



Locked up in Lockdown:

Life on Remand During the Pandemic



About Fair Trials

Fair Trials is an international human rights NGO that campaigns for fair and equal criminal justice systems. Fair Trials' team of experts expose threats to justice and identify practical changes to fix them. The organisation produces original research, campaigns to change laws, support strategic litigation, reform policy, and develop international standards and best practice.

Fair Trials supports movements for reform and building partnerships with lawyers, activists, academics, and other NGOs. It is the only international NGO that campaigns exclusively on the right to a fair trial, providing a comparative perspective on how to tackle failings within criminal justice systems globally.

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Executive summary

- **Thousands of people are being held in prison awaiting trial in England and Wales beyond the custody time limits set out in legislation.** These custody time limits are being extended ‘routinely’. Remand custody is repeatedly used disproportionately against Black, Asian and ethnic minority people. Many of those held will be found not guilty at trial.
- **People are pleading guilty to offences they have not committed to get out of extended remand custody.** Of the 23 people who wrote to Fair Trials, 12 said they have or will plead guilty, considered pleading guilty, or know people who have plead guilty to offences they did not commit in order to get out of extended pre-trial detention during the pandemic, due to the uncertainty of remand times and trial delays, prison conditions, and lack of human contact, among other things.
- **People allege they are being held in pre-trial detention without good reason, such as for low-level offences, and there is a bias against foreign nationals and people experiencing homelessness.**
- **Prison conditions are branded as “inhumane”, with prison lockdown amounting to solitary confinement, while many people are unable to see or speak to their loved ones at all.** People are held in their cells for more than 23 hours a day and sometimes days at a time, with showers and exercise allowed intermittently. Even in the best circumstances, contact with friends, families and others is restricted to monthly video-calls, with many unable to speak to their loved ones at all. Many have been denied access to healthcare, support and opportunities to learn.
- **There is a mental health crisis amongst remand prisoners, and prisoners generally, including crisis levels of self-harm, as well as accusations of safeguarding failures by prison authorities.** The extended remand times, uncertainty of trial dates, long periods of isolation in prisons as well as isolation from friends, family and loved ones, and the conditions people are held in, has impacted prisoners physically, mentally and emotionally, leading to rampant levels of depression, anxiety and other mental health issues, including self-harm. In many prisons, there are more recorded instances of self-harm than there are prisoners. Several people made allegations that prison authorities did nothing when informed of intentions to self-harm.
- **Access to legal advice and speaking to a lawyer while on remand has been severely restricted by the widespread use of ‘remote’ video-link calls.** People said the connections were often poor, meetings were short, and prison authorities error led to conferences being missed or cut even shorter, and there were concerns over confidentiality.

Introduction

This report details the individual accounts, thoughts and emotions of more than 20 people who are or have recently been remanded in custody – prison – awaiting trial during the Covid-19 pandemic. They wrote to Fair Trials following an advert we placed in Inside Time newspaper, requesting people to write about their experiences of pre-trial detention during the pandemic.

They are or have been held in 19 different prisons all around England and Wales, from London to Liverpool, Kent to Gloucester, Lewes to Durham, Nottingham to Wrexham. Many have families whom they have not seen for months, and in some cases years, their lives put on hold.

People held on remand have not been found guilty of an offence and they should only be held in custody awaiting trial as an exceptional measure, a measure of last resort. It is vital that the presumption of innocence is upheld while they are waiting for their trial, and that they are not held in detention unless there is a legitimate reason. Nevertheless, cases must also be brought to trial within a reasonable time. However, as these accounts show, the current situation is shocking.

The backlog of tens of thousands of cases awaiting trial – a backlog which the government has failed to address – means that people have been and continue to be held on remand awaiting trial for months, sometimes years, far beyond custody time limits set out in law.

People who are remanded in custody to await trial are held in the same prisons as people who have been convicted. Everyone in prison should be treated humanely and with dignity and respect, yet prison conditions during the pandemic have been extremely punishing, with one respondent labelling them “*inhumane*”. People have been held in their cells for 23-plus hours a day, allowed out only for a shower or for exercise – often facing a choice between the two. In some prisons, people have been prevented from leaving their cells and denied showers for weeks at a time. They have been denied proper access to legal advice or assistance; they have been denied access to healthcare, support and opportunities to learn, as well as opportunities afforded to convicted prisoners.

They have suffered physically, mentally, and emotionally, with many detailing serious mental health issues as a result, including self-harm and suicidal ideation. As a result of these conditions, and the sometimes uncertain length of pre-trial detention, people have even felt that they had no choice but to plead guilty to offences they have not committed.

The failure to deal with court delays is not a legitimate reason to hold people in prison awaiting trial for longer, and yet many people are suffering due to that failure. Trial delays affect not just those held in prison awaiting their trial, but also victims, witnesses and all their friends, families and loved ones. As one respondent said, “*And if the pandemic will last for 5-10 years, will I await trial for 5-10 years in here?*”.

These people deserve to have their voices heard, as much as anyone else in the criminal justice system, and yet they are often the people whose voices, experiences and opinions are paid least attention. We hope you will give them the attention they deserve.

1. Pre-trial detention in England and Wales: an overview

As of December 2020, there were over 12,000 people being held in prison waiting for their trial in England and Wales,¹ the highest figure for six years. Throughout 2020, more than 28,000 people were remanded in custody at the Crown Court, almost 40% of people facing trial at the Crown Court.²

Part of the reason so many thousands of people are being held in prisons awaiting trials for so long in England and Wales is due to the government's actions in response to the COVID-19 pandemic, which has exacerbated already serious pre-existing issues. Before the lockdown in March 2020, crown courts already had a backlog of 39,000 cases waiting to be heard, and the average waiting time for a jury trial was 32 weeks (7.3 months).³ This backlog of cases and resulting delays was caused by existing challenges faced by the criminal justice system, including a lack of court space, after half the courts across England and Wales were closed and a third sold off between 2010 and 2020,⁴ and cuts to funding generally, cutting legal aid and restricting judges' sitting days,⁵ with 2019/20 funding for the courts, Her Majesties Courts and Tribunals Service, 21% lower than in 2010/11.⁶

On 23 March 2020, all new jury trials were suspended, and a few days later, more than half of court and tribunal buildings were temporarily closed.⁷ By December 2020 the backlog of cases reached 50,000,⁸ and in April 2021 it was almost 60,000, growing at around 1,000 cases a month.⁹ In March

¹ 12,274 people. Fair Trials, 'UK: Thousands held in prison for longer than legal time limit while awaiting trial', 17 March 2021. <https://www.fairtrials.org/news/uk-thousands-held-prison-longer-legal-time-limit-while-awaiting-trial>

² Ministry of Justice, 'Criminal justice system statistics quarterly: December 2020, Remands: Crown Court data tool', 20 May 2021. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/987720/remands-crown-court-tool-2020.xlsx

³ BBC News, 'Coronavirus: Robert Buckland warns over court case backlog', 19 June 2020. <https://www.bbc.co.uk/news/uk-politics-53107109>

⁴ The Times, 'Courts in crisis: Third of courthouses sold off', 31 January 2020. <https://www.thetimes.co.uk/article/courts-in-crisis-third-of-courthouses-sold-off-bqtm5m57j>; The Law Society, 'Court closures', 20 May 2020. <https://www.lawsociety.org.uk/en/campaigns/court-reform/whats-changing/court-closures>

⁵ The Guardian, 'Covid has undermined chronically under-funded justice system', 10 January 2021. <https://www.theguardian.com/law/2021/jan/10/covid-has-undermined-uks-chronically-under-funded-justice-system>

⁶ House of Lords, 'Select Committee on the Constitution, 22nd Report of Session 2019–21, COVID-19 and the Courts', 30 March 2021. <https://publications.parliament.uk/pa/ld5801/ldselect/ldconst/257/257.pdf>

⁷ Ibid.

⁸ The Guardian, 'Extra funds needed' to clear England and Wales court backlog', 1 December 2020. <https://www.theguardian.com/law/2020/dec/01/clearing-uk-court-backlog-will-need-extra-funds-in-future-years>

⁹ BBC News, 'Deal struck to combat Crown Courts backlog', 22 April 2021. <https://www.bbc.co.uk/news/uk-56847285>

2021, the Lord Chancellor admitted that some trials have been listed for 2023.¹⁰ Defendants, victims and witnesses are having to wait up to four years from the date of an alleged offence until the trial is heard in the Crown Court.¹¹ People held in pre-trial detention have had their cases delayed by months, and sometimes years. These delays can be unbearable.

Pre-trial detention should be imposed only as an exceptional measure. People accused of a crime must be treated as innocent until proven guilty, known as the ‘presumption of innocence’. This is a core principle of the right to a fair trial.¹²

The detention of an individual is such a serious measure that it can only be justified where other, less stringent measures have been considered, and are found to be insufficient.¹³ In England and Wales, a person charged with a criminal offence must be produced promptly in court, and there is a rebuttable presumption of bail.¹⁴ A person should only be held in custody if the court is satisfied that there are substantial grounds – such as past actions – for believing that the defendant, if released on bail would:

- fail to surrender to custody
- commit an offence while on bail; or
- interfere with witnesses or otherwise obstruct the course of justice, whether in relation to themselves or any other person.¹⁵

People can also be held in prison awaiting trial:

- if they have been charged with a serious crime, for example armed robbery
- if they have been convicted of a serious crime in the past; or
- if they have been given bail before and not stuck to the terms.¹⁶

¹⁰ House of Lords, ‘Select Committee on the Constitution, 22nd Report of Session 2019–21, COVID-19 and the Courts’, 30 March 2021. <https://publications.parliament.uk/pa/ld5801/ldselect/ldconst/257/257.pdf>

¹¹ The Guardian, ‘Covid leading to four-year waits for England and Wales court trials’, 10 January 2021. <https://www.theguardian.com/law/2021/jan/10/covid-leading-to-four-year-waits-for-england-and-wales-court-trials>

¹² European Charter of Fundamental Rights, Article 6; International Covenant on Civil and Political Rights, Art 14(2).

¹³ *Ambruszkiewicz v Poland*, App 38797/03. 4 May 2006, para 31.

¹⁴ Bail Act 1976, s4.

¹⁵ Bail Act 1976, Sch 1, part 1, para 2.

