

**Evaluating the Effectiveness of Prison Systems in England and Wales and Their
Impact on Legal Practice**

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Abstract

The effectiveness of prison systems in England and Wales remains a subject of ongoing debate, particularly regarding their role in punishment, deterrence, rehabilitation, and reintegration. This dissertation critically evaluates the extent to which these prisons achieve their intended objectives and examines their broader impact on legal practice. By analyzing the interplay between prison effectiveness, sentencing policies, overcrowding, and legal decision-making, this study aims to uncover the systemic challenges affecting both inmates and legal professionals.

The research explores key issues such as high recidivism rates, the impact of mandatory sentencing laws, and the consequences of overcrowding on prisoner welfare and human rights. It also investigates how these challenges place additional burdens on the legal system, affecting access to justice, case backlogs, and the ability of legal practitioners to provide effective representation. A mixed-methods approach was adopted, utilizing both quantitative data (such as recidivism statistics and prison population figures) and qualitative analysis (including legal frameworks and case studies) to provide a comprehensive evaluation.

Findings indicate that while incarceration effectively incapacitates offenders, it often fails in deterrence and rehabilitation, as evidenced by persistently high reoffending rates. The study highlights how overcrowded conditions compromise prison resources, hinder rehabilitation programs, and increase mental health issues among inmates. These inefficiencies not only impact prisoners but also create significant legal and ethical challenges for lawyers, particularly in human rights litigation and parole representation.

The dissertation concludes that urgent reforms are needed, including a shift towards alternative sentencing measures, improved rehabilitation programs, and a reconsideration of judicial discretion in sentencing. By addressing these systemic issues, England and Wales can develop a more effective and just penal system that balances punishment with rehabilitation while alleviating the strain on legal practitioners.

INTRODUCTION

The prison systems within England and Wales are of crucial importance in the framework of criminal justice. Prisons must successfully achieve their objectives to punish offenders, deter them from future offences, rehabilitate them and reintegrate them into society. Over the years, there have been, and continue to be, raising concerns on whether these objectives are being fulfilled, and debates on how effective our prisons are at achieving their intended purpose. The prison systems within England and Wales are frequently being scrutinised for whether incarceration is the correct solution, for the overcrowding within these systems and for the high recidivism rates following release.

This dissertation shall explore how the effectiveness of prisons within England and Wales affects the legal practice by examining the interplay between how the shortcomings of correctional facilities, such as effectiveness of the prison, the rehabilitation efforts and the legal decision making, influence legal professionals, their strategies, and the overall functioning of the justice system. By exploring these dimensions, this dissertation attempts to provide a more comprehensive understanding of what prisons within England and Wales current challenges are and how these challenges challenge our legal professionals.

In addressing these questions, the research within this dissertation will critically analyse the current state of prisons within England and Wales, drawing on both the qualitative and quantitative data. This dissertation will also contribute to discussions on potential reforms by offering recommendations for reform that may enhance its ability to rehabilitate offenders and support the legal professionals who interact with the system.

1.1 Research Aims and Objectives

- To assess the level of effectiveness of prisons within England and Wales in their achieving of punishment, deterrence and rehabilitation.
- Explore the impact that prisons effectiveness has on the legal practice.

2.0 REVIEW OF RELATED LITERATURE

2.1 Deterrence and Retribution

Prisons are notoriously known for the incapacitation, deterrence, and retribution of offenders i.e. somebody breaks the law, as a result they are detained in prison to prevent them from committing further crimes and to keep society safe, protecting them from future harm. Research has however questioned the effectiveness of this tactic, in particular The Prison Reform Trust (2018)¹ highlighted how longer prisons sentences and harsher penalties do not necessarily result in reduced crime rates. They suggested that possibly the idea of the ‘certainty’ of receiving a form of punishment may be of greater significance than the severity of the punishment itself. The United Nations Office on Drugs and Crime² reported that when an individual who comes from a low-income family is sentenced to prison, this disproportionately affects the families living in poverty and their wider community – if the individual incarcerated was an income generating member of the household this leaves the remainder of the family to deal with the associated costs such as loss of income, transport for prison visits and the payment of solicitor’s fees.

