanced from their own case, with victims receiving very few updates and limited specialist support throughout the criminal justice process. This is driving increasing numbers of victims to withdraw from the process altogether.

How? A national victim-care hub, similar to the model proposed by London's Victims' Commissioner³³, should be rolled out in order 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. In order to build the confidence of victims, we recommend that the hub is run independently by, perhaps, a third-sector provider.

4. EMBED PRINCIPLES OF SWIFTNESS AND CERTAINTY

A National A&E-Style Target to Speed up the Court Process

Why? Timeliness is an undervalued resource in criminal justice where delays are not only tolerated but considered to be inevitable. This is bad for both defendants and victims, who are left in limbo. It also becomes self-reinforcing, with suspects incentivised by defence teams to plead not guilty in the hope that the victim will withdraw, causing the case to collapse.

How? The NHS four-hour waiting-time target is an example of a simple numerical target which had the effect of signalling a clear direction and galvanising effort around a priority policy area. This should be replicated in the CJS with the introduction of a single national target to speed up court timeliness and reduce the backlog of cases. A newly constituted national criminal-justice board should be responsible for setting the target and overseeing annual progress.

Smarter Use of Technology to Clear the Backlog

Why? Technology can drive greater efficiency, for example, through the use of

remote hearings, which saves time for lawyers and judges. However, to date, the rollout of new technology by HMCTS has been poorly handled. In a Law Society survey of courts staff, only 13 per cent agreed that the current technology was fit for purpose, with respondents reporting problems with the usability of tech, such as screens being too small, not being able to link to the right network, problems with sound and other glitches.³⁴

How? Government should appoint an expert advisory board to oversee the rollout of new technology across the courts. A key focus of the board should be the scope for greater use of remote hearings for procedural and administrative cases as well as ramping up the digitalisation of the CJS as a whole.

5. SMARTER SENTENCING

An Intensive Community Work Order

Why? There is a lack of confidence in existing community orders (COs), the use of which has more than halved since 2010. Despite being a more effective means of rehabilitating offenders than short prison sentences, such orders are perceived overwhelmingly as a soft option.

How? The MoJ should bring forward legislation to create a distinct new community sentence: a “work order”, which will be more intensive and rigorous than existing COs, taking up at least five full days a week and starting within a week of sentence, with GPS tags to enforce compliance. This will give policymakers the space to end the use of short custodial sentences, which are an expensive and inefficient way to punish offenders.

06

Conclusion

The criminal-justice system in England and Wales is collapsing. The scale of unmet demand is now so great that public consent – on which the system depends – is at risk. Traditional policy responses – more money to pay for more staff – are unlikely to be enough to fix the system’s myriad, deep-seated problems. The government now needs to take seriously the idea of a more fundamental reset of the system from the top down. The suggested reforms set out in this paper are a starting point for that process.

Endnotes

- 1 <https://data.justice.gov.uk/cjs-statistics/cjs-sentence-types>
- 2 <https://www.gov.uk/government/statistics/crime-outcomes-in-england-and-wales-2022-to-2023/crime-outcomes-in-england-and-wales-2022-to-2023>
- 3 Police recorded crime Police Force Area Open Data tables, from year ending March 2013 to year ending March 2023: <https://www.gov.uk/government/statistics/police-recorded-crime-open-data-tables>
- 4 <https://www.institute.global/insights/geopolitics-and-security/whats-happening-crime-uk>
- 5 <https://www.gov.uk/government/statistics/characteristics-of-prolific-offenders-2000-2021>
- 6 <https://justiceinnovation.org/sites/default/files/media/documents/2019-03/better-courts-a-blueprint-for-innovation.pdf>
- 7 <https://jenniferdoleac.com/wp-content/uploads/2019/02/Doleac%20Desistance%20Feb2019.pdf>
- 8 <https://www.gov.uk/government/statistics/crime-outcomes-in-england-and-wales-2022-to-2023/crime-outcomes-in-england-and-wales-2022-to-2023>
- 9 <https://www.gov.uk/government/statistics/crime-outcomes-in-england-and-wales-2022-to-2023/crime-outcomes-in-england-and-wales-2022-to-2023>
- 10 <https://publications.parliament.uk/pa/cm5803/cmselect/cmpubacc/40/report.html#:~:text=More%20than%20300%2C000%20victims%20report,or%20prosecuted%20for%20the%20crime>
- 11 <https://www.bbc.co.uk/news/uk-politics-65388621>
- 12 <https://cep.lse.ac.uk/pubs/download/dp1376.pdf>
- 13 <https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-october-to-december-2022>
- 14 <https://www.gov.uk/government/statistics/crime-outcomes-in-england-and-wales-2021-to-2022/crime-outcomes-in-england-and-wales-2021-to-2022>
- 15 <https://assets.publishing.service.gov.uk/media/6514101ef6746b00da4bae2/ccsq%20bulletin%20Apr%20Jun%202023.pdf>
- 16 <https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/2020/12/C-Decriminalisation-of-Rape-Report-CWJ-EVAW-IMKAAN-RCEW-NOV-2020.pdf>
- 17 <https://samf.substack.com/p/the-disconnect#:~:text=The%20very%20short%20answer%20is,than%20it%20was%20in%202008.>

