



Nacro's Justice Select Committee submission on adult custodial remand.

Nacro April 2022

About Nacro:

Nacro is a national charity with over 50 years' experience of changing lives, building stronger communities, and reducing crime.

We deliver services across each part of the criminal justice system (CJS) – from liaison and diversion services at police custody and court; education in prisons; to prison resettlement services.

We deliver the national Bail and Accommodation Support Service (BASS) on behalf of the Ministry of Justice (MoJ), housing prison leavers on Home Detention Curfew and those bailed from court in need of an address. From the beginning of October, we will deliver the Community Accommodation Service Tier 2 (CAS-2), which is replacing the existing BASS service.

We also run a criminal record support service, offering help and advice for individuals, employers, and practitioners around criminal records.

<https://www.nacro.org.uk/>

We are responding to this inquiry into adult custodial remand given our extensive experience of, and role within, the criminal justice system. Our response is based on first-hand testimony from our service delivery staff, as well as the views of our service users.

We are particularly keen to give our perspective as a national service delivery provider that understands first-hand how adult custodial remand can be improved.

To what extent the legislative framework for determining whether to remand an individual to custody is (a) fit for purpose, and (b) being appropriately applied?

The legislative framework for remand is underpinned by custody time limits for those awaiting trial, as contained within the Prosecution of Offences Act 1985, and The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO).

Custody Time Limits (CTL) were introduced to safeguard unconvicted defendants by preventing them from being held in pre-trial custody for an excessive period of time.¹ To cope with the Covid-19-induced courts-backlog, the Government temporarily extended custody time limits in September 2020 from six months to eight months. In June 2021, the Government ended this temporary extension and CTLs were once again set at 6 months.² However, despite this legislative safeguarding, and as of June 31st 2021, 3,949 people – almost a third of England’s remand prison population – were held in prison beyond the legal custody time limit whilst awaiting trial.³

Schedule 11 of the LASPO Act, which is introduced by section 90 of the legislation, “makes extensive amendments to the Bail Act 1976 that are designed to remove the option of remand in custody in most circumstances where there is no real prospect of the defendant being imprisoned if convicted”.⁴ If applied appropriately, this part of the legislation would restrict the circumstances under which a person could be refused bail.

The impetus behind this change in legislation was to ensure that people with no realistic prospect of getting convicted, would not be remanded in custody ahead of trial. However, Crown Court data shows that one in ten people on remand were found not guilty in 2019.⁵ In the same year, a third (33%) of women remanded into prison by the magistrates’ courts and 40% remanded by the Crown Court did not go on to receive a custodial sentence.⁶

We are also aware through our own delivery of regional variations in referrals to BASS accommodation from Courts which suggests the legislation may be being applied differently in different areas. The higher number of people currently awaiting trial also has an additional impact on the availability of places.

We also know that remand is disproportionately used on black and minority ethnic people, and this discrimination has only increased in recent years. From an information request in March 2022, data shows that people from Black or minority ethnic background make up 34% of those held on remand in England and Wales. The likelihood that a prisoner held on remand is from a Black or minority ethnic background has increased by 17% over six years.⁷

¹ <https://www.cps.gov.uk/legal-guidance/custody-time-limits-including-coronavirus-protocol>.

² <https://www.fairtrials.org/articles/news/uk-government-ends-custody-time-limit-extension-england-and-wales/>.

³ <https://www.fairtrials.org/articles/news/uk-thousands-held-prison-longer-legal-time-limit-while-awaiting-trial/>.

⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/219974/circular-06-12-youth-remand-adult-bail.pdf.

⁵ <https://www.gov.uk/government/statistics/criminal-justice-statistics-quarterly-december-2019>.

⁶ <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2020>.

⁷ <https://libertyinvestigates.org.uk/articles/prisoners-on-remand-increasingly-likely-to-be-black-or-from-an-ethnic-minority-figures-show/>.