A core factor in determining the level of effectiveness of prisons within England and Wales is the prisons’ ability to successfully reduce the offenders from reoffending after release. The most

¹ Prison Reform Trust, ‘*Prison: the facts – summer 2018*’,

² United Nations Office on Drugs and Crime, ‘*Prison and penal reform: the need for change*’, undated

recent recidivism rates in England are considerably high, as reported by the Ministry of Justice (2022)³ with an overall reoffending rate of 25.5%. Broken down, the statistics for reoffending revealed:

1. The overall proven reoffending rate for adults was 25.1%.
2. The overall proven reoffending rate for adults released from custodial sentences of less than 12 months was 55.5%.
3. The overall proven reoffending rate for adults released from custody or starting court orders was 33.2%.
4. The overall proven reoffending rate for juvenile offenders was 34.2%.

The Ministry argued that shorter sentences make up a significantly large proportion of the prison population and could be reduced via the use of alternative sanctions such as electronic monitoring or community sentences.

Shorter sentences, higher reoffending rates, together with ineffective rehabilitation provisions, contribute to prison overcrowding as reoffenders return to prison. This is discussed further at [2.3](#).

2.2 Overcrowding

The effectiveness of these prisons is also crucially influenced by the conditions within them. A significantly high number of English prisons are suffering from overcrowding, according to the report published by HM Inspectorate of Prisons⁴, as they are currently running at an over 120% capacity which is presumably going to get worse as The Ministry of Justice published Prison Population Projections⁵ for 2023 to 2028 for England and Wales in which they stated the prison population is projected to increase between 94,600 and 114,800 by March 2028. The total number of people in prison is published by the Ministry of Justice and is updated on a weekly basis. The data on the overcrowding itself is published once a month in more detail. Such detail is acquired from four figures; population, baseline certified normal accommodation, in-use certified normal accommodation and operational capacity.

Population is the number of prisoners currently held in the prison.

Baseline certified normal accommodation is the number of spaces within the prison that allows the prison to operate with a decent standard of accommodation that the prison service can provide to all prisoners.

³ Ministry of Justice, 'Proven reoffending statistics: January to March 2022', 25 January 2024

⁴ HM Inspectorate of Prisons, 'HM Chief Inspector of Prisons for England and Wales', Annual Report 2023-2024

⁵ Ministry of Justice, 'Prison Population Projections 2023 to 2028, England and Wales', 23.02.2024

In-use operational capacity is the same as the above but minus the places that are unavailable for immediate use. For example, if some cells within the prison are damaged.

Operational capacity is the total number of prisoners that the prison is able to accommodate whilst being able to operate effectively in terms of security, control and planned regime.

When the operational capacity number of a prison is higher than its baseline certified normal accommodation number of a prison it leads to prisoners being forced to share cells that are initially designed for one person only.

(This information shows how the statistics are calculated but not the root cause of why the prisons have become, and continue to grow, so overcrowded. A major contributing factor as to what caused prisons to become overcrowded are the sentencing policies which is discussed at section [2.3](#))

The more severe these conditions get, they eventually cross the line into human rights deprivation which was noticed by The United Nations Office on Drugs and Crime, which highlights reasons why prisons within the English and Welsh legal system may currently be considered ineffective and do not work. The first reason highlighted was the deprivation of human rights. In essence, it is stated how an individual being sentenced to prison is the punishment in itself, thus there is no need for additional punishment whilst imprisoned, and in this punishment the prisoner's right to liberty is lost. When prisoners are forced into overcrowded conditions, these conditions are critical because not only are the lives of the prisoners being impacted, the prison system's efficacy and rehabilitation practices are compromised. The Prison Reform Trust⁶ heavily highlighted that overcrowding has been a serious issue for a long time which has led to a strain on the prison system facilities due to their operating well beyond their limits. Some major conditions that are affected are the poor sanitation throughout the prisons, the poor ventilation, the deteriorating of the infrastructure and the defectiveness of rehabilitation practices. The last point (rehabilitation practices) was formerly pointed out as a major issue by Hough and Roberts in 2004⁷ where he discussed the fact that prisoners being incarcerated in overcrowded prisons reduces their much needed access to meaningful rehabilitation activities. This, of course, results in their chances of rehabilitation being reduced. Further, it is pointed out how the overcrowded space is a main contributing factor of rising mental health issues of the prisoners and rising stress levels of them also.

Her Majesty's Inspectorate of Prisons⁸ published how prisons with poor management often experience higher violence rates. The lack of personal space for prisoners being incarcerated in overcrowded prisons has increased the number of physical assaults not only between the inmates but also against the vulnerable prisoners and the staff, to the point that these physical assaults are

⁶ Prison Reform Trust, '*Prison: the facts – summer 2018*'

⁷ Hough, M., & Roberts, C (2004), *Prison Population Pressures: Causes and Consequences*, The British Journal of Criminology, 44(4), 570-586.

