

INNOCENT UNTIL PROVEN GUILTY: TACKLING THE OVERUSE OF CUSTODIAL REMAND

October 2011

The Legal Aid, Sentencing and Punishment of Offenders Bill contains provisions to address the unnecessary use of custodial remand. Detaining people pre-trial on charges which would not lead to a prison sentence is disproportionate, damaging, and wasteful of public funds.

Facts

In 2009, 55,207 people were remanded into custody to await trial.¹

In 2009, an estimated 39% of people remanded into custody did not go on to receive a custodial sentence.²

Just under two-thirds of people received into prison on remand awaiting trial are accused of non-violent offences. In 2009, 12% were remanded into custody for theft and handling stolen goods.³

Last year, three-quarters of children remanded by the magistrates' court, and one-third by the Crown court, were subsequently acquitted or given a community sentence.⁴ Children were remanded for a week or less on more than 1,100 occasions.⁵

In the year up to March 2011, 4,421 women were remanded in custody to await trial.⁶

Women on remand make up 18% of the female prison population.⁷

Remand prisoners, 15% of the prison population⁸, accounted for 50% of self-inflicted deaths in 2010.⁹

The decision to remand to custody

People remanded to custody are innocent until proven guilty. Over 55,000 people are sent to prison each year to await trial¹⁰; they account for more than half of all first-time receptions to custody.¹¹ In 2009, 39 per cent of people remanded to prison did not subsequently receive a prison sentence.¹² High numbers are sent to prison, charged with offences which would not merit a custodial sentence.

By law, someone appearing before a court to face charges is entitled to a presumption in favour of bail, unless they are charged with serious offences such as murder, manslaughter or rape. However, unlike sentencing, which is proportionate to the seriousness of the offence, bail decisions can be based on the perceived risk that the defendant will fail to appear for trial, intimidate witnesses, or commit further offences.

Justice depends on courts applying these exceptions to bail rigorously and consistently. However, the exclusions have been stretched and extended, so that custodial remand has become a tool which courts use to manage people before testing the evidence against them.

Professor Elaine Player concluded:

“The standard of evidence that can be relied upon to justify a remand to custody is uncertain and seemingly unrestrained by the presumption of innocence; and the necessity of detention is variously determined, apparently unhindered by the principle of minimum interference with a Convention right.”

(Player, 2007)

The result is that many people are held on remand unnecessarily and sometimes unjustly.

The no real prospect test

The Legal Aid, Sentencing and Punishment of Offenders Bill is intended to remedy the misuse of custodial remand by establishing a test of a reasonable probability that the offence is imprisonable as a criterion of whether the court can deny bail. The no real prospect test would mean that defendants should not be remanded to custody if the offence is such that the defendant is unlikely to receive a custodial sentence. The test will not restrict custodial remand for serious crimes, nor where there is a risk that the person will, if released on bail, engage in domestic violence.

Remanding children

Approximately a quarter of children in custody are on remand. Last year, three-quarters of children remanded by the magistrates' court, and one-third by the Crown court, were subsequently acquitted or given a community sentence. These figures suggest that remand decisions are sometimes made without sufficient information and that bail packages aren't always available at the earliest opportunity. There is significant scope to build on success in sentencing fewer children to custody by curbing the misuse of remand.

The Bill proposes to apply the no prospect test to remand decisions affecting children. In addition, every child remanded will become looked after by the local authority. The Bill will rectify the longstanding legal anomaly (in contravention of the UN Convention on the Rights of the Child) which treated 17 year-olds differently to other children for the purposes of bail. It also seeks to devolve the remand budget to local authorities to encourage them to provide supported accommodation in the community for those who need it, and to produce individualised bail support packages in every case.

Given the damaging impact of custody, it would be sensible to raise the minimum age that a child can be remanded from 12 to 14 years.

