

Report to the Thames Valley Police & Crime Panel

Title: Increase in Crime rates and falling number of prosecutions/ Restructuring of Courts and the implications of this on the Criminal Justice System



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Objective

The objective of this themed item will be for the Panel to assess why with an increasing crime rate in the Thames Valley has the number of convictions/ prosecutions reduced?

The Deputy Police and Crime Commissioner and Chief Constable will be in attendance to provide the Panel with presentations on this themed item.

Background

The number of people formally dealt with by the criminal justice system fell last year¹ to the lowest level since 1970 despite police figures showing a six per cent rise in offending, official statistics have revealed. The Ministry of Justice figures showed that the number of people dealt with by the justice system in England and Wales fell by three per cent in 2018.

The decline was made up of a two per cent drop in prosecutions and an 11 per cent fall in “out-of-court disposals”, such as community punishments. The statistics also revealed that nearly two-fifths of offenders now have long criminal records, up by 10 per cent on the figure a decade ago.

The disclosures have heightened concerns that cuts to police funding and other parts of the justice system are affecting the ability of law enforcers to bring criminals to court and to stop reoffending.

Among the exceptions to the trend were prosecutions for possession of weapons, which rose by four per cent during 2018 in response to the significant increase in knife offending

¹ <https://www.bucksfreepress.co.uk/news/>

nationwide. Prosecutions for sex offences and fraud were also up over the year, but all other categories of offending fell.

The result was that the number of people taken to court fell to 1.38 million, marking a 16 per cent drop compared with the equivalent tally for 2008.

An analysis accompanying the figures said a nine per cent fall in people charged by police over the past year was one factor behind the phenomenon. It also pointed out that police recorded crime rose by six per cent over the same period, with a total of 5.7 million offences, including fraud crimes, registered by forces during 2018. The conviction rate remained high at 87 per cent.

Thames Valley Police

The Thames Valley PEEL (police effectiveness, efficiency and legitimacy programme) assessment of 2018/19 ² concluded that Thames Valley Police was effective at reducing crime and keeping people safe, however, it needed to improve how it investigated low level crime.

The force has improved its processes for locating and arresting suspects. However, the force is bringing fewer offenders to justice than it has in the past. Its approach to disclosing evidence to the defence is good and staff have been well trained in this area.

Over the last four years the number of crimes recorded has increased, yet the number of offenders being brought to justice has decreased. The report concluded that this lends weight to the findings of reviews of completed and ongoing investigations, which suggested that the overall quality of some investigations has reduced.

Between 1 April 2016 and 31 March 2017, the force recorded 138,000 crimes, of which offenders were taken to court in 17,000 cases. The force dealt with a further 7,500 cases in other ways, such as with a caution. In the same period a year later, the force recorded 149,000 crimes, but took only 14,000 offenders to court and dealt with just over 5,500 in other ways. The improvement in processes for recording crime since crime data integrity inspections explain why recorded crime has increased. But it does not explain why the number of offenders being brought to justice has fallen.

The PEEL assessment stated that after legislation changed the way in which police bail was applied, the force did not strike the right balance between the use of pre-charge bail and the released under investigation (RUI) option. Previously, it was possible for police to, in effect; hold a person indefinitely by extending the bail period every 28 days. Following the introduction of the Policing and Crime Act 2017 c. 3, only an officer of inspector rank or higher could authorise police bail, so normally a suspect would be released without bail if they were not charged. Now, this period can only be extended once, and a superintendent officer must authorise it. A magistrates' court is responsible for any further extension.

² <https://www.justiceinspectors.gov.uk/hmicfrs/peel-assessments/peel-2018/thames-valley>

Since then, the force had been used RUI too often, rather than using bail conditions to protect victims and control offenders.

The force has raised awareness among officers of how to use the legislation, to improve their knowledge and expertise. It emphasises that they should always consider pre-charge bail.

Local Criminal Justice Board

Local Criminal Justice Boards (LCJBs) bring together criminal justice organisations at police force area level to support joint working and improve services. The purpose and vision of the LCJB is to reduce crime, harm and risk by increasing the efficiency and credibility of the Criminal Justice System. By working in partnership, the board aims to improve services to the public with the minimum costs, supported by the best available evidence.

