

APPG on Access to Justice

Briefing Paper for Lord Bach

Meeting with Rt Hon David Gauke

Chair of the Independent Sentencing
Review

Monday 10 February 2025

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Meeting with Chair of Independent Sentencing Review

Rt Hon David Gauke: Biography

Rt Hon David Gauke was a member of the Treasury Select Committee from February 2006 until he was appointed as a Shadow Minister for the Treasury in June 2007. As a Shadow Treasury Minister, he focused on tax policy, including matters such as tax simplification and corporation tax reform. He was appointed Exchequer Secretary to the Treasury in May 2010, and promoted to Financial Secretary to the Treasury in July 2014 where he served until July 2016. He served as Chief Secretary to the Treasury from July 2016 to June 2017. He then held the position of Secretary of State for Justice and Lord Chancellor from 2018 to 2019.

Panel Members of Independent Sentencing Review

Lord Ian Burnett (former Lord Chief Justice),

Inspector Catherine Larsen KPM, (retired inspector from Avon and Somerset whose work included transforming the way rape and serious sexual offences are investigated by the police),

Sir Peter Lewis (former CPS chief executive),

Nicola Padfield KC (Hon), formerly Director of the [Cambridge Centre for Criminal Justice](#) (CCCJ)

Andrea Simon (Executive Director of End Violence Against Women Coalition), and

Michael Spurr (former HM Prison and Probation Service chief executive)

Independent Sentencing Review (ISR)

Purpose of ISR

1. In Summer 2024, a lack of capacity within the prison system brought it dangerously close to total collapse. On taking office, the new government was forced to announce emergency measures that reduced the custodial term of some standard determinate sentences from 50 percent to 40 percent of a sentence.
2. The Review is described as a “comprehensive re-evaluation of our sentencing framework” to ensure that the country is never in a position where there are more prisoners than prison places and the government is forced to rely on the emergency release of prisoners.
3. The Review is guided by the following principles:
 - Sentences must punish offenders and protect the public – prison spaces must always be available for the most dangerous offenders
 - Sentences must encourage offenders to turn away from crime, reducing reoffending
 - We must expand and make greater use of punishment outside of prison

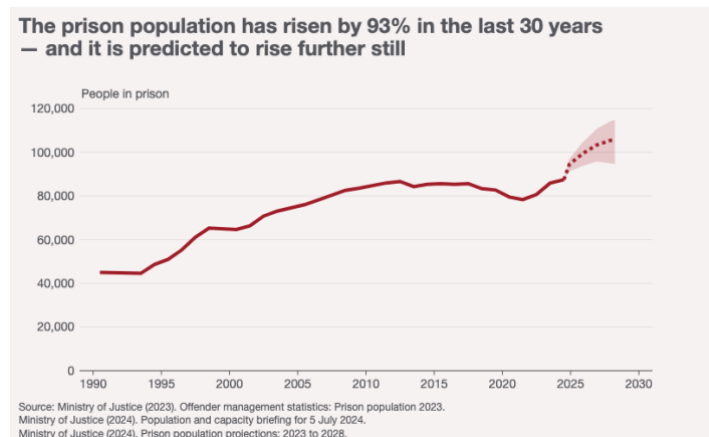
4. The Review is encouraged to look at international examples to consider what reduces reoffending across the world.

Scope of the ISR

5. The ISR will be considering the following:
 - Non-custodial sentences, and community alternatives to prisons
 - How incentives operate in sentence management
 - The impact of short custodial sentences
 - How sentences are administered
 - How technology can support offenders
 - How vulnerabilities of particular cohorts are interpreted in prisons
 - How sentencing for VAWG should be approached
6. The ISR will specifically exclude:
 - IPP Sentences
 - Remand
 - Youth sentencing
 - The murder sentencing framework

Background

7. The purposes of sentencing (in respect of those who are 18 or over when convicted) are set out in section 57 of the Sentencing Act 2020 (the “Sentencing Act”) and are as follows:
 - (a) the punishment of offenders;
 - (b) the reduction of crime (including its reduction by deterrence);
 - (c) the reform and rehabilitation of offenders;
 - (d) the protection of the public, and
 - (e) the making of reparations by offenders to persons affected by their offences.
8. Types of sentences include: Community Sentences (these can include supervision or other requirements), monetary penalties (such as fines) and custodial sentences.
9. The 1990s marked a turning point in our use of imprisonment. From 1993 the prison population began to undergo a dramatic period of growth, rising from 44,500 to over 88,000 by 2024.



