

The State of

JUSTICE

in the United Kingdom in 2020:

A PRE-BUDGET REPORT CARD

Labour Shadow Treasury Team
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1. A DECADE OF DECLINE IN JUSTICE

- Ten years of Tory gutting of the justice system has left people less safe than in 2010, and has left a system in crisis
- The part privatisation of probation showed that Conservative governments' approach to justice has been erratic and ill-judged
- The prison system has been pushed to breaking point through under-resourcing, with widespread violence and evidence of radicalisation in prison
- Legal aid and the courts have been decimated by cuts, undermining access to justice

The Scale of the Cuts and Reforms of Recent Years

Justice has faced some of the most significant cuts of any part of the civil service, despite its significance for our health as a society.

By 2019-20 the Ministry of Justice budget was 25% lower than in 2010-11.ⁱ

The Treasury has had to dip into its reserve several times in recent years because assumptions made in the 2015 Spending Review have not turned out to be true, and operational challenges have been greater than expected.ⁱⁱ

In prisons, the resource DEL budget fell by 13% in real terms between 2010-11 and 2018-19. The annual capital DEL budget fell by an extraordinary 80% in real terms between 2010-11 and 2015-16.ⁱⁱⁱ

In probation, the system was part-privatised in 2013-2014: the public sector continued to manage high-risk offenders and provided court services, while 'Community Rehabilitation Companies' managed low and medium-risk offenders.

This proved to be disastrous and a decision was made in 2019 to end private probation contracts two years early and bring all offender management activities back in-house. The Public Accounts Committee said that privatisation "left probation services underfunded, fragile, and lacking the confidence of the courts"; as a result, "probation services have been left in a worse position than they were in before the Ministry embarked on its reforms." The Ministry's decision to terminate contracts in

December 2020 cost the taxpayer at least £467 million, and further costs were shunted elsewhere in the system.^{iv}

The courts have also been decimated. In the first five years of austerity, between 2010-11 and 2015-16, the courts' service annual resource DEL reduced by around 30%.^v 300 court facilities were closed over this same period, reducing the justice infrastructure available to the public. Legal aid has been slashed at the time, with 2012 reforms restricting most legal aid in civil cases.

The Human Cost of Cuts to Justice

The story of the cuts in terms of numbers is shocking enough. But there has been a huge human cost that is not captured by numbers alone.

In prisons, the Institute for Government described in 2019 "a dramatic deterioration in standards across prisons since 2009/10". The Institute reported a "sharp rise in deaths, violence, self-harm, poor behaviour and drug use – as well as a drop-off in efforts to rehabilitate prisoners", all of which could "be linked to the cuts in government spending on prisons, and a fall in the number of prison officers."

Prisoner-on-prisoner assaults more than doubled from 11,892 in 2009/10 to 24,541 in 2018/19. Self-harm incidents more than doubled, from 24,964 in 2009/10 to 57,968.^{vi} Between 2015 and 2018 alone, among adult prisoners, there was a 110% increase in prisoner assaults on staff, a 63% increase in prisoner-on-prisoner assaults, and a 73% increase in self-harm incidents.^{vii} Put another way, prisons have become more violent – and self-harm and suicide attempts have become more common – during this period of vicious cuts.^{viii}

The Chief Inspector of Prisons said in his 2019 report: "The recent history of many prisons in England and Wales has been deeply troubling." He described "[s]taff shortages ... so acute that risks to both prisoners and staff were often severe", so that "levels of all types of violence had soared." Describing particular examples, he noted that at HMP Birmingham a prisoner formally assessed as vulnerable "was in a filthy, flooded cell which had the blood of another prisoner on the floor." The report reviewed the availability of "purposeful activity" and recorded that only in a third of adult male prisons inspected was purposeful activity (including education, work or training) judged to be good or reasonably good.^{ix}

All of this has contributed to a large-scale loss of faith in the criminal justice system, including on the part of victims. A suspect is now charged in just 8% of crimes in England and Wales, a 2019 figure down from 9% the year before. It has been suggested that reduced reporting of crimes is at least in part because of a view that the police are overstretched and will not bring individuals to justice.^x

Justice cannot be served in these circumstances. Justice, in short, is in decline.

