

The Future of Sentencing

*The interview is with two distinguished members of the Independent Panel to the Independent Sentencing Review. **Nicola Padfield** KC (Hon) is an Emeritus Professor of Criminal and Penal Justice at the Law Faculty, University of Cambridge. She is an expert on sentencing law, including the law and practice of release from (and recall to) prison. A barrister by training, she sat as a Recorder (part-time judge) in the Crown Court from 2002-2014. **Michael Spurr** CB worked in prisons and probation throughout his working life, ultimately as Chief Executive of the National Offender Management Service / HM Prison and Probation Service from 2010-2019.*

*They were interviewed by **Dr. Jamie Bennett** who is a prison group director in HM Prison and Probation Service.*

This interview took place in June 2025. In October 2024, the government commissioned an Independent Sentencing Review for England and Wales, chaired by the former Lord Chancellor and Secretary of State for Justice, David Gauke, and assisted by an Independent Panel of experts. The Review was commissioned by a new government following the General Election of July 2024, and during an acute prison population crisis, which had seen several emergency early release measures introduced to prevent the prison system running out of places. The goal of the Review was to ensure the system was not again in a position where there are more prisoners than prison places.

The Review published a report detailing the causes of the crisis,¹ which it attributed to 'piecemeal and unstrategic' changes to sentencing, driven by a 'tough on crime' narrative adopted by successive governments. The final report of the Review made wide ranging recommendations including a presumption against short term sentences (less than 12 months); strengthening alternatives including extending the use of suspended sentences, deferred sentencing and confiscation orders; improving community sentences including providing investment in probation and having orders more tailored to individual need, and; creating a simplified approach to early release from custody and post-release supervision. Together, it was estimated that the recommendations would lead to a reduction in demand for prison places of 9,800. The government accepted the recommendations of the Review,² except for the recommendation that those on extended sentences could earn an earlier parole hearing.³

The Chief Executive of Prison Reform Trust, Pia Sinha, has described the Review as 'a once in a generation

opportunity to reset the sentence framework⁴. Implementing the recommendations will require legislative and policy change as well as financial investment. This Review will be setting the direction of sentencing reform over coming years.

JB: How did you come to be involved in the Review, what did you personally hope to contribute?

NP: I received an e-mail from the private secretary to the Minister of Justice in October last year. I was excited to receive it and delighted to say 'yes'. I thought. I might offer a wise academic voice and focus on the empirical evidence, as well as bringing my experience as a Recorder, a part time judge, and teacher. The panel members were from a broad range of backgrounds and the discussions we had showed that having a panel is valuable.

MS: Similarly, I was approached by Ministry of Justice about whether I would be prepared to contribute to the Review. I was very happy to do so. The reason for my involvement is having been involved with prison and probation for all my working career, and through that career, what dominated was managing the dramatic rise in the prison population. I've done a lot to respond through operational action, but the systemic problem is that sentences have risen, and places haven't been provided to meet the need. Being involved in the Panel was an opportunity to look at this and contribute positively to solutions.

JB: Do the outcomes offer a radical transformation in sentencing or simply a method for easing the pressure on the penal system?

¹ Independent Sentencing Review. (2025). History and Trends in Sentencing. Available at <https://www.gov.uk/government/publications/independent-sentencing-review-history-and-trends-in-sentencing> (accessed on 23 June 2025).

² Independent Sentencing Review. (2025). Final report and proposals for reform. Available at <https://www.gov.uk/government/publications/independent-sentencing-review-final-report> (accessed on 23 June 2025).

³ Hansard. (2025, May 22). Independent Sentencing Review. Available at <https://hansard.parliament.uk/commons/2025-05-22/debates/A8FD73FC-8365-4C86-9486-F22F6C175877/IndependentSentencingReview> (accessed on 23 June 2025)

⁴ Prison Reform Trust. (2025). PRT comment: Independent Sentencing Review. Available at <https://prisonreformtrust.org.uk/prt-comment-independent-sentencing-review-2/> (accessed on 23 June 2025).

MS: Both. One of our primary objectives, set out in the terms of reference, was to provide a means of managing the prison population and providing a sustainable way to move forward.

Our recommendations, if enacted in full, will reduce the prison population by about 10,000. That provides some opportunity to do things differently, and so it does address the immediate crisis issues. But the report goes further, providing a direction that, if the government choose to follow it, will have long-term impact. In the relatively short time we had, we were not able to do all the things that we wanted to do, most notably to address the issue of individual sentence lengths, maximum and minimum sentences. We recommended that the government takes this issue forward.