10. The growth in the number of people sentenced to immediate custody has been the single most important contributor to the overall growth of the prison population since 1993 increase. Immediate custody rates for indictable offences increased from 16% in 1993 to 28% in 2002 — an increase of over two-thirds.
11. At the same time, there has been a decline in the use of community sentences and an increase in the average custodial length of sentences, as well as an increase in the use of preventative sentencing and the use of recall.
12. Over half of people in prison today do not have certainty around when they will be released.

Sentence inflation

13. Average custodial sentence lengths have roughly doubled since 1998. Since 2010, there has also been an increase in the number of custodial sentences of between four to 10 years and 10 years or more in length; meanwhile, the number of sentences of less than four years has declined. Between 2012 and 2023, there was an increase of more than 25% in the length of the average custodial sentence handed down in the Crown Court. The average custodial sentence length for indictable offences increased from 18 months in 2013 to almost 23 months in 2024.
14. Further examples of sentence inflation include:
 - The average minimum term for murder increased from 13 years in 2000 to 21 years in 2021.
 - The average custodial sentence length for manslaughter grew from 5.4 years in 2007 to 8.8 years in 2017.
 - The average custodial sentence length for sexual offences increased by 50% between 2007 and 2017¹.
14. Instead of fulfilling the statutory sentencing purposes, the increased use of ever longer custodial sentences has contributed to the prison overcrowding crisis. The prison population has risen by

¹ *Sentencing basics*, Sentencing Council

93% in the past 30 years, creating a strain on the prison system's capacity. Prison overcrowding has created unsafe conditions with high rates of violence, drug use and self-harm that make rehabilitation in custody virtually impossible; in HMP Pentonville Prison, in March 2024 alone, 104 incidents of self-harm were recorded.

15. In many circumstances, the use of more and/or longer custodial sentences is not effective. The combination of sentence inflation and the imposition of immediate custody for a greater proportion of indictable and either-way offences has contributed to an ever-growing prison population, culminating in the current crisis². England and Wales now has the highest rate of incarceration amongst western European jurisdictions (145 prisoners per 100,000 heads of population)³. In contrast, Germany has a prison population rate of 67 prisoners per 100,000 heads of population.⁴

Prison places

16. There are currently 141 prisons in the United Kingdom, with 122 in England and Wales. HM Prison Service runs 105 of these 122 prisons, with the remainder run by private companies.⁵
17. As of November 2024, there are around 86,000 people in prison in England and Wales, and around 22,000 prison officers and 5,000 operational support staff currently in post.⁶
18. The prison population of England and Wales has doubled over the last 30 years, despite crime rates falling substantially.⁷ Prisons have been routinely operating at over 99% capacity since the start of 2023.⁸ The prison population is expected to reach 106,000 by 2027,⁹ with useable operational capacity for the prison system at 89,619.¹⁰

The growth in the prison population since the pandemic has been largely fuelled by the remand prisoner population. The growing backlog in the criminal courts, especially in the Crown Court, has led to an 84% increase in the population of prisons on remand, who now constitute nearly

² Howard League for Penal Reform, *Sentence inflation: a judicial critique*, (2024) p.5; Jose Pina-Sánchez, Lilly Crellin, Jonathan Bild, Julian Roberts and Mike Hough, *Sentencing Trends in England and Wales (2002-2022)*, (2023), p. 3.

³ Jose Pina-Sánchez, Lilly Crellin, Jonathan Bild, Julian Roberts and Mike Hough, *Sentencing Trends in England and Wales (2002-2022)*, (2023), p. 3.

Georgina Sturge, House of Commons Library, *UK Prison Population Statistics*, (2024), p. 29

⁴ Ibid.