⁸ Her Majesty's Inspectorate of Prisons (HMIP) (2020), *Annual Report 2019-2020*. London: HMSO.

now considered common occurrences. This was furthered by Crewe's research⁹ which was suggestive of the increase in violence linking to a new culture of aggression and fear which originates from the pressures of overcrowding. This then raises safety concerns especially for younger or more vulnerable inmates. It is not only physical health that overcrowding affects. The prison systems in England struggle to meet the mental health needs of its population. The National Audit Office's research¹⁰ found that amongst the prison population, a significantly large percentage of the population are suffering from post-traumatic stress disorder, anxiety and depression which, considering the inadequate setting for treating these conditions, contributes to higher rates of self-harm and suicide within the prison systems.

The prison systems within England and Wales has faced criticism by many over the years for these reasons, many of which emphasise the insufficient rehabilitation programmes. The Howard League of Penal Reform¹¹ found that, as a result of their lack of educational programmes, a lot of prisoners leave the prison system unequipped to reintegrate into our society. Murry¹² had linked the lack of rehabilitation programmes to the recidivism rates due to lack of alternative employment. This, of course, traps them in a vicious cycle of re-offending. There have been many calls for reform in regard to the conditions of prisons within England and Wales. The Prisons and Probation Ombudsman¹³ reports that there have in fact been some improvements in these areas – in particular the introduction of new safety measures and implementing more focus on the rehabilitation programmes.

How does this affect the legal practice?

The Equality and Human Rights Commission¹⁴ published research that showed overcrowding increases the risk of human rights violations. Overcrowding thus raises claims for legal practitioners who become the vital gateway for prisoners asserting their rights to which their lawyers will represent the prisoners in judicial review cases in situations where there is inadequate living space, poor sanitation, insufficient healthcare and systematic neglect as these conditions breach the prisoner's Article 3¹⁵ right which prohibits inhumane or degrading treatment.

⁹ Crewe, B. (2011), *The Prisoner Society: Power, Adaptation and Social Life in an English Prison*, Oxford University Press

¹⁰ The National Audit Office, *Mental Health in Prisons*, 29 June 2017

¹¹ Howard League for Penal Reform, *Education and Rehabilitation in the Prison System*, 31 May 2019

¹² Murray, C. (2005). *The Effects of Imprisonment on Recidivism*. British Journal of Criminology, 45(5), 813-832.

¹³ Prisons and Probation Ombudsman. (2019). *Annual Report 2019-2020*. London: PPO.

¹⁴ The Equality and Human Rights Commission, *Measurement framework for equality and human rights*, 27 October 2017

¹⁵ Human Rights Act 1988, Article 3

The increased volume of prisoners creates an overwhelming volume of cases for lawyers, especially those who specialise in human rights law, causing them a great deal of pressure and results in a backlog of cases. This consequently affects the efficiency in how claims are handled.

Moreover, the lawyers and other legal practitioners who are relying on set court dates to progress their timely provisioned cases forward, as stated by Hough and Roberts¹⁶. The limited access to facilities due to overcrowding makes it very difficult for the legal representatives to schedule consultations with their clients who are imprisoned which consequently affects the quality of the legal representation the legal representative is able to provide as they are unable to meet with their clients in the expected timely manner. A client in prison has a strict right to meet with their solicitor which is their essential pathway into court to proceed with their case. This right should not ever be taken away from an individual; as Lord Justice Steyn in the case of *ex parte Leech* (1994) “It is a principal of our law; that every citizen has a right of unimpeded access to a court... as the common law “afforded special protection to a person’s right of access to a court as a constitutional right”.

Even once prisoners do get to meet with their legal representative, there is not much opportunity for private consultations due to overcrowding increasing the number of inmates sharing space and resources. The Prison Reform Trust states these limitations prevent lawyers from being able to adequately prepare for hearing and trials, with some prisoners having reported being unable to access legal services due to overcrowded conditions, which limits their ability to defend themselves adequately. This, again, affects the prisons human rights, under Article 8¹⁷, which protects the right to privacy, ensuring any legal discussions between a prisoner and their solicitor are confidential.