There are certain very serious offences for which the use of remand is the necessary option for the purposes of public safety as well as for the safety of the defendant. However, remand cannot be used as a default because we know from the experiences of our service-users and frontline staff the damage that remand can cause to an individual's mental health and outcomes. The highest rate of self-inflicted deaths within the prison estate can be found among the remand population at 2.5 per 1,000 people. This is an increase from 1.7 per 1,000 in 2020 or 68%⁸, despite only a 6% rise in the overall remand population, over the same period.

It is also vital to recognise that people held on remand have almost all not been found guilty of an offence, and that being remanded to custody ahead of a trial should only ever be an exceptional measure. The basis for remanding a person to custody is twofold – either due to that person having been deemed a threat to public safety or at risk of absconding ahead of trial. When this criterion is met, cases must legally be brought within a reasonable time, and a person must not be held in detention unless there is a legitimate reason to do so.

We therefore urge the Government to ensure that existing legislation is appropriately applied so that remand does not become the default option but is instead used when necessary for people at risk of absconding and for people who are a risk to the public.

Why has the number of people on remand increased since Covid-19, and what work is being done to address this?

The number of people in custody who are awaiting sentencing is at its highest level since 2010, and the number of people awaiting trial is at its highest level since 2014.⁹ A large proportion of this backlog has been caused by delays in the judicial process as a result of Covid-19. In the Crown Court it now takes an average of around 600 days from the offence/alleged offence to completion of court case, up from around 470 days before the pandemic.¹⁰ In the Magistrates' Court, the average time has risen from around 170 days to 230 days from offence/alleged offence to completion of court case.¹¹

From 28th June 2021, the emergency Custody Time Limit (CTL) of eight months, that a person could spend in custody before trial, was reduced back to the pre-pandemic length of six months. However, as referenced previously in this submission, and as of June 31st 2021, 3,949 people were held in pre-trial custody for longer than the legal custody time limit. This includes 1,523 people who had been held for over a year and 475 people who had been waiting for trial for more than two years.¹²

Awaiting trial – whether remanded in custody or on bail – can have a significant impact on both those who have been charged and their alleged victims. Clearly the court-backlog needs to be addressed urgently. Measures have been taken such as the Government's January 2022 announcement increasing the sentencing power of magistrates, allowing

⁸<https://www.gov.uk/government/statistics/safety-in-custody-quarterly-update-to-september-2021/safety-in-custody-statistics-england-and-wales-deaths-in-prison-custody-to-december-2021-assaults-and-self-harm-to-september-2021>.

⁹ <https://inews.co.uk/news/covid-court-backlog-remand-prisoners-at-highest-level-since-2010-1368038>.

¹⁰ <https://inews.co.uk/news/covid-court-backlog-remand-prisoners-at-highest-level-since-2010-1368038>.

¹¹ <https://www.fairtrials.org/articles/news/uk-thousands-held-prison-longer-legal-time-limit-while-awaiting-trial/>.

¹² <https://inews.co.uk/news/covid-court-backlog-remand-prisoners-at-highest-level-since-2010-1368038>.

magistrates to hand down prison sentences of up to 12 months – double the previous maximum. The Government’s ambition is that this move will free up nearly 2,000 extra days of Crown Court time each year. Courts are now also able to hold more sitting days through the continued operation of the Nightingale Courts, until March 2023, introduced during the pandemic to help clear the court backlogs.

We do not believe that increasing magistrates’ powers is the right policy option as it is likely that such a move will result in more custodial sentences being imposed. Short sentences, in particular, have been proven as ineffective, as well as disproportionately impacting on minority groups. Increased magistrate power will provide an additional focus on imprisonment when there should be a greater focus on community sentences.

Increasing magistrates’ powers is not a fix-all solution to the increased remand population. This is because some individuals on remand have been deemed at risk of absconding or unsuitable for bail and therefore, they are unlikely to be tried at the magistrates’ courts due to the severity of their crimes or risk they pose.

