



HAS GAUKE DONE ENOUGH TO SOLVE THE PRISON CRISIS?

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Abstract

The Gauke review was primarily commissioned in response to a crisis in prison capacity. Despite a series of emergency measures to reduce demand for prison places and a planned increase in the supply of those places, the incoming Labour government recognised that future sustainability required a recalibration if not of sentencing, then at least of the way sentences are implemented.

This paper considers the extent to which the review's core recommendations and the measures proposed in the government's response are likely to bring about long-term sustainability and efficiency.

It will examine

- the credibility of the impacts on prison numbers made for the four of Gauke's five core recommendations accepted by the government; the reduction of short sentences, extended scope of suspended sentences, earned release provisions and a new model for recall and
- the extent to which the current supply of prison places can be maintained and expanded to the required level.

It concludes with suggestions about further steps which could be taken to limit the growth of prison numbers and enable investment in more constructive ways of preventing and responding to crime.

Keywords: Gauke, prison, sentencing; early release, probation.

Introduction

In its 2024 election manifesto, under a section entitled *A justice system that puts victims first*, the Labour Party promised to 'carry out a review of sentencing to ensure it is brought up to date' (Labour Party, 2024). But the real driver of the Gauke review was not a desire

for modernisation but the need to address the urgent lack of custodial capacity to meet current and projected demand, something described by incoming Justice Secretary Shabana Mahmood as ‘a prison system in crisis, moments from catastrophic disaster’ (Mahmood, 2024a).

When introducing emergency early release measures to avert that disaster, Mahmood confirmed a commitment to longer-term reform and cutting reoffending, and that a forthcoming review would make sure ‘our sentencing is consistent and coherent, and that our sentences do actually work’ (Ibid).

It was only when the Independent Sentencing Review (ISR) was announced in October 2024 that its primary purpose was revealed – ‘ensuring we never run out of prison places again’ (Mahmood, 2024b). Injecting a rare dose of realism into penal policy, the Justice Secretary told MPs that despite the creation of 14,000 new prison places, ‘we cannot build our way out of this crisis. However fast we build, increasing demand will outstrip supply’.

The total adult prison population - 87,294 on 6 October 2025 - is projected to increase steadily to reach between 97,300 and 112,300 prisoners by November 2032, with a central estimate of 104,100 (MoJ, 2024b). The prison expansion programme aims to produce a usable capacity of about 99,000 by 2032 (MoJ, 2024a). To meet the clear objective of balancing supply of and demand for prison places, the ISR was advised that ‘that aiming to reduce demand by 9,500 prison places would help ensure there were sufficient places for the most serious offenders’ (ISR, 2025a).

The final report of the Gauke review, published in May 2025, proposed five core recommendations designed to reduce prison numbers to meet that requirement (ISR, 2025b). Gauke estimated that the combined effect of these would be to reduce the prison population by 9,800. His report also contained a number of other proposals that might lead to reductions in prison numbers but unlike the core recommendations the effects were not specified. Even for the core recommendations, the review provided no details about how the estimated effects had been calculated and failed to indicate over what timescale the reductions would take effect. This is important given the short period in which the demand for prison places is projected to exceed demand, perhaps as early as 2026 (PAC, 2025).

Four of Gauke’s five core recommendations have in large part been accepted by the Government and are contained in a Sentencing Bill published in July 2025 and whose Second Reading was held on 16 September 2025. The Bill’s Impact Assessment (IA) provides lower estimates for the deflationary effects of the Gauke proposals on prison numbers than did the ISR. This reflects the outright rejection of one recommendation - an ‘earned progression’ model for those serving Extended Determinate Sentences (EDS) - and modifications to others. The best estimate for prison place impacts of the Bill’s measures is 7,500 although this figure includes the impact of measures designed to reduce the use of custodial remand which did not emerge directly from the ISR (MoJ, 2025a).

Before assessing these, it is worth noting that the ISR did not consider all of the ways in which pressures on the prison population might be reduced.

First, although the ISR was intended to be a comprehensive re-evaluation of the sentencing framework, arrangements for young people under 18, wholesale reform of sentences for murder and the management of Imprisonment for Public Protection (IPP) were excluded from its scope.