As mentioned, overcrowding in prisons creates a strain on the prison’s resources. This includes all resources such as transporting the prisoners from the prison to the court for their hearings and trials. Crewe studied how the overcrowding of our prisons ‘exacerbates’ logistical problems including the delays in prisoner transportation. This delay causes issues by prolonging the time it takes to process cases, even more so when there are last minute cancellations of said hearings and trials. This ultimately deprives prisoners of their Article 6 right¹⁸ to a fair trial within a reasonable time. Crewe also highlighted how prisoners’ legal options are restricted when a prison is operating beyond capacity, their resources for educational programmes, rehabilitation programmes, vocational training and therapy are stretched thin. This then creates difficulty for the legal representative attempting to argue for parole or early release based on their client’s rehabilitation progress. This point was also reported by the Ministry of Justice who found this results in longer sentences and higher recidivism rates. Thus, creating a difficult task for lawyers

¹⁶ Mike Hough and Julian Roberts, *Youth Crime and Youth Justice: Public Opinion in England and Wales*, 2004

¹⁷ Human Rights Act 1998, Article 8

¹⁸ Human Rights Act 1998, Article 6

to balance the rights of their clients with the reality of the consequences of the overcrowded facility.

2.3 Sentencing Law and Alternatives to Prison Sentences

During the late 20th century and early 21st century, prison sentences became harsher and longer in a tough on crime movement.

A ‘zero tolerance’ policy on policing strategies emphasizes a stricter enforcement on law for even the most minor offences. Research by The Home Office¹⁹ found that the use of stop and search being used increasingly more has led to individuals being incarcerated for minor offences. They recognise that a zero-tolerance policy was intended to produce a safer community however in reality it has resulted in an ‘over-representation of individuals in prison for non-violent or low-lever offences.

Harsh prison sentencing policies majorly contribute to overcrowding in prisons due to increasing the number of individuals incarcerated and also the length of time in which they are ordered to spend in the prison. If anything, this is the root cause of the mass overcrowding.

Research by Bottoms²⁰ suggests that the desire to appear tough on crime presents much political pressure that have led to policies being in favour of prison sentences over using alternatives to sentences, even when custodial sentences are clearly not the most appropriate punishment for the crime in question. This political pressure is said to exacerbate the prison population, contributing heavily to overcrowding.

Prison sentencing law uses mandatory sentencing policies that limit the amount of discretion Judges have when sentencing convicts to prison by providing Judges with a framework to decide an appropriate prison sentence based on the severity of certain types of crimes. They compel the courts to impose custodial sentences for many offences, regardless of reviewing the circumstances. The Criminal Justice Act 2003²¹ introduced mandatory minimum sentences for repeat offenders, in particular those who were convicted of serious drug offences or violent crimes.

Whilst the introduction of this Act was intended to raise the public’s confidence in our criminal justice system by ensuring there was consistency in the way convicts were sentenced, these minimum mandatory sentences have, ironically, been highly criticised for their inflexibility which has led to overcrowding. One critic was Ashworth²² who felt that alternatives to prison sentences should be encouraged such as community-based sentences would be much better served, this of course does not include serious offences such as robbery, rape and murder. This is because the effect that the mandatory sentencing was having on our legal system led to our Judges

¹⁹ The Home Office, *Public Perceptions of Policing: A review of research and literature*, 28 August 2023

²⁰ A Bottoms, *Public Opinion, Crime Policy, and Political Rhetoric*, Oxford University Press, 2016.

²¹ The Criminal Justice Act 2003

²² A Ashworth, *Sentencing and Criminal Justice*, Cambridge University Press, 2005

being unable to consider and Judge the individual circumstances of each case brought before them, instead they had to obey the guidelines which lead to an increase in custodial sentences even for cases which were considered less severe such as nonviolent offences that a rehabilitation based alternative would prove more successful. Cavadino and Dignan²³ further this by saying that, in an attempt to adhere to the mandatory framework, will often default to imprisonment instead of exploring non-custodial alternatives that could prove more effective as they could address the root cause of the individual's criminal behaviour.

Research by Robinson²⁴ addresses a 'revolving door' phenomenon where criminals repeatedly get incarcerated for minor offences as a result of the system being heavily reliant on short-term custodial sentences. Robinson highlights that that this revolving door of repeatedly giving short-term sentences for minor crimes does not address the root cause of the crimes these individuals commit or the factors that lead to them committing the crime – instead the system simply incarcerate them and release them with little, if any, rehabilitation programme beforehand, only for them to be sent back to prison to repeat the process. This unnecessarily increases overcrowding.

