

The Justice Committee inquiry on the role of adult custodial remand in the criminal justice system



Our response

Submitted July 2022

About Clinks

Clinks is the national infrastructure organisation supporting voluntary sector organisations working in the criminal justice system (CJS). Our aim is to ensure the sector and those with whom it works are informed and engaged in order to transform the lives of people in the CJS and their communities. We do this by providing specialist information and support, with a particular focus on smaller voluntary sector organisations, to inform them about changes in policy and commissioning, to help them build effective partnerships and provide innovative services that respond directly to the needs of their users. We are a membership organisation with over 600 members, including the voluntary sector's largest providers as well as its smallest. Our wider national network reaches 4,000 voluntary sector contacts. Overall, through our weekly e-bulletin Light Lunch and our social media activity, we have a network of over 15,000 contacts. These include individuals and agencies with an interest in the CJS and the role of the voluntary sector in rehabilitation and resettlement. The National Criminal Justice Arts Alliance (NCJAA), a national network of over 800 artists, arts organisations and criminal justice practitioners using creative approaches to reduce reoffending is embedded in Clinks. We also support a network of women's centres and specialist women's services working in the CJS and our race and justice network supports organisations led by and focused on racially minoritised people.

Clinks also chairs and coordinates the Reducing Reoffending Third Sector Advisory Group (RR3), a formal voluntary sector advisory group to the Ministry of Justice (MoJ) and HM Prison and Probation Service (HMPPS), consisting of 17 senior voluntary sector leaders. This RR3 has set up a special interest group (SIG) on probation, to provide a formal avenue to channel voluntary sector advice to HMPPS, ahead of the planned implementation of the new probation model.

About this response

We welcome the opportunity to respond to this inquiry and welcome the Committee's interest in the use of custodial remand for adults and have responded to the questions relevant to our areas of work, beginning at Question 4. This response is informed by consultation with the voluntary sector working in criminal justice in England and Wales as well as our experience of supporting the voluntary sector working in prisons and the community and those delivering resettlement support.

Summary of response and recommendations

Access to both statutory and voluntary services in prison are usually driven by release date, which neither untried nor unsentenced prisoners have. This means remand prisoners may be included as a matter of policy but are largely excluded in practice. On release, there is no support for prisoners who are unconvicted. Those who are convicted may be able to access support depending on the type and length of sentence handed down. We are aware that HMPPS are considering how best to ensure services are available to those on remand. We welcome this but caution that it must be supported by funding otherwise services will simply be spread more thinly.

We recommend that:

1. The Ministry of Justice publish a comprehensive needs assessment of people in prison, including but not limited to those on remand.
2. The Committee explore the reasons for differences in custodial remand for those with protected characteristics, in particular women and racially minoritised people.
3. The Ministry of Justice consider the learning from reviews of disproportionality and the use of custodial remand in the children and young people's estate is incorporated into work to address these issues for the adult population.
4. The Ministry of Justice consider how the commissioning of services directed towards the policy priority of reducing reoffending might unintentionally preclude support for those on remand.

Question 4: How long are people being held on remand? What are the implications of people being held for long periods on remand?

As at 31 March 2022, the remand population was 12,747. Compared to the end of March 2021 the untried population fell by 2% (to 8,140) while the convicted unsentenced population rose by 17% (to 4,607). The Ministry of Justice attribute the difference to the partial recovery of courts following the COVID-19 pandemic. The experience and impact of remand varies little between the untried and unsentenced populations – as can be seen in our responses below, access to services in prison are usually driven by release date, which neither untried nor unsentenced prisoners have. This means remand prisoners may be included as a matter of policy but are largely excluded in practice.

Custody Time Limits (CTLs) are designed to ensure that accused persons are not deprived of their liberty for longer than is reasonable. If it is not possible to complete a case within the time limit, the Crown Prosecution Service can apply to extend the limit. The usual CTL is six months. This was extended to eight months during the early part of the COVID-19 pandemic but the six month limit was reinstated in June 2021.