⁵ <https://prisonandprobationjobs.gov.uk/about-hmpps/about-the-prison-service/>

⁶ <https://prisonandprobationjobs.gov.uk/about-hmpps/about-the-prison-service/>

⁷ <https://www.instituteforgovernment.org.uk/publication/crisis-prisons>

⁸ <https://www.gov.uk/government/news/lord-chancellor-sets-out-immediate-action-to-defuse-ticking-prison-time-bomb#:~:text=Originally%20launched%20in%20October%202023,over%2010%2C000%20offenders%20were%20released>

⁹ <https://howardleague.org/our-approach/>

¹⁰ <https://lordslibrary.parliament.uk/government-plans-to-ease-prison-capacity-pressure-and-manage-the-needs-of-vulnerable-prisoners/>

20% of the prison population.¹¹ Of this population, 10,700 were awaiting trial, the highest number of prisoners on record.¹²

19. While the government is committed to increasing prison spaces, the National Audit Office says current expansion plans will not meet demand.¹³ The shortfall is expected to reach 12,400 places by the end of 2027. Greater use of non-custodial sentences will have to be part of whatever solution we reach. There is also the need for the ISR to complement Sir Brian Leveson's review of the courts if we are to find a holistic solution to the problem of the backlogs and in the prisons.
20. In light of the severe capacity pressures impacting prisons, there is now a real opportunity to take a new approach to the criminal justice system, including the sentencing regime, which is sustainable, effective and serves to build safe and healthy communities.

Comparison of submissions to the ISR

The Bar Council recommendations:

21. The Bar Council propose the use of creative non-custodial sentences, particularly for non-violent offenders. Their proposals include:
 - Extended Home Curfews: Implementing 20-hour daily home curfews as a direct alternative to imprisonment.
 - Weekend Curfews: Establishing weekend-only curfews, allowing individuals to maintain employment during weekdays while restricting social activities during weekends.
 - Intermittent Custody: Revisiting the concept of intermittent custody, where low-risk offenders serve custodial sentences on a part-time basis, such as during weekends, enabling them to retain jobs and homes.
 - Community-Based Sanctions: Enhancing the use of community orders, including mental health treatment requirements, to address underlying issues contributing to criminal behaviour.
 - Suspended sentence orders with an education requirement attached: requiring offenders to complete short apprenticeships or trade qualifications will mean that more convicted defendants who have had limited education in the past will be able to improve their prospects.

Criminal Bar Association's recommendations:

22. The Criminal Bar Association emphasises the need to reduce the backlog in criminal courts and suggests:
 - Efficient Case Management: Implementing measures to streamline case handling and reduce delays in the justice system.

¹¹ <https://www.instituteforgovernment.org.uk/publication/crisis-prisons>

¹² <https://commonslibrary.parliament.uk/will-prisons-run-out-of-space/>

¹³ <https://www.nao.org.uk/reports/increasing-the-capacity-of-the-prison-estate-to-meet-demand/>

- Alternative Sentencing Options: Exploring non-custodial sentences to alleviate pressure on the prison system and focus custodial resources on high-risk offenders.
- Recalls: Also note that the number of people recalled to prison for breaching licence conditions has grown significantly in recent years.

Law Society's Submission recommendations:

23. The Law Society's recommendations include:

- Alternative Sentencing Options: there should be a move towards more humane, open prison type conditions for the majority of prisoners who are not considered dangerous or an escape risk.
- Complex cases: Intensive supervision courts and complex case courts are a better way to oversee intensive community sentences.
- Health: Greater resourcing of mental health services is needed to help address mental ill health which can be a cause of reoffending.
- Home Curfews: should be used much more.
- Probation officers: In support of government's announcement to recruit 1000 additional probation officers to deal with increased non-custodial caseload. Probation services to be adequately funded so as to help reduce the causes of offending.
- Prison lawyers: increase funding for prison lawyers to ensure there are enough solicitors to advise prisoners, to allow for their timely and appropriate release and to ensure the resource is used well. The proposed increase in funding to criminal legal aid should also apply to prison lawyers. People are currently stuck in prison because they cannot access legal advice to make an application to the parole board.
- Recalls: suggest that judicial involvement in the system for recalling people to prison could help with unnecessary congestion in prisons caused when the Probation Service initiates the recall, but it transpires that the risk could be managed in the community. This could be alleviated with the use of magistrates' courts remanding people to return in a week, with enquiries made in the interim to determine whether recall is necessary.
- Rehabilitation: Prison service should consistently provide education and rehabilitation programmes.
- Resources should be available to prisoners on their immediate release.