Of these perhaps the most significant in terms of impact on the prison population, albeit indirectly, is the murder sentencing framework. In his preliminary report on sentencing trends, the Gauke review identified the principal cause of the increasing prison population 'is that prison sentences have been lengthened substantially by successive governments' (ISR, 2025b). In particular, it concluded that the introduction of statutory starting points for minimum terms for offenders convicted of murder 'had an impact on wider sentencing and the prison population more broadly, subsequently inflating sentence lengths for other serious offences' (ibid). Gauke's terms of references did permit him to consider the impact of sentencing for murder on the wider sentencing framework, but other than recommending that the Law Commission should look at the minimum sentence tariffs for murder, the final report did not propose ways of limiting the effects of increasing sentence lengths for murder on other offences in order to put a brake on sentence inflation.

Indeed, more generally, Gauke's final report and proposals shied away from addressing head on the reduction of the length of sentences imposed by the courts for example by reducing maximum penalties, or recalibrating sentencing guidelines. Nor did the review make recommendations to remove the minimum sentences for certain offences or the requirements on courts to treat previous convictions as aggravating factors, both of which have contributed to making sentences more severe. Gauke suggests that maximum and minimum penalties should be looked at, but his review itself does little to address the rampant sentence inflation which the first part of his review identified as the main cause of the capacity crisis.

Instead, the review concentrates on how prison sentences are implemented, proposing much greater use of suspension of prison terms so that they are served in the community; a structure for most prison sentences which involves shorter periods in custody; and limitations to the use of imprisonment as a response to failures to comply with post release supervision. While these may prove useful ways of reducing the numbers in prison in the short to medium term, they do not necessarily provide the basis for a proportionate, transparent, and sustainable sentencing framework suitable for a modern liberal democratic state.

This article starts by discussing each of the Gauke proposals which are designed to reduce prison numbers before addressing the overall impact they are likely to have on demand for prison. It continues with an assessment of the supply side of the equation- how more prison places are being created - before concluding with some observations about what further action might be needed to restrain the use of prison in an unpromising political climate.

The Gauke Proposals

a) Reducing Short Sentences

The first of Gauke's proposals to reduce reliance on custody is for legislation to ensure short custodial sentences are only used in exceptional circumstances. The term appears to mean sentences of less than 12 months. These are estimated by Gauke to save 'around' 2,000 prison places.

The Sentencing Bill 2025 seeks to give effect to this proposal by introducing a presumption for courts to suspend short custodial sentences of 12 months or less unless the offender breaches any order of the court or where there is a significant risk of harm to an individual. Courts will also be able to determine where there are exceptional circumstances that do not justify a suspended sentence order, and where this is the case, will retain discretion to impose a sentence of immediate custody.

The IA estimates a saving of 1,800 prison places - slightly less than Gauke despite the Bill's cohort including sentences of 12 months (not just those under 12 months) (MoJ, 2025a). Moreover as the IA says, judicial discretion means there is a high level of uncertainty on estimated impacts. Breach rates are highly uncertain too so 'the figures may be an overestimate of prison savings' (ibid).

A much more detailed impact assessment produced in 2023 when the previous Conservative government introduced a virtually identical proposal in the Sentencing Bill 2023 estimated a much more modest reduction of between 200 and 1,000 places depending on the proportion of offenders deemed unsuitable for a suspended sentence, the numbers who breach and have the custodial term activated and the degree of 'up-tariffing', where courts impose sentences of longer than 12 months to circumvent the presumption (MoJ, 2023).

Evidence from Scotland, where a presumption against short sentences was extended from three-month terms to 12 months in 2019 suggests that its effect has been more modest than expected. Despite the presumption, in 2023, 73% of custodial sentences were for 12 months or less (Scottish Government 2025). One former director of the Scottish Prison Service concluded that the presumption was failing (McCurdy, 2025). In the light of the earlier impact assessment and the Scottish experience, the prison place savings from this core proposal look somewhat optimistic.

b) Extending the Scope of Suspended Sentences

The Gauke review also recommended an extension to the upper limit of Suspended Sentence Orders from custodial sentences of two years to three, estimated to produce a reduction of 1,300 prison places (MoJ, 2025a). The IA in the Sentencing Bill estimates a slightly lower figure of 1,200 but does not provide a methodology. All will depend on the decision making of the judiciary and the proportion of offenders who breach their orders. It is possible that the requirement on courts to suspend most of the shortest sentences may make them reluctant to do so for even longer ones; that offenders whose offending merits sentences of between two and three years may be more likely to have a history of poor compliance with court orders or present a risk thereby making it inappropriate to suspend their sentence; and be more likely to breach the suspended sentence order than those with shorter sentences. The level of uncertainty here must be very high.