2. HOW THE BUDGET PAVES THE WAY FOR A DECADE OF DISAPPOINTMENT

- The Tories have used ‘tough on crime’ rhetoric, promising longer sentences and an end to ‘automatic halfway release’ as well as more prison places, and longer sentences for terrorist offences
- But they have not set out a comprehensive plan to reverse cuts to justice and seem to be planning to load more responsibilities on a strained justice system without necessary funding – a recipe for disaster and disappointment

The Direction of the Conservative Party on Justice Policy

The Conservative Party 2019 manifesto committed to ending ‘automatic halfway release’ for serious crimes, expanding electronic tagging, and adding 10,000 more prison places. The direction of travel was clear. Despite more rehabilitative rhetoric in recent years, the Johnson-led administration has flagged that it will adopt a punitive approach, reliant on incarceration as a response to social harm.

There is limited evidence that this will make the public safer. The Government’s own evidence shows that there would be tens of thousands fewer crimes committed each year if ineffective short prison sentences for less serious offences were replaced with proven community sentences. However, with both prisons and proven effective alternatives to custody under-resourced, it appears that the Government is intent on ignoring the evidence of what works when it comes to public safety.

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As well, the Johnson Administration has failed to commit to the investment needed to reverse the cuts in justice, or to rebuild prisons, probation, the courts, and the legal aid system.

Despite probation’s disastrous part-privatisation (implemented alongside outsourcing of prison maintenance contracts), the Tories are still leaving the door open for further

private-sector involvement in probation. In November, they started the tendering process for contracts worth up to £280 million a year to provide unpaid work and accredited programmes for “innovation partners” from the private and voluntary sectors.^{xi}

What is Needed?

The Conservative MP Sir Bob Neill said recently: “If the prime minister is talking about more police, more prosecutions and increasing sentences in some areas, you’ve got to be honest and say that costs money.”^{xii}

The sums needed – to reverse past cuts as well as to realise future promises – are significant.

In March 2019, the House of Commons Justice Committee said: “The Ministry of Justice currently has a gap in its finances across 2018-19 and 2019-20 which equates to £1.2 billion.”^{xiii}

A National Audit Office report recently reported that:^{xiv}

- There was an estimated £450 million annual investment needed in the public sector justice estate;
- 63,200 maintenance jobs were outstanding in prisons as at April 2019.

It seems unlikely that these gaps will be plugged in the upcoming Budget, let alone the investment identified by Sir Bob Neill.

There is also evidence of a lack of capacity to deliver on justice reforms: the cuts of the last ten years have punctured the capacity of the justice sector. The former Chief Inspector of Prisons Nick Hardwick said recently, “Let’s be clear. All this talk about longer sentences, deradicalisation programmes and closer probation supervision – who, precisely, is going to do this? These are services in crisis, haemorrhaging experienced staff and struggling with chaotic reforms.”^{xv}

There are real concerns, too, about the capacity to deliver deradicalisation programmes, promised by the Conservative Government following recent attacks in London Bridge and Streatham. There is “no proven methodology”, according to the Home Office. Usman Khan, the person responsible for stabbing and killing two people

in London Bridge in late 2019, requested a deradicalisation programme in prison, but received no help. No solutions have been offered to tackle the fact that three-quarters of convicted terrorist offenders reject engagement with deradicalisation programmes.^{xvi}

3. THE POSITIVE VISION NEEDED FOR JUSTICE – THAT ONLY LABOUR CAN PROVIDE

There is an urgent need for an alternative approach, which prioritises investment in the justice system, puts an end to hollow rhetoric, and recognises the need to think about the connections between policy areas.