The United Nations Office²⁵ explains how prison and penal reform would help to reduce imprisonment by promoting community-based measures which would directly reduce the overcrowding within the English and Welsh prisons and the overall condition and effectiveness of the prisons also. This chapter was strongly suggestive that the improvement of rehabilitation and integration back into society is a key issue which must be reformed in order to keep crime down and reduce prison overcrowding which shall consequently improve the prison conditions and effectiveness.

The Criminal Justice Act 1991²⁶ had previously aimed to reduce the prison populations by promoting alternatives to incarceration such as community sentences. Community sentences are now central to reduce prison overcrowding and involve offenders serving their punishment amongst the community under supervision. The Ministry of Justice reported²⁷ that the use of community sentences was more effective at reducing reoffending in comparison to short-term sentences, especially when the community sentences involve treatment for substance abuse, lack of education and mental health problems. They help reduce the prison population and increase the rehabilitation and reparation within the community.

In October 2023 the Ministry of Justice introduced an Early Release Scheme. They note that the objectives of early release schemes is to promote rehabilitation, rather than punishment. By releasing low-risk offenders early, we can improve the overall management of prisons which

²³ Cavadino & Dignan, *The Penal System: An Introduction*, Sage Publication, 2007

²⁴ G Robinson, *Recidivism and the cycle of Imprisonment*, Crime and Justice Review, 2012, 28(3), 240-258

²⁵ United Nations Office on Drugs and Crime, *'Prison and penal reform: the need for change'*, undated

²⁶ The Criminal Justice Act 1991

²⁷ Ministry of Justice, *Community Sentences: Effectiveness and Impact*, Ministry of Justice Research Series, 2015

shall enable our prisons to direct their efforts to rehabilitative programmes. There are three types of early release schemes. Parole; which allows prisoners serving long sentences to be released before serving their full sentence, Home detention curfew; which allows the early release for prisoners who have served the minimum portion of their sentence, subject to being electronically monitored, and release on temporary licence; which allows prisoners to be released from prison temporarily for a specific purpose such as family visits or work placements, subject to strict conditions.

What affect does this have on the legal practice?

Legal representatives have a heavy duty of advising and representing their clients who have committed crimes in the context of early release. This is more complex now that early release schemes have been introduced. Legal representatives must be well versed in the early release procedural aspects. They must ensure that their client's are well advised on the likelihood of parole and represent them at the hearing. They must ensure that clients understand the conditions that are attached to home detention curfew schemes. They must also assist their clients in applying for early release. As the schemes become more prevalent, the demand for such legal services is increased. As suggested by Cavadino and Dignan, this is beneficial for lawyers as more successful parole hearings lead to a reduction in the workload of defence lawyers. This is opinionated as lawyers work on an hourly rate basis – so reduced workload for some is a negative concept whilst easing pressure for others is seen as positive. Nevertheless, the same opinion was published by Sampson & Laub²⁸, if the early release schemes are successful, the number of repeat offenders will reduce leading to a reduction in repeat offenders needing ongoing legal representation. Similarly, these schemes would reduce the length of time offenders served in prison, mitigating overcrowding and relieving some pressure on the facilities, the prisoners and on the legal system.

Unsuccessful early release schemes, also published by Cavadino and Dignan, lead to increased workload and prolonged legal process, due to the lengthy time and complexity required for judicial review combined with the backlog of cases, which ultimately circles back to overcrowding in prisons and has a knock-on effect to other disadvantages mentioned in 2.2.

3.0 METHODOLOGY

This chapter shall discuss the techniques used in collecting the data for my research. Some data was collected via primary sources such as cases and legislation, but most was collected via secondary sources of documented materials such as published journals, reports and news.

The majority of my methodology has been done using quantitative research as I am relying on statistics and figures to accurately support my statements, proving them either true or false and to

²⁸ Sampson & Laub, *Understanding the Causes of Crime: Parole and Reoffending*, Sage Publications, 2005

what degree. Using quantitative data has also allowed me to analyse the data and, in terms of speaking in future tense, accurately predict what may happen should reform of the prison legal system not happen, should it need to. Examples of quantitative data I have used are statistics on English and Welsh prison reoffending rates, the prison population for overcrowding indications. Some qualitative research was needed in my research as it will be appropriate to seek an understanding of the reason why the legal processes we have are needed and why they are governed in the specific way that they are. Additionally, I have looked at policy, for example sentencing policies as this is an important piece of legislation that governs the running of prisons, and other prison policies such as Release on Temporary License Policy Framework, Generic Parole Process Policy Framework and Prison service Instructions. I used appropriate case research such as *ex parte Leech* [1994] QB 198; as this case emphasised fundamental rights that a lawyer has with their client which I have used to apply to clients in prison. I did not use any invasive or intrusive procedures.