JUSTICE recommendations:

24. Justice's recommendations include:

- **Dynamic Sentencing:** Dynamic sentencing would involve sentences being varied by the Parole Board, meaning that “penalties can be adapted weeks or months after conviction” to accord with factors like an offender’s good behaviour or reduction in risk.
- Adequate resourcing of the probation service.
- A public education campaign on sentencing. Evidence indicates that the public’s knowledge of current sentencing practice is limited. A study conducted by the Sentencing Academy discovered that most respondents were not aware that sentence length had increased since 1996, and over half believed that sentence lengths have become shorter.
- **Technology:** recommend that any new technology that impacts sentencing should ideally only be introduced after satisfying the following three conditions:
 - **Independent Assessment:** All proposed technology solutions are independently assessed from an impact and rights-based perspective. Due and proper consideration must be given to the impact on the rights and well-being of the supervised individual, to ensure an appropriate balance between any conflicting rights or interests is struck.
 - **Pilot Testing:** All proposed technology solutions should be piloted on similar terms. Piloting technology ensures that technological innovations produce genuine alternatives to custody, rather than recreating custodial prison sentences.
 - **Co-Design with Users:** To the extent possible, all proposed technology solutions are co-designed with potential users to mitigate the risk of adverse or unintended consequences on the users, probation officers and the wider public.

Howard League for Penal Reform recommendations:

25. The Howard’s League’s recommendations include:

- **Address Sentence Inflation:** Reverse the trend of sentence inflation by resetting sentencing benchmarks to those of the 1990s. Abolish short sentences of 12 months or less and remove the power of lay magistrates to sentence individuals to custody.
- **Reform Custodial Sentences:**
 - Use prison sparingly and only for serious and violent offenses.
 - Rebrand custodial sentences as ‘Detention and Supervision’ orders, focusing on rehabilitation and safe release.
 - Improve access to rehabilitation and timely progression through sentences.
 - Expand open prison places and adjust eligibility criteria for earlier transfer to open conditions.
- **Enhance Non-Custodial Sentences:**
 - Strengthen and resource the probation service, making it independent of prisons and more locally structured.

- Reverse the Crime and Courts Act 2013 provision that mandates a punitive element in every community sentence.
- Promote the use of community sentences and alternatives to custody, emphasizing their effectiveness.
- Use of Technology:
 - Explore technological innovations to support desistance and enhance engagement, such as electronic monitoring and remote check-ins.
 - Ensure technology is used proportionately and does not widen the net of criminal justice control.
- Improve Sentence Progression:
 - Facilitate movement between prison categories and improve transparency in decision-making.
 - Prioritize release and reintegration planning from an earlier point in the sentence.
 - Implement accelerated routes out of custody for those serving long sentences and review whole life orders.
- Tailor Sentencing to Individual Needs:
 - Recognize the diverse needs of victims and offenders, including those from ethnic minority backgrounds, young adults, women, pregnant individuals, and older adults.
 - Implement specific policies and reforms to address the unique challenges faced by these groups.
- Recall Policies:
 - Limit the use of recall to serious breaches or further offending, and consider fixed-term recalls for administrative breaches.
 - Abolish Post Sentence Supervision for short sentences and review administrative recall practices.

Recommendations of the Prison Reform Trust

26. Changes to sentencing law and practice:

- Promoting individualised sentencing so that sentences take full account of needs and circumstances, including the impact of prison, and removing mandatory sentencing (in all but murder cases, which are the subject of a separate review) and minimum sentences.
- Simplifying custodial sentences to ensure that they can be clearly understood. Reducing sentence starting points in sentencing guidelines and in legislation for custodial sentences by a significant proportion in consultation with stakeholders including victims.