A recent academic review found little current research on suspended sentences and that more is clearly needed (Curzon and Roberts, 2021). In particular, it saw merit in exploring the limits of public support for, or acceptance of a suspended sentence as an alternative to an immediate sentence of imprisonment. Curzon and Roberts suggested that if suspended sentences in England and Wales are associated with preventing justice – by failing to impose an appropriate level of punishment – ‘the courts may be viewed as *disingenuous or fraudulent*, saying they will impose a sentence of imprisonment whilst letting the offender return to the community’ (Ibid). If this proves to be the case, the estimated reduction in prison places may turn out to be optimistic.

c) Earned Progression to Earlier Release

Perhaps Gauke’s key recommendation is the introduction of an *earned progression model* for those serving standard determinate prison sentences (SDS). The review estimated that 4,100 prison places could be saved - easily the largest impact of any of his proposals. The model structures prison sentences into three segments - the first in prison, second under supervision in the community (generally with electronic monitoring) and third at risk of recall in the event of further offending.

The reduction in prison places comes from the proposal that most offenders currently released at the 50% or 40% point would in the future be released at the one third point (with all released by the 50% point). Most of those sexual and violent offenders currently released after serving two thirds would be released at the halfway mark and all by two thirds.

As for the *earning* element, Gauke proposed that the release point would be pushed back following non-compliance with prison rules, and envisaged that the offender engage in available work, education, and treatment, implying that this should be taken into account in decisions about early release.

The government accepted the bulk of what they called the review’s ‘central recommendation’, with some important modifications (Mahmood, 2025). There is no upper limit for release so theoretically very badly behaved prisoners could serve their whole term in prison.

On the other hand, the criteria for compliance in the Bill are less demanding than the review’s. Release points will be pushed back only when an offender seriously breaches prison rules, if an independent adjudicator imposes additional custodial days. Although the Government have announced that the maximum number of days that can be added for each adjudication is being doubled from 42 to 84, the percentage of disciplinary breaches dealt with in this way is small. There were 71,625 adjudication outcomes between January and March 2025 with additional days awarded as punishment on 1,683 occasions (HMPPS, 2025a).

Gauke proposed that offences against discipline such as engaging in any threatening, abusive or violent behaviour and possessing unauthorised articles would result in the offender’s release point being pushed back. Current prison policy is that threatening, abusive or insulting words or behaviour should not be referred to an independent

adjudicator unless there are aggravating factors (HMPPS, 2025b). Moreover in some prisons the adjudication system is in disarray with inspectors reporting last year that 'at Wandsworth, Garth and Manchester hundreds of adjudications were outstanding, including some for very serious offences' (HMIP, 2025). It is not clear whether the government's promise to 'introduce a tougher adjudication regime so that bad behaviour in prisons is properly punished' will make any changes other than to the maximum number of added days (MoJ, 2025d). The Howard League is concerned that 'if additional days become the default mechanism in enforcing an earned progression model in prisons, then their use - already rising - would increase dramatically in short order' (Howard League, 2025).

The Sentencing Bill IA estimates a saving of 3,600 prison places, 500 fewer than Gauke, presumably reflecting the proposed doubling of the added days, but the IA makes the obvious point that 'if the proportion of offenders meeting earned release is different, the demand reduction impacts will vary'. It also assumes that sentencers may increase the length of some SDS sentences to provide a longer spell served in custody, and that a small proportion of SDS offenders formerly released at the two thirds point would be sentenced to an Extended Determinate Sentence (EDS), a sentence for offenders posing a significant risk of serious harm, release from which is decided by the Parole Board.

The Government rejected Gauke's proposal for an analogous progression scheme for EDS prisoners, which would enable them to earn a parole hearing earlier than the current two thirds point. The review estimated this would save 600 prison places.

This simpler system would replace the complex current arrangements by which release can take place at the 40%, 50% or 66% point depending on the nature of the offence - or earlier if the offender is eligible for Home Detention Curfew. But it is in effect a replacement of the temporary SDS40 scheme allowing eligible prisoners to be released after 40% rather than 50% with a permanent SDS33. In a private communication, a senior official described the earned release model as 'smoke and mirrors' (HMPPS, 2025c).

d) Recall Prisoners

The review recommended a new model for recalling to prison those serving standard determinate sentences who having been released into the community fail to comply with their licence conditions. The numbers of people in prison having been recalled more than doubled from 6,300 in 2018 to 13,500 in March 2025 although fell slightly to 12,657 in September 2025 (HMPPS, 2025d).