Why has there been a disproportionate increase in the population of the convicted unsentenced on remand, compared to the untried population?

The Covid-19 courts backlog is the main cause of the disproportionate increase in the population of the convicted unsentenced on remand.

How long are people being held on remand?

While data on this is not published regularly, according to an FOI request almost a third of those held on remand were held for longer than the legal limit of six months. Specifically, as of June 31st 2021, nearly 4000 people had been held on remand awaiting trial or sentencing for six months or longer, representing 31% of the total remand population. Meanwhile, 10% (1,523 people) had been held awaiting trial for more than a year and 4% (475 people) had been awaiting trial for more than 2 years.¹³

What are the implications of people being held for long periods on remand?

Practically, people held for long periods on remand will almost certainly lose their employment, their accommodation, and in some cases custody of their children. We know that all of these factors are critical in reducing an individual’s likelihood of reoffending, and the loss of these foundations also has a significant impact on those remanded who are found not guilty. In addition, obtaining positive outcomes is significantly more challenging for those held on remand. This is because they might be released from court or within a short period post sentence, and without knowing when a person will be released, it is incredibly difficult to secure somewhere to live or make arrangements to secure employment.

¹³ <https://www.fairtrials.org/articles/news/one-ten-remand-population-england-and-wales-have-been-prison-more-year/#:~:text=The%20custody%20time%20limit%20under,10%25%20rise%20since%20December%202020.2>
<https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-july-to-september-2021/offender-management-statistics-quarterly-july-to-september-2021>.

The psychological impacts of long periods held on remand are also significant, given the uncertainty of the situation. It is perhaps unsurprising, therefore, that those on remand have the highest rate of self-inflicted deaths – three times higher than people who are sentenced – and that this figure is only increasing. In 2021, 37% of all self-inflicted deaths in prison were by people held on remand, an increase from 28% of all self-inflicted deaths in 2020.¹⁴ The proportion of self-inflicted deaths on remand is the highest it has been for five years. We must also acknowledge the impact on victims, witnesses for the trials, as well as the impact on the quality of evidence, particularly if trials are being delayed significantly.

To rectify this, there are several measures that can be taken by the Government. Urgent action is required to tackle the ongoing courts backlog, which would reduce the amount of waiting time for people on remand. We also urge greater scrutiny of remand decisions, identifying poor practice in this area. Remand must only be used when necessary for those who are a risk to the public or who are at risk of absconding.

What data on remand should be collected and published that isn't already?

There is data available regarding people held on remand, but much of it is not easily accessible or publicly available. Data that it would be helpful for the Government to regularly collect and publish include: the length of time people are being held on remand for; data on the ethnicity of those held on remand; improved data on the mental health and physical health needs of those on remand; the impact of being remanded on an individual's employment outcome; the impact of remand on an individual's accommodation status; and detailed data on their support needs. Enhanced data collection and publication of this data will ensure a better understanding of the issues inherent among the remand population, and help with the development of the necessary policy solutions to rectify these issues.

What support is available for remand prisoners?

With regards to resettlement and preparation for release, very limited pre-release resettlement support is put in place ahead of any eventual release. A person on remand will undoubtedly be feeling incredibly anxious, with an uncertain future and the loss of their stability such as their home, their relationships or their job. Currently resettlement services are commissioned to only provide minimal assistance to individuals on remand, with the majority of the support removed from Dynamic Framework provision.

Subject to staff capacity, people on remand should receive support from their allocated prison wing officer and the offender management unit. This is very low-level guidance and is predominantly based on the willingness and capacity of the individual prison officer. For those who have been on remand and are then released direct from court, they are not even eligible for the subsistence payment that sentenced prison leavers benefit from.

