

The Justice Committee inquiry on the future prison population and estate capacity



Our response

Submitted November 2023

About Clinks

Clinks is the national infrastructure organisation supporting voluntary organisations working in the criminal justice system. We ensure the sector and those with whom it works are informed and engaged in order to transform the lives of people in the criminal justice system and their communities. We provide specialist information and support with a particular focus on smaller voluntary sector organisations, inform them about changes in policy and commissioning, help them build effective partnerships, and provide innovative services that respond directly to the needs of their service users. Clinks uses relationships across government to act as a policy conduit between ministers and officials, and the voluntary sector.

We are a membership organisation with over 500 members, including the sector's largest providers, and its smallest. Our wider national network reaches 4,000 voluntary sector contacts. Through our weekly e-bulletin, *Light Lunch*, and our social media activity, our network reaches tens of thousands of contacts. These include individuals and agencies with an interest in the criminal justice system and the role of the voluntary sector in rehabilitation and resettlement.

About this response

We welcome this opportunity to respond to the Committee and its interest in the future of the prison population and estate capacity. Clinks' response is informed by ongoing consultation with the criminal justice voluntary sector, as well as our experience of supporting the voluntary sector working in both prisons and the community.

What changes are expected in the size and composition of the prison population in the short, medium, and long term?

The most recent *Prison population projections: 2022 to 2027*, project significant growth in the prison population, with an expected population of 106,300 by March 2027¹. As of Friday 20 October 2023, the prison population stood at 88,126, compared to the estate's total usable operational capacity of 88,890 places. The total prison population has increased by 7,024 people in the last year alone².

To cater for this, the government committed "more than £4 billion" in capital spending to build 18,000 additional prison places by the mid-2020s in the Spending Review 2020³. The *Prisons Strategy White Paper* outlined these new places would be created by building six new prisons, as well as expanding and refurbishing 16 additional prisons. The Paper also noted 2,000 additional temporary places would be created⁴.

The government is not on track to reach its prison building target: only two new prisons are currently operational, HMP Five Wells and HMP Fosse Way, with one under construction. The remaining prisons are facing planning obstacles. This is further evidenced by the Lord Chancellor's announcements regarding plans to rent spaces in foreign prisons, release people up to 18 days earlier from their sentences, and introduce a presumption against prison sentences of less than 12 months⁵ ⁶. Even if all the 20,000 extra prison places were delivered on time, it is forecast there would still be a shortfall of 2,300 prison places by March 2025⁷.

As the prison population increased, its demographics have been changing. Research from the House of Commons Library notes the proportion of people aged 15 to 29 has fallen since 2002. People under 21 made up 16% of the prison population in 2002, compared with just 4% in 2023. The proportion of people aged 20 to 29 also fell from 35% in 2002 to 27% in 2023.

Over the same period, the oldest age groups have seen the largest growth. The proportion of people in prison aged 50 and over has increased from 10% in 2002 to 21% in 2023. The populations of people aged over 50, 60, and 70 are forecast to increase in number over the next four years, but it is anticipated that the proportions of the total prison population will remain relatively constant⁸. Given these increases and the forecast future rise, Clinks recommends a strategy focussed on the specific needs of this group is published.

The length of sentence that people in prison are serving has also changed. By June 2023, the most frequent length of determinate sentence being served was "four years or more", with approximately 56% of the sentenced prison population serving a sentence of this length. Approximately 23% were serving sentences of between one and four years, and 15% were serving indeterminate sentences⁹.

By June 2023, the remand population made up 18% of the total prison population, 16% higher than in June 2022.¹⁰ The increase in the remand population has brought new challenges for prison regimes, including around access to rehabilitative and resettlement services.

What is the Ministry of Justice's current strategy for safely and effectively managing the prison population, and how effective is it?