NP: The report has potential to transform, but only if those with political power want it to. In reality, the Review turned into a method for dealing with the current crisis more than I had initially expected. This was disappointing. The reality of politics stopped us being more radical. But I'm aware that if we'd written the sort of report that I might have written, it would have been easy for the Ministry of Justice just to ignore it. You must take politics seriously. That was something I learned through the process. It's difficult to change cultures and I hope that the Review may unleash debate.

JB: Let's discuss some of the recommendations. First, the purpose of sentencing. Currently the purposes of sentencing are: the punishment of offenders; the reduction of crime (including its reduction by deterrence); the reform and rehabilitation of offenders; the protection of the public; and the making of reparation by offenders to persons affected by their offences. The report recommends that the purposes are amended to incorporate the needs of victims and to make reducing crime the overarching aim. What practical effect would these changes have?

NP: The statutory purposes of punishment sentencing were introduced in the Criminal Justice Act 2003, and the then government thought they would lead to greater consistency in sentencing. Most judges thought that they were a statement of the blindingly obvious and could be safely ignored. If anything, it allowed judges to be more

inconsistent because you could say in this case the purpose of punishment is the protection of the public or reform or whatever.

It is obvious that victims aren't mentioned. It is important that they're included in these purposes because the justice system, the court system in particular, continues to treat victims poorly. Victims deserve to be taken seriously, to be listened to, and to be compensated.

The overarching aim is more difficult. I've been teaching the philosophy of punishment for decades to students, discussing why we punish people in the ways that we do, and it seems to be fundamental to recognise the aim of reducing crime. There's something perverse about sending people to prison if you know that for this person, at this moment in his or her life, prison is likely to make them more likely to reoffend. Of course, there's an important place for public protection, but that should be seen in the overall context of how best to reduce offending and reoffending. I strongly support this recommendation.

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JB: A number of the proposals focus on custody. First is the proposal to create a presumption against short term sentences, those of less than a year. This is based on evidence that short sentences disrupt the lives of those sentenced, without time to undertake more positive work. This approach has been adopted in other countries including Scotland. What does international experience indicate? Have short prison sentences been significantly reduced and has imprisonment been made more constructive?

MS: Our focus was on the evidence that exists within our own jurisdiction and to a degree within Scotland. You're right that the evidence is overwhelmingly clear that short custodial sentences generally are less effective than other alternatives, particularly community sentences. I was struck by a study published in 2019, which importantly took matched offenders, and showed a 4% lower re-offending rate amongst those given community orders rather than imprisonment.⁵

We were aware that attempts to abolish short sentences have generally fallen, due to protest about what do you do with particularly hard cases where people have been given community options and failed. I have sympathy for magistrates with prolific offenders, for example, who keep coming back. Since 2010 there's been a 39% reduction in the number of offenders getting sentences less than 12 months. We didn't recommend abolishing short sentences but made recommendations that would further reduce their use. We focused on suspended sentences, and I confess this was pragmatic. The suspended sentence is a custodial sentence rather than a community sentence, I recognise that. The evidence is that suspended sentences, with requirements alongside them have a re-offending rate of around 24%, which is better than community orders.⁶ Of course, they should only be used where the custodial threshold is met, but where you're going to give a short custodial sentence, it is much better to suspend it with requirements in the community. We've also recommended for prolific offenders, intensive supervision courts be expanded, with tailored programmes available for those difficult individuals, who constantly offend and create mayhem in local communities. Ultimately, if nothing works then prison will have to be used, but there will be more options to manage those cases on an individual basis.

JB: The proposals for early release captured a lot of attention. It is proposed that it will be possible to be released at the one-third point of a custodial sentence, dependent upon good behaviour, with a post-custody phase to the two-thirds point including active probation supervision and support, with the final third where the individual is not actively supervised but 'at risk' of being returned to prison if they re-offended or present a significant risk. Can public support be sustained for an approach that will see someone who is sentenced to 15 years in prison spend five years there?

MS: The context is important. The Review would not have been set up were it not for the adversity across the criminal justice system; there are too many people in prison and not enough places for them. That's the starting point. To address that, there are three things you can do: send fewer people to prison; reduce the amount of time that people receive on sentences, and allow people to come out of prison at an earlier point on their sentence than they currently do. The Review addressed the first point by shifting the balance between short prison sentences and community orders. The second point we would have liked to do, but the complexity and consultation required meant that within the timescale it was not feasible to look at sentences for individual offences, including maximums and minimums. We had to focus on that third point, unpopular as that might be with

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many people.