- Community sentences: Creating a presumption that all sentences of deprivation of liberty of three years or less should be served in the community unless there are exceptional circumstances.
- Removing powers of magistrates to sentence to deprivation of liberty except for a breach, which would only result in a prison term where electronic monitoring has failed, and increasing their powers to impose community orders and oversight of certain orders.
- Extending the use of Home Detention Curfew (HDC) for those sentenced to imprisonment.
- Operational changes:
 - Simplifying release mechanisms for prison to restore honesty and transparency in sentencing by restoring automatic release in non-parole cases to a consistent point not greater than half-way Protecting and enhancing judicial oversight of decisions concerning liberty after sentence.
 - Extending the High Court's power of review to enable a reduction in the minimum term at the halfway point in indeterminate sentences with minimum terms of ten years or more for exceptional progress to incentivise positive behaviour.
 - Creating an independent Parole Board under His Majesty's Courts and Tribunal Service with enhanced resources to ensure timely reviews that can be meaningful and effective and where the burden is on the state to justify continued detention in the preventative phase.
 - Better use should be made of open prisons, making them easier to get to and ensuring that, once in open conditions, prisoners, including those with protected characteristics, are appropriately supported and able to progress effectively through their sentence towards safe release.
 - Making better use of resettlement units in prison and Release on Temporary Licence (ROTL) from prison.
 - Creating purposes of prison to mirror the purposes of sentencing.
 - Reforming sentence planning ensure it is procedurally fair with reviews based on need and evidenced based and shared understanding of risk, enabling a focus on developing protective factors rather than just interventions.
 - Establishing a separate inquiry to understand how risk-based decision-making affects progression and release.
 - Creating a mechanism to support those on indeterminate sentences who have become stuck in the system similar to Care and Treatment Reviews in hospitals.
 - Removing post sentence supervision.
- Recall: Changing the use of recall, including consideration of whether it is necessary at all, and if so, whether there should be at the very least a judicial check at the point of recall.

- Creating a new statutory duty to support prison leavers to settle into the community through the provision of bespoke key long-term services.
- Increased independent advice, scrutiny and accountability
 - Creating an independent panel on sentencing
 - Strengthening the accountability of Parliament and government for the resource implications of the sentencing policies they propose or enact by a requirement for an annual statutory report on sentencing.
 - Establishing a fully independent and accountable Women’s Justice Board.
 - Strengthening the remit of the Sentencing Council to promote public understanding of sentencing.

Prison Lawyers

27. The right of people in prison to access the courts (and by extension lawyers to assist them to do that) is a fundamental right that has long been protected by the common law. The courts have characterised this as a constitutional right which cannot be abrogated (R v Lord Chancellor ex p Witham [1998] 2 WLR 849)
28. Prison lawyers play an important role in representing people before the Parole Board, providing timely advice and assistance, ensuring that cases are progressed in a timely manner and enabling release where that is safe, providing legal advice and representation in disciplinary matters and picking up on abuse and errors in the system. Prisoners are recognised as including disproportionate numbers of people with protected characteristics compared with the ordinary population: around two-thirds of people in prison will have mental health problems.¹⁴
29. The latest data from the Legal Aid Agency (LAA) shows that as of January 2025, there were 110 provider offices throughout England and Wales completing prison law legal aid work. This compares to 353 in 2013 and over 900 firms doing this work in 2008/2009,¹⁵ a decrease of 85%.¹⁶
30. A 2023 [survey](#) conducted by the Association of Prison Lawyers (APL), which surveyed 98 practitioners in total, suggesting a looming sustainability crisis in the profession due to poor remuneration. Three-quarters of respondents considered they would not be doing prison law in 3 years’ time with 88% of those cited poor remuneration as the reason.
31. In December 2013, the Criminal Legal Aid (General) Regulations 2013 SI No 9 were amended to restrict the ability of firms holding a legal aid contract to provide assistance with a number of areas in prison law. These included issues surrounding categorisation, sentence planning, licence conditions, mother and baby units and most prison disciplinary hearings. From this point on legal aid only covered the following issues:
 - Parole – where the Parole Board had the power to direct release