The current strategy has been ineffective given the current issues across the prison estate, emphasised by the recent government announcements to manage prison capacity. This includes plans to rent prison places overseas and the wider group of announcements made by the Lord Chancellor on 16 October 2023.

Currently, there are only 557 useable operational prison places free,¹¹ Operation Safeguard has been in place for nearly a year,¹² and around two-thirds of prisons are overcrowded.¹³ Staffing prisons remains a challenge. Despite efforts to increase frontline operational prison officer recruitment, there remains 10% fewer staff than in 2010. Staff retention also remains a problem, with 15% of employed officers leaving in the last year. The prison workforce is becoming more inexperienced, with only 35% of staff having 10 or more years' service, the lowest proportion since 2010.¹⁴

This has led to negative outcomes in prisons. HM Chief Inspector of Prisons for England and Wales notes in his *Annual Report 2022-23*, that of the 37 assessments carried out of prisons holding men, only one was rated “good” for purposeful activity, whilst the remaining 36 were rated “not sufficiently good” or “poor”. The majority of prisons inspected in 2022-23 were rated as “not sufficiently good” or “poor” on safety. Against each of the four healthy prison tests, improvements were also limited, compared with the prisons’ previous inspections. Only 15 establishments improved on safety, eight on respect, one on purposeful activity, and seven on rehabilitation and release planning.¹⁵

Given the current situation, there are specific challenges for certain cohorts. The increasing number of older people in prison will impact prisons’ ability to provide appropriate regimes and meet their health and social care needs. Clinks’ joint report, with Recoop, draws on lived experience to explore challenges around appropriate facilities within prison, access to age-appropriate meaningful activity, health and care provision, and end of life care.¹⁶

The exceptionally high remand population faces distinct challenges in accessing service provision. Criminal justice voluntary organisations are primarily funded to work with people serving a sentence, either in prison or the community, especially where funding is provided through contracts and grants from HM Prison and Probation Service (HMPPS). Access to services in prison are usually driven by release date, which neither untried nor unsentenced people have. Therefore, people on remand are often excluded. Even if not funded to do so, voluntary organisations often provide services to people on remand. Of the respondents to our 2022 State of the Sector survey, 49% said they work with people on remand.¹⁷ However, some of these provide specialist services and are not all present in every prison.

Clearly, a rise in the prison population will exacerbate the already stretched resources of voluntary organisations.

Is the Government’s commitment to deliver 20,000 prison places by the mid-2020s achievable and sufficient to manage the projected demand for places?

To what extent has the activation of Operation Safeguard and the rolling out of Rapid Deployment Cells helped to manage capacity pressures?

As opposed to managing the projected demand for prison places, Clinks believes resources could instead be more effectively directed towards reducing prison use in the first place. England and Wales currently have the highest imprisonment rate in Western Europe, at 141 people in prison per 100,000 population. Whilst this is similar to the rate in Scotland, which has the second highest rate, it is significantly higher than Spain, with the third highest rate of 116 people in prison per 100,000 population.¹⁸

There has been a shift towards more punitive sentencing policy from successive governments, leading to significant sentence inflation. The average prison sentence for an indictable offence has risen by more than two years since 2008, currently standing at 62.4 months. More than three times as many people received determinate sentences of 10 years or more in 2022, compared to 2008. Over the same period, there has also been an increase in sentences of four to 10 years. The use of community sentences reduced by more than half over the last 10 years.¹⁹

There has also been a race to dial up the rhetoric on crime and sentencing between the major parties to appear “tough on crime”. This seems to have come at the cost of providing essential rehabilitative services to people in prison, to ensure they are best prepared for their release. For example, of the 37 inspections of men’s prisons carried out by HM Inspectorate of Prisons in 2022-23, 21 were rated as “not sufficiently good” or “poor” on rehabilitation and release planning. Only seven of those establishments improved on this healthy prison test since their last inspection, while 12 had declined.²⁰ Despite this ramping up of rhetoric, and the increase in average prison sentences a 2022 survey found 56% of people believed sentences had become shorter.²¹