¹⁶ Gov.uk, ‘Being charged with a crime’. <https://www.gov.uk/charged-crime/remand>; Ed Cape and T Smith (University of the West of England), ‘The practice of pre-trial detention in England and Wales: Research report. Project Report’, 2016. <https://www.fairtrials.org/wp-content/uploads/Country-Report-England-and-Wales-MASTER-Final-PRINT.pdf>



The length of time that someone can be held in prison awaiting trial in the Crown Court in England and Wales is 6 months, known as the ‘custody time limit’.¹⁷ In September 2020, the Government increased the length of time people can be held awaiting trial from six to eight months, until June 2021.¹⁸

However, lawyers have reported to Fair Trials that custody time limits “*may as well not exist*” and are extended “*as a matter of routine*”.¹⁹ The ‘routine’ nature of this usually exceptional approach was publicly confirmed by Chris Philp MP in response to a written question:

“*CTL extensions are being routinely granted amongst those who were remanded before the SI [the 8-month extension] came into force*”.²⁰

There is no limit to the number of extensions.

In March 2021, Fair Trials uncovered that thousands of people are being held in prison awaiting trial beyond the legal custody time limit. More than 2,500 of the 12,000 people held in prison awaiting trial in December 2020 had been held for longer than eight months – a quarter of the remand population at the time.²¹ More than 3,600 people had been held longer than 6 months.²²

Many of those people who are held in pre-trial detention are found not guilty at trial. In 2020, 2,380 people who were remanded in custody, one in ten of all those remanded, were acquitted at trial.²³ A quarter of all those remanded in custody in 2020 – 6,888 people – were not sent to prison following their trial. The figures for 2019 were the same.²⁴

Discriminatory use of remand

Those remanded in custody awaiting trial are disproportionately Black, Asian and from other ethnic minorities.

¹⁷ Section 22 of the Prosecution of Offences Act 1985, Prosecution of Offences (CTL) Regulations 1987, and the Criminal Procedure Rules (October 2015). <https://www.cps.gov.uk/legal-guidance/custody-time-limits-including-coronavirus-protocol>

¹⁸ Prosecution of Offences (Custody Time Limits) (Coronavirus) (Amendment) Regulations 2020. <https://www.legislation.gov.uk/uksi/2020/953/contents/made>

¹⁹ Fair Trials, ‘Justice Under Lockdown’, June 2020. https://www.fairtrials.org/sites/default/files/publication_pdf/Justice%20Under%20Lockdown%20survey%20-%20Fair%20Trials.pdf

²⁰ Parliamentary Question 114863 answered by Chris Philp on 19 November 2020. <https://questions-statements.parliament.uk/written-questions/detail/2020-11-12/114863>

²¹ 2,551 people.

²² Fair Trials, ‘UK: Thousands held in prison for longer than legal time limit while awaiting trial’, 17 March 2021. <https://www.fairtrials.org/news/uk-thousands-held-prison-longer-legal-time-limit-while-awaiting-trial>

²³ Ministry of Justice (n2).

²⁴ Ministry of Justice, ‘Criminal justice system statistics quarterly: December 2019, Remands: Crown Court data tool’, 21 May 2020. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/888657/remands-crown-court-tool-2019.xlsx

In 2020, Black, Asian and minority ethnic people made up 5,496 (19.3 percent) of the 28,395 people remanded in custody, a clear over-representation.²⁵ Since 2015, Black, Asian and minority ethnic people have consistently made up 20 percent of those remanded in custody awaiting trial.²⁶

In 2020, 49 percent – half – of Black defendants were remanded in custody during Crown Court proceedings, compared to 40 percent of white defendants.²⁷ In 2019, 47 percent of Black defendants were remanded in custody during Crown Court proceedings compared to 38 percent of white defendants.²⁸

Despite Black defendants and defendants from other ethnic minorities being more likely to be remanded in custody at Crown Court, they are *less* likely than white defendants to go on to receive an immediate custodial sentence.²⁹

The government completed an ‘Equality Impact Assessment’ for the custody time limit increase, but only published this in October 2020, after the extended time limit had come into force in late September.³⁰ It contained the same findings as above – that Black, Asian and ethnic minority people are disproportionately remanded in custody, and that this is despite them being less likely to receive a custodial sentence. The government knew that its actions would directly lead to more unconvicted Black people being held in custody for longer, despite being more likely to be released after a trial, and it went ahead regardless.

²⁵ Ministry of Justice (n2).

²⁶ Ministry of Justice (n24)

²⁷ Ministry of Justice (n2).

²⁸ Ibid.

²⁹ Government ‘Equality Impact Statement’.

https://www.legislation.gov.uk/uksi/2020/953/pdfs/uksipes_20200953_en.pdf

³⁰ Parliamentary Question 101042 tabled by Tulip Siddiq MP on 8 October 2020, answered by Lucy Frazer MP on 13 October 2020. <https://questions-statements.parliament.uk/written-questions/detail/2020-10-08/101042>

2. Meet the people held

Content warning – discussion of self-harm and suicidal thoughts.

This section will introduce you to the people who have been held on remand and in prisons during the pandemic. They are all people, with their own lives – with families, friends, children and other dependants, jobs, aims and dreams. They wrote to us following an advert we placed in the national prison newspaper, Inside Time. We have anonymised all of their responses and removed certain identifying details to prevent their identification and any harm to their legal case, or in some cases, themselves. For further details on how we conducted this study, please see the Methodology section.³¹

We want to give these people the space to speak in their own words, so we have included long excerpts from the letters they wrote to us. Inevitably, as many thousands of people held on remand are suffering many of the same problems, some of the same issues come up time and time again – but for every person that wrote to us, this is their own experience, and how they are living on a daily basis. We hope you will take the time to read their accounts.

Jake, 32, has been held on remand since October 2019, and is currently in HMP Leeds. He was refused bail “*due to past breaches*”. His trial was originally set for September 2020, but has been pushed back to September 2021. He has now been held for 20 months awaiting trial, and it will be almost two years by the time of his trial. He says the legal advice he received remotely in several videoconferences “*have been totally inadequate*” and he has been held in his cell for 23 hours a day. He has also struggled with mental health and addiction issues. He said:

“Thanks for taking the time to hear me”

Agnes, who is in her mid-30s, has been on remand for “*over 270 days*” (almost 9 months). Her original trial was set for February 2021, but it was pushed back to August 2021, meaning she “*would be in prison for 14 months prior to my trial*”. She did not apply for bail as she says she is a foreign national, which is more difficult. She said she is “*considering pleading guilty in order to get my freedom back and to get out of extended remand time.*” She said:

“...the impact for me and my loved ones is very stressful. It is as if I lost my anchor to life.”

³¹ All names have been anonymised. The text in italics is the original text from the letters, edited only for basic spelling and grammar and to remove identifying details or information such as specific trial dates.

Dom, 54, has been on remand since January 2020 (16 months). His original trial was set for June 2020, then delayed to August 2020 and now it is listed for July 2021. He said:

“I asked my lawyer in August 2020 why my trial got postponed by 1 year and they told me the Court in Derby was small and they didn’t have the right conditions for jurors. I wonder how it is my fault that there are no funds. And if the pandemic will last for 5-10 years, will I await trial for 5-10 years in here?”

“Can this much injustice happen in a State like England?”

Dean, 49, held in HMP Elmley in Kent, has been on remand since December 2020 (7 months). He has been put on the ‘warned list’³² for trial starting in July 2021. He is also serving a separate six-month sentence for theft, and said in April when it ends, he *“will be applying for bail”*.

“To be honest I am 49 years old and come from the old school type prisoner who is used to lock up and I think the impact of lock up differs with each person, the only think I am upset with is the amount of time I am waiting on remand due to covid.”

Isaac, 46, held in HMP Pentonville in London, said he has been on remand for 18 months, facing charges of *“drug dealing”*. He was refused bail, and his custody time limit was *“extended due to covid”*. He said he plead guilty in March 2021 and was awaiting sentence.

“The conditions were terrible/are terrible. (...) I was denied access to having a shower for 20 days. (...) I tested positive for Covid and they kept me isolated in a cell for 21 days due to a ‘clerical error’.”

He says he was also refused a compassionate visit to see his dying father due to an inexplicable rule that only convicted prisoners are allowed certain privileges.

Keeley, 38, has been held in HMP Eastwood in Gloucestershire since February 2020 (16 months). She had a trial date for May 2021, after previous trial dates in August 2020 and November 2020 were pushed back.

“Each time the judge used the pandemic as the reason for extending my custody time limit. (...) The courts shouldn’t have the right to continuously extend custody time limits. By the time I get to trial in May I’d have been on remand for 15 months. If I’m found not guilty, I don’t get no help with any of the things I’ve lost since being on remand and all the pain, stress and emotional trauma that I’ve endured.”

³² The warned list is a list of cases which are used as backup cases if a case which is given a fixed date for trial does not proceed for some reason.

She has been denied bail on 3 occasions on the basis that she may commit further offences but has said *“this reason doesn’t carry much weight”*.

“My kids have not seen me in person in over 1 year and I can’t tell them when I’ll be able to see them let alone hug them.”

Darryl, 25, has been on remand for 12 months, and is held in HMP Leeds. He originally had a trial in January 2021, but it resulted in a hung jury. His retrial is set for August 2021. He was denied bail

“on the basis that I may commit further offences on bail and interfere with witnesses although previously I never have.”

He said that being held in custody has also impacted him physically and mentally.

Seb has been held since January 2019 (2 years, 5 months), and is currently in HMP Birmingham. He plead guilty in October 2019. However, he has still not been sentenced because the prosecution wants to sentence all 24 co-defendants in his case together, but one of them has not yet had their trial. He said he has been held for 18 months past the 6-month custody time limit:

“I see this to be unfair as I have already served [the equivalent of] my recommended sentence.”

Stuart, 34, has been held on remand since September 2020 on a recall,³³ and is on the warned list for a trial in April 2021. However, he said he’s been *“told that my case is (...) considered not a priority case”* and that he will not be released when his custody time limit expires in May 2021 because he is on a recall:

“So really I’m just in limbo (...) my recall is [until] December 2023 so court are happy to just hold me but a not guilty changes that all as recall is for further offences.”

Stanley, 61, currently held in HMP Berwyn in Wrexham, has been remanded in custody *“9 months so far awaiting trial”*. He had a trial date for late March 2021 but this was *“subject to change”*. He was denied bail on the basis he might abscond, even though he has no valid passport and is a live-in carer for his elderly parents, and on the basis he might commit further offences, even though he has no criminal record. He is concerned his calls with lawyers were not confidential as he could

³³ A recall is when someone has been released on licence or on parole with certain conditions they must adhere to, and they are judged to have committed another crime or breached those conditions.

hear officers' voices in the monitoring room next door. Since being held, he's lost all his possessions. He said:

"Mentally it has been draining and extremely stressful. I have constantly worried about my elderly parents contracting the virus and have worried about becoming ill too. Living with my parents I did everything for them, shopping, bills, taking them to doctors' appointments etc."