Gauke proposed that recalls to prison are used only to address consistent non-compliance with licence conditions or specific and imminent risk. The review also proposed a Fixed Term Recall period of 56 days which would for the vast majority of offenders replace both the current short-term recall periods of 14 or 28 days, and the standard recall for SDS under which they can serve the remainder of their sentence in custody unless they are released by the Parole Board. These changes were estimated to save 2,300 prison places.

As with the SDS early release proposals, the legislation contains some tweaks to the policy by retaining standard recall for certain categories of high-risk offender and those recalled having been charged with a new offence. The Bill also gives a power to the Secretary of

State to transfer to a standard recall a prisoner they believe would pose a significant risk to members of the public of serious harm occasioned by the commission of murder or certain specified violent, sexual, national security or terrorist offences. Gauke envisaged such a power being used exceptionally but it is possible that the Ministry of Justice consider it could be used more widely. That could be one reason why the Bill's IA estimates a reduction of just 900 prison places, 1400 fewer than the review's. Another may be the calculation that recalls may increase under the progression model, which will see many more offenders subject to electronic monitoring following release.

e) Other Proposals

In addition to these core recommendations which include estimates of how much they will reduce the prison population, a number of other proposals in the ISR could have should have a downward effect on prison numbers.

Such an effect is most certain to result from Gauke's call to facilitate the earlier removal of Foreign National Offenders (FNOs). Within a month of Gauke's report, the Government tabled legislation to FNO's to be removed up to four years before the earliest release point of their sentence, subject to having served 30% of the requisite custodial period of their sentence. Although no impact assessment was prepared, the MoJ say that 'reduction in demand for prison places is dependent upon the number of removals made per year. If, for example, there were 2,000 removals we would expect prison place demand to reduce by 350 to 500 places under this measure' (MoJ, 2025c). The measure - the first of Gauke's proposal to take effect was approved in September 2025.

Gauke also recommended an increased use of Early Release on compassionate grounds for suitable older offenders although it is not clear if this has been accepted, nor what numbers are likely to be involved.

A suite of other proposals seem less certain to impact on the prison population although if carefully implemented could do so. These include Gauke's recommendation for a greater use of deferred sentences, and his proposals to strengthen alternatives to custody in the community. He cites evidence from a process evaluation of Intensive Supervision Courts (ISC) that found most people sent to the ISCs (41 out of 63) would have otherwise received a custodial sentence. But there is limited evidence that tougher community sentences including bans from pubs sports or other activities will lead either to greater diversion from custody or less re-offending.

A more restrictive approach to community supervision designed to build public confidence could reduce its potential for reform and increase rates of non-compliance. The Chief Inspector of Probation has said that government plans to provide probation practitioners with a legal power to take and publish the names and photographs of individuals subject to an unpaid work requirement 'could act as a disincentive to rehabilitation and some may refuse to turn up' (Syal, 2025).

However there seems a good deal of merit in providing more sustainable and long-term funding to Women's Centres and ensuring female offenders receive appropriate support by expanding the use of liaison and diversion; in increasing accessibility to treatment for

offenders with substance misuse or mental health issues; and in investing substantially in the Probation Service and third sector partners. Quantifying the extent to which these initiatives will lead to reductions in the prison population, if at all, is almost impossible.

Overall impact on demand for prison places

As it is, the impact of Gauke's measures which have made it into the Sentencing Bill – a 7,500 reduction in prison places (including non-Gauke remand measures) are highly uncertain. They rely on assumptions about the behaviour on the one hand of defendants and offenders and on the other of criminal justice actors - police, prosecutors, courts, probation and prison staff. The most certain impact is from the so-called progression model which is to a large degree under the control of the Prison Service.

They also assume that the measures in the Bill will remain unamended during its passage through parliament. While the Labour Party has a majority to ensure that it does so it is possible that concessions may need to be made to expedite the Bill's progress. Amendments have been tabled which would limit cases where the presumption to suspend sentences should apply or to make the requirements to earn release more demanding. The House of Commons Justice Committee, with a Labour majority wrote to the then Justice Secretary in July 2025 expressing concern about the significant public protection implications arising from the introduction of a 56-day fixed term recall as proposed by the ISR (Justice Committee, 2025).

There are also questions about timing - when the bill becomes law, and when its provisions are commenced, bearing in mind the need for training for stakeholders - and about the transitional arrangements.