- » As of 31 December 2021, 4,185 people had been held on remand for more than six months; 480 people have been held for more than two years.
- » As at 31 March 2022, 6,699 people are awaiting trial or sentence for violence against the person or drug offences. Ergo, the remaining 6,047 people are held in prison awaiting trial or sentence for non-violent and non-drug related offences.

Eligibility for benefits ends when someone is in prison. However, a person on remand who was eligible for Universal Credit housing help with housing costs before going into prison, can be paid for up to six months. As can be seen above, almost a third of people on remand are held for longer than six months and are therefore at risk of losing existing accommodation.

For sole or primary carers this means children must be accommodated with family or by statutory services. When the carer is released (regardless of whether they are convicted or not) they are then assessed as a single adult so only eligible for benefits and housing support for themselves.

Even once housed, they are not in suitable accommodation to take their children back home. Imprisonment disrupts existing healthcare, education, employment or support networks and long periods of remand can destroy them completely. Services to mitigate this for prison leavers do exist, albeit to varying extents, but these are not accessible for those released after remand as they are driven by release date.

Question 5: What data on remand should be collected and published that isn't already? What effect does the increasing remand population have on the prison population?

Voluntary sector organisations report that most women remanded have no fixed abode on reception and prisons are being used as a place of safety. Some prisons collect data on this and it has been noted by the Inspectorate. As well as widespread collection of this data, focused work to address the issue should include engagement with voluntary sector organisations providing liaison and diversion work in the community. These organisations have built knowledge of, and relationships with, people at risk of remand as well as understanding of services available in the community. In its review of custodial remand for children, the Ministry of Justice found that protocols to ensure timely communication are in place between liaison and diversion teams, police, CPS and other services helped identify children at risk of remand earlier, enabling the creation of suitable bail packages. We would suggest this could be usefully explored for adults.

This should be underpinned by a comprehensive needs assessment of people in prison, including those on remand. In Clinks' response to the Prison Strategy White Paper we called for the Ministry of Justice to publish an assessment annually. This should include:

- » The reasons that lead people to be imprisoned, including needs assessments, broken down by protected characteristics.
- » A breakdown of offence, sentence type (or those on remand), length of sentence (including recall), and the number of previous convictions; linked to protected characteristics.
- » Outcomes and analysis of variations between protected characteristics.
- » An assessment of learning from oversight bodies, including an assessment of feedback collated from people in prison.

Question 6: What support is available for remand prisoners?

Voluntary sector organisations working in criminal justice are primarily funded to work with people serving a prison sentence, either in prison or the community, especially where funding is provided through contracts and grants from HMPPS. The policy priority to reduce reoffending has, understandably, driven commissioning decisions and means there is less emphasis on services that would support those on remand. Charitable trusts tend to see provision of services for people on remand as a statutory responsibility and do not offer grant funding for these activities. There is some evidence of a shift in language, from reducing reoffending to supporting desistance, which we hope will lead to a wider consideration of how best to support people to resettle, regardless of conviction status.

In many cases, even if not specifically funded to work with sentenced populations, voluntary sector organisations do their best to provide services to people on remand. Of the 132 organisations that responded to our 2021 State of the Sector survey, 44% said they work with people on remand. However, some of these provide specialist services and not all are present in every prison. Access to prisons over the last two years has been a challenge and organisations have had to adjust their ways of working, which impacts the number and range of people they can support. Many organisations prioritise services by release date to ensure as many people as possible can access them. This disadvantages those on remand, whether untried or unsentenced, because they have no release date. There are exceptions – for example Listeners, trained and supported by Samaritans, are available to all prisoners regardless of status.

Changes to funding to allow voluntary sector organisations to provide services to people on remand would be welcomed. This would require commissioning decisions to be less driven by the policy priority of reducing reoffending and to place greater emphasis on achieving wellbeing outcomes for prisoners. However, current regime and staffing restrictions create difficulties for voluntary sector organisations entering prisons and contacting prisoners while there. Any attempt to widen provision would need to be accompanied by efforts to improve access.

Question 7: Are there differences in the use of remand in custody between men and women?