5 Eaton, G., & Mews, A. (2019). The impact of short custodial sentences, community orders and suspended sentence orders on reoffending. London: Ministry of Justice. Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/814177/impact-short-custodial-sentences.pdf (accessed on 19 June 2025).

6 Ministry of Justice. (2023). Sentencing Bill Factsheet: Short Sentences. Available at <https://www.gov.uk/government/publications/sentencing-bill-2023/sentencing-bill-factsheet-short-sentences> (accessed on 19 June 2025).

The current arrangements provide a plethora of early release options, which are not at all clear to the public and victims, or even to those of us who are associated with the criminal justice system. For example, the home detention curfew scheme has been expanded several times, even in the last 12 months, and while there are some people who are eligible, others are not. Under the current arrangements, some prisoners are released after 20% of their sentence, but others much later. Our recommendations provide a more straightforward, transparent system for early release. It will be applied to everyone as we believe that the sentence given by the court should determine when a person is released, not an administrative decision. For standard determinate sentence prisoners, everyone, no matter what their offence, gets the opportunity for release at the one-third point, as long as they have shown good behaviour in prison. So, there is a clarity and transparency in the system.

Following early release, they will be under supervision with access to support in those early days post-release, which will reduce their risk of further offending. From a victims' point of view, that is something that really matters because most victims want the offender not to re-offend.

JB: It is proposed that early release is earned through good conduct. What can be learned from incentives and earned privileges (IEP) in prisons? These were designed to encourage good behaviour and reduce re-offending but have been criticised as focussing on institutional behaviour rather than rehabilitation, being procedurally unjust and even being manipulated by those deeply entrenched in the criminal subculture. They have also been criticised in media and public discourse as being 'soft' on prisoners.

MS: I, and others on the panel, are familiar with the evidence about IEP. There is also evidence that IEP was a major factor in enabling the prison service to regain a degree of control when it was first introduced. IEP is primarily about managing behaviour in prison. What we're talking about here is how we manage early release in a balanced way. To create a sustainable prison population, people must be released earlier in sentence than they would otherwise. The starting point in our proposals for standard determinate sentence prisoners is that people will be released at the one third point, but our expectation is that to be released at that point, they will comply with prison rules. Our recommendations are that the implementation of this must be objective and administratively straightforward. So, our view, is that we

use existing formal systems for determining where people fail to comply, that means the formal adjudication system where there is a proper level of oversight and scrutiny, with independent adjudicators who make the decision to delay release. The mechanics of that need to be put together, but the learning from IEP was we didn't want a system which was open to individual bias in the way that it was applied but was straightforward and clear.

For extended determinate sentence prisoners we recommended a different approach, closer to the Texas model of earned progression. Extended determinate sentence prisoners have a release date at the two-thirds point, subject to a parole recommendation for release. Our recommendation was that there should be a greater focus on risk factors and that they should be able to earn an earlier parole review by demonstrating that they were tackling the issues that led to their offending. We were recommending potential for a parole review after 50% of their sentence, subject to them demonstrating progress. That was the one recommendation the government chose not to accept.

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JB: What recommendations in the report will specifically address the sentencing inflation that has occurred over recent decades? Will sentences for more serious offences be reduced?

NP: The honest answer is that I fear that they won't. We were deliberately instructed to avoid indeterminate life sentences and the agenda as it evolved led us to focus on the management of sentences much more than on the imposition of sentences.

I've been thinking about this a lot and ask myself, was this because it was too difficult a subject for a quick report? Or was it also fear of interfering with the independence of the judiciary? Or was it simply politics? The Ministry of Justice has already rejected our recommendations on extended sentence prisoners, which is disappointing. The final chapter of the report makes important recommendations for future work, which I hope won't be ignored, including a thorough review of maximum penalties and of the need for mandatory minimums (or should they simply be abolished?).

I'm interested in the way you phrased the question, 'sentences for more serious offences', because it's offenders who are sentenced, not offences. I would like there to be much greater focus on the offender; their culpability and what needs to be done to help them not re-offend.

In recent times, the media and politicians have become much more focused on the outcomes of offending rather than the offender's personal circumstances or blameworthiness. And that's an issue which needs to be discussed and debated.