Will for example the SDS33 progression model apply to existing prisoners whose compliance with prison rules will retrospectively be taken account of? If so, that would mean potentially large numbers of prisoners who have served more than a third of their sentence being released at one time. That might be good - essential even - for the prison service but extremely demanding on the probation service and providers of electronic monitoring. Indeed, in respect of the Bill as a whole, the Probation Institute which provides professional leadership to probation workers finds it 'difficult to envisage a scenario in which effective supervision can be carried out, given the current strains on probation staff' (Probation Institute, 2025). The institute also has concerns that the Bill presents a picture of justice which is punitive, stigmatising and discriminatory, and which may only serve to further diminish real opportunities for effective rehabilitation (Ibid).

Uncertain too of course are the projections about the likely trends in the prison population without the Gauke measures. The 2024 Annual Statement on Prison Capacity which projects the population reaching between 97,300 and 112,300 prisoners by November 2032 with a central estimate of 104,100 says 'it is entirely possible that the reality may lie outside of this range' (MoJ, 2024b). Figure 1 shows simplified data from the MoJ's 2024 Annual Statement on Prison Capacity and suggests without remedial action demand would outstrip supply as soon as 2026. In fact, in May 2025, the Justice secretary was forced to take further short-term measures because the adult male estate 'will hit zero capacity - entirely run out of prison places - by November 2025' (Mahmood, 2025b).

14-day fixed term recalls, previously used for most offenders serving less than 12 months who breached their licence was extended to those serving up to 4 years. The MoJ estimated that this would over time lead to a reduction in demand for prison places of about 1,400 (MoJ, 2025b). As noted above, the Early Removal Scheme for Foreign National Offenders has also been extended.

The 2025 prison capacity statement due in December 2025, will no doubt provide an updated picture which takes account of these changes, but it seems likely that the pressure will be such that the Sentencing Bill's provisions need to be in force as soon as possible if they are to avert the continuing need for emergency measures.

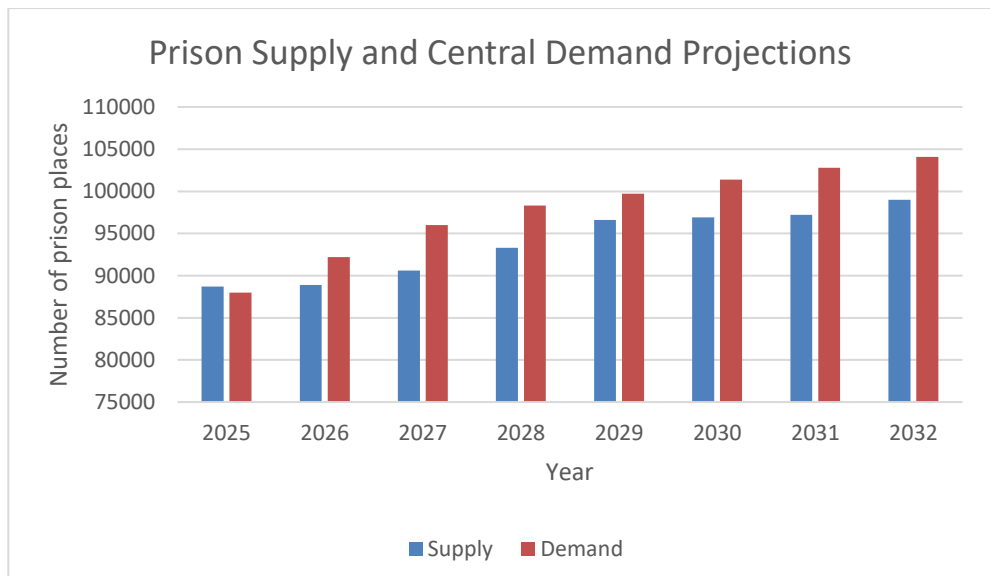


Figure 1: Prison supply and central demand projections (MoJ, 2024)

Supply of Prison Places

The demand reduction measures in the ISR and Sentencing Bill sit alongside a major programme of prison expansion designed to provide the supply needed to avoid further crises of the kind faced by the incoming government. Almost all of the programme was developed under the previous government, but the Labour administration is promising to ensure its delivery, with annual updates on progress to Parliament.

The 2025 Spending Review is providing £7 billion from 2024/25 to 2029/30 for the MoJ to build 14,000 new prison places but the Ministry of Justice claims to be planning a total of 15,100 places to provide a contingency: 6,500 places in four new prisons, 6,400 in new houseblocks in existing prisons, 1,050 in Rapid Deployment Cells and 1,150 in refurbished cells (MoJ, 2024b).