Earl, 52, has been held on remand at HMP Chelmsford in Essex on two shoplifting charges since March 2021 (three months). He wrote:

"I have been arrested numerous times for mistaken identity. Police [are] saying [it's] me on CCTV when it was not me. I think in my area as black man shoplifter the police say it's me because of my offending history."

His trial date is not until October 2021 by which time he would have been held in prison for 7 months.

"I am anxious what is going to happen to me, I am fearful as going to lose my council flat by not paying rent."

"I think my offence is not in the public interest (...)."

Michelle, 47, has been held on remand since February 2021 (four months), but she has not got a trial date. She is legally recognised as female but is being held in a male prison.

"I do not go out an exercise for fear of abuse from male prisoners."

She said she is *"tempted to plead guilty"* as she has been trying to get legal advice to help her get moved to a female prison.

Farhan, 31, has been on remand since February 2020 (16 months). He was denied bail on the basis of being a flight risk, even though, he said, *"I live here for 12 years, have all my family here, mother, sister, now ex and my son (...)"*. His trial was moved multiple times since last year:

"my trial date [was] supposed to be August 2020 but due to pandemic they moved to October then they moved to November then February 2021 and now waiting for 12 April. I hope this goes through."

"I haven't seen my son now for over a year because my ex can't get purple visits³⁴ working. I'm on sleeping pills and anti-depressants (...). It's so hard when you immigrant in this country."

³⁴ 'Purple visits' is an app that allows for video calls with people in prison. Gov.uk, 'Secure video calls with prisoners'. <https://www.gov.uk/guidance/visit-a-prisoner-using-a-video-call>

***Killian**³⁵ is a sentenced prisoner and is being held in HMP Bure in Norwich. He spoke about his time on remand in 2018, when he was held from May to December 2018, and about his trial and appeal.

“I have no experience of the legal system and as a consequence I have made very bad decisions (...).”

Alex, held in HMP Buckley Hall in Rochdale, has been on remand since March 2020 after being recalled. He was told if he plead not guilty then his trial *“would be put off for a year”*, and he was already beyond his custody time limit.

“I was totally innocent but due to the conditions, time locked up and not being able to get appropriate legal conferences I was willing to plead guilty to get out of there. I was well over my custody limit as well. (...) It is totally wrong and unjust. I just thought I’d let you know my story and I praise you for trying to highlight this injustice.”

“I want people to know what’s going on.”

Miriam, 32, has been on remand for 21 months, and is currently held in HMP Eastwood Park, Gloucester.

“My trial has been postponed several times, even before the pandemic, last October 2020 was suspended and set for October this year.”

She has been unable to apply for bail because, as she says *“I literally have no address or anywhere to go”*.

“I’ve been on ACCT^[36] 3 times, last time was (...) when I found out my trial was postponed one more time, without hope of getting bail or giving this nightmare an end (...) I can say I’ve been yes, suicidal, depressed, anxious (...) I honestly don’t trust the justice system of this country. I feel I am wasting time here.”

Declan, 44, has been held on remand for 13 months, and is currently in HMP Bristol. He said he has *“no date”* for a trial, and although he said he has a provisional trial date for August, he said *“this has moved several times”*. He was denied bail for allegedly visiting a witness.

“I have ASD/Asperger/Autism (...) my psychiatrist said I should not be [in] a custodial environment. It’s quite dangerous and have previously violently assaulted, harassed, victim of theft etc. Have to take sedatives and say in-cell 24 hours due to acute fears.”

³⁵ *denotes someone who has been sentenced.

³⁶ As above.

Jacob, 49, has been on remand since May 2020 and is currently being held in HMP Wandsworth in London. He was denied bail on the basis that he was considered a flight risk and may interfere with witnesses although he said this has “*no basis in truth!*”.

“People outside go on about the pain of lockdown but they don’t know the half of it. I can’t wait to get out!”

Nick, 23, has been on remand for 8 months with a trial date set for April 2021, by which time it will have been “*9 months 21 days on remand*”. He said the offence he was charged with prevented him from applying for bail. He said he was “*forced to*” plead guilty “*by solicitors & barristers*”.

“Mental health is worse, been self-harming more and even told staff I wanted to kill myself and they don’t do anything (...) staff don’t care especially when it comes to self-harm and mental health.”

***Simon** is held in HMP The Mount, in Hertfordshire. He was convicted and is coming to the end of his sentence, but is recently facing “*old charges*” from 2018:

“I am at the end 3 months remaining of my sentence and have had some old charges I was told were thrown out of court as I was held on remand for it (...) Instead they waited till the end of my sentence (...) so I would not get concurrent or anything else but to give me x 2 sentences which shows corruption”

He has been in hospital 3 times since he has been held, and has a dental abscess and other health issues.

***Eric**, 38, held in HMP Swaleside in Kent, was remanded in December 2019. He originally had a court date in April 2020, but this was delayed until September 2020. He described disgraceful conditions and the effect they had:

“Yes, covid has increased the time periods people have been kept on remand. But the following conditions have always been this terrible. Half an hour’s exercise on a filthy yard filled with food waste, general waste, urine & faeces thrown from people’s windows. Rats and pigeons’ infestations. 10 minutes to shower but not always everyday and runs alongside exercise time so you have to choose whether to clean your cell, shower or exercise.”

***Mansur** is held in HMP Wandsworth in London. He has been convicted but has another trial date set for August 2021.

“[P]risons become hate factories. I have been locked up for 23 and 1/2 hours a day”

Winston, 34, is held in HMP Elmley on the Isle of Sheppey in Kent, has been on remand for 2 months, with a trial date set for October 2021. He was denied bail for a Criminal Behaviour Order breach. He also described a previous time on remand. He said:

“(...) care and treatment has been uncompassionate verging on bullying by some officers (...) I feel remand is used as a tool to increase ‘conviction’ rate as most people get to the ‘time served’ part and change plea just to get out of this hellhole. I’ve been exposed to more criminality and threats inside than I had my entire life before prison.”

Remand offences: analysis

Four out of the 23 individuals who wrote to us are being held on drugs charges. Two are being held for theft. Six people are being held for violence against the person charges including harassment, Actual Bodily Harm (ABH), Grievous Bodily Harm (GBH), and attempted murder. Other charges people are held for include kidnap, breach of a Criminal Behaviour Order, robbery, threats to kill and possession of a firearm with intent to cause violence and modern slavery and human trafficking. One person has been convicted of murder – but appears to be appealing. Three people did not want to share what offences they had been charged with.

The spread of charges of the people who wrote to us is relatively representative of the offences people who are remand in custody are charged with. In the first quarter of 2020, before the pandemic, 60 percent of those in custody on remand were being held on the following charges:³⁷

- Violence against the person (25 percent of the remand population)
- Drug offences (23 percent)
- Theft offences (12 percent)

In December 2020, the breakdown of those held for the same reasons is as follows:³⁸

- Violence against the person (27 percent)
- Drug offences (29 percent)
- Theft offences (9 percent)

The number of people being held on remand for drug offences almost doubled between March 2020 and 2021. It rose from 1,246 to 2,436 – a 96 percent rise.³⁹

³⁷ Gov.uk, ‘Offender management statistics quarterly: January to March 2020’, 20 July 2020. <https://www.gov.uk/government/publications/offender-management-statistics-quarterly-january-to-march-2020--2/offender-management-statistics-quarterly-january-to-march-2020>

³⁸ Gov.uk, ‘Offender management statistics quarterly: October to December 2020 and annual 2020’, Published 29 April 2021. <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-october-to-december-2020/offender-management-statistics-quarterly-october-to-december-2020-and-annual-2020--2>

³⁹ Ibid.

3. Reason for being held in pre-trial detention

In this section, people on remand discuss the reasons they were remanded or not granted bail, as they understand them, and the circumstances that led them there.

As considered above, there are several reasons people may be held in pre-trial detention. These include if the court believes a person will commit further offences, interfere with witnesses, or fail to attend their trial. People can also be held in pre-trial detention if they have been charged with a serious crime, such as violence against a person, if they have been convicted of a serious crime in the past, or if they have been given bail before and breached it.

Several people on remand questioned whether these laws had been applied correctly in their cases. They pointed out, for example, that they were refused bail despite having no previous criminal record, or no history of offending whilst on bail. There were also letters that highlighted the discriminatory ways in which pre-trial detention decisions were made, particularly against foreign nationals, and those experiencing homelessness.

Denied bail due to the belief they would commit further offences

Stanley

“Yes, applied for bail. At time of arrest [I] was living with elderly parents. No criminal record, aged 60 years, no valid passports. Reasons for not granting/ opposing bail where I’d abscond and/ or commit further offences.”

“Living with my parents I did everything for them, shopping, bills, taking them to doctors’ appointments etc (...).”

Darryl

“I applied for bail after my hung jury but [it was] rejected on the basis that I may commit further offences on bail and interfere with witnesses although previously I never have.”

Michelle

“I applied for bail because I am legally recognised as female and held in male cat B prison, the Magistrates granted bail – conditional bail with the condition of not to contact the male prisoner I threatened following his campaign of abuses, harassment and victimisation at my cell door and damage to my clothing (all of which was proven in civil court who found in my favour). The crown prosecution service opposed bail and so I am remanded on these matters and living several doors away from this person on the same wing.”

“CPS [Crown Prosecution Service] opposed bail, used (...) previous offences, all of which have been served in full, and argued that I would offend on bail, my solicitor argued that ironically, I have never offended on bail.”

“If I had been released and gate arrested or if CPS had not opposed bail and I could have either way been physically put before the local court or attended the court in person. I would have been remanded to HMP Low Newton female prison.”

“I have not been given a release date or trial date.”

Denied bail for being a foreign national and considered a ‘flight risk’

Keeley

“I applied for bail once in the Magistrates and 3 times in the crown [court]. The reason for all 3 being denied was fear of committing further offences. This reason doesn’t carry much weight as I’d been arrested for this offence [previously] [and] I was on bail with conditions, that were later removed in September 2019. I was released pending further investigations with no bail conditions. I was re-arrested in January 2020, after being invited to the police station by the investigating officer, for a voluntary interview.”

“Because I’m a foreign national I believe that plays a part as to why I wasn’t given bail even though I’m not illegal in this country. The not knowing is the worst part. Everyone has their release date or end up getting bail.”

Farhan

“So I apply 3 times for bail. First time they say I am flight risk because I am Lithuanian, and it doesn’t matter I live here for 12 years, have all my family here, mother, sister, now ex and my son at that time when I was arrested, he was only 3 [years old]. And all UK was in full lockdown. Second time I apply in June cos I had statement that I was not involved they decline again. Then in July I add guarantor with £2800 they declined again.”