- 18 <https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/2020/12/C-Decriminalisation-of-Rape-Report-CWJ-EVAW-IMKAAN-RCEW-NOV-2020.pdf>
- 19 <https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2022/11/OMiC-joint-thematic-inspection-report-v1.0.pdf>
- 20 <https://www.justiceinspectorates.gov.uk/hmiprisoners/chief-inspectors-blog/why-the-prison-population-crisis-is-everyones-concern/>
- 21 <https://www.justiceinspectorates.gov.uk/hmiprisoners/inspections/annual-report-2021-22/>
- 22 <https://www.justiceinspectorates.gov.uk/hmiprisoners/2022/06/running-prisons-with-purpose/>
- 23 <https://data.justice.gov.uk/justice-in-numbers/jin-reduce-reoffending>
- 24 <https://www.gov.uk/government/collections/prison-and-probation-trusts-performance-statistics#community-performance-statistics>
- 25 See <https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2017/02/Report-Rehabilitation-Activity-Requirement-Thematic-final.pdf> and <https://www.gov.uk/government/collections/prison-and-probation-trusts-performance-statistics#community-performance-statistics>
- 26 <https://www.justiceinspectorates.gov.uk/cjji/media/press-releases/2020/02/iomthematic/>
- 27 <https://www.telegraph.co.uk/news/2023/07/01/ministry-of-justice-repeat-offenders-minimum-crimes-jailed>
- 28 <https://www.crestadvisory.com/post/a-victims-strategic-needs-assessment-for-the-crown-prosecution-service>
- 29 <https://www.met.police.uk/police-forces/metropolitan-police/areas/about-us/about-the-met/bcr/baroness-casey-review/>
- 30 <https://www.kingsfund.org.uk/projects/general-election-2010/performance-targets>
- 31 <https://committees.parliament.uk/committee/127/public-accounts-committee/news/173726/avoidable-mistakes-in-tagging-programme-wasted-98-million-of-taxpayers-money/>
- 32 <https://www.herts.police.uk/police-forces/hertfordshire-constabulary/areas/about-us/about-us/c2-programme/>
- 33 <https://committees.parliament.uk/writtenevidence/113195/pdf/>
- 34 <https://www.lawsociety.org.uk/topics/research/are-our-courts-fit-for-purpose>

Follow us

facebook.com/instituteglobal

twitter.com/instituteGC

instagram.com/institutegc

General enquiries

info@institute.global

Copyright © October 2023 by the Tony Blair Institute for Global Change

All rights reserved. Citation, reproduction and or translation of this publication, in whole or in part, for educational or other non-commercial purposes is authorised provided the source is fully acknowledged Tony Blair Institute, trading as Tony Blair Institute for Global Change, is a company limited by guarantee registered in England and Wales (registered company number: 10505963) whose registered office is One Bartholomew Close, London, EC1A 7BL.