The contingency is necessary because as the MoJ put it 'large infrastructure projects come with inherent risks, including ground conditions, planning permission and construction

market stability. In some cases, this can result in projects becoming undeliverable or delayed' (MoJ, 2024b).

As it is, the National Infrastructure and Service Transformation Authority has given a delivery confidence rating of red to three components of the prison expansion programme - the House blocks and Refurbishments Programme, Category D (Open Prison Programme) and Small Secure Houseblock project. A red rating means 'successful delivery of the project appears to be unachievable. There are major issues with project definition, schedule, budget, quality and/or benefits delivery, which at this stage do not appear to be manageable or resolvable. The project may need re-scoping and/or its overall viability reassessed' (Nista, 2025).

The red rating for the first two of the components is primarily due to key suppliers, construction companies ISG and ESS entering administration. The MoJ confirm that around 3,700 places across 16 projects in the prison build programmes have been impacted by the collapse delaying the schedule by up to 18 months. The problem for the third relates to challenges with construction costs that require further review.

The ISG collapse has also affected fire safety improvement projects on around 4,000 prison places. 21,000 currently occupied prison places - almost one in four - do not meet the current fire safety standards. HMPPS has agreed with the Crown Premises Fire Safety Inspectorate that all cells will comply by the end of 2027 and those that do not will be used. HMPPS currently estimate that 6,000 cells will not be compliant by that date but there must be a risk that the number will grow. It is hard to see how there will be sufficient capacity within the system at that stage to take all of those cells out of action (Copple, 2025).

The 2024 prison capacity statement also makes clear that 'it is inevitable that current plans will change to reflect operational realities' (MoJ, 2025b). Nor does the supply line reflect the risk of unpredictable major shocks to supply, such as places lost to disorder or temporary losses for other operational reasons. Despite new Justice Secretary being confident that 'we're on track for 14,000 extra prison places by 2031' with funds for new prisons only assured until 2029, there must be some considerable doubt as to whether 99,000 prison places will be available for use by the early 2030s (Lammy, 2025).

Conclusions

In a scathing report on Prison Estate Capacity early in 2025, the Public Accounts Committee concluded that 'to prevent it running out of prison places early next year, HM Prison and Probation Service (HMPPS) is relying entirely on uncertain future changes to how sentencing works. These will be laid out in the Sentencing Review in late spring, with HMPPS further assuming any required changes in the law could be introduced very quickly' (PAC 2025).

While the Sentencing Review and subsequent legislation will undoubtedly drive down demand for prison places to some extent, it is still not clear by how much or by when. Much of the effect will be achieved through the so-called progression model which in practice will mean that most prisoners will serve no more than a third of their prison sentence in custody.

The 7,500 reduction estimated in the Bill looks optimistic and in order to avoid additional deflationary measures, the government will be hoping for population projections to reflect a low rather than medium or high scenario. Yet their commitment to reverse 'plummeting charge and prosecution rates' could lead to a higher proportion of crimes being solved producing more defendants and prisoners pushing projections towards the higher end (Labour 2024). The National Police Chiefs Council has reportedly estimated that crime may rise by 6% in a year as a result of the Sentencing Bill's provisions (Dodd 2025).

Given the time and terms of reference, David Gauke's sentencing review has done a workmanlike job in crafting fixes for the capacity crisis centred on a saleable but somewhat deceptive vision of earned release.

What he has failed to do with sufficient vigour is open-up a more fundamental debate about the most effective ways to deal with offenders. He might have highlighted more starkly the financial, social and ethical costs of imprisonment and the need for some at least of the billions being spent on them to fund other institutional and community-based responses instead. On the positive side, he has recommended the need for further work to review offences such as drug related crimes which may benefit from a re-evaluation of maximum penalties; and an external advisory body to ensure that successive governments remain focused on maintaining a sustainable approach to custody.

He might have argued, as Ann Owers has in her own review of handling the capacity crisis proposals for local multi-disciplinary management of offenders, modelled on youth justice, and improved addiction, health, housing, and employment services (Owers, 2025). He might have sought to strengthen the role of the Sentencing Council plays in balancing supply and demand for prison places.

The Council reports each year on how changing sentencing practice impacts on prison, probation and youth justice services; and on how *non-sentencing factors* such as the numbers in court, and release and recall decisions affect the resources needed to implement sentences. This has been a watchdog that never barked if ever there was one. It should be urged to use its vocal chords and even be given some teeth. Instead ironically the Bill which will enacts many of his proposals also seeks to subject the Sentencing Council to political control. That does not bode well for the future direction of sentencing.

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