These aforementioned factors have led to the use Operation Safeguard and rollout of Rapid Deployment Cells to create extra prison capacity. While we acknowledge the rollout of these cells has been effective, better management of wider criminal justice policy, including around diversion, early intervention, and sentencing, would have made it unlikely that short-term fixes were needed. Prison population projections since 2020 all projected significant increases, meaning the need for action has been known about for at least three years.^{22 23 24}

Reducing the use of prison is key to managing the demand for prison places. A 2017 poll found only 7% of people thought having more people in prison was the most effective way of reducing crime. Instead, people tended to highlight early interventions, with 41% saying better parenting, 33% better discipline in schools, 26% constructive activities for young people, and 23% more/better drugs and alcohol treatment.²⁵

Moreover, the Female Offender Strategy Delivery Plan commits to ensuring fewer women enter the criminal justice system. Despite this commitment, the women’s prison population rose from 3,136 in January 2023²⁶ to 3,622 in October 2023.²⁷

There are already countless examples of voluntary organisations providing services that intervene before a custodial sentence even becomes an option. By diverting people away from the criminal justice system at the earliest opportunity, we can address many of the underlying issues that can lead people to having contact with the criminal justice system, including poverty and substance misuse, reducing future crimes. Such a focus on diversion and early intervention will not only help to address these underlying causes through service provision in the community, wherever possible, but also ensure that we never again face this crisis in prison capacity. The voluntary sector stands ready to offer its expertise in plotting a path forward.

What are the implications of the rise in the prison population for the resources required to manage prisons safely and effectively?

As the prison population continues to rise, and estate's usable operational capacity dwindles, prisons become overcrowded. As mentioned earlier, as of June 2023, 61% of prisons were overcrowded, with the overcrowded prisons holding 10,000 people above their Certified Normal Accommodation.²⁸ In his annual report, HM Chief Inspector also noted he would be monitoring closely the impacts of overcrowding, particularly on purposeful activity and the time people spend outside of their cells.²⁹

Overcrowding puts additional pressures on existing resources, making it much harder to run a safe and secure regime. The government's latest *Safety in custody* statistics, for the quarter to June 2023, continue to show high levels of self-harm, and assaults. The rate of self-harm incidents increased in both the male and female estate in the year to June 2023, compared to the previous 12-month period. At the same time, the number of individuals who self-harmed also rose by 7%, compared to the previous 12 months.³⁰

Assaults have also risen, with the rate of assaults in the year to June 2023 rising 9% on the previous 12-month period. While this is below the previous peak of the rate of assaults, it continues to form part of a rising trend, since a low during the height of the pandemic. The rate of serious assaults also continued to rise, standing 16% higher in the year to June 2023, compared to the previous 12 months.³¹

Overcrowding also limits the regime's ability to prioritise things like work, education, resettlement, and voluntary sector services. Building on the staffing challenges set out above, Clinks regularly hears through its networks that these challenges impact the voluntary sector's ability to deliver services to people in prison. Staff shortages have meant that voluntary organisations are not always able to access people due to a lack of prison staff to unlock people and escort them to activities and support. This has been compounded by issues with prison vetting processes, including delays and denied clearances. If the Committee would like more information about this, Clinks would be happy to share with it a joint paper it developed with the Criminal Justice Alliance, The National Women's Justice Coalition, and Revolving Doors.³²

If people are receiving less support, they will likely have greater levels of need on release, which could have a knock-on effect for organisations supporting people in the community, such as commissioned rehabilitative service providers. This greater need for support has the potential to impact service delivery, at a time where organisations have already been reporting greater service user need and increased caseloads. Our 2022 *State of the sector* research found that 69% of organisations reported a rise in service user numbers, with 28% reporting a significant rise. At the same time, organisations were also reporting continued increases in the level, complexity, and urgency of service user needs, with more than 80% reporting an increase in the level and complexity of need, and over half reporting an increase in urgency. When we asked organisations how they were responding, a concerning feature of the responses was that 46% said staff were taking on larger caseloads, which has significant potential implications for service quality and sustainability.³³

What is HM's Prison and Probation Service's current capacity to manage overcrowding safely and effectively?