Whilst it is the case that providing this support is more challenging when there is no known release date, for example securing accommodation, it is still critical to ensure that there is

¹⁴<https://www.gov.uk/government/statistics/safety-in-custody-quarterly-update-to-september-2021/safety-in-custody-statistics-england-and-wales-deaths-in-prison-custody-to-december-2021-assaults-and-self-harm-to-september-2021>.

support and advice available in order that people released following a period held on remand are not left without any support, homeless, and/or without sufficient money.

We are aware of potential additional services being introduced to support people released following remand at some stage this year. We urge the Ministry of Justice to ensure that this does happen, as it is critical people in this situation are released with the support needed, and that this is properly funded to ensure it is high-quality. This additional support would be hugely welcome given that there remains negligible support for those held on remand and subsequently released.

Whether there are differences in the use of remand in custody between men and women?

The proportion of women remanded to custody is higher than the proportion of men – the latest data shows that 20% of women in custody are on remand, compared to 16% of men.¹⁵ Whilst remand is psychologically and practically an incredibly difficult experience for anyone, regardless of gender, it is clear that remanding women can have specific consequences on women with children.

Remanding women unnecessarily damages them and their families. Most remands happen immediately following arrest and, in these circumstances, women brought directly from the police cells to court routinely have no opportunity to make arrangements for children or dependents they care for.¹⁶

85% of women commit non-violent crimes, and many of those on remand will be found not-guilty of committing any offence; in 2019, almost two-thirds of women remanded to prison by magistrates were either found not guilty or were given a community outcome.¹⁷ From this perspective, it is clear that the vast majority of women awaiting trial or sentencing should be released on bail.

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

We welcome alternatives to the use of custodial remand that would allow the individual to maintain their job, accommodation and custody of their children whilst awaiting trial. Based on the evidence above, too many people are being remanded into custody who do not need to be. Therefore, the first thing to look at is ensuring that remand is not overused.

The Government's renewed focus on electronic tagging, bolstered by October's Spending Review, would allow individuals who would otherwise be held in custody to keep their job, their home and their ties into the community, all of which are critical for reducing the likelihood of reoffending (not applicable to those who have been remanded and subsequently found not guilty).

¹⁵ <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-july-to-september-2021>.

¹⁶ <https://www.gov.uk/charged-crime>.

¹⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/938360/statistics-on-women-and-the-criminal-justice-system-2019.pdf.

In addition, if tagging is combined with effective referrals into community support services to address mental health issues, substance misuse concerns or family and relationship issues, this would further encourage desistance and support the defendant's case at trial.

However, electronic tagging does still have several negative consequences for individuals that need to be taken seriously. Tags may be part of a series of very onerous licence conditions such as a curfew or geographic restrictions that individuals with complex needs may find difficult to understand and follow. As such, these conditions can set people up to fail.

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

Support for people held in custody on remand who are then found not guilty and immediately released – which makes up 10% of the remand population – remains prison-dependent, with no baseline level of support available across the country¹⁸.

As referenced previously in this submission, the difference in support between people who have been sentenced and then released, and those who have been remanded and released, is substantial, and the impact can be severe. Those who have served sentences will generally come under the supervision of probation. By contrast, people released following a period on remand do not come under the supervision of probation and therefore receive minimal – if any – support. To note, those that are convicted and released based on time served will get probation supervision and therefore access to community-based support.

Yet, while on remand, many people will lose their home, their job and even the residence of their children, and are faced with uncertainty due to the lack of an end date to their time in custody. They are therefore unable to properly plan for their release and can struggle to rebuild the foundations needed to successfully reintegrate back into society. An example of this lack of support would regard an individual receiving treatment for substance misuse issues whilst in custody on remand. When released, it is highly unlikely that they will then receive a referral for community support and therefore, on release, would be unlikely to continue with any treatment they started while in custody. They would then lose any progress that they had made.

¹⁸ <https://www.fairtrials.org/articles/news/uk-thousands-held-prison-longer-legal-time-limit-while-awaiting-trial/>.