¹⁴ ¹⁴ <https://committees.parliament.uk/publications/7455/documents/78054/default/>

¹⁵ <https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2023>

¹⁶ https://www.associationofprisonlawyers.co.uk/wp-content/uploads/2023/08/APL_SUSTAINABILITY_REPORT_7_AUGUST_2023.pdf

- Adjudications before the independent adjudicator
 - Sentence calculation – where the internal complaints procedure had been exhausted
32. What this has meant in practice is that some issues which could have been addressed during a lengthy sentence are often only flagged as part of the parole process at the end of the person's minimum term. Between 2011 and 2022 the number of oral parole hearings has almost doubled and the prison population is now at record levels. Prison lawyers are essential to the efficient operation of the prisons system.
33. In 2018, following litigation by the Howard League and the Prisoners' Advice Service,¹⁷ some areas were brought back into the scope of legal aid on the basis that the Court of Appeal found that fairness required legal advice and representation.
34. Since June 2018, the following issues have been covered by prison law legal aid:
- All matters before the Parole Board
 - Close Supervision Centres
 - Access to offending behaviour courses
 - All independent adjudications and disciplinary matters that have been permitted by a governor
 - Minimum term reviews
 - Categorisation cases concerning category A (or equivalent) prisoners
 - Sentence calculations where the release date is disputed and the complaints process has been exhausted
35. Critical areas of work that were in scope for a modest fixed fee before 2013 remain unavailable. These include sentence planning cases that previously ensured prisoners could undertake crucial risk reduction work before automatic release or parole
36. At the same time, prison law has become more complex following new layers of work that have arisen from the Worboys case.¹⁸ This created a new system of reviews of parole decisions, the production of summaries of cases, and the need to establish findings of fact where there are unadjudicated allegations by means of pre-hearing case conferences or 'mini hearings'. Clients themselves are often highly vulnerable and the work often requires knowledge of multiple other areas of law such as mental health law and community care.

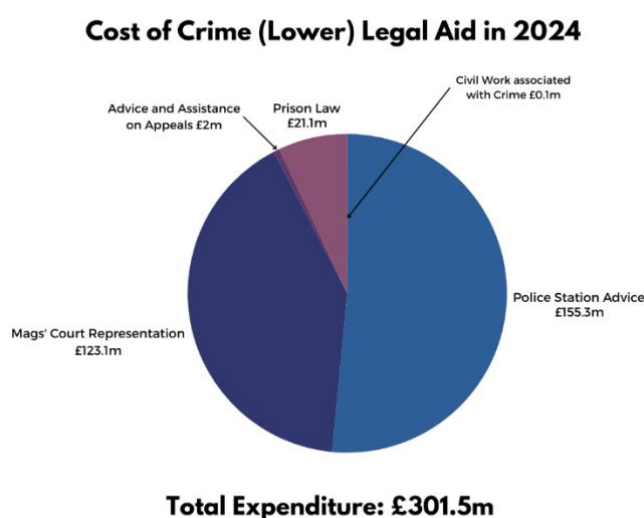
Legal Aid Fees

37. Prison law was excluded from the fee increases that were the product of the Criminal Legal Aid Review (CLAR). This was contrary to Lord Christopher Bellamy's recommendations in the original independent [report](#) which suggested an increase of at least 15% for prison law and parole work. Now, according to a recent APL survey, three-quarters of prison lawyers say they will not be doing this work in 3 years' time, with the vast majority citing poor remuneration as the reason.

¹⁷ *R (Howard League for Penal Reform and Prisoners' Advice Service) v Lord Chancellor* [2017] EWCA Civ 244. Available at: <https://www.bailii.org/ew/cases/EWCA/Civ/2017/244.html> (accessed 27 September 2021).

¹⁸ *Commissioner of Police of the Metropolis v DSD and another* [2018] UKSC 11. Available at: <https://www.bailii.org/uk/cases/UKSC/2018/11.html> (accessed 27 September 2021).