The Female Offender Strategy highlighted the fact that women can be held in prison on remand due to a lack of available appropriate accommodation rather than because they are a threat to the public or alleged to have committed a particular offence. This means women can be remanded for lengthy periods for minor offences – effectively imprisoned for their needs, rather than their deeds. As referenced above, this results in women being remanded to prison as a place of safety.

Prisons are not places of safety. There were 54,027 self-harm incidents in the 12 months to December 2021. Accounting for population changes, the rate of self-harm per 1000 people decreased by 1% in the men's estate and increased by 4% in the women's estate. There were 20,883 assault incidents in the 12 months to December 2021. Accounting for population changes, assault rates decreased in the men's estate by 2%, but increased by 12% in the women's estate.

The size and geography of the women's estate means women are held further from home, creating difficulties in maintaining contact with their families and within the remit of local services. This remains a significant issue for Welsh women who are remanded in England. As at March 2022, almost half the women remanded at HMP Eastwood Park were from Wales. Women are more likely to be remanded for less serious offences, more likely to be primary or sole carers for children.

As well as differences between the use and experience of remand for men and women, we invite the Committee to also consider disparities in the use of remand for racially minoritised people. The Ministry of Justice reports that, since 2019, Black and Asian defendants have been less likely to receive a custodial sentence relative to White defendants. Despite this, in 2020, 40% of white defendants were remanded in custody compared to 51% of Chinese or Other and 49% of Black defendants. The proportion of racially minoritised people held on remand increased from 29% to 34% between 2015 and 2021. As at 30 September 2021, 15% of people held on remand were Black – as compared to around 3% of the UK population.

The Youth Justice Board have recently published their analysis of and recommendations for addressing racial disparity in the remand and sentencing of children. This includes the collection of more, and richer, data from children and from custodial and community sources. We recommend that the learning from this report is incorporated – where appropriate – into any review of remand and sentencing for adults.

Question 8: What alternatives are there to the use of custodial remand (such as more effective tagging)?

Custodial remand is both costly and damaging, and therefore its use must be proportionate to the risk posed by an individual. Alternatives to remand should be considered in the context of the long-term aim – whether that is to reduce cost or ensure more support. Alternatives that reduce cost may not always be supportive. Alternatives that ensure support may have cost implications elsewhere – although they may offer better value for money in the long-term.

Tagging itself may not always be an effective alternative. Accompanied by a curfew, tagging can cause particular problems for people who remain in employment, for those living in abusive households and those with caring responsibilities. While a community alternative is always preferable to custodial remand, this should follow an assessment of individual needs.

With this in mind, we recommend a broader look at alternatives and one that takes into account the range of community support provided by the voluntary sector. Mandatory training for magistrates on the range of voluntary sector services in the community could support more proportionate decisions, especially for women and racially minoritised people.

Liaison and diversion services – with or without tagging – could provide support to sentencers on a person's circumstances. As discussed above, people without stable accommodation are more likely to be remanded, in part because the time and resources needed to identify a suitable address are simply not there. Prioritising effective communication between agencies could help to reduce the remand population but needs to be underpinned by infrastructure.

Question 9: Some people who are held in custody on remand, will at trial be found not guilty and immediately released. What support is available for this category of people, upon their release from prison?

One in ten people remanded in custody by magistrates' courts and 11 per cent of people remanded by the Crown Court were subsequently acquitted. There is no statutory support available for people who are acquitted. Some voluntary sector organisations report being asked by HMPPS to take referrals for people released following remand but that this goes beyond the scope of existing contracts. This suggests a recognition of the needs of people in remand but, without adequate resource those needs cannot be met. Voluntary sector organisations working with probation can continue to work with people who are sentenced to a community sentence.

End notes

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9. Clinks (2022) *State of the sector 2021*, Available at: https://www.clinks.org/sites/default/files/2022-04/clinks_state-of-the-sector-2021.pdf
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End notes (cont.)

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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.

Join Clinks: be heard, informed, and supported

Are you a voluntary organisation supporting people in the criminal justice system?

Join our network of over 600 members. Clinks membership offers you:

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