JB: The report makes recommendations regarding community sentences. These include simplifying the rules so that courts have greater flexibility about requirements, extending the options around drug treatment and increasing the powers for suspended prison sentences, deferred sentencing and confiscation orders. Are these options likely to be taken up? Is this a continuation of the discourse of toughening up community sentences? Is there a risk of making community punishments more onerous rather than expanding their use?

NP: One thing I've learned in the last six months or so is that I'm not a very good politician and I have no idea whether these options are likely to be taken up.

On the discourse of toughening up community sentences, I hope that it won't have this impact. What is obvious is that we need to build trust within the system. People need to believe that community orders work. Just as important, sentencers must believe that probation officers have the time and the resources to implement community orders effectively. It's not about toughening up

community orders, it's about better, swifter implementation.

We recognised the problem of resources and prioritisation of probation work. For too long the probation service has been the poor relation to the prison system. No one we talked to wanted another reorganisation of probation, but there are fundamental questions about accountability, whether, for example, probation should be a local service, accountable to the courts. But that was beyond the scope of this Review.

JB: Women make up a small proportion of the prison population. There have been several important reports, such as the Corston Report and national approaches, such as the Female Offender Strategy, how will your recommendations make positive change for women in the criminal justice system?

NP: If only sentencers, Parliament and the government grasp the nettle, then positive change is possible. I hope that sentencers will think longer and harder about whether it's necessary to send women to prison. Extending the period for suspension of sentences and deferring sentences should make a difference. We also recommended intensive supervision courts or problem-solving courts, more sustainable funding for women's centres, expanding diversion projects, and a woman's specific pathway for drug and alcohol treatment requirements. In relation to focusing more on the offender than the offence, it is shocking that so many women in prison have been victims of more serious offences than the one that they've been sent to prison for. The gender dynamics of much criminal activity needs to be better understood.

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JB: How can new and existing technology be harnessed to realise the aims of the Review? What are the risks and challenges?

MS: In our report, probation is front and centre to virtually everything. Unless there is investment in probation and a change in the culture and operation of probation then we will not make the best of the recommendations in our report. We recommended that we replace rehabilitation activity requirements with a more general probation order. That's because we believe that probation need to have more flexibility and to be allowed to manage individuals.

We've stressed the importance of support for prisoners released from custody, helping them into work and accommodation. With recall, probation need resources to work with people in the community rather than resorting to early recalls back into prison. All of this is difficult because probation is under resourced and there are a lot of inexperienced staff. We've recommended additional investment in probation and further use of third and voluntary sector to support probation.

Technology will also be important in supporting probation. I was impressed with the ways in which artificial intelligence (AI) is being used to improve doctors' consultations with patients. That felt like the type of AI application that would work when probation is engaging with their offenders. There is a role for AI in reducing process and prioritisation, as well as improving public protection. There are risks, including building in bias, but there are methods for addressing this known as 'guardrails'. The use of technology needs to be based on personalisation, so practice is focused on what individuals need. Rather than being the blunt use of devices such as electronic monitoring, technology should be developed with probation practice at its heart, so that it is enabling professional judgement and expertise.

JB: What does the Review offer for people who are the victims of crime? How were the views and experiences of these people used to inform the recommendations?

MS: Victims of crime were a focal point for us as Panel members. We had Panel members who worked directly with victims, and following our call for evidence, we received submissions from victims' groups. We had round

tables with a range of different people, including victims. Foremost, I hope that victims will see that our recommendations will create a more transparent system for sentencing. The overriding view of victims is they don't want the perpetrator to commit further crime, and our recommendations are based on the best evidence of what works to reduce re-offending overall. Inevitably people will have different views of the recommendations, but I do believe overall it's a package that will benefit victims.

JB: To shape future developments, the Review recommends an external advisory body that would have three functions: an authority on what works to reduce crime; analysis of proposed policy changes; and annual reporting. A body like this could offer an evidence-based approach, but in a field that is often filled with emotion and ideology. For example, the Sentencing Council and Parole Board, both of which are independent public bodies, have been embroiled in controversy from time to time. Why is such a body needed? Have you seen other bodies have a positive impact?