Agnes

“I have not applied for bail. Bail is hard to achieve for a foreigner and it would imply that I rent an apartment and put a significant amount towards the court (I am European).”

Denied bail because they do not have a registered address

Miriam

“I haven’t been able to apply for bail because I literally have no address or anywhere to go, the prison where I am only created the bail officer position last month. This person only came to see me once, and

said the same other senior officers have told me before, NACRO BASS⁴⁰, the company they work with, to offer a place to prisoners or ex-prisoners, refused to have me. On top of that [they said] ‘Do not hold high hopes’. My solicitor has also been unable to find me a place. I can apply for bail but that’s the reason I haven’t done so.”

Dom

“In August 2020, my lawyer asked me to speak to my family and ask for money to meet bail. We did not have that kind of money. In January 2021 I asked my lawyer to ask for my conditional release without bail. My family provided an address after talking with the landlord, but then the prosecutor convinced the landlord to not agree with the terms.

“In March 2021 one of my nephews signed an agreement for me to live at his place. He sent my lawyer a copy of the lease contract and a letter of acceptance from the agency who leased him the place; the police then went and checked the address and gave the green light. But once again the prosecutor contacted the owner of the place and he opposed me moving there.”

Other reasons for being held on remand

Stuart

“I have been on remand since September (...) and I am on the warned list for trial [in] April, but being told that my case is unlikely to make it on the warn list as is considered not a priority case, and my custody time limit [ends in] May, but I will not be released as I am on recall, but I’m on recall pending my case that if I get a not guilty probation will put into parole board for executive release as no case to answer to anymore [sic]. So really I’m just in limbo (...).”

“(...) my recall is [until] December 2023. So [the] court are happy to just hold me, but a not guilty changes that all as recall is for further offences.”

Seb

“I have been on remand since January 2019 (...) I pleaded guilty to my offences in October 2019, I have still not been sentenced as I have 24 co-defendants and the prosecution wants us all sentenced together, but we are only waiting for one more [co-defendant] to run trial. I am well over my custody time limit by nearly 18 months. I see this to be unfair as I have already served my recommended sentence which is 4 years.”

“I have never broken bail or tag before.”

⁴⁰ NACRO is a national social justice charity. BASS (Bail Accommodation and Support Service) is a service which provides housing and support to people who do not have a suitable address during the period of their bail. <https://www.nacro.org.uk/wp-content/uploads/2019/09/BASS-Information-Sheet.pdf>

4. Access to legal advice

People held in prison awaiting trial must be able to speak to their lawyer about their case and get legal advice, otherwise their ability to defend themselves at trial would be severely limited.

However, many of those who wrote to us raised serious problems with their ability to do so, particularly via video link and audio link alternatives. This has further isolated people in already isolated conditions as their access to legal advice has been severely restricted. It is also clear from these letters that having access to a lawyer does not always guarantee effective legal assistance. Several people made it clear that they felt unable to trust their lawyers, and that they were unconvinced that their lawyers were showing sufficient interest in their cases, especially if they were on legal aid.

Problems with speaking to lawyers via videocalls and receiving legal advice

Eric

“Legal advice was restricted. The prison was very bad at communicating to legal firms or prisoners that legal representatives could video call from any device. Most still believed it had to be done from a court.”

Jake

“Since lockdown, I have only received 2 or 3 video conferences and they have been totally inadequate, and I feel it’s no substitution as there’s delay and [we] end up talking over each other.”

Agnes

“I am fortunate in having a good legal team but still, I can only speak one hour per week through videolink with my solicitor and barrister. Often the videolink are cut short due to staff problems picking me [up from my cell] on time.”

Isaac

“I had one legal visit in 13 months and 2 video links. The video link in Pentonville is terrible quality. A 1-hour video link is all delays – bad sound. It equates to what could be achieved in a 10 min face to face visit.”

Keeley

“I feel like my case hasn’t been given the right amount of time and effort by my legal team because we cannot meet face to face, and often times when I have video consultation we speak over each other, or the equipment is not connecting on time and when this happens the still end the consultation even though it started late, through no fault of mines or my legal team.”

My consultation is always rushed because my barrister has to try and squeeze in the most important things in limited time. And even if he's not finished the video call ends and getting another one booked can take ages because there's a long que due to limited facilities to facilitate the video calls.

Then I have to contact my solicitors on the telephone which is very expensive and even then, I can't speak to my barrister directly. I have to raise my issues with my solicitor, who in turn contacts my barrister and then I have to keep calling back to get a reply. This means I am often left anxious for days and sometimes weeks. Sometimes my solicitor will try to give me answers to my questions but then when he consults with my barrister I get another answer to the same question, which annoys me. Because had I been able to have face to face meetings, I would have my full 2 hours and get to ask all my questions. Often times I leave my consultation with more questions than answers. Because of the rush to get through each point within the allocated time.

With my case there is a lot of social media posts including videos. My barrister has tried to show me them on another device whilst on video call, but I find it hard to give instructions because I can't see the videos clearly.

There are still lots of videos that I need to view before my trial, because even though my solicitor describes what's on it, I can't instruct him properly until I've seen these videos. So hopefully that will be arranged before my trial. I'm in fear that because I haven't had quality time with my legal team, that might impact on my trial and possibly head to a negative outcome."

Nick

"Really bad as everyone is at home, receiving it via video, kept freezing."

Stuart

"The matter of getting legal consultations has been a nightmare, had one [remote] legal visit, couldn't hear most of it, can't talk and see evidence as you need to, I feel very unprepared for the case and I have to take the word of brief [lawyer] saying it's in hand on the phone when they are not demanding things critical to my case i.e camera evidence, the full police interview. Police have now asked for more DNA which will hold case up when they already took DNA to match me to a bottle but want more DNA to do extensive matching which means nothing as I've said I think I had a bottle on me before incident took place."

"(...) [I] still have no clue as to when it [trial] will be and if solicitors are prepared the way I want them to be prepared."

Michelle

"Legal advice and representation has been excellent, the hearings have been by video link (...) it is essential to be physically produced so that I can be remanded to a female prison following the bearing and away from this male prison I am [in] (...) I have therefore made clear that I could not appear by video link and they must physically produce me to attend court."

Jacob

“My solicitor and I went months without contact due to being moved, hearing impaired and booking mistakes made by the prison. Last contact was end of Jan 21, booking messed up all of Feb, and my next contact is now [in] March 21, considering I have a trial [in] March 21.

All through this process due to my disability (hearing) there have been failures. One example was at Guildford Magistrates, I was due to attend and they sent me to Redhill to video link (I was in Guildford police station) the desk officer realised I was hearing impaired and required a lip speaker / signer, so I was sent back (...) at court the lipspeaker told me that she asked the judge to speak up and he said ‘no, I don’t want to hurt my throat!’ Consequentially I could not fully participate! Police were the same, no regard for my disability either.”

Miriam

“I am in touch with my legal team as much as I can thanks to the in-cell phone, we have used videocalls for hearings and legal meetings. However one of my last videocalls was complicated to achieve, the reason: the prison was moving to a better app or service, more secure (you could have some uninvited people popping into your legal call without any warning) since then, probably October 2020, I haven’t seen this in any way.”

Mansur

“(...) when I complained to the Judge about me not being happy with legal team, he said that it could take over a year before another trial date could be set. I found that HMP Prisons Wandsworth and Wormwood scrubs have problems with their sound i.e. keep getting cut out so the solicitors lawyers can’t hear you and I couldn’t hear them. Every inmate I spoke to about this had the same problems when using video link. Plus (...) I wouldn’t even be collected to attend a video conference twice.”

People who had issues with their lawyers or the advice they received

Declan

“Horrible nightmare. It took me 4-5 solicitors to find an acceptable option, 2-3 [were] furloughed. It was quite traumatic. The police custody solicitor (...) encouraged a disabled/ autistic person to complete a no comment interview. [One firm] dropped my case at a crucial stage due to an admin error. All video link and zoom. Video is massively oversubscribed.”

Farhan

“Legal aid is ‘ok’ cos you can tell they are not hired by me and they do not have intention to do more not just a minimum and get money from government.”

Killian

"I had six legal visits whilst on remand from my solicitor. I did not select him myself and he selected the barrister to represent me. I felt an instant discomfort. He actually seemed to despise me, despite me protesting my innocence. I only met this barrister once in prison. He subsequently lied about this even though I have documentation and prison records show his one and only visit. He has categorised this one visit as 'several hours'."

"He suggested dealing, we fought about this. I told him to do what he is being paid for. (...) His response was 'really?' and had I not considered a deal? I said no!"

"I re-submitted my appeal in Feb 2020. A legal visit was arranged for March 24th. Boris Johnson called a national lockdown on the 23rd March. Obviously my legal visit was cancelled and I was locked away for 23 hours a day. I couldn't see my solicitor but I thought well the courts are closed too so my appeal will be much later than expected. I was shocked to receive an appeal hearing date in October [2020] with just 9 days' notice. I called solicitors office and was diverted to the home phone of his secretary. I was told he could not act without seeing me. I desperately tried to delay hearing. Many letters of my plight are on record in the appeal office. I was given a 6-week extension, but that coincided with lockdown no2 and no legal visits were allowed in this prison."

"My appeal was heard on 17th Dec and failed with no submissions by me and my legal team. I was judged solely on the prosecution case. Even I knew that I had no chance under those circumstances because it was put before the 3 judges unfairly in my view. I am now being told that the CCRC are my only option."

Alex

"I struggled to have conferences with my solicitor and couldn't get to speak to him for 5 mins on the day of my hearing in which he stated that if I was to plead not guilty then my trial would be put off for a year."

Concerns over confidentiality of videocalls

Stanley

"When arrested on 2nd July 2020 [I] was represented in person at the Police Station. Since then, I've had a number, maybe 6, video link visits. During these visits I could hear televised court appearances going on through the walls of the room I was in and at HMP Peterborough could hear officers' voices in the monitoring room next door. Obviously this concerned me as a confidential call should be exactly that, confidential. How could it be if I can hear other then others surely could hear me!"

5. Remand prison conditions

In this section, people talk about the conditions they have been living in while on remand.

In March 2020, prisons were placed in lockdown and imprisoned people's lives were even further restricted. Since then, people held in prisons, whether awaiting trial or convicted, have been kept in their cells for almost the entire day, and sometimes kept in cells for days at a time.⁴¹ They have been prevented from using the library, going to the gym, or going to worship. Educational opportunities have been stripped to almost nothing, consisting of in-cell 'education packs', with many education departments closed and education providers withdrawing from prisons.⁴²

Visits from families, friends and loved ones were stopped in March 2020.⁴³ During this time, the Prison Service attempted to introduce free video calls for people in prison to have online 'visits', sometimes called 'purple visits', after an app used for these videocalls.⁴⁴ These have also been restricted to just one 30-minute video call a month in some prisons.⁴⁵ Some prisons temporarily opened to allow visits between July and November 2020, under strict guidelines such as one a month for a maximum of 45 minutes, no physical contact, and facemasks. Some social visits to prisons began again under strict guidelines in March 2021.