That is Labour's approach. The justice sector cannot be seen as sealed off from health, education, social security, housing, and related areas. Cuts in those areas will make it harder to achieve a safe and fair society, and investments in those areas are also needed for justice to be protected.

This is just one problem with the Government's proposal for all departments to cut up to 5% of their day-to-day spending in the lead-up to the Budget, in order to find money for the NHS, tackling crime, and addressing regional inequality.^{xvii} Cuts in other ways won't 'make room' for these three priorities: they may hamper the Government's ability to make good on these priorities.

Labour's 2019 manifesto committed to restoring prison officer numbers to 2010 levels and addressing the prison maintenance backlog. It promised a presumption against prison sentences of six months or less for non-violent and non-sexual offences as well as investment in proven alternatives to custody such as women's centres and problem-solving courts.

Importantly, these commitments were part of an integrated broader package of investment in housing, education, and local government; and the scrapping of Universal Credit.

Without these transformative measures, what appears to be in the Budget from a justice perspective looks set to put us on a path to a decade of disappointment, despite the Chancellor's talk of a decade of renewal.

The Tory Government should adopt, without delay, the approach to justice advocated by Labour. More fundamentally, it must end austerity for good, recognising that cuts to spending will only undermine people's safety and the quality of justice in this country.

NOTES

i House of Commons Library briefing, 'The spending of the Ministry of Justice', 1 October 2019, at p. 2.

ii Ibid, at p. 3.

iii Ibid, at p. 5.

iv Committee of Public Accounts (HC), *Transforming Rehabilitation: Progress Review*, online at <https://publications.parliament.uk/pa/cm201719/cmselect/cmpubacc/1747/1747.pdf>, at p. 3.

v Library briefing, above n i, at p. 7.

vi See <https://www.instituteforgovernment.org.uk/publication/performance-tracker-2019/prisons>.

vii National Audit Office, 'Improving the prison estate', 7 February 2020, online at <https://www.nao.org.uk/wp-content/uploads/2020/02/Improving-the-prison-estate.pdf>, at p. 7.

viii As this report was finalised, further figures were published, showing an overall 129% increase in assault incidents between September 2010 and September 2019; a 107% increase in prisoner-on-prisoner assaults over the same period; and a 130% increase in self-harm incidents. See <https://www.gov.uk/government/statistics/safety-in-custody-quarterly-update-to-september-2019>.

ix HM Chief Inspector of Prisons for England and Wales, *Annual Report 2018-2019*, online at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/814689/hmip-annual-report-2018-19.pdf, at pp. 8-11.

x See 'Crimes unreported as public lose faith in police', 7 February 2019, online at <https://www.bbc.co.uk/news/uk-51408921>.

xi T.E.D., UK: Probation services, 2019/S 222-544675, 18 November 2019, <https://ted.europa.eu/TED/notice/udl;JSESSIONID=08DCEBC5C22E9FB2616653C00B02620E.backend-a2?uri=TED:NOTICE:544675-2019:TEXT:EN:HTML&src=0>

xii See <https://www.thetimes.co.uk/edition/law/a-working-justice-system-is-as-much-a-social-service-as-healthcare-b5w7pfj9k>.

xiii House of Commons Justice Committee, *Prison Population 2022: Planning for the Future*, online at <https://publications.parliament.uk/pa/cm201719/cmselect/cmjust/483/483.pdf>, at p. 5.

xiv National Audit Office, 'Improving the prison estate', 7 February 2020, online at <https://www.nao.org.uk/wp-content/uploads/2020/02/Improving-the-prison-estate.pdf>, at p. 5.

xv See <https://www.theguardian.com/commentisfree/2019/dec/01/locking-up-extremists-uk-cash-strapped-prisons>.

xvi See <https://www.theguardian.com/commentisfree/2019/dec/01/locking-up-extremists-uk-cash-strapped-prisons>.

xvii See <https://www.ft.com/content/2d13dcb0-42c2-11ea-a43a-c4b328d9061c>.