38. The government's response to the Crime Lower Consultation was published on the 15th November 2024, which ran from 29 January 2024 to 28 March 2024. In this, a total of £24 million has been allocated to criminal legal aid.¹⁹ This will include investment into police station fee schemes, a youth court fee scheme, and police station travel remuneration. However, no further funding was allocated to prison law legal aid fees.
39. We note that the total cost of provision of prison law last year amounted to only £21.1m, or 7% of the criminal lower legal aid expenditure (see chart below). A 15% initial uplift in fees in line with the rest of criminal legal aid would increase the overall cost of prison law work to £24.3m and work towards mitigating the sustainability crisis of prison lawyers.



Source: Legal Aid Statistics July - September 2024, Table 2.2, Gov.uk, 2024

40. In 2011, a fixed fee for a written parole case was £220. If increased in line with inflation to September 2024, this would now be £316.09. Instead, today, the same type of case attracts a fixed fee of £200.75. Advocacy parole cases attracted a lower fixed fee of £479.13 or a higher fixed fee of £1,593.91 in 2011. If increased in line with inflation to September 2024, this would now be £688 and £2,290 respectively. Instead, today, the same type of case attracts a fixed fee of £437.21 (lower) or £1454 (higher). Escape fees, reached only where the profit costs are over three times the fixed fee, are very rare in advocacy cases.
41. The current fixed fees represent a 36% decrease in real terms since 2011.
42. Prior to 2011, prison law work was paid at low hourly rates (although higher than they are now – the hourly rate has decreased by 14% in real terms²⁰). The rationale behind the fixed fee system was that some cases would be more complex and others less so, resulting in providers being able to benefit from “swings and roundabouts”, being overpaid and underpaid in equal measure. This has not transpired.

¹⁹ <https://www.gov.uk/government/news/24-million-boost-for-criminal-legal-aid-to-support-most-vulnerable>

²⁰ In 2010, before fixed fees were introduced, the hourly rate for preparation in an oral parole case was £60 - it is now £51.24.

43. In 2007/8, there were 996 offices undertaking prison law work²¹ compared with just 110 offices with prison law contracts as of January 2025²²: this amounts to a reduction of 85% over this period. Between 2012/13 and 2023/24, the number of provider offices completing prison work in each year has decreased by 63%: that is more than any other area of work, with the exception of categories purposefully reduced by the Legal Aid Sentencing and Punishment of Offenders Act 2012, such as welfare benefits and debt.

44. The Parole Board provided a response to the Ministry of Justice’s consultation in May 2022 in which it noted:²³ *“There has been a significant reduction in the number of legal firms prepared to carry out prison law work over the last decade and we fear that unless there is some increase to fees there is a danger that there will be insufficient lawyers to represent prisoners involved in the parole process, which would have a significant detrimental effect on timeliness, victims and the public purse.”*

45. The Bellamy review in 2021 found that:²⁴

- “no structural change is called for... however, the rates should be increased in accordance with my overall recommendation
- “better provision of trained legal advice to prisoners, including especially young offenders, would lead to better outcomes, particularly in terms of sentencing calculations and decisions of the Parole Board, in turn reducing the pressure on the prison estate”
- “further investment in legal aid in prisons is likely to be well worth it in terms of reducing numbers in prison and reducing re-offending”
- “in terms of access to prison facilities, whether for physical visits to a client in prison or video conferencing, ... investment in further improvements, will prove well worth it in terms of the better functioning”

46. Although the previous Government accepted the main recommendations of the Bellamy the review, it refused to take forward any of these recommendations, stating in its November 2022 response at that it “will not uplift prison law fees at this stage... because we want to focus available funding on the initial stages of criminal cases to support early case resolution” and “that restructuring the fee scheme could address the issue that providers are currently not rewarded for extra work on complex cases unless they reach the escape fee threshold” and it would be “engaging with the profession to determine whether the current LAA data we hold can be used to support the structural reform of the scheme.”²⁵

²¹ <http://data.parliament.uk/DepositedPapers/Files/DEP2009-0384/DEP2009-0384.pdf>