The emergency measures that have been announced over the last few weeks by the government suggest that HMPPS do not have the capacity to manage overcrowding safely and effectively. However, some of the measures that were set out are those that Clinks and the voluntary sector have been recommending for years. This is especially the case for the intention to introduce a legislative presumption against custodial sentences of less than 12 months. This step is very welcome, and Clinks encourages the involvement of the voluntary sector in developing the specifics of the necessary legislation and that this legislation is implemented at pace.

The planned presumption against sentences of less than 12 months is likely to particularly support a reduction in the future women's prison population, given that over 60% of women entered prison to serve a sentence of less than 12 months in 2022.³⁴ The voluntary sector has long advocated the most effective way to support women in contact with the criminal justice system is through a properly resourced, community-based approach.

While some announcements were welcome, Clinks believes alternatives need to be pursued to the plan to rent foreign prison places overseas. This announcement caused considerable concern across the voluntary sector. Clinks would like to direct the Committee to the blog published by our CEO about this scheme.³⁵

However, there are concerns that many of these announcements only apply to small proportions of the prison population and/or will take time to be introduced. For instance, both the presumption that sentences of less than 12 months should be suspended and the overseas prison rental scheme will both require legislation, and it is possible the latter could get further delayed by legal challenges. As such, the impact of these announcements on the management of current capacity may not be felt for many months.

Many of the recent announcements to ease the capacity crisis rely on the support of the Probation Service. Despite this, there has been no mention of changes to the service, system, or ways of working. This seems remarkable given the staffing shortages in probation are well-documented. For these announced measures to enable people to successfully stay out of prison and effectively move on with their lives, high-quality probation services with sufficient capacity are vital. Clinks would also like to direct the Committee to the more detailed response our CEO published following the announcement made by the Lord Chancellor on 16 October 2023.³⁶

What is the impact of an ageing infrastructure and are Victorian prisons fit for purpose?

There are 32 Victorian-era prisons that still form part of the present prison estate. HM Chief Inspector of Prisons, Charlie Taylor, recently suggested that 14 prisons in England and Wales "really struggled to fulfil their purpose" and should be closed, citing overcrowding and inadequate infrastructure and living conditions, including HMPs Wandsworth, Pentonville, Liverpool, Leichester, Exeter, Bristol, and Leeds.³⁷

The ageing infrastructure means some cohorts are particularly disadvantaged. Some prisons are not capable of meeting the needs of a growing older population, many of whom have multiple and complex health and social care needs, and this can act a barrier for them to access services or take part in activities. As highlighted by HMPPS' Model for Operational Delivery,³⁸ older people are more likely to have higher rates of disability and mobility difficulties, making it challenging for them to physically access activities and services. This is further exacerbated by the physical infrastructure of our ageing prison estate; many prisons are not accessible for wheelchairs, lack grab rails, and have poor lighting. This can create social isolation and leaves older prisoners vulnerable.³⁹ It appears that the Ministry of Justice has been ill-prepared for the rise in numbers of the older population. As there is no national strategy for older people in prison, there is little in place to cope with the complexities of managing a hugely different population.

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Our vision

Our vision is of a vibrant, independent and resilient voluntary sector that enables people to transform their lives.

Our mission

To support, represent and advocate for the voluntary sector in criminal justice, enabling it to provide the best possible opportunities for individuals and their families.

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82A James Carter Road
Mildenhall
Suffolk
IP28 7DE

☎ 020 4502 6774

✉ info@clinks.org

🐦 @Clinks_Tweets

🌐 www.clinks.org

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