In April 2020, the government announced that up to 4,000 'low-risk' prisoners would be temporarily released to control the spread of COVID-19.⁴⁶ This initiative was a failure, as by July 2020, only 209 prisoners had been released.⁴⁷ Regardless, people held on remand were not part of this scheme and were not considered for release by it.

As before, some of the accounts repeat the same issues, but this reiterates how so many people have been subjected to extremely difficult and unpleasant conditions while held on remand.

⁴¹ HM Inspectorate of Prisons, 'What happens to prisoners in a pandemic?', February 2021.

<https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2021/02/What-happens-to-prisoners-in-a-pandemic.pdf>

⁴² House of Commons Justice Committee, 'Coronavirus (Covid-19): The impact on prisons', 27 July 2020.

<https://committees.parliament.uk/publications/2154/documents/20016/default/>

⁴³ Gov.uk, 'Prison visits cancelled', 24 March 2020. <https://www.gov.uk/government/news/prison-visits-cancelled>

⁴⁴ Gov.uk, 'Secure video calls with prisoners', 27 May 2020. <https://www.gov.uk/guidance/visit-a-prisoner-using-a-video-call>

⁴⁵ HM Inspectorate of Prisons, 'What happens to prisoners in a pandemic?', February 2021.

<https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2021/02/What-happens-to-prisoners-in-a-pandemic.pdf>

⁴⁶ The Guardian, 'Up to 4,000 inmates to be temporarily released in England and Wales', 4 April 2020.

<https://www.theguardian.com/society/2020/apr/04/up-to-4000-inmates-to-be-temporarily-released-in-england-and-wales>

⁴⁷ House of Commons Justice Committee, 'Coronavirus (Covid-19): The impact on prisons', 27 July 2020.

<https://committees.parliament.uk/publications/2154/documents/20016/default/>

Eric wrote:

“Yes, covid has increased the time periods people have been kept on remand. But the following conditions have always been this terrible. Half an hour’s exercise on a filthy yard filled with food waste, general waste, urine & faeces thrown from people’s windows. Rats and pigeons infestations.

10 minutes to shower but not always everyday and runs alongside exercise time so you have to choose whether to clean your cell, shower or exercise. 23 hours locked in a cell unless you’re lucky enough to get a job, most aren’t. There was a combination of single and twin cells. However, the vast majority of the single cells has been connected to double cells. The marks of the old bolt holes from the old single beds could be seen as the bunk beds have different fixing points. Two men share a cell 6ft by 9ft. if you’re lucky there is a makeshift curtain around the toilet which is at the foot of the bunk beds made out of an old bed sheet. The walls and floors are disgustingly dirty and in a state of disrepair and with graffiti everywhere. There is always a lack of cleaning products. If you are unfortunate enough to break your skin with a cut or a graze it will become infected.

The food is tasteless and the portions pathetic. (...) I am fit and healthy without an ounce of body fat and yet I lost 6 kgs (1 stone) in two months. (...) The average daily calorie intake was approximately 900cal. Most people supplement the terrible diet with canteen purchases, but only if they can afford it. There is an over-reliance on cheap carbohydrates. The food situation creates lethargic prisoners with a sort of brain fog which the prison likes. However, it can make prisoners bad tempered also which causes people to act out who perhaps couldn’t normally.

The prison service is disorganised and apathetic to prisoners needs. There is a staff culture that if you complain you are unofficially blacklisted and sometimes targeted. Staff will also become ridiculously litigious just to unconvince you if you complain using the official channels.

Contact with family is ridiculously expensive by phone. The prisons often run out of letters and visits are so time consuming and unpleasant for visitors. Purple visits are good. I could go on and on, and in greater detail, even giving examples, but the easiest and best description of the conditions is inhumane.”

Jacob

“[HMP] High Down was dirty, I cleaned the cells that I was in, one window wouldn’t open, I was told it had been like this for months! Average 23 hours in cell.

“Wandsworth – first day 4th floor E Wing, smashed up furniture, old half eaten food under the bed, dirty clothes/rubbish under the bed/floor. Toilet broken and leaking, sink-both taps consistently running and filthy. More flies than air particles! They also forgot to provide me with food. I was after around a day later moved to 10 VP C Wing. I cleaned the cells, but they were a palace compared to E Wing. On average 23 hours in cell. The occasional weekends being 48 hours and longer without exercise or shower (in both prisons). When I started working this did help (textiles) but at High Down I was denied a shower and told if you want a regular shower, then don’t work!

I was allowed to organise my account and mortgage at High own but not in Wandsworth so my mortgage payments have gone up from £,750 pcm to £,1050 pcm because I cannot talk to them to arrange a deal. They will not do it by letter (already asked). This is a direct result! I must say that the staff in general are helpful but they get their orders from others.”

“I realise prison is withdrawal of liberty but poor filthy conditions, substandard treatment and to top it solitary confinement and torture!”

“Internet/ laptops to aid education more than 2-hour calls should be allowed per day, cost of calls are extortionate at almost 6p per min and 9p per min for mobiles.”

Killian

“I was remanded in HMP Elmley in Kent awaiting trial (...) I was then placed into a triple cell. The two people were nice but one was extremely obese so snored the whole night. After 4 days of induction, I was placed in another triple cell. One very scared teenager and a man in his thirties out of his mind on spice. I lasted 2 days because of the spiceheads stealing.”

“Went to another triple cell with two decent northern men. After a week a friend of theirs asked if I would take his single cell so he could go in with his mates. I jumped at the chance. I complained at booming music on the top floor and in a move the officers no doubt found amusing, they move me into the cell next door to the complained about.”

Seb

“My first part of lockdown was terrible, we was allowed 15 mins exercise and a ten min shower every other day, this occurred for at least 6-7 months. It is now a 1 hour a day, which includes exercise when the officers can be bothered.”

“No gym, education or rehabilitation.”

Jake:

“Up to last August 2020, I was housed in HMP Doncaster which entailed 23 hour bang up,^[48] out for a shower 10/15 minutes then exercise 30 mins. Since August I’ve been in HMP Leeds where it’s pretty much the same 23 hours banged up, exercise 7 days a week, showers six, due to canteen on Saturdays. You can get a job here either tea packing, kitchens or cleaners, though only 2 wings facilitate this.”

Declan

“Conditions bearable now that they help with autism/asd [autism spectrum disorder] traits. Have seen cold/ damp/ mouldy cells, my cell toilet blocked for over a week, been starved for over 5 days many traumatising events. Usually in cell 24 hours as I’m scared of violence and the crazy convicts. (...)

⁴⁸ Lockdown – held in cells.

Shower and exercise once a day here. But no family calls. Can't really call family as they're in expensive Belarus and Switzerland. (...) So I'm basically denied the human right of family contact."

Keeley

"The wing that I'm on we get let out for showers once everyday. We often time get 30 minutes on the exercise yard, once in the morning and once in the afternoon when staff permits. On weekends we only get 30 mins in the afternoon.

"They have replaced face to face visits with purple visits, which is a 30 mins video call with family and friends, but I'm only entitled to 1 per month so that's not convenient considering my children don't all live together and convicted prisoners get the same amount of visits per month as remand prisoners, unless you're enhanced then you can have 2 or 3.

"Being on 23hrs bang up is very isolated so I tend to rely on speaking to my loved ones. So I normally spend at least £30 each week on my pin credit which often runs out on Wednesdays. But although I've formally complained about the flaw in the pin top up system and was told to either top up less or I'll not get it, which means I'd have to top up £20 in order to get the free £5 but then I'd have £25 which would not last me until Thursday."

Agnes

"The conditions are disgraceful. I am locked 23 hours per day, with a maximum of 20 minutes of fresh air. There is no exercise possibility. I can speak to my family and friends via phone but call abroad is expensive and with the weekly maximum allowance it is very difficult. I have not had any video calls with family or friends."

"Showers are available, every other day."

Isaac

"The conditions were terrible/ are terrible. I currently have 3x cases being investigated by the prison's ombudsman. The 3 cases being investigated are:

Case [1]: I was denied access to having a shower for 20 days.

Case [2] For 3 MONTHS Pentonville offered all prisoners no food choices. We just had to eat whatever meal we were given.

Case [3]: I tested positive for Covid and they kept me isolated in a cell for 21 days due to a "clerical error".

"HMP Pentonville used "Covid" as a reason to excuse each one."

"In Jan 2020 my father was dying in hospital. This was before any covid travel restrictions. He was in hospital for 3-4 weeks before he died in Feb 2020. I was not allowed to go and see him as "remand prisoners" we are not allowed compassionate visits. According to MOJ rules only convicted criminals are allowed such visits. I feel that is wrong."

Michelle

“Conditions are that the person I am on remand for on my wing knows I am on remand because of reacting to him and this has escalated the abuse from him to me and I have been reacting. It has become a real battle of the sexes. (...) I am and have been able to shower and use the phone daily, I do not go out an exercise for fear of abuse from male prisoners. I am not allowed to mix with male prisoners as I am legally recognised as female.”

Miriam

“The regime’s changed so much since last year. At the moment we go out every day, in a good day: 1 hour, not so good: 40-45 mins, that time’s for you to exercise, shower, clean your room (...) we currently have issues with the showers, only two out of six work properly and three are queue for showers sometimes. There had been times due to covid outbreaks within the wing we could only go out every other day and mostly, less than 1 hour. The prison is giving us £10 for pin credit and purple visits are working, nonetheless, in my case, last time I saw my mother was September 2020, as she doesn’t have good internet service. She lives abroad.”

“(...) given my remanded status I cannot apply for university courses either, I was really surprised I was allowed to take a beauty pack, for learning.”

Nick

“23hrs a day in cell 30 mins exercise, staff don’t care especially when it comes to self-harm and mental health. Showers daily. Phone in cell but cut off at 11pm each day cos costs a fortune.”

Stuart

“I am getting half an hour out a day to shower or exercise on alternative days i.e Monday’s shower, Tuesday exercise, Wednesday shower and so on so on. Phone is in cell to contact but so expensive and no wages as there is no work/ education. The impact has been exhausting (...).”

Stanley

“At HMP Peterborough (1st 4 months) I was held 23 hours ‘behind the door’ being allowed out for 45 minutes exercised and 15 minutes to shower. This was the regime for 7 days per week. At HMP Berryn 23 hours and 15 minutes behind the door, showers are ‘in cell’. At Berryn there is no exercise on Fridays as it is not possible due to Friday being canteen day! Both prisons have phones in the cell so if you have credit contact with family and friends is possible.”