The Thames Valley LCJB consists of the Police and Crime Commissioner (PCC), Thames Valley Police, Thames and Chiltern Crown Prosecution Services (CPS), Her Majesty's Courts and Tribunals Service (HMCTS), Thames Valley Probation, Thames Valley Community Rehabilitation Company, Her Majesty's Prison Service, Youth Offending Service and the Legal Aid Agency.

Priorities for 2019/20 are:

- Delivering improvements in performance across the Criminal Justice System (CJS), particularly with regard to increasing the proportion of effective trials.
- Identifying and creating efficiencies across the CJS including the delivery of digital working by all agencies and working with as little paper as possible.
- Improving victim and witness satisfaction - putting people at the centre of the CJS.
- Supporting the principle of facilitating the required Criminal Justice processes necessary to make Restorative Justice a timely, safe and efficient intervention in order to reduce re-offending and the risk of repeat victimisation.
- Reducing Re-offending – reducing crime, harm and risk by removing adult and youth offenders from the CJS, especially through the use of Integrated Offender Management.
- Improving access to health provision for offenders and reducing health inequalities.
- Supporting Children and Young People who are going through the CJS and increasing diversion from it, where appropriate.

However, there has been a restructuring of the Criminal Justice System which has resulted in two thirds of magistrates' courts in Thames Valley being closed over the last decade.

Experts have expressed concerns that widespread court closures could deny people access to justice. House of Commons library data reveals that 10 of the 15 magistrates' courts in Thames Valley have shut since 2010: (Witney, Didcot, Wantage, West Berkshire (Newbury), Maidenhead (East Berkshire), Bicester, Amersham, Aylesbury, Banbury and Bracknell. The following courts remain open: East Berkshire Magistrates' Court, Slough, High Wycombe Magistrates' Court, Milton Keynes Magistrates' Court and Family Court, Oxford and Southern Oxfordshire Magistrates' Court and Reading Magistrates' Court and Family Court.

Nationally, more than half the magistrates' courts in England and Wales have closed as part of reforms by the Ministry of Justice and HM Courts and Tribunals Service. The reasoning behind this is to "improve access to justice" by using technology, including having defendants entering pleas online and testifying remotely via video screen. However, campaigners say this could hamper communication between defendants and their legal representatives.

In Thames Valley six courts have been sold - four to private buyers - raising a total of £4.7 million for the Ministry of Justice (MoJ). The Treasury has stipulated that £400 million of the MoJ's £1.2 billion digital modernisation programme must be raised through the sale of courthouses.

Across England and Wales, £223 million has been raised by closing 162 out of 323 magistrates' courts. This closure of magistrates' courts has hampered witnesses and defendants, who are put off by having to travel long distances, which has had an impact on the number of collapsed cases. The MoJ maintains that the programme will make access to justice easier and improve efficiency, particularly by closing under-used court houses.

On 15 February 2019, Thames Valley's PCC offered the following comment in response to court closures at Newbury, Bicester and Aylesbury:-

"I am disappointed that the Ministry of Justice has decided to close three magistrates Courts in the Thames Valley, those in Aylesbury, Bicester and Newbury. It has made this decision in spite of the response to its own consultation showing overwhelming opposition from local Councils, MPs, Magistrates, and many other interested parties across the Thames Valley, including myself as Police and Crime Commissioner. Furthermore, the decision flies in the face of the Ministry's own pledge to put the victim first.

"It will result in more failed cases as victims and witnesses will have to travel long distances to get to courts. It will waste a considerable amount of police time getting officers to courts. It takes local justice away from the areas in which crimes are committed. Local justice will not be seen to be done as the local press will not turn up to cases heard in courts many miles away. It will prevent good people becoming Magistrates if they have to commute long distances to attend cases. It does nothing for the victims of crime or the effectiveness of the criminal justice system.

"It is true that proposed CCTV links to Courts will overcome some problems, but until that system is up and running properly we will not know how effective it will be, and in many cases it will not be possible. The alternative suggestion to close the Court buildings, but retain the function locally, and use Council offices or some other venue to host Court hearings, does not seem to have been looked at.

"The decision to close these three Courts may save the Ministry of Justice money in the short term, but it will cost the Police money, do nothing for victims and witnesses, and is likely to result in yet more failed cases. It would seem to waste money rather than save it, at the expense of local criminal justice."