²² <https://www.gov.uk/government/publications/directory-of-legal-aid-providers>

²³ <https://www.associationofprisonlawyers.co.uk/wp-content/uploads/2022/12/Martin-Jones-to-Rikki-Garg-and-PB-response-to-Legal-Aid-review.pdf>

²⁴ <https://www.gov.uk/government/groups/independent-review-of-criminal-legal-aid>

²⁵ <https://www.gov.uk/government/consultations/response-to-independent-review-of-criminal-legal-aid/outcome/94ade061-8c59-4a3f-8997-799e57daf1c8>

47. The Criminal Legal Aid Advisory Board Annual Report 2024, published in November 2024 found:²⁶

- “unless a substantial increase is made to prison law fees, there is likely to be a complete collapse in provision. The failure to adequately remunerate prison lawyers may prove to be a false economy, since without access to legal advice prisoners eligible for parole are more likely to end up spending longer in prison. At a time when the prison population is at crisis levels, it is counterproductive to make it more difficult to hold effective and efficient parole hearings.”
- “We recommend that prison law fees be increased to take account of the increasing complexity and importance of this work”

48. In real terms, the rate of pay for prison law has decreased since 2011 by 36%. Small businesses cannot survive on these rates. An increase is urgently required to enable legal aid lawyers to survive.

49. In December the Government announced £92m for criminal legal aid work.²⁷ The Minister for Courts and Legal Aid has confirmed with APL in a letter dated 3 February 2025 that how this will be spent will be subject to consultation and has implied this can include consideration of prison law funding. The letter states: “In consulting on the proposed fee uplifts I hope we can work to gather comprehensive feedback from stakeholders, including the Association of Prison Lawyers, to make sure needs and concerns across the criminal legal aid system are captured to inform our final decisions.”

The parole system

50. The last government made huge changes to the parole system resulting in a massive increase in the volume of cases going before the Parole Board: the number of oral hearings has doubled in the last decade, from 4,216 in 2011/12 to over 8,500 in 2023/24.

51. The parole system has seen very significant changes in the past few years, all of which may require additional submissions, and which are incorporated into the fixed fee despite having been introduced after the fee level was set.

52. Following the Worboys (DSD) case, parole reviews frequently involve investigations into alleged, but unproven, allegations. This widens the scope and complexity of cases and requires skilled preparation and advocacy to minimise delays and ensure fairness.

53. Around 50% of oral hearings now require specialist Parole Board members, indicating the increasing complexity of the work.

54. The reconsideration system was introduced 4 years ago. This is a whole new stage to parole reviews, effectively an appeal system but on judicial review grounds. The number of

²⁶ <https://www.gov.uk/government/publications/criminal-legal-aid-advisory-board-claab-annual-report-2024>

²⁷ <https://www.gov.uk/government/news/millions-invested-in-legal-aid-to-boost-access-to-justice-and-keep-streets-safe>

reconsideration cases has almost doubled since it was first introduced in 2019. Reconsideration applications are particularly complex and time-consuming. They involve the application of public law principles and are reserved for specialist, accredited Parole Board members and are publicly reported.

55. Terrorism legislation has brought a new cohort of terrorism-related cases into the parole system. These involve far more extensive use of evidence which cannot be disclosed to prisoners. The government is understandably instructing experienced counsel and GLD lawyers to represent the Secretary of State and the Parole Board is making use of Special Advocates. Highly skilled, specialist experienced lawyers are needed to manage these cases. These cases are highly susceptible to long delays.
56. The government and the Parole Board are committed to an increase in transparency and to expanding victims' rights to participate in the parole process. Victims can now attend parole hearings. Hearings can be held in public. Effective legal representation of prisoners is critical to making this work. The number of requests by victims to observe hearings increased five-fold since 2022/23. Where victims attend the hearing, it will invariably take longer and rightly require additional care and attention by the legal representative to ensure a smooth and sensitive process.
57. The Victims and Prisoners' Act introduced further changes which will increase demand for work in February 2025, when an estimated 600 people will be immediately eligible for a review of their licence by the Parole Board.