Remand is a punishment

Time on remand is a punishment with harmful effects that go beyond the loss of liberty. In 2009, the average time spent on remand, awaiting trial, was 15 weeks¹³, (12.3 weeks from Crown courts¹⁴) which is effectively longer than a six-month prison sentence. People acquitted after a period on custodial remand are not entitled to compensation, unless they can prove their case has been seriously mishandled, through, for example, malicious prosecution.

As remand prisoners are held in local prisons, which are typically older and more overcrowded than those for sentenced prisoners, they generally experience a less decent regime. They are more likely to be locked up for most of the day, more likely to be confined two to a cell designed for one, and less likely to have opportunities to work.

Even a relatively short period in custody can result in homelessness, increased debt, family breakdown, loss of employment, and social stigma. The uncertainty of their status and the deprivations they experience also cause emotional distress, as indicated by the disproportionate numbers of remanded prisoners in incidents of self-inflicted deaths in custody.

The cost of unnecessary remands

Unnecessary remands are a waste of public funds. The evidence on which the Bill was based projects that the no real prospect test could save between 1,200 and 1,400 prison places in 2014/15 (Ministry of Justice, 27 June, 2011). Each year, about six per cent of people held on remand are released on bail as a result of bail information provided in prison¹⁵. This service gathers information about the person's circumstances and puts together a package that supports the case for bail. The costs saved cannot be calculated precisely, but they are substantial. The annual cost per prison place is about £45,000¹⁶.

Over 55,000 people were remanded to prison to await trial in 2009. The average time served on remand pre-trial was over 12 weeks. These statistics suggest that prison bail information schemes achieve savings of up to £40 million per

year. However, this is an under-estimate of the overall fiscal benefits of securing bail for people who need not have been remanded.

The impact of custody on women and their children

The wider costs of unnecessary remand are illustrated by its impact on women, who are more likely than men to be remanded to prison for offences which would not lead to a custodial sentence. Almost half the women imprisoned each year are received on remand.¹⁷

Over 17,000 children are separated from their mothers by imprisonment each year, which has costs for the extended family and the local authority. A survey by the prisons inspectorate found that 38% of women in prison did not have accommodation arranged on release¹⁸. Thus, remanding women in custody creates costs for local authorities in looking after children and re-housing women on their release from prison. There are wider, long-term costs, such as the impact on the woman's employment prospects and the detrimental impact on her children's education.

Responding to concerns about reforming remand

Concerns raised by courts include the risk that the defendant will fail to attend trial, interfere with witnesses, or commit an offence while on bail. However, courts have the power to impose bail conditions to address these concerns, rather than remanding someone to custody whose charges would not lead to a custodial sentence.

Courts also report that they must frequently make decisions while they lack sufficient information. The information deemed relevant to a bail decision is wide-ranging, but it may include evidence from a mental health assessment. Improving the reach and quality of court diversion and liaison services, in line with the Bradley Report, should address these circumstances more effectively. In law, the use of remand due to a lack of information is already bound by the no real prospect test as it can only justify a decision to deny bail when the charges relate to an imprisonable offence.

Tackling overuse of custodial remand

Current practices impose a punishment, before conviction, which is often disproportionate to the alleged offence. The damage to society and to thousands of people subsequently acquitted, or given non-custodial sentences, provides strong evidence that stricter criteria are needed to reduce the unnecessary use of remand. Sentencing policy states that prison sentences should be reserved for serious offences, to protect the public from serious harm, and it is right that the same principle should apply to bail decisions. The change will ensure that courts apply a more balanced and proportionate approach to bail decisions.