Thames and Chiltern Crown Prosecution Service is the main prosecuting authority in England and Wales, and was set up in 1986 to prosecute criminal cases investigated by the police in England and Wales. Thames and Chiltern is one of 14 CPS Areas and covers three police force areas; Bedfordshire, Hertfordshire and Thames Valley (Berkshire, Buckinghamshire and Oxfordshire) and serves a population of approximately four million. The CPS' aim is to be a service that is confident and independent, efficient and effective, becoming truly world class. Everything that the CPS does, aims to support victims and witnesses, deliver justice for all, and make communities safer. They work in partnership with police forces, but are independent of them.

In the financial year 2017-18, CPS Thames and Chiltern prosecuted 27,524 cases in Magistrates' Courts and 4,664 cases in Crown Courts. The conviction rate for this period was 84.3% in Magistrates' Courts and 81.1% in Crown Courts.

An issue which is causing a problem in the criminal justice system has been the number of prosecutions that have collapsed because of a failure by police or prosecutors to disclose evidence. In 2018 this had increased by 70% in the previous two years.³

A particular area of concern has been the number of collapsed rape cases caused by a failure to share evidence with defence solicitors.

In the lead up to criminal trials, police and prosecutors have a duty to disclose evidence that might either assist the defence case or undermine the prosecutions. However, the collapse of several rape cases has heightened concerns that evidence is not being disclosed early enough, and that the rules are not being followed.

The CPS figures demonstrate that there are not just isolated cases of disclosure-related failed prosecutions, they are on the increase. There have been three official reports into disclosure in seven years (Lord Justice Gross, Richard Horwell, CPS inspectorate) but only now, it seems, is there a determination among police and prosecutors to grip the issue.

The reason for failings in disclosure was partly down to lack of police resources but also the police needed to consider all possible lines of inquiry, not just focus on building up a case, and the prosecution should not be holding onto evidence. In addition, lack of investment, training and attention to the criminal justice system was another reason.

The figures, obtained under the Freedom of Information Act, revealed that the total number of people whose trials have ended or the charges against them dropped due to a failure to disclose evidence. Over a four-year period, the number of completed prosecutions fell by almost 150,000 cases - from more than 736,000 in 2013-14 to just over 588,000 in 2016-17.

The National Police Chiefs Council (NPCC) acknowledged that the Police needed to swiftly improve and appoint disclosure champions in each force. The Chief Constable of Surrey Police⁴, the lead on criminal justice for the NPCC, commented that "We have had a cultural problem with disclosure, where it is too often seen by police officers as a thing to be done at

³ <https://www.bbc.co.uk/news/uk-42795058>

⁴ <https://www.theguardian.com/law/2018/jan/>

the end of an investigation, becoming subsequent to, rather than integral to, the investigation. Changing this mind-set is an immediate challenge for us.” Training ... is forming part of a very aggressive improvement plan that I’ve developed together with colleagues in the CPS, which is imminently due for publication,” he said.

Reference was made to the increase in digital information which presented challenges for the police service, with the average smartphone containing the equivalent of 30,000 pages of A4 paper in information.

Recent Developments

Since becoming Prime Minister, Boris Johnson has made a number of law-and-order announcements which will have an impact on policing and on the number of prison places available.

The hiring of 20,000 more police officers by 2022, which will cost £1.1bn. The creation of 10,000 places in new prisons by 2020. However, this target was to create new places in order to shut old, outdated prisons, not to increase the overall capacity of the prison system.

Plans have also been announced for an extra £85m over the next two years for the Crown Prosecution Service. Since 2010-11, the CPS has had its budget cut by roughly 30% in real terms - a total of about £225m. In the same period, staff numbers have decreased from 7,978 to 5,518.

Rehabilitating our criminal justice system

Thames Valley’s Deputy PCC made the following statement on 13 September, 2019:

“Confidence matters. Not just in the sense of good PR, or a nice warm feeling inside, it actually matters. Thankfully, most people have very little or no contact with the criminal justice system, but we all need to have confidence that the system is in good health and working to protect us and those around us. You do not have to believe in a rose-tinted past in order to see that this confidence has taken a battering over recent years, and indeed decades.

Justice is seen as too slow and bureaucratic; investigative outcomes are poor; sentencing is seen as weak and reoffending rates are high. We urgently need to rehabilitate both offenders, and the criminal justice system itself. Few complex systems are perfect, especially those that have to deal with human tragedy and transgression as their bread and butter, but through the leadership of Local Criminal Justice Boards, that bring together all of the agencies involved in delivering justice, Police & Crime Commissioners can be the midwives to that transformation.