Mansur

“This is why mainly, prisons become hate factories. I have been locked up for 23 and ½ hours a day whilst at Wonno [Wandsworth] & scrubs [Wormwood Scrubs].

“(...) we get a shower once or twice a week and sometimes the water is very cold.”

Dom

“We have been treated like animals for over a year now. We get 30 minutes of walking outside and spend the rest of the time locked up.”

The unacceptable conditions that these people have experienced are representative of the majority of prisoners – both remanded in custody and convicted – since the pandemic started in March 2020. The Criminal Justice Chief Inspectors found that between July and December 2020:

*“78% of prisoners reported that they had less than two hours out of cell, including 42% who said that they had less than one hour”.*⁴⁹

They also reported that:

*“Some prisoners were held in conditions which effectively amounted to solitary confinement, which was sometimes prolonged and/or indefinite”.*⁵⁰

The international definition of solitary confinement, as defined by the United Nations (UN) Revised Standard Minimum Rules for the Treatment of Prisoners is *“the confinement of prisoners for 22 hours or more a day without meaningful human contact”*.⁵¹ Under the same definition, *“Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days”*. People remanded in custody and convicted prisoners have therefore been effectively subjected to prolonged solitary confinement during the pandemic.

In addition, remand prisoners do not have access to the support, educational and training services as convicted prisoners do, as acknowledged by the Chief Inspector of HM Inspectorate of Probation to the Justice Committee.⁵² Remand prisoners are also usually entitled to an unlimited number of visits compared to convicted prisoners – but are currently allowed none. There is a long-standing principle that remand prisoners, as they have not been convicted or sentenced, should have certain rights and entitlements that are not available to sentenced prisoners. However, as detailed in the accounts above, this has not been the case and there are numerous examples of remand prisoners being subjected to worse conditions and less entitlements than convicted prisoners.⁵³

These factors add significantly to the already punitive nature of remand during the pandemic. As put by **Eric**, the conditions have been *“inhuman”*. Despite this, the Prison Officer’s Association

⁴⁹ Criminal Justice Joint Inspection, ‘Impact of the pandemic on the Criminal Justice System’, January 2021, p16. <https://www.justiceinspectorates.gov.uk/cji/inspections/impact-of-the-pandemic-on-the-criminal-justice-system/>

⁵⁰ Ibid.

⁵¹ U.N. Revised Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) (May 2015). https://www.un.org/en/ga/search/view_doc.asp?symbol=E/CN.15/2015/L.6/REV.1

⁵² Justice Committee, 19 January 2021 (at 15.10.30). <https://parliamentlive.tv/event/index/cc4fa6fe-627f-45ac-9cf9-08a337ff7c4d>

⁵³ HM Inspectorate of Prisons, ‘Remand prisoners - treated worse than sentenced prisoners’, 29 April 2014. <https://www.justiceinspectorates.gov.uk/hmiprisons/media/press-releases/2012/08/remand-prisoners-treated-worse-than-sentenced-prisoners/>

has repeatedly called for the ‘exceptional’ changes made during the pandemic to become permanent.⁵⁴ This cannot be allowed to happen.

6. The heavy impact of remand: emotional, mental, physical

Content warning – discussion of self-harm and suicidal thoughts.

If you are being held in prison awaiting trial, in the conditions described above, for an uncertain but lengthy period of time, during which you are held in your cell for almost 24 hours a day, without much or any human contact, and away from friends, family and loved ones, it’s perhaps unsurprising that the toll on people’s emotional, mental and physical health is immense.

Below, people describe that toll.

Farhan

“I do not have any criminal record so impact here is devastating. I haven’t seen my son now for over a year cos my ex can’t get purple visit⁵⁵ working (...) on sleeping pills and anti-depressants (...) It’s so hard when you are an immigrant in this country.”

“Outside [I] had [a] garage running machine business, now lost all business, sitting in massive debts from finances (...) if I be released I even don’t have [anywhere] to go. Mother sister and her boyfriend lives in Leeds and my sons mother left me so [I] basically need start from zero (...)”

“P.S. and now is over a year (...) waiting for dentist appointment with painful teeth (...) I would like to make a claim but don’t know how (...)”

Eric

“Mental health, myself included, has greatly worsened. Self-harm, hooch and drug taking has increased and also in those who have never had issues with drink, drugs or self-harm in the past. People’s physical health has also suffered. Fat gain is common along with fitness dropping due to leaning on a bed for 23 hours a day. Made even worse for the majority who are ‘two-up’ in a one-man cell.”

⁵⁴ PACT, ‘Prison Officers’ Association calls for long-term changes to prison regime’.

<https://www.prisonadvice.org.uk/news/prison-officers-call-for-long-term-changes-to-prison-regime>

⁵⁵ ‘Purple visits’ is an app that allows for video calls with people in prison. <https://www.gov.uk/guidance/visit-a-prisoner-using-a-video-call>

Agnes wrote:

“The impact physically and mentally is huge. I am restless, exhausted, can’t concentrate, going blank, feeling lonely and isolated. My heart flutters, I feel shaky. (...) Nobody is asking how one feels, the impact for me and my loved ones is very stressful. It is as if I lost my anchor to life.”

Keeley

“The time I’ve been on remand has affected my mental state as each time when I’m looking forward to getting it over and done with, I’m told that I’ll have to wait months to get my trial, so I couldn’t plan my future.

“My kids have not seen me in person in over 1 year and I can’t tell them when I’ll be able to see them let alone hug them. My relationship with my partner broke down because of the stress relating to my case not being brought to trial.

“I haven’t been to the dentist in over 1 year even though I’ve asked for an appointment. My eyesight is deteriorating due to not getting an appointment in the year that I’ve been here.

“I am in rent arrears due to my extended remand time. All of my benefits have stopped. I lost my babyfather and I couldn’t be there to comfort my kids in their time of grief. I’m in further debt because before coming to prison I was making regular payments. All that stopped when my benefits stopped.

“I haven’t been able to better myself in anyway. I’m just sat here waiting on the courts to bring my case to trial even though I’m innocent and the victim in this case. I also suffered a serious injury in September 2019, by the same group of people who are alleged victims in the case against me and they get to be on bail with strict conditions even though they have previous and that was because of the pandemic. So I don’t understand why I was constantly refused bail and there is no guarantee that my trial will go ahead in May. The courts shouldn’t have the right to continuously extend custody time limits. By the time I get to trial in May I’d have been on remand for 15 months. If I’m found not guilty I don’t get no help with any of the things I’ve lost since being on remand and all the pain, stress and emotional trauma that I’ve endured.

“The not knowing is the worst part. Everyone has their release date or end up getting bail. I’m the only female in this jail on remand the longest. Mentally I think I’m a strong person and I try to stay positive but I do have my off days when I get depressed and withdrawn. Not being able to leave my room to associate with other prisoners has also left me feeling isolated. I caught covid-19 in December 2020 and still have not got back to my normal health.”

Miriam

“The impact (...) I’ve been on ACCT [Assessment, Care in Custody and Teamwork⁵⁶] 3 times, last time was around October – November 2021 when I found out my trial was postponed one more

⁵⁶ Assessment, Care in Custody and Teamwork (ACCT) is the care planning process for prisoners identified as being at risk of suicide or self-harm.

time, without hope of getting bail or giving this nightmare an end. I can say I've been yes, suicidal, depressed, anxious... and yes, I've lost weight too, is really hard to accept those realities in your life, and cope with them.

"I honestly don't trust the justice system of this country. I feel I am wasting time here, because what skills can I get from cleaning a toilet once a week? The prison is barely supporting us (...) Some education courses keep running, I am taking one of those, the library is giving us books which is good, but generally speaking... colouring packs: one... once per ... I don't know for sure, week or every 2 weeks, I haven't seen any distraction itself here in a while."

Declan

"I have ASD/Asperger/Autism (...) my psychiatrist said I should not be [in] a custodial environment. It's quite dangerous and have previously violently assaulted, harassed, victim of theft etc. Have to take sedatives and say in-cell 24 hours due to acute fears.

"Life changing psychiatric traumas may never be able to work again. It's hard to talk about this. Have lost massive amounts of property and business denying the rights of peaceful enjoyment of possessions etc."

Isaac

*"Physical wellbeing: getting fatter
Mental wellbeing: bored as hell."*

Darryl

"I have started suffering really bad depression and anxiety. I feel socially awkward and gained a lot of physical weight."

Seb

"I see a lot of people's mental health go down the drain, along with drugs abuse as it is a major problem here with corrupt officers."

Earl

"My issue is my case in crown court and solicitor has given me a barrister who has never met me and is advising me to plead guilty on thing I do not know about. This has impacted my mental health and sleep I am anxious what is going to happen to me, I am fearful as going to lose my council flat by not paying rent."

Michelle

"The impact of my time in custody awaiting trial has been affecting my mental health because I am held on a male cat B prison and doors away from the male prisoner who abuses me and targets me for abuse/harassment because I am the only female prisoner on the wing and my solicitor has told the magistrates court that being held in a male prison is a clear breach of [my] human rights."

Alex

"The conditions were horrible (...) My mental health was suffering and I was severely depressed."

Dom

"I suffer from serious health issues. I've been operated three times (...) [it] causes me tremendous pain. Without physical therapy and surgery [I] could be permanently damaged and I could be paralyzed. I did a CT scan in April 2020 but 'the results were lost'. In September 2020, upon insistent requests by the prison doctor, the hospital doctor told me through an interpreter that he would schedule an appointment as soon as possible to administer a shot in my spine to alleviate pain. I have yet to hear back from them to this day (March 2021). The prosecutor also intervened in this matter – my lawyer requested my medical file from HMP Nottingham in order to submit it to the Court, but the prosecutor argued that this was not a serious case and that he didn't see any urgency."

Jacob

"I have been diagnosed with severe depression and anxiety and PTSD. PTSD resurfaced (as of military service) due to solitary confinement. I am in a single cell in all experiences I cannot sleep due to regular tortuous conditions with lights going on 5am, consequently I sleep at short bursts of 1-2 hours. My eyesight has got worse due to poor electric and natural light. I have attempted to cut my own wrists too. People outside go on about the pain of lockdown but they don't know the half of it. I cant wait to get out!"

"If I walk free then I will require more extreme treatment for my 'forced' mental health, by MOJ and I will not be able to return to a job that involves thinking (...) I consistently forget things/ words/ memories/ names (...) I feel like I have the life sucked out of me by this torturous regime!"