NP: I believe an independent body is needed. The obvious comparator is the National Institute for Health and Care Excellence (NICE), which has a high reputation for independent advice on improving best practise in health. The Sentencing Council is not the right body; it's a judge-led body providing guidance to judges and magistrates and is not equipped to undertake the role that we are recommending for an external expert advisory body. There's a whole debate to be had on why recent governments don't seem to welcome expertise.

MS: At the moment, the government have accepted the recommendation. There were lots of calls for such a body in our evidence, including from the House of Commons Justice Select Committee. We're recommending that the body incorporate some existing organisations, notably, the Correctional Services Advice and Accreditation Panel,⁷ which makes it more akin to a NICE body.

⁷ Ministry of Justice. (2018). Offending behaviour programmes and interventions. Available at <https://www.gov.uk/guidance/offending-behaviour-programmes-and-interventions> (accessed on 20 June 2025).

JB: What do you think is the potential impact on racial disparity in sentencing? There is ample evidence of racial disparity in sentencing, and it has been seen that with the reduced use of criminal justice interventions with children, black children are less likely to benefit and remain more likely to end up in prison.

MS: My inclination is that it won't have a significant impact on racial disparity. There'll need to be a proper impact assessment before implementation, but logically because we're not changing sentencing for individual offences, disparity won't be impacted. There would be potential that there is an indirect impact from the early release system as the adjudication system in prison has disparity; there are a higher proportion of black prisoners in particular who are found guilty on adjudications. Overall, though, having an objective and transparent system for determining early release may have a positive benefit. The evidence will need to be collected during implementation.

NP: It is disappointing that we didn't have more time to explore how this will work in practise, particularly given the intersection of many different areas of disadvantage.

Baroness Casey's report, which was published recently on grooming gangs,⁸ makes it clear how difficult it is to talk about ethnicity, as does the controversy over the Sentencing Council's guideline on pre-sentence reports.⁹ We mustn't feel that we have to hide from shouting about the over representation in prisons of people who have many characteristics which mustn't be ignored including poor mental and physical health, homelessness, poverty and people from minority ethnic communities. There is potential for some of our recommendations to lead to discriminatory outcomes. There's got to be vigilance, and we mustn't be frightened of discussing the issues.

JB: The public are generally assumed to be in favour of more punitive sentencing. How can support be sustained for the proposals made by the Review? Changes to sentencing and early release in the early 1990s included reforms based on 'proportionality' and it was legislated that previous convictions would have no or limited influence on sentencing. Public and political confidence fell away when real life cases were exposed in the media, with apparently lenient sentences being awarded to people who had long criminal histories. Is there a risk that these reforms will fall foul of similar reporting of real-life cases?

NP: With the Criminal Justice Act 1991, I would argue that the main reason that they changed the rules on previous offences was judicial resistance rather than the media. The media are, nevertheless, powerful in the way they choose to report crime and justice stories. We need to encourage responsible media and political debate. I have been sensitised to the politics of this through the Review panel. The rise of Reform as a political party has made politicians of other parties even more nervous of this debate. But from where I sit, the public debate becomes more rather than less important. Those of us who don't think that more punitive sentencing is the right answer must be prepared to speak out more.

JB: If we were to come back in ten years, what do you hope will be the legacy of the Review?

MS: I hope that the recommendations have been properly implemented, that there will have been a culture shift to support people leaving prison and on community sentences, with probation given greater investment. I hope also that the government would take forward the wider recommendations for long-term change. If that does not happen and the population rise continues as it has, then we will be back here again and again. There's going to be a lot of building of prison places, even with our recommendations. That's costly at a time when the country is struggling to provide the schools and hospitals and other public services it needs. I would argue that it's not the best use of public money in terms of outcomes to put people into prison for longer and longer. That point is emphasised in the conclusion to the Review, and I hope that the government do listen and act to addresses that.

NP: I'm not clear that the Review has an obvious legacy. I agree that a culture change is needed. Wouldn't it be wonderful if we saw the prison population shrink in the coming decade, and then the Review might be remembered as something which helped spark that change, but I don't have a crystal ball.

⁸ Casey, L. (2025). National Audit on Group-Based Child Sexual Exploitation and Abuse. Available at <https://www.gov.uk/government/publications/national-audit-on-group-based-childsexual-exploitation-and-abuse> (accessed on 18 June 2025).

⁹ Ministry of Justice. (2025d). Government to introduce legislation to block new sentencing guidelines. Available at <https://www.gov.uk/government/news/government-to-introduce-legislation-to-block-new-sentencing-guidelines> (accessed on 28 April 2025).