The Prison Reform Trust welcomes the intention in the Bill to apply the no real prospect test to bail decisions and recommends:

- Timely information, including if required assessment of mental health or learning disability, should be provided for the courts
- Every court should have access to a fully-functioning bail support and information scheme
- Bail information and support schemes achieve major savings: their performance should be rigorously monitored to assess and demonstrate their cost effectiveness
- Prior to being remanded into custody, defendants who are primary carers for dependent children should have the opportunity to make arrangements for those children, including the possibility of a reasonable suspension of detention, taking into account the best interests of the child
- Remand budgets for children should be devolved to local authorities to encourage them to provide more supported accommodation in the community
- The law on remand should consistently treat 17 year old defendants as children, in line with the UN Convention on the Rights of the Child
- The age at which children can be remanded in custody should be raised from 12 to 14
- Proposals regarding remand decisions concerning children should be applied to all defendants under 21.
- The presumption of innocence should be the yardstick for the treatment of, and conditions for, those remanded in custody.

References

Ministry of Justice (2010) Judicial and Court Statistics 2009, London: Ministry of Justice.

Ministry of Justice (2010) Offender Management Caseload Statistics, 2009, London: Ministry of Justice.

Ministry of Justice (27 June, 2011) 'Legal Aid, Sentencing and Punishment of Offenders Bill Research Report 11/53', by Garton Grimwood *et al*, London: Ministry of Justice.

Player, E (2007) 'Remanding women in custody: Concerns for human rights,' *The Modern Law Review*, 70(3) 402-26.

Prison Reform Trust (2011) *Bromley Briefings Prison Factfile, June 2011*, London: Prison Reform Trust.

Endnotes

¹ Ministry of Justice (2010) OMCS, Table 6.2, London: Ministry of Justice.

² Hansard HC, 11 July 2011, c76W.

³ Ministry of Justice (2010) OMCS, Table 6.2, London: Ministry of Justice.

⁴ Hansard HC, 5 September 2011, c297W.

⁵ Hansard HC, 6 September 2011, c387W.

⁶ Ministry of Justice (2010) Offender Management Statistics Quarterly Bulletin, January to March 2011, Table 2.1c, London: Ministry of Justice.

⁷ *Ibid*, Table 1.1c.

⁸ Ministry of Justice (2011) OMCS, 2010, Table A1.1, London: Ministry of Justice.

⁹ Ministry of Justice (2011) Safety in Custody 2010, England and Wales, Table 8, London: Ministry of Justice.

¹⁰ Ministry of Justice (2010) OMCS, Table 6.2, London: Ministry of Justice.

¹¹ Player *et al.*, 2010, page 243.

¹² Crispin Blunt, Minister for Prisons and Probation, response to a Parliamentary Question by Helen Goodman: 2009 court data shows 71,500 remanded in custody; 9,500 acquitted; 43,400 given immediate custody.

¹³ Ministry of Justice (2010) Judicial and Court Statistics 2009, p102, London: Ministry of Justice.

¹⁴ Ministry of Justice (2010) Criminal Statistics, England and Wales, 2009, Table 5A, London: Ministry of Justice.

¹⁵ In 2006, bail information officers interviewed 10% of women and 19% of men entering prison on remand. Bail reports were successful for 40% of women and 33% of men. In 2006, their work led to the release on bail of 5% of women and 6% of men on remand (Source: Prison Reform Trust note to Baroness Corston).

¹⁶ Prison Reform Trust (2011) Bromley Briefings Prison Factfile, June 2011, London: Prison Reform Trust.

¹⁷ Ministry of Justice (2010) Offender Management Caseload Statistics 2009, London: Ministry of Justice

¹⁸ Prison Reform Trust (2011) Bromley Briefings Prison Factfile, June 2011, London: Prison Reform Trust.

"I am very sad to hear the tragic news of one of my good friends' death who died in prison on Saturday. He (like myself) had a history of drug abuse problems. I've known a lot of my friends who get out of prison say there is no support for their addictions when they get "locked up". What I find hard to take is that he was on remand for minor shoplifting charges. He was a very nice person who had personal problems. He worked hard for most of his adult life until he lost his job a couple of years ago with his dependency problems hence getting in debt from a mortgage and having to move to be with his parents. Wouldn't it be better to have urgent support for people like my friend who get remanded? Why are they locking people up for petty crime?"

An email received by the Prison Reform Trust's advice and information service