4.0 FINDINGS AND DISCUSSION

The research has revealed several challenges and some inconsistencies regarding the effectiveness of prisons within England and Wales. One key observation is that harsher punishments may not always deter crimes. The Prison Reform Trust who suggests that harsher prison sentences do not lead to reduced crime rates but rather the certainty of knowing that some form of punishment is coming. However, this could go one of two ways - indeed, the certainty of knowing you will receive punishment for a crime you commit could be intimidating, especially for individuals who are the income generating member of the family, this further disproportionately affects their families as the offender would be unable to financially support their family in providing food and shelter which also exacerbates social strain and poverty - this adds weight to the argument that alternatives to prison could reduce both recidivism and the social harm caused by imprisonment. Additionally, this displays a connection to how the effectiveness of prisons affects solicitors in the legal practice if their fees and invoices are overdue or unpaid resulting in loss of income, or delayed income, for the legal work they would have undertaken for their client. However, for individuals who come from a disadvantaged background may be more inclined to not perceive prisons as a major deterrent due to their already deprived social and economic factors who see little alternatives to criminal behaviour. The severity of the punishment is subjective to the offender's background, as the more disadvantaged they are, the less severe they may view the punishment.

It is clear that the effectiveness of prisons is partly measured by their ability to reduce reoffending. From what we have seen, England and Wales have high recidivism rates – according to the Ministry of Justice the overall reoffending rate is 25.5% of which 55.5% of this population were adults who had been released from prison sentences of less than 12 months. This information contradicts with the earlier findings from the Prison Reform Trust, which argued that longer prison sentences and harsher penalties do not result in reduced crime rates, but when we take a look at the statistics presented above by the Ministry of Justice, we can clearly see that the

highest reoffenders were the adults who had the *shortest* prison sentences. Although, it is not clear whether these statistics include both male and female offenders, it refers to them simply as ‘adult’ offenders. Such clarification could lead to a more clarified investigation as men and women are likely to commit different crimes. The fact that the reoffending rates are so high only indicate how prisons are not addressing enough, if at all, the underlying cause of the prisoners’ criminal behaviour. There are various reasons why offenders are led to commit crime such as poverty, mental health issues and lack of education which ultimately leads to difficulty earning a living wage. Rather than incarcerating the offender and leaving them be, prisons should be addressing the reason behind crime – for example if the reason for a prisoner committing a robbery was to get money because he is uneducated and cannot find employment, prisons should use the duration of the sentence to educate the prisoners to resolve the root cause of their crimes, which shall reduce the reoffending.

Overall, prisons are quick to incapacitate offenders but their attempt, or lack of, to deter crime and rehabilitate prisoners is ineffective to say the least. Necessary next steps prisons need to take in order to address the root cause of crime is investigate the circumstances of the offender that lead them to turn to crime and explore alternatives to imprisonment with more attentiveness to the background information.

The research shows that the main issue driving the inefficiency of prisons within England and Wales is the overcrowding, which is only projected to get much, much worse. The overcrowded facilities force prisoners to share small cells, which compromises their human rights via poor living conditions. The toll these living conditions have on prisoners has led to mental health issues, high stress levels, anxiety and depression which we can only imagine must throw them into a cycle of deterioration – after all, if a prisoner is suffering underlying issues which lead them to become incarcerated, then suffer additional mental health issue due to the conditions they are forced to live in together with the non-existent rehabilitation programmes, they are not really, or at all, being rehabilitated with the aim of being released back into society a changed man, they are suffering *more* in prison and are being released *worse off* mentally than when they came in. Referring back to the point made by The United Nations Office on Drugs and Crime, that custodial sentences are intended to correct the behaviour of the criminal in attempt to rehabilitate them so they become law abiding citizens that can be released into society without being a danger to society, the incarceration itself is deemed to be the punishment, therefore prisoners should not be suffering poor treatment within the facility that is supposed to be rehabilitating them; being treated so poorly that your mental health deteriorates and you are stripped of some of your human rights is a hefty punishment.