Much of the attention to police performance is understandably about visibility, but that is only part of the picture. The investigative outcomes are well below where the public would expect them to be. In Thames Valley a major new initiative is being launched to ensure that

investigation is at the heart of what the police do. It is one of the unique functions that can only be carried out by the police and it goes beyond the immediate response to incidence which is so often the focus of attention and resources.

The effectiveness and quality of prosecutions must also be rigorously scrutinised. Undoubtedly much of this rests with the police in terms of providing thorough investigations and properly dealing with issues such as disclosure, but the Crown Prosecution Service also need to ensure that they are not prioritising the safest cases at the expense of confidence in the wider system.

The use of technology in our courts and prisons needs to be improved. Too often the correct technology is not in place or the infrastructure isn't up to the job. With court closures making the physical journey to secure justice a longer one for many victims and witnesses, the facilities and the support for them needs to be right first time, every time.

The public response to sentencing, often without understanding the details of the case will always be a problem, but whilst prisoners continue to be routinely released half way through the sentence that has been imposed by the courts it is little wonder that confidence is draining away. If we are to retain this policy the Ministry of Justice should seriously consider GPS tagging for all serious or violent offenders as part of their sentence. This is currently used by Thames Valley on a voluntary basis for a small cohort of offenders, but the potential of this technology is significant. Not just by imposing an additional restriction on someone's liberty as part of their sentence, but as an active tool to reducing reoffending and helping people to turn their lives around.

This final point about reducing the chances of someone committing further crimes is key. Too often the pendulum of debate swings all the way to draconian punishment to ultra-lenient sentencing with no evidence of success. There is a balance to be struck. Whilst offenders are in prison they are there to be punished, but there is no reason why that time inside should not be used to equip them with the basic skills to become law abiding members of society on their release. Once they are outside there is no reason why they should be cast aside. Restrictions on liberty, provision of education, and where necessary treatment should all be part of how the state deals with offenders in order to keep society safe.

Reform will cost money, but as is so often the case, cash isn't the only answer. By properly joining the system up, through bodies such as Local Criminal Justice Boards, can improve working practices, encourage the sharing of data and ensure that all agencies have a shared goal of improving justice for victims.

Just as there is no contradiction between punishment and rehabilitation, there should also be no conflict between delivering an efficient criminal justice system and at the same time ensuring public confidence in it."

Further background information

Half of rape victims drop out of cases even after suspect is identified
<https://www.theguardian.com/society/2019/nov/10/>

Campaigners say victims may be dropping out fearing disclosure of their intimate private life after police requests for the contents of their digital devices.

Almost half of rape victims are dropping out of investigations, as a growing proportion do not want to pursue a prosecution even when a suspect has been identified, according to a Cabinet Office report.

The figures, which were prepared for a secret internal government review earlier this year, reveal a system in crisis as tens of thousands of women are reluctant to pursue their alleged attackers when faced with invasive disclosure demands, a lower likelihood of securing a conviction and lengthy delays in seeing their case brought to court.

The report, suggests a lack of resources which is impacting the criminal justice system's ability to pursue rape cases.

Reported rapes are on the rise. However, police are referring fewer cases to the Crown Prosecution Service, which in turn is prosecuting even fewer cases.

While recorded rapes increased by 173% between 2014 and 2018, the police referred 19% fewer cases for charging decisions and CPS decisions to prosecute fell by 44% in the same period.

One of the most concerning changes is the growing proportion of cases resulting in "outcome 16", whereby a suspect has been identified after a police investigation but the victim does not support further action. The document reveals that from 2015 to 2018, the proportion of cases dropped owing to an outcome 16 rose from 33% to 48%.

Last year, more than 20,000 women – an average of one every 30 minutes – decided not to proceed with a rape investigation, even when the suspect had been identified.

Campaigners believe the sharp rise may reflect victims being discouraged from pursuing complaints because they face disclosure of their intimate, private life through requests for the contents of their phones and laptops. The sheer length of time from offence to completion at court, which has increased by 37% to an average of two years since 2014, may be deterring others.

The lower number of cases referred to the CPS has been compounded by a further decline in the charging rate. The majority of CPS areas showed a decline in the charge rate for rape between 2014 and 2018. Overall 11 of 14 CPS areas showed significant falls in the rate of charging suspects and three – Wales, the south-east and east Midlands – showed increases. This effectively results in further variation in a victims' chances of seeing their case prosecuted.