Nick

"Mental health is worse, been self-harming more and even told staff I wanted to kill myself and they don't do anything."

Stuart

"The impact has been exhausting, I have a little girl due [in] June and not knowing what is going on has affected my mental health immensely and is getting worse, and the stress on my pregnant wife and teenage kids already is terrible. I have even self-harmed, had no help from mental health, no counselling can be facilitated, and still have no clue as to when it [the trial] will be (...)"

Stanley

"Since being in custody I have lost all my possessions which were in storage as I was not able to keep up payments on a storage unit and was not able to make any other arrangements for disposal. As a result I actually had to pay someone to empty the storage unit and dispose of all items."

"Mentally it has been draining and extremely stressful. I have constantly worried about my elderly parents contracting the virus and have worried about becoming ill too. Living with my parents I did everything for them, shopping, bills, taking them to doctors' appointments etc. During the 1st lockdown I was able to keep both them and myself safe and health. Recently, at [HMP] Berrymyn, I have contracted Covid-19 and have been quite ill with it and still suffer some effect of the virus."

***Simon**

"I've been in hospital 3 times staying, my mental health isn't good, the dentist can't see me because I've had implants and he can't touch them, so [I] am left with abscess and swollen feet where I stayed in hospital for 4 months. Please can someone help."

Mansur

"I first started to suffer symptoms of covid when there had been break outs in March [2021], the truth is there has been break outs in every wing I've been to, that's about 5 five wings here and scrubs. And during trial I couldn't understand why I wasn't able to remember some simple questions when given evidence on the stand, I remember now. but I still suffer from short term memory loss as I also since March 2021 forget to order my canteen menu which is something I've never done before this year.

"I have needed lifesaving surgery for some time now, years, but all my complaints fall on death ears. And now Intervene a charity representing me, have been refused, my medical record and my black area in my bottom is spreading into my torso stomach. But yet no skin draft just left to rot."

"(...) art and exercise plus chess kept my mind stable. Having my body locked up in 20 different prisons for petty crimes because mainly of being destitute since the age of 14, has helped me free my mind...."

"But the dark cloud of depression is seeping its way to the centre of my brain as the cancer spreads."

Winston

"I came in with M[ental] H[ealth] issues, care and treatment has been uncompassionate verging on bullying by some officers. I've been down healthcare once and taken 2 overdoses I feel remand is used as a tool to increase 'conviction' rate as most people get to the 'time served' part and change plea just to get out of this hellhole. I've been exposed to more criminality and threats inside than I had my entire life before prison."

However, there are some positives amongst the torrent of mental health problems.

Jake

"I suffer with PTSD [Post Traumatic Stress Disorder] and have EUPD (emotionally unstable personality disorder), at times I've really struggled with the isolation as I'm single cell status, [I] had issues last year with drugs (spice) and have been on ACCT [Assessment, Care in Custody and

Teamwork⁵⁷ once. Now I'm back on meds 5 + months clean and doing in cell and yard workouts, also we were getting gym once a week until last couple of weeks due to an outbreak at this jail."

There is clearly a serious problem with the amount of mental health issues on remand during the pandemic – and otherwise. The extended remand times, uncertainty of trial dates, long periods of isolation in prisons as well as isolation from friends, family and loved ones, and the conditions people are held in, points towards a mental health crisis.

The fact that several people in our relatively small sample mentioned raising self-harm with their respective prison officials and nothing was done is also serious cause for concern. The latest Ministry of Justice Statistics record that there were 55,542 self-harm incidents in the 12 months to December 2020. This is apparently a decrease of 13% from the previous 12 months, comprising a 16% decrease in male establishments and a 0.5% increase in female establishments. However, the Ministry of Justice acknowledged that *"This partially reflects a fall in the prison population over the same period"*. In addition, it's clear from the reports from the individuals who wrote to us that many instances of self-harm and suicidal ideation are being ignored or unreported.

In many prisons, the amount of recorded self-harm incidents per 1,000 prisoners is almost or more than 1,000. This includes the following prisons: Altcourse, Aylesbury, Bedford, **Birmingham**, **Bristol** (2,297 incidents per 1,000 recorded), **Bronzefield** (3,144), Cardiff, **Chelmsford**, Cookham Wood, Downview (2,402), **Eastwood Park** (4,043), Exeter, Feltham, Forest Bank, Forston Hall (6,887), Frankland, Guys Marsh, **Hewell**, Hindley, **Isle of Wight**, **Leeds**, Leicester (1,654), Lincoln, Liverpool, Low Newton (1,832), Manchester, **Norwich**, Nottingham, Peterborough Female (4,996), Peterborough Male, Preston, Send (1,944), Styal (5,235), Swansea, Swinfen Hall (1,560), Wealstun, Werrington, Wetherby (2,479), Winchester (1,526) and Woodhill (bold denotes a prison where one of the individuals in this report have written from).⁵⁸ At 40 out of 117 prisons in England and Wales, there are more recorded instances of self-harm than there are prisoners.⁵⁹

⁵⁷ Assessment, Care in Custody and Teamwork (ACCT) is the care planning process for prisoners identified as being at risk of suicide or self-harm.

⁵⁸ Gov.uk, 'Self-harm incidents per 1,000 prisoners', 2021. <https://data.justice.gov.uk/prisons/safety-and-order/self-harm-rate>

⁵⁹ Ibid.

7. Pleading guilty to get out earlier

Fair Trials asked people if they had considered pleading guilty to get out of extended remand while awaiting trial. These were the responses.

Agnes

“Absolutely, I am considering pleading guilty in order to get my freedom back and to get out of extended remand time. It is almost impossible to get a fair trial.”

Farhan

“I wanted plead guilty just to know when I be out but I haven’t done nothing. I do not have any criminal record so impact here is devastating.”

Alex

“I struggled to have conferences with my solicitor and couldn’t get to speak to him for 5 mins on the day of my hearing in which he stated that if I was to plead guilty then my trial would be put off for a year. I was already beyond my custody time limit but as I was a recall it didn’t seem to matter but it did to me!”

“The conditions were horrible, so much so that I was going to plead guilty just to get to a transfer out of there.”

“I was totally innocent but due to the conditions, time locked up and not being able to get appropriate legal conferences I was willing to plead guilty to get out of there. I was well over my custody limit as well. I am aware of at least 4 other people who pleaded guilty just so they didn’t have to stay in HMP Preston potentially until 2022 just to have a trial. It is totally wrong and unjust.”

Declan

“There’s a plea deal in place but having trouble with details, also my legal [team] [are] overwhelmed.”

“I’m almost certain to plead guilty with the deal before trial as I can’t take much more.”

Miriam

“I thought about that just once, because of the frustration this waiting time gives me. However I rather to maintain my pleas, I know what I’ve done and what I haven’t done, why would I do that? It’s against my principles. Although I’ve also met people here who sadly have done that. Changing their pleas from innocent to guilty only because it will make everything quicker.”

Eric

“No, although I personally know three people who did plead guilty to get out earlier. Two of which had previous criminal records and so an additional conviction didn’t cause them any concerns even if

they were innocent. The other didn't even receive a custodial sentence and was released under time served."

Michelle

"I am aware that I am likely to spend longer on remand than what the likely sentence could be but in my case, to ensure that I can be settled on re-release I have to get physically produced at the court so that the court custody team can then book me on the right transport to female prison. On remand means one can vote and claim universal credit. In my case, I may need to plead not guilty in order to get physically produced at the court so that I can then be booked onto the correct transport after the hearing to female prison."

"So I am tempted to plead guilty to get help on my human rights issue that is causing me distress as I am a female held in a male prison and need help to get me moved to female prison where I should be located as I am legally recognised as a female."

"I have contacted solicitors who would be able to help secure my human rights, they can't help me unless I am formally convicted as they say as I am unconvicted, I can't access a prison law lawyer who can help me with these serious human rights breach."

Stuart

"I have considered a guilty [plea] but I'm not going to break and hold out as a guilty will definitely put me here to dec 2023 and whatever more I get for the charge."

Dom

"We are forced to plead guilty just so the prosecutor wins the case. If I had pleaded guilty and was sentenced to 5 years imprisonment, I would have been free today. Example: 5 years [sentence] = 2.6 years [in prison]. I then get a 1-year reduction if I declare I will leave the UK. Then there's 1.6 years left – and even if the Court gave me a 15-20% reduction for pleading guilty I would have been out [by now]. But I cannot be tainted for life just to please the prosecutor."

Earl

"I will be on remand 7 months by the time I go on trial. I am pleading not guilty. I am not pleading guilty to crimes I did not commit in order to bring my detention to an end."

"[I] was advised [to] plead guilty now and go jail. Why should I plead guilty for something I did not do."

Keeley

"I did consider pleading guilty to the lesser charge because I was frustrated about being on remand for so long and also fear of not getting to prepare properly for my trial. As getting consultation with my barrister and solicitor was very minimal and at times rushed."

Stanley

"No, but [I] have been considering pleading guilty to something I haven't done just to obtain 'credit' of up to 1/3 off of sentence."

Winston said he had "definitely" considered pleading guilty and he said, *"I probably will"*.

"I feel remand is used as a tool to increase 'conviction' rate as most people get to the 'time served' part and change plea just to get out of this hellhole."

For a previous time spent on remand he said

"I did plead guilty in the end as I was already at time served and I was looking at another 6 months on remand if I maintained a not guilty plea."

Dean described a previous time on remand:

"On a previous case before this ... case I ended up pleading guilty just because if I didn't, I would've spent more time on remand than the Judge would've sentenced me, so I pleaded guilty to get it out of the way even though I was not guilty. I was not prepared to spend 16 months on remand when I was only expecting 8 weeks [as a sentence]."

Conclusion

The accounts and experiences given in these letters paints a harrowing picture of life in pre-trial detention in England and Wales during the pandemic.

People are being held in prison for prolonged periods awaiting trial, with thousands held for more than 8 months, the current legal time limit. Bail is being refused for tenuous reasons, with people held on suspicion of committing further offences despite having previous criminal record, people held as 'flight risks' just because they are foreign nationals despite having close family ties and children in the UK. People are also being held for many months for relatively minor offences, such as drug dealing or theft.

Custody time limits are being extended repeatedly, with Covid-19 still given as a common reason for such extensions, despite being a year and a half on from the start of the pandemic. Many of those held will be found not guilty at trial, and will have served time in prison for offences they may have not committed, or will be held in prison far beyond any sentence. The government must answer for its inaction on pre-trial detention and its repeated failures to get trials heard in a reasonable time.