The pressure that is placed upon the prisoners whilst spending long periods of time living within these conditions ultimately leads to violence. This violence consequently creates quite a complex legal environment for the lawyers who are required to advocate for and defend their clients who are in prison that have, for instance, been involved in violent incidents or who are seeking compensation for any injuries they may have sustained within the prison system. This additional

required representation must make it unnecessarily difficult for the legal representatives whose clients are facing additional charges relating to the prison violence on top of their original charges, complicating their legal situation. Such claims require a specific expertise in certain areas, for example prison regulations, personal injury and even human rights law, which means the lawyers must be prepared to handle such claims arising from these incidents that occur within the prisons. There is also the further consideration of those prisoners who are vulnerable and need legal representation – this vulnerable group are exposed to a higher risk of harm as a result of the overcrowding within the prison they are in, thus presenting some ethical problems to ensure they are safe and that their legal rights remain protected.

The root cause of overcrowding lies within sentencing policies that have quite clearly not evolved with society to match the changing needs of the criminal justice system. The governments tough on crime movement introduced the zero-tolerance policing approach which is now combined with the minimum mandatory sentences that arrested and incarcerated offenders for even the most minor offences and gave harsher sentences. This ended up increasing the number of individuals being arrested and given custodial sentences. Whilst the government had good intentions of trying to ensure society feel safe and secure knowing that every crime, no matter how big or small, shall not go unpunished, it has actually contributed heavily to overcrowding in prisons which consequently results in the ineffectiveness of rehabilitation programmes which further leads to those prisoners being released even more damaged, if anything, taking into consideration the point made earlier regarding their further deterioration in mental health. Thus, makes society more *unsafe*.

Minimum mandatory sentences introduced by the Criminal Justice Act 2003 intended ‘assist’ in the sentencing process by providing a uniform structure to sentencing and projecting certainty into society. We cannot deny that the minimum mandatory sentences have not been beneficial to the legal practice in terms of consistency and predictability. When Judges have consistency in their rulings it makes it easier and provides more accuracy to the advice that legal practitioners are able to give their clients. Perhaps an intention of introducing such mandatory sentences could have been to reduce the strain on lawyers? Logically, the more cases a Judge handles with efficiency should help alleviate any strain on the legal practitioners within the justice system and enable access to justice within a shorter timeframe. This is because the more organised the court process is, the less time lawyers spend dealing with delays and administrative issues combined with further claims that arise due to the overcrowded system. This, however, was not the case. Parliament did not account for the increased volume of offenders that would be sentenced to prison for longer periods when imposing the minimum mandatory sentences.

What the minimum mandatory sentences have done, though, is take judicial discretion away from our Judges – Judges who have spent their whole careers gaining the specific knowledge and expertise to deal with these exact situations. The inability of Judges to consider the individual circumstances of a case leads to disproportionate sentences including minor, non-violent crimes – where a Judge may have considered a shorter sentence or alternative punishment to prison

which he considers more effective at reform, he instead is forced to impose the minimum mandatory sentence. The research has shown that sentencing policies have heavily contributed to overcrowding so we must weigh up the two; the consistency and predictability vs the consequences of a heavily overcrowded, backlogged justice system.

Further, the fact that the Judges have to impose a minimum mandatory sentence restricts them from exploring the community sentences that the government have introduced...which is very contradictory between the two government schemes – how are Judges meant to explore community sentences when their judicial discretion is restricted by mandatory sentences?

A Judge's role is to judge the circumstances, the situation, the individual. **Let the Judges judge.**

There, of course, does need to be a balance between parliament and Judges. Afterall, a Judge's role is not to make law but to interpret and enforce it. We are going back to basics here with the rule of law and the separation of powers – parliament's role, put simply, as the legislature is to make the law whilst the Judges' role is to interpret the law passed by the legislature and enforce it through the system of courts and tribunals. When one's role bleeds into the others, such as how Parliament have taken it upon themselves to 'Judge' what type and/or length of prison sentence an offender should receive, the powers blur and it is impossible for one to perform their duty to their specialised standard. Moreover on this point, the separation of powers is a fundamental principal of our unwritten constitution, and if the law makers themselves find difficulty in following our fundamental rule of law then how can they expect our society to do the same?

Potential solutions

Overcrowding of prisons within England and Wales has a direct, negative effect on our legal practice which puts tremendous amounts of pressure on our legal practitioners. The only way to relieve this pressure is by extracting the root cause of it.