The review also shows the amount of time taken by the CPS to produce a decision on whether or not to charge a suspect has doubled since 2013-14, when it was on average 30.6 days, to 2018 when it reached 86.2 days.

Crimes and convictions

<https://www.bbc.co.uk/news/uk-49986849>

In 2018-19, fewer than 8% of offences led to a suspect being charged or ordered to appear in court, and under 4% were dealt with outside court, by an on-the-spot fine, caution or community resolution, such as an apology or compensation.

When deciding if a suspect should be charged, police generally work with the Crown Prosecution Service (CPS), which prosecutes crimes in court on behalf of the state.

The two tests which must be met for the CPS to authorise charges are whether there is sufficient evidence for a realistic prospect of conviction and if a prosecution is in the public interest.

Charging rates and overall detection levels vary according to what type of crime it is.

Drugs offences are often discovered by the police through searches or raids, which is why charging rates are higher. Most murders are detected because of the huge investigative effort that goes into solving them.

The proportion of crimes that are "detected" - meaning they have been resolved in some way - has been falling continuously since 2015. Offences such as robbery, where witnesses are needed and sexual offences, which often revolve around the issue of consent, have far lower clear-up rates.

Genuine increase in crime

In England and Wales, crime is measured through the Crime Survey of England and Wales, and by counting offences that are reported to and recorded by police. The Survey is seen as the better way of measuring long-term trends and its methods have remained consistent and it includes unreported offences.

Its results indicate an overall downward trend in offending over the past two decades, before stabilising in the past few years. Some crimes, such as murder, offences against businesses, and crimes against people aged under 16 - are not included in its main findings.

The Survey is also not regarded as being good at estimating less common crimes which cause the most harm, like stabbings and robbery.

Police data provides a more reliable measure of these crimes, which have shown a genuine increase.

Overall, the police figures **show the number of offences logged by forces is up.**

This is partly because more people feel comfortable approaching the police about under-reported crimes, such as sexual offences, and because police themselves are getting better at recording crime.

Police officers are central to the criminal justice system's smooth running as they:

- deal with crimes, disorder and anti-social behaviour
- help victims and identify suspects
- prepare cases for trial

The number of officers in the 43 England and Wales forces has fallen by about 20,000 since 2010, but the government is in the process of restoring those numbers by April 2023 in the most ambitious police recruitment drive in modern times.

There has also been a steep decline in the number of police community support officers and civilian staff, who provide vital back-up roles.

When officers are called to reports of a crime, they have several options, including resolving matters informally, issuing a warning, or making an arrest - which can lead to a charge. But as officer numbers have dropped, arrests have gone down for almost all crimes.

Detective work has been made more complex because of the mass of digital material from smartphones, computers and data storage devices. A roughly 30% reduction in the CPS budget between 2011 and 2018 has also affected the volume of prosecutions and how quickly cases can be processed, though court success rates have improved.

Once a case goes to court, most crimes are dealt with by magistrates or district judges but serious offences are heard in the Crown Court, where defendants have the right to trial by jury. Almost half of Magistrates Courts in England and Wales have been closed since 2010.

This is partly because of a government strategy to move some cases, such as low-level thefts and motoring offences, out of the court system, by extending the use of video links and virtual hearings conducted online.

If a defendant admits the offence they are accused of, or is found guilty after a trial, a magistrate or judge will determine the most appropriate sanction. The maximum (and in some cases, minimum) penalty for each offence is set out in legislation, but the judge will also refer to Sentencing Council guidelines.

Most crimes are dealt with through fines or community sentences, administered by probation officers. The probation system was partially privatised in 2014, but is now undergoing a further substantial overhaul to undo some of the changes.

Prison is usually reserved for serious offenders, persistent criminals and those who pose a risk to the public; it is intended to be used as a "last resort", but England and Wales have one of the highest rates of imprisonment in the Western world, with almost 83,800 people currently locked up.

Prisons, like other parts of the criminal justice system, also faced significant budget cuts, which led to the loss of more than 6,000 front-line prison staff between 2010 and 2016.

The reduction coincided with a rise in violence, drug-taking and self-harm.

Prison officer numbers are now on the increase and the government has promised to invest £2.5bn in 10,000 new places.