There are also serious issues of accessing legal advice in prison. Numerous people complained of difficulties speaking to or hearing their lawyers while communicating via videolink, either as a result of connectivity issues or a general difficulty arranging or being brought to videolink discussions promptly by prison authorities. People were also restricted by the format from viewing or discussing key evidence, such as video. Not only does this have serious ramifications for people to receive adequate legal advice and give instructions, possibly infringing their right to a fair trial, it also clearly has a serious impact on people's mental and physical wellbeing, increasing already extremely high levels of stress and anxiety around upcoming trials.

Many of those who wrote to us spoke about pleading guilty to get out of extended remand time, to avoid longer time in prison than they would get even if they were convicted, and several spoke about the pain of wanting to get out but not wanting a criminal record or to plead guilty to something serious that they had not done. This tallies with wider reports, it is a serious issue that must be dealt with urgently by the government, otherwise a fundamental tenet of justice is being undermined.

Further, the accounts given in the letters suggests a considerable mental health crisis in prisons. Many people referenced the uncertainty and feeling of being in limbo, awaiting a trial with no fixed date, or which had been moved so many times they had no idea when they might get their trial or get out. Particularly concerning are the allegations by several people that prison authorities are guilty of a dereliction of their duty to safeguard people suffering serious mental health issues and self-harming.

Solutions

Prosecutions

During the lockdown, the CPS announced that it would bring fewer prosecutions, prioritising the most serious cases, putting on hold 'lower priority' cases and using out of court disposals (cautions).⁶⁰ This approach to prosecutions, if implemented effectively, will no doubt play a crucial role in reducing the backlog.

However, it should also be considered as a part of a longer-term plan for criminal justice which will continue beyond the duration of the pandemic, reducing the numbers of people in the criminal justice system, reducing the numbers of people held in pre-trial detention and in prisons, and reducing the likelihood of future court capacity challenges.

Pre-trial detention

Pre-trial detention must only be used as a last resort in any conditions, but especially given the extremely punitive nature of remand during the pandemic.

There must be consideration of some of the reasons given for justifying pre-trial detention, and there must be much more stringent judicial reviews of Crown Prosecution Service applications for people to be remanded in custody. This includes an end to the routine detention of foreign nationals due to discriminatory perceptions of being 'flight risks', people with no criminal records held on suspicion of committing further offences, and where people are held due to charges of serious offences when there is no evidence that person poses any danger to the public or themselves if released.

The European Court of Human Rights (ECtHR) has outlined the lawful grounds for ordering pre-trial detention to be: (1) the risk that the suspect will fail to appear for trial; (2) the risk the suspect will spoil evidence or intimidate witnesses; or (3) the risk that the suspect will commit further offences.⁶¹

The mere fact of having allegedly committed an offence is not a sufficient reason for ordering pre-trial detention, no matter how serious the offence and the strength of the evidence against the suspect.⁶² Pre-trial detention cannot be extended just because the judge expects a custodial sentence at trial.⁶³ With regard to flight risk, the ECtHR has clarified that neither the lack of fixed residence nor the risk of facing long-term imprisonment if convicted can alone justify ordering pre-trial detention. The risk of reoffending can only justify pre-trial detention if there is actual evidence of the definite risk of reoffending available; merely a lack of job or local family ties would be insufficient.⁶⁴

⁶⁰ Crown Prosecution Service, 'Prosecutors to prioritise serious cases to manage impact of coronavirus pandemic', 14 April 2020. <https://www.cps.gov.uk/cps/news/prosecutors-prioritise-serious-cases-manage-impact-coronavirus-pandemic>

⁶¹ Fair Trials, 'A Measure of Last Resort? The practice of pre-trial detention decision making in the EU', 26 May 2016. https://www.fairtrials.org/sites/default/files/publication_pdf/A-Measure-of-Last-Resort-Full-Version.pdf

⁶² Tomasi v France, App 12850/87, 27 August 1992, para 102.

⁶³ Michalko v. Slovakia, App 35377/05, 21 December 2010, para 149

⁶⁴ Ed Cape and T Smith (n16)

Custody time limits

In April 2020, the government announced that 4,000 ‘low-risk’ prisoners would be temporarily released to control the spread of COVID-19,⁶⁵ but this did not appear to include any of the thousands of people held in prison awaiting trial. Instead, later that year in September, the government extended the custody time limit from 6 to 8 months.

The increase of the custody time limit is a counter-productive response to the current challenges faced by the criminal justice system in England and Wales. It gives legal legitimacy to the failings of the criminal justice system, normalises excessive deprivations of liberty, and further undermines the presumption of innocence. Legalising lengthy pre-trial detention ignores its underlying causes, and it is only likely to worsen delays in criminal proceedings, given that this is likely to reduce incentives for courts to prioritise and expedite cases of defendants in custody.

Although this has been described as a ‘temporary’ measure, the current court capacity challenges are likely to be a long-term challenge, and we are extremely concerned that lengthier criminal proceedings, and therefore lengthy periods of pre-trial detention, could quickly become a norm that is difficult to reverse. Defendants should not be held in punitive detention settings on account of administrative failures and underfunding.

The pandemic can no longer be considered an ‘exceptional’ circumstance for extending custody time limits. The government has been aware of the pandemic since March 2020, and has now had more than a year to bring in measures to address its impact on the justice system. This was identified by a Crown Court judge in July 2020, who refused to extend an individual’s custody time limit for a third time despite routine extensions by other judges using COVID-19 as an excuse. He stated that the lack of available courtrooms or money provided by the government and the resulting delays in bringing cases to trial were not a good enough reason to deprive someone of their liberty and extend their custody time limit for what was a third time.⁶⁶ The same judge refused a further custody time limit extension in another case where a defendant had already been held in custody for 10 and a half months – more than 4 months longer than the legal custody time limit.⁶⁷ Concerningly, he also alleged that there had been judicial interference and pressure to grant custody time limit extensions. He was subsequently removed from dealing with custody time limit hearings.⁶⁸ A letter from Fair Trials in December 2020 to the Senior Presiding Judge requesting a response to this allegation and the reasons for the judge’s removal went unanswered.

Not only should the custody time limit be reduced to at least the pre-pandemic legal limit of 6 months, but there is also case to be made for it to be reduced further. In a significant criticism of the current situation, Sir Tom Winsor, HM Inspectorate of Constabulary recommended in January

⁶⁵ The Guardian, ‘Up to 4,000 inmates to be temporarily released in England and Wales’, 4 April 2020. <https://www.theguardian.com/society/2020/apr/04/up-to-4000-inmates-to-be-temporarily-released-in-england-and-wales>

⁶⁶ *R v Graham*, Woolwich Crown Court, 22 July 2020 (Unreported).

⁶⁷ BBC News, ‘Judge makes formal complaint over Covid custody waits’, 11 September 2020. <https://www.bbc.co.uk/news/uk-england-london-54109098>

⁶⁸ The Times, ‘Campaigners: we will take action over custody limits’, 24 September 2020. <https://www.thetimes.co.uk/edition/law/campaigners-we-will-take-action-over-custody-limits-gdtdgfsly>; The Guardian, ‘Judge refuses to stand aside amid row over UK Covid trial delays’, 18 September 2020. <https://www.theguardian.com/law/2020/sep/18/judge-refuses-to-stand-aside-amid-row-over-uk-covid-trial-delays>

2021 that the current custody time limit in England and Wales be reduced to below pre-pandemic limits to match that in Scotland:

*“In Scotland, we have had the 110-day rule, which can be extended to 140 days. It is to be recommended in England because it concentrates the mind enormously, but it requires investment”.*⁶⁹

Recommendations

- 1) Pre-trial detention must only be used as a true last resort, and in line with international legal standards. Defendants who pose no or minimal danger to the public or themselves must be released on bail pending trial. Foreign nationals must not be held as ‘flight risks’ unless there is evidence that they pose a genuine flight risk. People must not be held on suspicion of committing further offences unless there is evidence that they may commit further offences.
- 2) Custody time limits should be reduced as soon as possible to pre-pandemic limits – at the very least. The temporary extension of custody time limits from 6 to 8 months via the Prosecution of Offences (Custody Time Limits) (Coronavirus) (Amendment) Regulations 2020 must not be renewed on its expiry on 28th June 2021.
- 3) The government must implement long-term structural solutions to address caseloads, and numbers of people in the criminal justice system, including by ‘de-prioritising’ and ultimately reducing prosecutions for non-violent and less-serious offences, as occurred during the first lockdown in April 2020.
- 4) The government must increase funding to the justice system, and in particular, the courts, as a matter of emergency to reduce the backlog of cases. This includes the use of temporary court facilities.
- 5) Current temporary restrictions in prisons should be removed as soon as possible and should not be continued beyond the pandemic.

⁶⁹ Sir Tom Winsor speaking at a Justice Committee evidence session, 19 January 2021 (at 15.23.30).
<https://parliamentlive.tv/event/index/cc4fa6fe-627f-45ac-9cf9-08a337ff7c4d>

Annex: Methodology

We placed an advert in the March 2021 edition of Inside Time, the full text of which is below. We received 23 letters in response, the majority from people currently on remand, but several from convicted prisoners who had recently or previously served time on remand.

We asked for and received the full written consent of all those who wrote to us, for their responses to be published. Although many said they were happy to be identified, we took the decision to anonymise all responses, and to remove potentially identifying details and information, in order not to prejudice their upcoming trial, or in some cases, for their own protection.

Advert

Below is the full text of the advert Fair Trials put in Inside Time in March 2021.

ARE YOU ON REMAND AWAITING TRIAL?

Fair Trials is looking for people to share their experiences of being held on remand awaiting trial during the pandemic.

Fair Trials is a human rights charity campaigning to reduce extensive remand custody while awaiting trial and improve access to legal advice. We aren't able to give people individual legal advice or assistance with their cases, but we want people to write to us about their experience of remand:

1. How long have you been held in prison waiting for your trial?
2. Have you been given a release date or trial date?
3. Have you applied for bail? What was the outcome and the reasons given?
4. What have you been charged with? (*Only if you're willing to share*).
5. Have you considered pleading guilty in order to get out of extended remand while awaiting trial?
6. What has been your experience of receiving legal advice during the pandemic, either in police custody or prison? Did you receive it in person or via video or phone, and if video or phone, were there any issues?
7. What have the conditions been where you have been held? (*e.g how long have you been held in your cell per day, how many times a week have you been allowed out to exercise, contact family and friends or shower?*)



8. What has been the impact of your time in custody awaiting trial? How has it impacted your mental or physical well-being?
9. Are you willing for us to publish your responses (Yes/Anonymous only/No)
10. Are you willing for us to contact you about your responses? If yes, let us know your contact details.
11. What's your name, age and gender? (*Just leave blank if you don't want to share this*)

Please address your answers to: Fair Trials, 5 Castle Road, London, NW1 8PR