Whilst there has been attention drawn to overcrowding and attempts at easing it by introducing community sentences, the root causes of overcrowding and its associated issues, such as insufficient rehabilitation programs and ineffective sentencing policies, must be addressed to ensure long-term reform. The prison system must prioritize addressing these systemic issues to prevent further deterioration of conditions. This could be done primarily by reconsidering the minimum mandatory sentences and giving Judges their discretion back when it comes to sentencing offenders. Allowing Judges to Judge the individual's circumstances and allocating a sentence or punishment accordingly will prove more effective than viewing offenders with a 'one size fits all' perspective.

Even when offenders do get sentenced to prison, another way in which the above may be addressed could be by introducing, or rather restructuring, prisons within England and Wales to be more therapeutic. It is clearly becoming more increasingly recognised that the traditional approach is proving ineffective, and the more we are pressing on the 'harsher sentences' and 'tough on crime' movement, the worse the conditions are getting not only for prisoners, but the

pressure is spreading throughout our legal system. Therapeutic prisoners are designed to uncover, identify and treat the underlying social, emotional and psychological issues that contribute or cause individuals to turn to criminal behaviour. The research has shown that many prisoners struggle with mental health issues, albeit mainly caused by the overcrowded incarceration itself, but also difficult life circumstances, substance abuse, trauma etc. The way our prisons operate now, the main focus is punishment rather than rehabilitation. This does not provide support to the offender. Offenders need counselling, they need therapy, they need psychological intervention that addresses the root cause of their inner issues which shall increase the succession of rehabilitation by promoting self-reflection and personal development. A therapeutic prison would offer this as an everyday main focus, rather than a passing ‘if we get a chance we will’ approach.

The challenges and considerations to this idea is that it may be difficult to recruit as much staff that is required with the necessary skill and profession such as psychologists and counsellors. In the long run, presuming therapeutic prisons would prove successful in their rehabilitation of prisoners, the reoffending rate should reduce as offenders who are genuinely reformed will be released, eliminating the ‘revolving door’ theory. This ultimately becomes more cost effective also as the over crowdedness fades and, acknowledging the fact that therapeutic prisons may require higher upfront costs due to the need of specialised staff, personalised programmes and infrastructure, the cost should off-set in the future.

The research has shown that the current conditions of prisons are stressful which often leads to violence. Whilst a therapeutic prison tends to create a more positive, supportive environment, there is of course the possibility that therapeutic prisons may be overcrowded. This, however, would likely be only for the short-term whilst the overlap from transitioning from the punitive prisons to the therapeutic prisons is in effect. A safety concern must also be considered – not all offenders can be rehabilitated so a therapeutic prison may be too lenient for prisoners who have committed serious crimes therefore balancing security with therapeutic care is crucial for the safety of our prison guards and our legal practitioners.

Perhaps a sample of the introduction of a few therapeutic prisons to test the waters before committing to such a large project would be sensible.

Also, Potentially collaborating with private sector and non-governmental organisations could aid in creating additional rehabilitative services, support for mental health and post-release reintegration programmes which would ease pressure on prison systems and legal systems.

6.0 CONCLUSION

Prisons within the English and Welsh legal system have grown into a detrimental problem within our English penal system that has consequently resulted in an ineffective and overcrowded correctional system. High rates of reoffending, in addition with the strain on the prison systems, are suggestive of the fact that an approach of a more balanced nature, for

example a combination of punishment and rehabilitation, may prove to be more effective in the long term. There is and continues to be an increase in recognition for the need to focus on rehabilitation and the reintegration into society in order to break the cycle of crime.

There is a growing advocacy for more alternatives to imprisonment, in particular for non-violent, less serious crimes. Legal professionals are currently playing an important role in advocating for reforms that shall prioritise human rights, non-custodial sentences and rehabilitation. Community sentences may be more appropriate for criminals who are not a danger to society. Community service is a non-custodial sentence which shall require the offender to make reparations to their community instead of going to prison with the aim of allowing the offender to ‘give back to society’ after the harm caused by their behaviour. Of course, due to the nature of this sentence not all offenders qualify, it is reserved for those offenders who attract shorter sentences for less serious crimes such as theft, fighting and traffic offences, rather than more serious crimes that are a danger to society such as armed robbery, murderers, and rapists. Therefore, community sentences should be encouraged where they can be suitably applied. Community service is very strongly recommended for those offenders who may be facing a custodial prison sentence for a duration between one month to one year.

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